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Soviet Jurists in the Legislative Arena: The Reform of Criminal Procedure, 1956-1958*

Introduction

On December 25, 1958, the deputies of the USSR Supreme Soviet unanimously adopted a legislative package of unprecedented scope and novelty. In a single sitting, the Soviet parliament acted to nullify the complex of codes and statutes which had for decades defined crime and allocated punishment, established the rules of judicial procedure in criminal cases, and governed the structure and functioning of the Soviet judicial network.

The event, which was punctuated by the usual contrived speeches that pass for “debate” in Soviet parlance, appeared in no way to contradict the widely held belief that the Soviet parliament constitutes a legislature in name only, being in reality a simple, direct, and efficient conduit for the processing of those decisions of the Communist Party leadership which happen to require the force and stability of law (zakon). What follows is an attempt to reconstruct in detail the legislative history of one of the acts adopted that day—the “Fundamental Principles of Criminal Procedure of the USSR and the Union Republics.” We shall attempt to demonstrate that the dominant Western image of the Soviet parliament as a ritualistic “rubber stamp” stands in need of some modification; that the spurious unanimity of the ratification stage is not necessarily characteristic of earlier stages of the legislative process; and that indeed, the overall process whereby demands become issues, issues become subjects of legislative initiative, and bills become laws may, on occasion, bear a resemblance to the legislative process in Western parliamentary systems. Political issues may initially be raised and debated widely in the public media. Special drafting commissions may be formed. Subject-matter specialists may be consulted, some on a “temporary full-time” (komandirovka) basis. For complex legislation, such as the Fundamentals, successive drafts may be debated, then modified or even discarded.

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1. The field of criminal liability and punishment would henceforth be regulated in accordance with the new Fundamental Principles of Criminal Legislation of the USSR and the Union Republics and the Law on Criminal Liability for State Crimes. The organization of the judiciary was set forth in the new Fundamental Principles of Legislation on Court Organization of the USSR and the Union and Autonomous Republics, and in the Statute on Military Tribunals. The field of criminal procedure would now be regulated by the Fundamental Principles of Criminal Procedure of the USSR and the Union Republics.
The following account will also suggest the presence of vigilant bureaucracies standing guard in defense of their policy interests, in part through participation by their representatives in the work of drafting bodies. Jerry Hough has employed the term "institutional pluralism" to describe the general framework of Soviet policymaking. The central insight of institutional pluralism is that, while the CPSU clearly dominates the Soviet political system, it must nonetheless share policymaking influence with a wide variety of organizations and institutions. Most policy-relevant groups in the USSR form around professional, rather than economic interests. Since the members of Soviet professions tend in turn to be grouped in large bureaucratic institutions, Soviet interest groups tend to be of the institutional type, as contrasted with the associational type which seems to prevail in the West. This article may be regarded as an illustration of institutional pluralism in action.

The Need For Change: Obsolete Law Codes

Even as Khrushchev condemned the transgressions of Stalin and his lieutenants before the delegates to the 20th Congress of the CPSU in February 1956, the Soviet legal system was still "living in sin." The Constitution of 1936 had called for the immediate creation of all-union (i.e., federal) law codes to supplant the then operative union republican codes, but the attempts at codification had come to naught. Meanwhile, the various branches of Soviet law continued to be regulated by republican codes promulgated in the 1920's in accordance with basic federal principles which had been enacted at the end of the Lenin era. Thus, the continuation in force of the RSFSR and other republican codes after the adoption of the Stalin Constitution of 1936 was unconstitutional on its face. To compound the constitutional untidiness, the RSFSR Criminal and Criminal Procedure codes had also been declared operative in the Kazakh, Kirghiz, Lithuanian, Latvian, and Estonian republics.

However, the glaring lack of correspondence between constitutional requirements and the republican origins of the codes actually in force was not the only reason for the decision to accelerate the codification process after the death of Stalin. Even more pressing was the need to resolve certain fundamental issues which had arisen as a result of the increasing obsolescence of the old republican codes. Long-suppressed disputes over such basic questions as the presence in Soviet law of the principle of presumption of innocence, the rights of counsel, and—amazingly enough—the very nature of courtroom proceedings (adversarial or inquisitorial?) surfaced with the death of Stalin, and then fairly erupted three years later as a noisy coda to the 20th Congress, shattering the glacial silence which had enveloped Soviet lawyers during the Stalin period.


3. In the criminal field, the relevant legislation was the Fundamental Principles of Criminal Legislation of the USSR and the Union Republics (1924) and the Fundamental Principles of Criminal Procedure of the USSR and the Union Republics (1924). The corresponding codes for the RSFSR were adopted in 1926 (criminal law) and 1923 (criminal procedure). The Fundamental Principles of Criminal Procedure were seldom referred to and failed to produce any substantial changes in the pre-existing RSFSR Code of Criminal Procedure. See Government, Law, and Courts in the Soviet Union and Eastern Europe, Vol. 1, eds. Vladimir Gsovski and Kazimierz Grzybowski (New York, 1959), p. 841.