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THE JUDICIAL REFORMS IN THE GDR

During its 26th session on 17 April, the East German pseudo-parliament legalized the increased Party dictatorship of the judiciary apparatus. This final approval of the re-organization of jurisprudence is the last in a series of preparatory steps which date back to June 1962—an evolution which deprives the current development of any element of surprise and novelty. In brief, the decided changes permit the following general observations:

1. the authority of the Ministry of Justice, headed by Hilde Benjamin, has been curtailed by the transference of its function as the final power in guiding the decisions of the lower and district courts to the East German Supreme Court. The Supreme Court is no longer responsible to the Ministry of Justice, but rather to the State Council and to the People's Chamber;

2. the increased enforcement of the principle of democratic centralism closely follows the Soviet lead of July 1962 when the Supreme Soviet of the RSFSR enacted a bill which placed the legal profession under the jurisdiction of the local authorities;

3. the regime's efforts to exploit the law and jurisprudence more than before for "socialist" education and the creation of "socialist" mentality is apparent from the new decrees;

4. the timing for the passing of the new laws was not chosen at random, but seems to have been purposely made to coincide with the current West German reform of the penal law. This aimed coincidence serves the dual purpose of presenting a contrasting East German version in an analogous field, and of exploiting the West German propounded reform for propagandistic anti-Federal Republic aims;

5. the new decrees do not go as far as planned in applying "public legality" (gesellschaftliche Gerichtsbarkeit) which was to involve all areas of life and all inhabitants in implementing enterprise and citizen justice.

1 See Background Information USSR, 27 July 1962, "'Decentralization' of Justice?".
While the role of the "conflict commissions" (in the factories) is to be expanded and continues to be supported under the aegis of the FDGB (communist trade union), the corresponding bodies for residential areas ("Schiedskommissionen" or "adjudicative tribunals") will at least not yet be created throughout the country.

Background History of the Current Decrees:

In East Germany the reconsideration of judicial principles along post 20th CPSU Congress lines did not begin until several months after the 22nd Soviet Congress. In recapitulating the most significant publications and exchanges, it might be advisable to recall that it was only in the April 1962 issue of the official Soviet organ for jurisprudence "Sovietskoye Gosydarstvo i Pravo" that the Stalinist cult of personality applied by Prosecutor General Vyshinsky came under the most scathing attack for having "frequently violated the legal norms".

The first February 1962 edition of "Neue Justiz" ("New Justice", biweekly of the Ministry of Justice) featured an article dealing with the "Concepts of the 22nd Party Congress of the CPSU for the Development of Socialist Penal Law in the GDR". The article developed the idea that all violations of law tend to undermine the political power of the socialist state, and that such violations in fact tend to become themselves "counter-revolutionary and anti-state activities". This Stalinist legal point of view was suggested by two prominent professors of Penal Law, Dr. John Lekshas and Dr. Joachim Renneberg, the authors of a text book on the subject, last reedited in 1959 and then still in use at all East German universities. "Neue Justiz" editors prefaced the article with the remarks that it was based on a joint lecture, given in late December 1961, adding that the subject was very important, but that the piece contained "several problematic theses propounded by the authors". The editors, therefore, invited commentaries, discussions and additional ideas about the basic concepts presented in the article.

The requested comments and criticisms soon followed: the first April issue of "Neue Justiz" included a passionate attack by two lecturers at the Karl Marx Party School not only against the article by Lekshas and Renneberg, but primarily against their text-book. The thesis which had been valid heretofore, namely that "every crime, every violation of the penal code is an expression of the class struggle against socialism" was decried as leading to "schematic exaggerations, to false emphasis on the role of force in the practice of justice".

The authors argued that people who are unable to follow the rapid social development in a socialist society and who falter occasionally should not be punished drastically and
should not be regarded and treated as enemies. Political opponents must of course be handled without mercy, but "citizens who do not agree with us in all respects, and who will only understand the social development in the GDR in the future", must be considered with tact and patience.

In the April 1962 issue of "Staat und Recht" ("State and Law", monthly organ of the German Academy for Politics and Law "Walter Ulbricht" in Potsdam), the Minister of Justice herself presented similar arguments, i.e. arguments against Lekschas and Renneberg, maintaining that the "growth of moral forces of the population...should not be ignored in evaluating the degree of danger to society of punishable actions..."

A 24 May 1962 resolution by the State Council concerning the development of the application of law stated among other things that "the majority of violations of the law committed in the GDR are not based on a hostile attitude toward the Farmers' and Workers' State."

During this same session of the State Council, under the chairmanship of Walter Ulbricht, a special commission was created, charged with working out measures "for the further improvement of the judicial organs, court procedure and the direction of public prosecution in the GDR". This commission which was to present its proposals by 15 September, was headed by Professor Karl Polak, himself a former secretary of the Soviet Prosecutor General Vyshinsky. In addition to forming this commission, the decision of the State Council noted further:

"Opportunities of public influence have not yet become in due measure the basis of the entire activity of the judicial organs. The organs of jurisprudence are not yet fully aware of the increased force of the socialist public and do not use it in full measure in the struggle with crimes and in educating the violators of law...New, more favorable conditions for the struggle against violations of law with the aid of the socialist public have been created in the state...."

The strongest and most straightforward attack against the former justice methods was featured in the 8 June 1962 issue of "Sozialistische Demokratie" ("Socialist Democracy", the weekly publication of the State Council), authored by the same Dr. Polak, who had just been nominated head of the special commission. Dr. Polak directed his attack at the Lekschas and Renneberg article, at their text book, at the Stalinist trend it represented--very much in accordance with the post 22nd Congress Soviet line, and concluded:

"It must be noted that the article in 'Neue Justiz' presented ideological positions which are not in fact based on the teachings of the 22nd Party Congress, but which hark back to ideas that were defended prior to the 20th Party Congress of the CPSU..."
Decisions and statements along these lines became the rule from that time onward; that is to say, judicial and Party spokesmen argued against the dogmatic conception that any faltering individual is necessarily committing a crime against the state, that any "stupid remark, any 'flying off the handle' is necessarily an attack on the state..." (Walter Ulbricht in his speech to the National Congress, Neues Deutschland, 20 June 1962). At the same time, they emphasized the educational role of "socialist society" in guiding an individual back to the road of "productive life, back to the collective, back to society" (idem). For misdemeanors, persuasion and comradely criticism should be the judicial methods employed rather than punishment, particularly imprisonment.

When it had become clear that the SED was going to emulate the Soviet judicial reforms at least pro forma, if not perhaps in substance, and when the attacks on East Germany's Ministry of Justice and its methods multiplied, speculations arose in many quarters that Hilde Benjamin's days might be numbered. It was frequently overlooked that the Minister of Justice (as Walter Ulbricht himself) had managed to present arguments against the methods employed by her own Ministry quite early in the game (April 1962) --arguments which amounted to a reversal of her own previous position, a self-acusation therefore by which it was likely she would save her skin.

At the Sixth SED Party Congress in mid-January 1963, the "schematic and bureaucratic" ways of the judiciary came under attack once more, and again Hilde Benjamin fell on the side of the angels. At the conclusion of the Congress, it emerged that she was still Minister of Justice and remained a member of the Central Committee.

The Decree "About the Basic Tasks and the Working Methods of the Judiciary":

The fruit of the labors performed by Dr. Polak and his commission were presented in draft form to the State Council on 6 December 1962. In early April, the State Council passed the series of judicial laws and then presented them for final approval to the People's Chamber on 17 April. According to the official version which was formulated by Walter Ulbricht, the draft had been discussed by more than 2.5 million people who had contributed more than 6000 suggestions for ameliorations, changes and additions.

The method of presenting draft decrees or resolutions for what the regime chooses to call "popular discussions" is certainly not new, and would appear to serve only the purpose of impressing the population with the "democratic" ways of the government and the Party; it also attempts to demonstrate to other less dogmatic communist parties that the SED is
intent on preserving the "Leninist forms of Party life". Similar procedures have been used in the recent past, for example, in the discussion of the "Party Program" and of the "Party Statutes"...with one slight difference. To the best of our knowledge, the draft of the jurisdiction decrees has never been published (both the Statutes and the Program had appeared in draft form first and in slightly altered final form subsequently), making it virtually impossible to determine whether any changes or suggestions have been incorporated in the finished decree.

1. In explaining and justifying the new decrees to the "Volkskammer", the speakers were extraordinarily vague, contenting themselves with generalizations, while forgetting concrete illustrations. The remarks by the Secretary of the State Council Otto Götsche and the President of the Supreme Court Dr. Heinrich Toeplitz (Neues Deutschland, 18 and 19 April respectively) only amplified Walter Ulbricht's statements of early April: the administrative guidance of local and District courts no longer is to be handled by the Ministry of Justice, but by the immediate superior judicial agency up to the highest level, namely the Supreme Court. The Supreme Court, however, answers only to the parliament, the Volkskammer, and to the Council of State. Neither the Volkskammer which meets infrequently, nor the State Council, can be considered as bodies capable of functioning without the approval of the highest Party leadership. It also was stated that the Prosecutor General and his office would be responsible, as the Supreme Court, to the same two bodies. The meaning of the reorganization therefore is clear: more so than previously, the power of justice is to be concentrated into the hands of the State Council Chairman, Walter Ulbricht. In addition to his other positions as chief of State and of the Party, Ulbricht has now legalized his function as the last and highest judicial authority, and prosecutor.

The new decrees not only curtail the power of the Ministry of Justice, but also reduce the power of the Council of Ministers, by transferring certain authorities to the State Council. As the First Deputy Prime Minister Willi Stoph explained (Neues Deutschland, 18 April 1963), the Council of Ministers is henceforth designated as the "executive organ of the People's Chamber and of the State Council"; the formerly valid law of 8 December 1958 termed the Council of Ministers as "the highest executive organ of state power". According to Stoph, the work of the Council of Ministers is

2 The disarray among the population and among judicial functionaries is perhaps best illustrated by the article of "Neue Justiz", No. 4, 1963, written by Prosecutor General Joseph Streit, to be found in the appendix.
to be characterized by the "intensified transfer from administrative measures to specialized, economically and scientifically-sound leadership of the national economy". In other words, the various Ministries will operate almost exclusively as bureaus guiding the branches of economy, and will be even further deprived of political executive functions. To quote Stoph again:

"On the basis of the Party Program and of the decisions of the CC, the Council of Ministers will elaborate and execute the laws and resolutions of the People's Chamber and of the State Council in the political, economic, technical, cultural, and educational realms."

2. At the Volkskammer session (and during the previous State Council meeting), there was much talk of alleged concern for "the human being", the individual. According to the SED-chief, the aim of the changes was to "extend the democratic rights of GDR citizens" after having overcome certain "phenomena of dogmatism and also of revisionism". If, as mentioned above, the judicial reforms aim at least formally at a simulation of Soviet post-22nd Congress de-Stalinization, the survival of Ulbricht's personality cult is obvious in all major speeches. Thus, Willi Stoph said:

"It is necessary to implement throughout the whole state apparatus the new forms of socialist leadership, as they have developed especially since the creation of the extensive activities of the Council of State, and in accordance with the personal example of its Chairman, Comrade Walter Ulbricht."

Supreme Court President Toeplitz thanked Ulbricht personally for his example in equally profuse terms. It is superfluous to point out here the basic contradiction between such exhibitions of personality cult, and the spirit of de-Stalinization.

3. The recent legislation emphasized the importance of "conflict commissions" as a symptom of socialist legality, and of "workers' jurisprudence". These commissions have been in existence since 1953, and were devised originally to settle work conflicts arising at the enterprises and factories. In the course of time, however, they were used to rule on "violations against socialist working morality" and small criminal misdemeanors occurring at the place of work.

In May and June last year, Ulbricht insisted on an expansion of the commissions' authority; by a system of "collective educational measures", punishment by deprivation of freedom was to be replaced by fines, shortage of salary, public reprimand, additional working hours, etc. (Otto Lehmann, executive board member of the communist trade union FDGB, wrote in Neues Deutschland of 29 April that they are at present 190,000 workers active in the conflict commissions
and that in 1962 alone, 67,540 cases had been submitted to these commissions).

The regime's request to punish misdemeanors by "educational" measures rather than by imprisonment might at first appear as increasing leniency. Two factors should not be ignored before coming to such a conclusion: 1) a system of public criticism and reprimand tends to further mutual distrust among the working population by supporting denunciation and intrigues; 2) anti-state or "political" crimes do not enter this category, and will continue to be punished harshly. It would seem unlikely that the judges responsible for such cases will practice leniency, knowing that they are responsible to the State Council and to its Chairman!

The corresponding development of such commissions for situations in life other than the working place ("Schiedskommissionen" in residential areas, women's clubs, etc.) was slowed down and even warned against. The Deputy Chairman of the State Council Hans Rietz wrote in Neues Deutschland of 18 April that the creation of "Schiedskommissionen" should not be hastened.

"According to the specifications of the Ministry of Justice, such commissions should only be formed in some realms and in some individual collectives in order to study their experiences."

Despite the great achievements in building socialism, the GDR is obviously not ready to apply socialist legality in all sectors of life.

It might be pointed out in conclusion that the current justice reform does not have any real liberalistic characteristics. It is also apparent that the new decrees add nothing basically new to the previous conception of justice and jurisdiction, of their role in and for the state and Party apparatus.