THE COURTS

1) Historical Background

The modern court system in Russia emerged as an outcome of the Great Judicial Reform of 1864. The pre-Reform state of affairs could best be characterised as sheer lawlessness and chaos. The court system was organised in such a way that different lines of courts adjudicated cases involving people from different classes. In civil procedure, there could be 16 instances and 30 different procedures. There was no independence of the courts while judges were corrupt and susceptible to pressure from outside. “Our courts have got all the shortcomings which Western European courts used to have when the inquisitorial system prevailed”. I.S. Aksakov, a renowned philosopher, remarked in 1884; “Old courts! Simply thinking of them, your hair stands on end and your flesh begins to creep.”

In 1864, a new Statute on Court Organisation was enacted together with the rules of criminal and civil procedure. The reformed system was modelled entirely on the Western European system which existed at that time; there was a clear discontinuity with the indigenous Russian system. Laws of France, Switzerland, Belgium, Germany, and Austria as well as England were studied. There are different views as to the origin of institutions introduced by the Reform. “The most liberal foreign institutions” served as a model. More specifically, the French system had a major influence, although some German and English elements could also be seen. At that time, the German judicial system was in

1 I.V. Gessen, Sudebnaia reforma, St.Petersburg 1905, p.65.
2 Ibid., p.28.
3 Ibid., p.29.
the process of modernisation under the influence of French law, and therefore, it was no wonder that the French system was preferred. Although this system was formally abolished by the October Revolution, traits of the continental judicial system and procedure still remain to this day.

One of the first decrees which the Bolsheviks enacted was the Decree on Courts by which the Tsarist Russian courts were abolished and a new system of people’s court was set up. This system was the immediate predecessor to the current ordinary court system. Commercial courts did not exist as part of the judiciary under socialism. The most important feature of the people’s court was the “democratic principle” in that the judges were all elected by the populace, but for the time being, they were being elected by the executive committee of local soviets. In addition, people’s assessors, who were laymen chosen from among the general public, sat with the judge in court. This system was consolidated in 1922 by the Law on Court Organisation.\(^5\) While at the initial stage, this system existed only in the RSFSR, after the Soviet Union was founded, the USSR Supreme Court was established in 1923.

Under the socialist regime, particularly since the consolidation of power by Stalin in the late 1920s, the independence of the court remained only on paper. First, the election of judges came to be reduced to a formality. The position of a judge was on the *nomenklatura*, a list which contains positions which require the approval of CPSU organisations. Judges were nominated by the local CPSU organisation and the election, which allowed only one candidate for one seat, was merely a ceremony. Second, judges were under pressure from various sources in handling the cases, namely the local CPSU organisations and local government officials. Third, the Procuracy was vested with the power of “judicial supervision”, i.e. supervision over the legality of court judgments.

In general, the prestige of the court was extremely low under socialism. Judges were not even required to have had higher legal education. CPSU organisations which nominated judges were lower in rank than those nominating procurators of the same level.

In 1987, when the creation of the “law-governed state” (*pravovoe gosudarstvo*) came on the agenda, one of the first issues raised was the revamping of the court system and the increasing of the authority of the court. In 1989, the Law on the Status of Judges was enacted in order to strengthen the independence of judges and to shield them from undue pressure.\(^6\) Changes were introduced to the system of electing judges – a new system of appointment of judges by the

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5 *SU RSFSR*, 1917 No.4, item 50. For the formation of the judicial system in Russia, see J. Hazard, *Settling Disputes in the Soviet Society*, New York 1960.

6 *VSND SSSR i VS SSSR*, 1989 No.9, item 223.