

FOR THE
RULE
OF LAW

*"That every State
and every citizen
shall be free under
the Rule of Law"*

BULLETIN OF THE
INTERNATIONAL COMMISSION OF JURISTS

No. 1

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ERRATA

Page 5, line 21	"If" for "In"
13, line 13	"both" for "bot"
15, line 19	"1947" for "1941"
16, footnote 28	Should be on page 17
18, line 4	"institution of the public prosecutor"
18, line 5-6	for "Ministry of Public Affairs"
32, line 19	"public prosecutor" for "Ministry of Public Affairs"
38, line 20	"Messrs" for "Mr." "Jogtudomány" for "Jogtumádanyi"

For the Rule of Law

The International Commission of Jurists is a world-wide organisation of lawyers and jurists, dedicated to the preservation and, if necessary, restoration of the rule of law in every country.

The Commission appeals to the conscience of every lawyer and jurist as such. This appeal reaches out beyond the professional conscience, beyond the code of ethics of the lawyer's career, beyond the moral and legal rules binding on the bench, even beyond the devotion of the civil servant to his administrative responsibilities and the professor to his educational tasks.

The lawyer, much as he devotes his life to the service of the law, is generally so absorbed by individual cases of right or injustice, that only seldom does he become conscious of the deep bond existing between his work and law as a unity and a whole, between his daily cares and the great juridical adventure of mankind.

The judge, impartial and independent, devotes his life to the resolving of differences between individuals and to the protection of the state; but how often does he find opportunity to take a stand in relation to the basic principles of the system of law of which he has to be at the same time the disinterested servant and protector?

The civil servant, trained in special branches of governmental service and so often lost in the details of the routine of administration, ever so frequently loses sight of the "why".

The professor, educator of generation upon generation of law students, is often so immersed in the ever-increasing quantities of positive law, of national and international rules and regulations, of legal decisions in which he has to be a

guide to his students that he too often lacks the time to take a position on the fundamentals of the system of law which he teaches.

However, these fundamentals and this system of law are in danger. In nearly all countries of the world the universities put out an increasing number of legally-trained people, the ranks of the lawyers are swelling alarmingly, the number of laws promulgated attains unmanageable proportions, but more than ever law as a whole is menaced in its very foundations, from outside and within.

The International Commission of Jurists bases itself on the legal-philosophical and political achievements of twenty centuries of Western thinking and statecraft: on the system of the rule of law. The rule of law means respect by the individual for the requirements of society and the State, respect by the State for the rights of the individual. This carefully tuned balance of the rights and duties of the individual, of the State power and the restriction thereon, can only function — many centuries of history have taught so — in a spirit of freedom and moderation.

Under every system of totalitarianism, the balance is necessarily violently disturbed and there sets in a systematic violation of the basic principles which underlie the concept of the rule of law, together with a systematic violation of the rights of the individual, the recognition of which rights began with the famous Magna Charta of England in 1215 and culminated with the acceptance of the Universal Declaration of Human Rights by the General Assembly of the United Nations on the tenth of December 1948.

The International Commission of Jurists has undertaken the task of defending the basic values of the rule of law, as the heritage of the civilized world, against corrosion and at-

tack. Such a defense lies not only on a philosophical plane; it requires fighting and the courage of making a choice.

This choice, in our opinion, is not a political one. The International Commission of Jurists counts amongst its members and more than 4,000 supporters followers of the most divergent political tendencies and parties. With all the political disunity in the free world, there is one principle which unites us in this choice: the choice for law as we have always known and understood it, law — which is one of the most essential conditions for the well-being of a community. If such a choice is called by some people a political one, so be it. If the defense of our home and our spiritual heritage is called politics, we cannot reasonably do otherwise than take the blame. It would be cowardice to abandon, for fear of being labelled, our most fundamental values of justice and living, without any defense, to the most dangerous attack to which they have been exposed in centuries. It is for these reasons that the International Commission will mobilize the lawyers and jurists of all countries in the fight against systematic injustice which menaces the world to-day.

If the Commission calls this fight a political one, it does not mean that the fight will be conducted by other than strictly juridical means. We will speak as lawyers to lawyers, as jurists to jurists, on the basis of legal texts and facts, the proof of which is unassailable. Honesty and fairness in the presentation of our evidence will be one of our leading motives. The world of today does not need more doctrinaire material; what it does need is honesty, reflection, and men who have the courage to form and voice a conviction.

Does the world need, a sceptic will perhaps ask, new international organizations in the juridical field?

There are, indeed, many international juridical organiza-

tions. They concern themselves either with the different specific branches of law or with the different aspects of the juridical profession.

All the trees and families of trees in the varied forests of juridical science are taken care of. But who cares for the preservation of the forest as a whole? In many rooms of the big house of law one is busy polishing the furniture but of what use is this if the house itself is in a state of decay? The International Commission of Jurists will look after the harmony of the forest, the foundation of the house. In several countries national groups of lawyers, adhering to the purposes of the International Commission to fight every type of systematic injustice, have been formed to further the purposes of the Commission in their respective countries through their autonomous sections. In many other countries, the creation of such national sections is in preparation.

We will limit ourselves strictly to the field of law; we shall only speak of law. But with the choice, which the Commission asks, more is at stake than the preservation of law alone — there is a civilization at stake. For more than in any other form, the history of our civilization has found its expression in the development of legal conceptions, in the development from slavery and arbitrariness to a freedom which observes the law. It is for the preservation or restoration of this freedom that the International Commission of Jurists will form a front of justice all over the world, a front which will help to realize the ideals of the noblest philosophers and statesmen of our history: that every state and every citizen shall be free under the rule of law.

The Significance of the Independence of Judges Behind the Iron Curtain

RULE OF LAW

"And so to sum up, I believe that, for by far the greater part of their work it is a condition upon the success of our system, that the judges should be independent; and I do not believe that their independence should be impaired because of their constitutional function."

*Judge Learned Hand
to the members
of the Massachusetts
Bar Association,
1942.*

SOVIET LAW

"The question as to who is guilty and who is innocent will in the end be decided upon by the Party with the help of the National Security organs."

*Karol Bacilek, former Minister
of Interior of the Czechoslovak
People's Republic.*

"The independence of the Soviet judge is not to be understood as an independence with respect to the Soviet State. The Court is an instrument of the Soviet State. Its sole aim is to construct the Soviet society; it cannot practice any other policy than the policy of the Communist Party and the Soviet Government." This is what a Soviet jurist — Karev ¹ — said when speaking of the 'democratic' judge.

The public of the Free World, when following the show trials behind the Iron Curtain, is generally less interested in the person of the judge than in the sensational confessions of the rulers of yesterday, such as, Kostov, Rajk, Slansky, and Beria, or in the confessions, no less fantastic, of such men as Cardinal Mindszenty, Bishop Kaczmarek, or the journalist Oatis, which have stimulated still more the imagination of the masses.

The jurist, however, cannot be but puzzled by the role of the judge in these trials. Accustomed as he is to picture a judge with traits which, in the opinion of most, are best embodied in the person of an English judge ², the Western jurist just cannot grasp the character of the judge in the Sovietized countries. In particular, the somewhat effaced attitude of the judge in the course of the show trials — the only trials known to the Western world — obliges the Western jurist to raise the

¹ D. S. Karev, *Soviet Justice* (German tr.; Berlin 1952), p. 37.

² Professor I. T. Golyakov, *The Role of the Soviet Court* (Washington, D. C.: Public Affairs Press), p. 8. This is a translation of a pamphlet, *Vospitatelnoe znachenie sovetskogo suda* (The Educational Significance of the Soviet Court) (Moscow, 1947); see also Karl Marx and Frederic Engels, *Works*, Vol. II, p. 388, wherein Engels himself stated that the British courts were more democratic than the courts of other countries.

question of his independence. For to the Western jurist it is this very element of independence which best permits him to appreciate the administration of justice in a country.

Throughout the ages the notion of the independence of judges has indeed been among the very few in the field of law ever to touch the masses: almost all the *Cahiers des Doléances* of 1789 in France contained a claim in this respect. In 1917 many people in Russia supported the Communist Revolution because of disgust felt for the corruption of Tsarist judges. Today, the wish for independent judges is still firmly fixed in the peoples of all countries.

It is for all these reasons that it was thought necessary to compose a treatise on the independence of judges in the countries in the Soviet Orbit. The treatise is based on official texts and thus utilizes a procedure necessary to the jurist. But we know that in the Communist countries a wide gap exists between the texts and actual application, between the letter and practice. Therefore we shall comment on these texts with the aid of documents of practice, documents which the International Commission of Jurists has compiled and whose authenticity it guarantees.

**The independence of the judge is guaranteed by all
the constitutions of the Sovietized countries**

The attacks on the independence of judges by the Nazi and Fascist totalitarianisms induced post-war legislators to inscribe this principle in constitutions. Thus, in France, where under the Constitution of 1875 the independence of judges was only a rule of custom, the principle was introduced in Article 84 of the Constitution of 27 October 1946. The Italian and German parliaments followed the same course.³ In this way the principle gained that particular moral value which is attached to all constitutional texts.

Moreover, since all the above-mentioned constitutions are

³ See the Italian Constitution of 22 December 1947, Article 101, par. 2, and Article 104; the German Fundamental Law of 8 May 1949, Article 97.

rigid, in the sense that they all have a certain immutability (their modification requires, in fact, very cumbersome procedures) ⁴, the principle thus benefits by a very great stability.

One should not be surprised to find that the Stalin Constitution of 1936 contains in Article 112 the same principle: "Judges are independent and subject only to the law." In a lapidary style, exactly the same words appear in the German Fundamental Law and exactly the same or similar articles in the other satellite constitutions. ⁵ The constitution of Czechoslovakia, which probably sets a record for length, develops the principle with a great profusion of detail in Articles 11, 141, paragraphs 2 and 3, 143.

All the constitutions of the People's Democracies are rigid; the Soviet Constitution, for example, can be amended only by a majority of not less than two-thirds of the votes in each of the Chambers of the Supreme Soviet. ⁶ One is tempted to see in these arrangements a supplementary protection for the principle of the independence of judges. Unfortunately, there is nothing of the kind.

The unanimity, always obtained in the legislatures of the People's Democracies, is already somewhat surprising. But it should be further noted that the requirements of the particular forms for amending the constitution have not been respected by the governments at the time decrees were promulgated which were manifestly contrary to or even amended the constitution. ⁷ Under these conditions, the principle of the independence of judges — although laid down in the 'law of

⁴ Thus, for example, a majority of two-thirds of the members of the Federal Assembly are necessary, according to Article 79, for the amendment of the German Fundamental Law.

⁵ Albania: Article 76; Hungary: Article 41, par. 2; Rumania, Article 70; Bulgaria: Article 56; Poland: Article 52; German Democratic Republic, Article 127.

⁶ Except for the Albanian Constitution which can be amended by an ordinary law.

⁷ For example, the Decree of 26 June 1940 of the Presidium of the Supreme Soviet of the USSR which introduced an eight-hour in place of a seven-hour day, contrary to Article 119 of the Constitution. In 1947 the Constitution was amended to conform to the change.

laws': the constitution — is always threatened by modification, suspension, or even suppression by a simple decree. The principle has no better chance of being respected by the regime than a decision which authorizes a *kolkhoznik* to have three cows instead of two.

. . . and 'dialectically' interpreted

It is rather curious to follow the successive interpretations of Article 112 of the Stalin Constitution given by Soviet jurists. The devious ways of the Marxist 'dialectic' finally brings them to an interpretation directly contrary to the one given in the beginning. The various 'new courses' of Soviet foreign policy constitute obligations that a Soviet jurist is expected to carry out.

Thus, the first edition of the *Course of Criminal Procedure* by Vyshinsky und Undrevitch, published in 1934 (the year of the Communist severity at the beginning of the Second Five Year Plan) expressed itself in the following terms:

"The court is an organic part of the administration. In content, its activity is identical with the activities of other agencies of administration which have the task of projecting and strengthening the revolutionary order. . ." ⁸

Furthermore, the principle of the independence of judges is declared not only useless but directly harmful because it is supposed "... to acquire, under the conditions of the dictatorship of the proletariat, a counter-revolutionary character." ⁹

In 1936, the year of the Franco-Soviet and Soviet-Czechoslovak pacts, the second edition of the *Course* 'concedes' a certain independence to the judges:

"The Soviet court is subject only to the law. . . . It means that the judges of the Soviet court of workers and peasants, the court of the Socialist State, carry

⁸ *Course* (in Russian, 1st ed., 1934), p. 5.

⁹ *Ibid.*, p. 11.

out unswervingly the policy of the proletarian dictatorship as expressed in the statutes of the Soviet State, and that they carry out this policy regardless of persons and regardless of any 'local influences'." ¹⁰

In 1938, the year of the active participation of the USSR in the activities of the League of Nations, the textbook on constitutional law by Vyshinsky declared that by their 'specific nature' the courts were different from other governmental agencies. Article 112 of the Constitution was interpreted along the traditional lines of the 'inner conviction' of the judge.

"The provisions of the Constitution have in view the right and duty of the judge to render judgement in each individual case according to his inner conviction . . ." ¹¹

Further it stated that the Soviet judges were independent 'in the true and direct meaning of the world.' ¹²

The recent textbooks all adopt this latter interpretation. ¹³ The jurist who is not versed in the maze of the dialectic will have great difficulty in grasping the sense of the independence of the Soviet judge.

. . . He is chosen through a 'democratic' system of election

The system adopted for the election of a judge undeniably exerts a certain influence on the independence from which he is to benefit in the future exercise of his functions. The free countries employ systems which are greatly different from one another and it is impossible to say *à priori* that one system favors independence more than another since national character, tradition, remuneration, and other factors also play a role. Thus, the elections permit Swiss judges to be really in-

¹⁰ Course, p. 21.

¹¹ *Sovietskoe gosudarstvennoe pravo* (Soviet Constitutional Law) (Moscow, 1938), p. 461.

¹² *Ibid.*, p. 462.

¹³ Evtikhiev and Vlasov, *Administrativnoe pravo* (Administrative Law) (Moscow, 1946), p. 256 ff.

dependent in their functions, whereas the same system applied in the United States does not always give equally satisfying results. In the case of America, certainly, the drawbacks are met by the far-reaching control exercised by the Supreme Court on the elected judges.

In the majority of the free countries, however, the system of the nomination of judges by the Executive is employed. In England, for example, the judge is chosen from among the most respectable members of the Bar. The system is sometimes moderated by the intervention of a professional body representing the magistracy (Conseil Supérieur de la Magistrature in France).

Up to the last few years, both systems — nomination and election — were equally known in the Sovietized countries. The Polish Law on the Organization of Courts of 16 August 1950¹⁴ still provided for the nomination of judges by the President of the Republic, on the recommendation of the Minister of Justice in concurrence with the Prime Minister. Today however, all those countries are rapidly adopting the Soviet model, the country of the 'vanguard of Socialism', where since the promulgation of the Law of 16 August 1938 all judges have been elected.

In the legislation of the People's Democracies, a distinction is generally made between the professional judges, elected by local or regional People's Councils (Soviets), or by legislative bodies (according to their place in the hierarchy), and People's Assessors, who are chosen by the electorate at large.

In order to understand the content of this 'election', let us quote as an example Decree No. 99 of 4 March 1953 of the Rumanian People's Republic¹⁵, which states in Article 13:

"The People's Assessors are chosen on the recommendations of workers' organizations, i.e., organizations of the Rumanian Communist Party, trade-unions,

¹⁴ Dziennik Ustaw Rzeczypospolitej Polskiej (Journal of Laws of the Polish Republic), 1950, No. 39, item 360.

¹⁵ Journal officiel roumain (Rumanian Journal of Laws), 1953, No. 8, Decree 99 of 4 March 1953.

cooperatives, youth organizations, and other mass and cultural organizations."

Of course, we could talk indefinitely about this 'electoral body' from which are excluded all the 'enemies of the people', the 'former exploiters of the people', the 'unworthy' — declared so by the local people's councils. It is obvious that the Communist Party has the final decision in these elections. This is easily understood after reading Article 126 of the Soviet Constitution, which has been taken over into the other constitutions.¹⁶ The sworn statement of Mrs. Moreno on the election of judges confirms what was already expected.¹⁷

The election of judges, 'proof of the perfect democracy of the Soviet judicial system',¹⁸ of course favors above all the members of the Communist Party! In the USSR, in the course of the numerous congresses of the Communist Party, speakers have been congratulating one another on the increase in percentage of Communist judges.

	Lower Courts	Higher Courts
1928	69.8	86.4
1930	74.8	89.7
1935	95.5	99.6 ¹⁹

¹⁶ Article 126 of the Constitution of the USSR states:

"In conformity with the interests of the working people and in order to develop the organizational initiative and political activity of the masses of the people, citizens of the USSR are guaranteed the right to unite in public organizations: trade unions, cooperative societies, youth organizations, sport and defense organizations, cultural, technical and scientific societies; and the most active and politically-conscious citizens in the ranks of the working class, toiling peasantry, and toiling intelligentsia to unite voluntarily in the Communist Party of the Soviet Union, which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organizations of the working people, both public and State."

¹⁷ Annex I.

¹⁸ Golyakov, *op. cit.*, p. 8.

¹⁹ *From Congress to Congress, the Report of the Soviet Government* (in Russian, 1930), p. 23; (1935) *Soviet Justice*, No. 35, pp. 4-5, as cited in Vladimir Gsovski, *Soviet Civil Law* (Ann Arbor: University of Michigan Law School, 1948), Vol. I, p. 242.

Since 1935 no new figures have been given. Let us wager that the figure 100 has been attained.

His formation . . .

"In bourgeois states candidates for judgeships are confronted with numerous demands, like the 'property qualification', 'moral irreproachability', which fully guarantee the bourgeois court against the infiltration into its membership of undesirable candidates."²⁰

In the Sovietized countries, on the contrary, judges are confronted with no demands of ability whatsoever. Any citizen can become a judge. In fact, as we have seen before, judges are chosen from lists which are prepared by the Administrative Bureaus of the Ministry of Justice. These Bureaus will not fail to 'advise' the voters to vote for the candidates who, from a professional point of view, seem to be the best ones.

In spite of this, the juridical level of the judges remains very low. This appears clearly from official statistics in the USSR:

	1928	1935-36	1941
university training	5—6 %	5.8	14.6
courses of 6 months to one year	94—95 %	43.5	21.8
no juridical training		50.7	63.6 ²¹

In the People's Democracies, the old judiciary — which was very often remarkable — has been carefully 'purged' of all capitalistic elements. Even those among the judges who committed no other 'crime' than to be the son of a 'kulak' have not been spared.²²

The fall of the level of the judges has been catastrophic. As a remedy, courses of six months, one year, two years —

²⁰ Golyakov, *op. cit.* It would be easy to reply by quoting the names of Communist judges in Italy, France, and elsewhere.

²¹ Zelitch, *Soviet Administration of Criminal Law* (Philadelphia, 1931); *Soviet Justice*, *op. cit.*; *Socialist Legality* (in Russian), 1947, No. 2, pp. 4, 5.

²² *Scanteia*, 4 June 1952.

²³ Annex II, extracts from *Romania Libera*.

according to the countries — have been organized, and the “teaching of historical and dialectical materialism holds a high place”.²³ Should we not be surprised to see the new judges — although they do not know the law — handle so well the incomprehensible doctrine of ‘material truth’ or the no less obscure ‘socialist legality’? At the Civil Court of Prague, Judge Dohnalek, who is a specialist in housing cases, declares to the parties, before all pleadings: “We will first see how the doctrine of socialist legality is understood by the parties”.²⁴

His position . . .

In the free countries, the judges benefit by the principle of irremovability, which is the highest guarantee of their independence. Let us hear what a Soviet jurist thinks of this:

“Irremovability is seen only in such instances where it is advantageous to the dominant classes or to the most reactionary groups of the bourgeoisie . . . The Supreme Court of the USA, for example, consists of justices with life tenure, who receive very substantial salaries. In fact, this Court is a stronghold of reaction and in every way impedes every effort to enforce more or less progressive laws ‘contradictory to the constitution’.”²⁵

In the Soviet countries, the electoral origin of the judge delivers him to the mercy of his electors, i.e., the Communist Party.²⁶ Moreover, special laws²⁷ constitute a rigorous

²⁴ Deposition of a Czechoslovak advocat who, for reasons of security, prefers to remain anonymous. The deposition was given in July 1954.

²⁵ Golyakov, *op cit.*, pp. 10-11.

²⁶ Hungary: Article 39 of the Constitution; Rumania: Articles 15 and 16 of Decree No. 99 of 4 March 1953; USSR: Article 17 of the Law of 16 August 1938; German Democratic Republic: Articles 16, 17, 18 of the Law of 2 November 1952.

²⁷ For example, in the USSR the Decree of 29 July 1940, Articles 1 and 2, and the Decree of 15 July 1948.

²⁸ The ‘violation of labor discipline’ is one of the most important concepts in the law of the Soviet-Satellite States. The Commission intends to treat this matter separately at some future date.

regime of responsibility of judges: they can be removed for "violation of labor discipline" ²⁸, for "perpetration of acts, incompatible with their dignity" — all loose conceptions, permitting a Minister of Justice, who exerts control through the medium of bureaus established at each Court, to dispose of the judges at his discretion. ²⁹

The Judge renders judgments but not justice

The whole set of rules, commented on above, proves that the *conditions* for the independence of judges do not exist in the Sovietized countries. It is even worse.

In the free countries, the judge applies the law which he finds in the Code or in legally promulgated decrees or decisions.

In addition to the fact in the countries of the Soviet Orbit directives, ³⁰ emanating from all agencies of the administration, have been added to these legal sources, it is observed that the judge himself has to submit also to all sorts of pressures which would be dangerous for him to ignore.

The pre-eminence of the Procuracy in the Communist judicial organization results above all in a considerable weakening of judicial authority. The judge will hesitate to pronounce a judgment which contradicts the finding of the Procurator.

The Procurator, indeed, "must be whiter than the snow of the Alpine peaks".³¹ It is rather surprising to find this sentence written by Procurator-General Vyshinsky, who in his pre-war indictments used to claim the blood of the accused. And isn't the color of the snow turning to red when we hear the "Vestnik Moskovskovo Universiteta" declare:

"Is it the business of the Procurator's office to supervise the *work of the courts* from the standpoint of most strict observance of the requirements of the law and the implementation of the policy of the Party and the

²⁹ Annex III.

³⁰ Directives of the Presidium of the Supreme Court which interpret the law, directives of Gosarbitzh. . . .

³¹ *Socialist Legality* (in Russian), 1936, No. 11.

Soviet regime? There should be no doubt whatsoever that the answer to this question is affirmative.”³²

There is something more here than influence as exerted by a Ministry of Public Affairs in free countries.

In any case, in no country is the Ministry of Public Affairs tied so closely to the government as is the Communist Procuracy. For, if “la plume du Ministère publique est serve, sa parole est libre”.

And, last but not least, the Communist Party also has a word to put in at the trial. It was to be expected. The judge has, first of all, to apply the Party decisions.

The Western jurist will have difficulty in accustoming himself to the idea of a political party being the legislator in a State. Let us again see what the “Vestnik Moskovskovo Universiteta” has to say on this subject:

“The policy of the Communist Party exerts its influence upon the activity of the judicial institutions by means of Party directives... In speaking of Party directives we have in mind the instructions and demands contained in resolutions and decisions of congresses, conferences and plenary sessions of the Central Committee of the CPSU, in joint decrees of the Central Committee of the CPSU and Government... The resolutions passed by the leading organs of the Party make the proposals and references to tasks to be performed, which are approved in them, mandatory for all workers of the State and public institutions, *including the courts...*”³³

But this is only the question of general directives.³⁴ What of the practice of dictating judgments to judges under the pretext of helping them?³⁵ The then Minister of Interior of

³² “The Directives of the Party and Criminal Justice” in *Vestnik Moskovskovo Universiteta* (in Russian), November 1950.

³³ *Ibid.*

³⁴ Annex IV.

³⁵ Annex V.

Czechoslovakia, after having praised all those who had helped in unmasking Slansky, the "vipère lubrique", castigates all those who have a tendency to "suspect everybody, punish everybody, liquidate everybody". In actual practice — Bacilek continues — such proceedings are serving the West... And Bacilek concludes by the following bewildering statement: "*The question as to who is guilty and who is innocent will in the end be decided upon by the Party with the help of the National Security organs...*"³⁶

The role of the police

This statement by Bacilek draws attention to a factor which, fully applied, threatens to pull down the whole structure of the independence of judges. This factor is the police. In fact, before a punishable act enters the domain of justice, the act first disrupts the public order. And as such, it belongs to the Executive, to the police, and thus to politics. It is certain that in actual everyday practice, the attitude of the judge towards the accused is strongly influenced by the conclusions of the police. He does not lose his independence for this reason. But it suffices that the police-phase of the trial takes place without the presence of a judge; it suffices that this phase is entrusted to a police which is strictly subordinated to the government (and which police is not!), consequently voiding the entire conception of independence of judges of its content. What will become of his independence if the judge only knows the accused by the portrait drawn up by the police, if he finds an accused which has been carefully "prepared" by the police? *It is the independence of the judges which permits them to establish a link between the reality of the trial and the theory of the law.* If the police does play a preponderant role at the trial, it is still impossible to establish this

³⁶ Speech of the Minister of Interior, Bacilek, given on 17 December 1952 at the Conference of the Communist Party of Czechoslovakia. It is remarkable to note that the report on the Slansky trial was drawn up by the Minister of Interior and not by the Minister of Justice.

link. Does the judge cease to be independent? No, he simply ceases to be a judge . . .

In the free countries, the institution of the examining magistrate, having final supervision over the activities of the police, avoids much injustice. Yet the danger re-appears through an abuse of the rogatory commissions or letters rogatory which are delivered to the investigating authorities and the abuse of detention pending trial. One of the remedies is the Anglo-Saxon Habeas corpus. But this does not resolve the problem, the solution of which is finally in the hands of the government. Obviously, we are far from the independence of judges; in reality, we have never been so close to it.

In the Sovietized countries, the powers of the police are immense. To this, the whole world will agree. The case of the "Doctor-Assassins" in the USSR proved it again, if such proof was necessary. Without the death of Stalin, the Soviet judges would have most certainly condemned these "assassins in white". The judgment would have been strongly justified with evidence to support it. Let us leave all hypotheses aside. The reality is so much worse.

One would have to dwell on numerous cases of people condemned for acts to which they have confessed, but which physically they could not have committed. Rajk, for example, confessed to having collaborated in the internment camps in France with the Yugoslav "Trotskyists" — Bebler, Mrazovitch, and Vukomanovitch. But now, it appears that the first two of the group have never been interned in the same camp with Rajk and that the remaining member never set foot in France or Spain! One would also have to speak of the pitiful cases of those ecclesiastics, confessing in the language of convinced Communist to inconceivable crimes.

What does the judge do in the presence of the accused who become their own accusers? If he were really independent,³⁷ then the enormity of the confessed crimes and the improbability of the confessions would have made him doubt the grounds

³⁷ Annex VI on the disposition of a judge who tended to be independent and to judge according to this 'inner conviction',

of the indictment. But as he is "only responsible to law" (*dixit* the Soviet Constitution), he only has to apply, very freely, this law in the "cases", made very clear by the "work" of the police. We cannot — in spite of all — understand this "new style" independence of the communist judge. True, we are "ignorant bourgeois". That explains everything . . .

Conclusion

If we cling with such force to the independence of our judges, it is because this principle constitutes the best guarantee of a good administration of justice. Only an independent judge can be impartial in applying the law. Only a judge who benefits by the stability of his function will be able to resist the temptations of corruption. Only the judge who has an appropriate juridical education will be able to ward off treacherous encroachments on our rights by the political power. And finally, all our liberties are in his hands: he alone can make constitutional texts into strongholds against totalitarianism.

In the Communist countries — as we have seen — the *guarantees of the independence of judges* do not exist. Hence, individual rights are — if not suppressed — at least at the mercy of a party to which the welfare of mankind is of less importance than the justification of a doctrine. In his most famous book, "The Trial", Franz Kafka — great visionary that he was — imagines a man who, ignorant of the charge weighing upon him, runs after the judge for the rest of his life to exculpate himself. Kafka could not foresee that one day the fantastic race of his hero was to become that of a third of humanity . . .

ANNEX I

Extract of the statement of Mrs. Moreno

I, the undersigned, Anna Moreno, born on the 7th of April 1926 in Moscow, state as follows:

My father owned a tea room in Moscow. After the Revolution my parents lost everything; they were obliged to leave their home within 24 hours, and from that moment my father worked as an ordinary manual laborer. In Moscow I married an Austrian who had, however, Soviet nationality and I stayed in Moscow until the 17th of November 1947. After that date I was employed with the Soviet Oil Company in Vienna until March 1952. In 1952 I was on leave in Moscow for one month, returned to Vienna, and then I fled with my family to the West.

The candidates for the elections of the People's Judges are appointed by the Government. At the meetings you receive a piece of paper with the names of the candidates one may vote for. There are six to ten candidates on the list. In the course of these meetings you may propose names of other candidates, but those are never approved of by the Government.

Statements obtained
the 13th of November 1953

ANNEX II

“On the Front of Justice, We Have to be Soldiers Devoted to the Party“

“Recently, courses began at the College of Lawyers, Faculty of Law, Boulevard the 6th of March. The College, which was opened simultaneously with the colleges of Cluj and Jassy, has the important duty of preparing the best elements of the toiling masses to become the cadres in our new judicial apparatus . . .

Ten past seven. The Professor enters the room. The noise ceases. The Professor speaks about the idea of law. He explains

how the bourgeois theoreticians try to falsify this idea. They state that the law is superior to man, is above social classes. In reality, law is at the service of the exploiting classes, who keep the people in chains. Today, law is a weapon in the hands of toilers . . .

Historical and dialectical materialism and political education play a large role in the assignments.

" . . . I am a railway employee. I have come to learn how justice is administered . . . We have to be soldiers devoted to the Party at the front of justice. That is our duty . . . Our Party gives us the opportunity of attending the School for Judges and to occupy any function of our choice in the judicial apparatus; in return, we shall follow its directives throughout our entire activity as judges . . ."

"Romania Libera" of
10 December 1948 (No. 1322)

ANNEX III

The Removal of a Lenient Judge

In the USSR, by a decree of 26 June 1940, workers and employees were made criminally responsible for being late more than twenty minutes and for unwarranted absence from their jobs. The law provided that tardiness over twenty minutes was to be punished by not more than a fine of 25 per cent of the worker's or employee's pay each month for six months ("compulsory labor tasks at his place of work"). In a supplementary instruction the Supreme Court of the USSR prescribed it as obligatory for all judicial organs of the USSR to impose the *maximum* penalty provided for in the edict.

Soon after the edict had been issued, the people's judge of one of the workers' districts of Odessa, Mrs. Morozova, in trying a criminal case involving a charge against an Odessa factory worker who had been late to work more than twenty minutes, took a number of circumstances into consideration and pronounced an acquittal. The district procuracy protested the decision to the Odessa Regional Court, which sentenced

the accused worker to the maximum penalty provided for.

Mrs Morozova was promptly removed from her job "for failing to maintain constant vigilance."

Note: The Law of 16 August 1938 on the Judicial System of the USSR provided in Article 17 for the removal of judges only in the following cases:

1. by the recall of their electors;
2. by virtue of a sentence of the Court against them.

Neither of the conditions was applicable here.

Moreover, assuming that the decree of 29 July 1940 on the Responsibility of Judges was already in force at the time of the trial, this decree could not have constituted the juridical basis of the removal. Indeed, in Article 1, the decree provides as possible sanctions: "Warning, Reprimand, Reprimand with the warning that proceedings for recall of the judge will be instituted in accordance with the *Law on the Judiciary of the USSR...*"

We return to the previous hypothesis.

Source: This case was reported by B. Konstantinovskiy, professor up to 1941 at the University of Odessa, in "Soviet Law in Action" (Cambridge: Harvard University Press, 1953), p. 10.

ANNEX IV

How Many Corpses Does the Five Year Plan Provide?

The cashier of a bakery in Odessa was sent to collect a sum of 11,000 rubles from the bank. Upon his return he noticed the loss of nearly 6,000 rubles.

A charge was brought against him for "neglect of his official duties" under Article 99 of the Ukrainian Criminal Code. The cashier's case was the fourth to be heard at that

session of the People's Court. In the first three cases, the court had pronounced acquittals.

In defense of the cashier it was argued that the administration of the bakery should have foreseen a similar case, that it should have provided him with the means of transportation to get the money from the bank to the bakery (the money having been stolen in the trolley). Moreover, the counsel of the cashier advanced the argument that his client had been working for a long time at the bakery, and that he was a very active member of the workers' union.

Before retiring with the two people's assessors for consultation, the judge said to the defense counsel in a subdued voice:

"Comrade legal adviser, how can I acquit this man when I've already acquitted three before him? You know, they won't pat me on the head for that. They'll say, "He's pooped, his class vigilance had weakened . . .". I, too, have a "plan"."

After a prolonged conference the court handed down an acquittal with a separate opinion appended by the judge.

Note: Article 99 of the Ukrainian Criminal Code:

"Non-use of authority, that is, the failure of an official to carry out actions which are obligatory for him by virtue of his position, provided that the conditions stated in Article 97 are present, or provided that there is a negligent attitude toward the position entailing delay, tardiness in carrying out or accounting for activities, or other omissions, shall be punished by deprivation of freedom up to three years, or compulsory labor tasks."

It should be pointed out that in the Soviet system the people's assessors are equal in law with the professional judge. But, generally, they endorse the opinion of the judge. The above case is rather exceptional. The administration knows this and will always hold the judge responsible for an incorrect judgement.

Source: Reported by Professor Konstantinovsky in „Soviet Law in Action”,
op. cit.

ANNEX V

Aid to the Judges

Statement made on 9 November 1953 by Dr. Rudolf Reinartz, born 10 July 1913, formerly Departmental Chief in the Ministry of Justice in the Soviet Zone of Germany, at present a refugee in West Berlin.

"I was witness of the violation of the independence of judges for the first time in 1950 in the Waldheim case, when the Director of the Operational Staff, Frau Hildegard Heinze, gave precise instructions to the judges as to the sentences to be pronounced. The system of special directives for judges was especially built up after 17 June 1953. Under the direction of Frau Dr. Hilde Benjamin a *veritable* general staff was formed for this purpose. Frau Benjamin probably received instructions to this effect during her "educational" trip to USSR in 1952. So far as I know members of this General Staff of Frau Dr. Hilde Benjamin, were: Dr. Melsheimer, Ziegler, attorney Wunsch, Helene Kleine, Frits Böhme, Gerda Grube and Erna Naumann. Gerda Grube and Erna Naumann held the position of examining magistrates.

Each Saturday a meeting was held at the office of Frau Dr. Benjamin and they sometimes continued to the following Monday. The rest of the time the examining magistrates travelled through the Zone. Frau Grube, for instance, "worked" at Halle; Frau Naumann at Jena.

At the offices of the Supreme Court a night service was installed. Fritz Böhme and Helene Kleine were frequently detailed for this night duty. During the night the magistrates telephoned to the service and presented their cases. If, in the opinion of the service, the case was a clear one, the latter gave its decision right away to the magistrate. Otherwise it was reserved for decision by Frau Dr. Benjamin the next day.

This procedure is well-known to me because I myself learned all about the activities of the examining magistrates

Grube and Naumann, when Helene Kleine told me about her work at the night service. The magistrates passed on the directives received by them to the judges. Not a single important criminal sentence was given without these directives.

Officially one does not, of course, speak about "directives"; one speaks of "aid to the judges".

ANNEX VI

Communist Judges Should Not Be Overly Humane?

Deposition of Lothar Kirsch, born 8 September 1917, at Zechau (District of Altenburg), now residing in West-Berlin.

From the autumn of 1947 until 30 November 1948, I took part in the course for People's Judges at Gera, which was organized by the County of Thuringen. From 1 December 1948 until 5 February 1953, the date of my dismissal, I was the People's Procurator at various courts, and lastly, since the middle of September 1952, at the Regional Court of Schmölln, which has now been transferred to the Leipzig District Court. The President of the Court at Schmölln was the People's Judge Willi Sachse, originally from Altenburg. Previously Sachse had been a judge at Erfurt and at Pössneck.

Collaboration with Sachse was congenial. Sachse tried, so far as I was able to ascertain, to alleviate the unnecessary severity of penal law. At the end of 1952 or in the beginning of 1953 a case was pending which, according to the Law for the Protection of People's Property, required a minimum sentence of at least one year's hard labor. A baker, employed in a People's Bakery, stole ten pancakes and took them home. I instituted proceedings on the basis of the Law for the Protection of the People's Property. During the proceedings, the triviality of the matter was revealed and President Sachse sentenced the baker only to a fine of 50 (East) Marks for petty thievery. This decision was voluntary on his part since he declined to apply the Law for the Protection of People's Property because, as he contended, this law provided

extremely heavy penalties which should not be made applicable to a case of so little importance.

Shortly afterwards Sachse, at the request of the Prosecutor, should have issued a warrant for the arrest of a farmer who had misappropriated some 30 hundred-weights of straw belonging to a collective farm. The warrant for his arrest was considered justified because of the amount of punishment expected — at least one year's hard labor — and the escape of the accused to the Western sector was considered a possibility. Sachse refused to issue the warrant. The accused was still threatened with arrest but was able to take refuge in West-Berlin.

On 24th January 1953 I went to spend the week-end with my parents at Zechau. From there I was returned by car to Schmölln by Prosecutor Adam of the Leipzig District Court and Herr Pfifferling of the Office of Juridical Affairs of Leipzig. I felt as if I myself was being placed under arrest.

At Schmölln they checked several documents and I had to remain at the office at their disposal. After having waited for about an hour and a half I was summoned by telephone to come to the Criminal Investigation Department in order to submit all forms and documents necessary for the issuance of a warrant for arrest. I learned that they intended to arrest President Sachse.

When I arrived, President Sachse was being violently attacked by Prosecutor Adam and Herr Pfifferling. They accused him of not having administered the Law for the Protection of the People's Property in the case of the stolen pancakes and they also attacked him because of his refusal to issue the warrant for the arrest of the farmer. Moreover he was reproached for having pronounced only very light sentences in the cases of representatives of the middle-class during his stay at Pössneck and Erfurt. After his interrogation, Sachse was transferred to Leipzig where a warrant for his arrest was issued.

Shortly before my flight to West-Berlin on 8 May 1953, I learned that Sachse had been sentenced to three and one half years' imprisonment.

Newsletter

The International Commission of Jurists, in dedicating itself to the task of investigating and exposing systematic injustice, has earned the moral and physical support of numerous lawyers and jurists in the Free World. Many of its supporters have formed national groups to cooperate with and render active assistance to the Commission in the realization of its goals. New groups are in the process of formation and new supporters are offering their time and talents to the Commission. The cooperating national groups organized thus far are described below; the formation of new ones will be covered in future bulletins, together with a resume of activities of all groups.

GREECE

The Greek group was founded in December 1953 and among its founders included such prominent personalities as: Professor *André Gasis*, University of Athens; Professor *Peter Vallindas*, University of Saloniki; Dr *Georg Mavros*, lawyer and former Minister; Dr *Georg Romanos*, lawyer and member of Parliament; Dr *Athan. Zervopoulos*, President of the Lawyers' Association, Athens; Professor *Georg Papahadjis*, Higher School for Politics, Athens; Professor *Pan. Zepos*, University of Athens; Professor *Demetrius Caranikas*, University of Saloniki; Dr *Georg Economopoulos*, lawyer and former Minister. The activity of the section will be described in a future bulletin.

SWEDEN

In January 1954 a small group of jurists, representing various professions in the legal field, called a meeting of lawyers and other jurists in order to discuss the possibility of the formation of an association devoted to the defense of the commonly accepted principles of justice where such principles

were threatened. As a result of the initiative and energy of this group, an association pledging support for the work of the International Commission was founded and adopted the name "Swedish Association of Jurists for the Security of Justice" (Svenska juristföreningen för rättssäkerhet).

A constitution was drawn up and a Governing Board, consisting of the following persons, was elected: President — Professor *Niels Gärde*, former Minister of Justice and former member of the Supreme Court of Sweden; Vice-President — Professor *Henrik Munktell*, Upsala University and member of Parliament; Secretary — Mr *Bertil Bolin*; Treasurer — Mr *Bertil Lidgard*; Members — Professor *Folke Schmidt*, Mr *Yngve Schartau*, and Mr *Inger Leijonhufvud*.

The Association now contains about 200 members and it is contemplated that the number will increase considerably when the Association's scope of activity increases this autumn. Included in the proposed activity program are such events as a public meeting of the Executive Committee of the International Commission, a lecture on the legal conditions in present-day Spain, and a debate on the theme: "In Which Way Can the Consciousness of Justice be Influenced and Altered". In addition, the Association, as a part of its routine activity, will discuss legal conditions in the different countries where systematic injustice has taken hold.

SWITZERLAND

A working committee of prominent Swiss lawyers has indicated its strong support of the aims and work of the Commission. A meeting was held at Bern in June 1954 to discuss the means by which effective measures might be taken to further the work of the International Commission. The details on the work of this committee will be discussed in future bulletins.

TURKEY

In Turkey, an "Association for the Defense of Law Against Injustice" was formed to propagate the concept of the rule of

law and to combat injustice with a view to securing the liberty of the individual and safeguarding his rights. To carry out its aims the Association is cooperating very closely with the International Commission and all organizations and persons having similar ideas to that of the Association.

The founding group included: Professor Dr *Yavuz Abadan*, Dean of the Faculty of Political Sciences, Ankara; Mme. *Bayan Süreyya Agaoglu*, Attorney, Ankara; Professor Dr *Muvaffak Akbay*, Dean of the Faculty of Law, Ankara; Dr *Muammer Aksoy*, University lecturer and Attorney, Ankara; Dr *Amil Artus*, Member of the Court of Cassation, Ankara; Professor Dr *Hikmet Belbez*, Faculty of Law, Ankara; Dr *Cemil Bengü*, Prosecutor-General, Ankara; Dr *Zahit Candarli*, President of the Commercial Court, Ankara; Dr *Fethi Celikbas*, Minister of Trade and Economy, Ankara; Dr *Vedat Dicleli*, Attorney, former Minister of Trade and Economy; Professor *Süheyib Derbil*, Ankara; Mr *Saim Dora*, Attorney, President of the Chamber of Attorneys; Professor Dr *Bülend Esen*, Political Economy Faculty, Ankara; Dr *Sadettin Gökay*, President of the Commercial Court, Istanbul; Professor Dr *H. A. Göktürk*, President of the Turkish Law Society, Ankara; Dr *Nurettin Gürsel*, President of the Second Civil Court, Ankara; Mr *Bahadır Dülger*, Member of Parliament; Professor Dr *Sadi Irmak*, Faculty of Medicine, for Minister of Labor, Istanbul; Dr *Rabi Koral*, Lecturer, Political Economy Faculty, Ankara; Dr *Osman Nebioglu*, publisher, Istanbul; Professor Dr *H. C. Oguzoglu*, Rector of the University, Ankara; Dr *Sevket Ozgür*, Judge, Permanent Secretary in the Ministry of Justice, Ankara; Mr *Tahir Sebük*, President of the Trade Senate at the Court of Cassation, Ankara; Professor Dr *Hifzi Timur*, Political Economy Faculty, Istanbul; Dr *Ekmet Zamil*, Director of the Labor and special lecturer at the University, Istanbul.

The Association consists of active and honorary members, with a fixed financial contribution required of the active members. A periodic General Meeting is held and a Governing Board is elected to conduct the affairs of the Association. The first Governing Board consisted of: Professor Dr *Yavuz*

Abadan: Dr Muammer Aksoy; Professor Dr Hikmet Belbez; Dr Vedat Dicleli; Mr. Bahadır Dülger; Professor Dr Bülend Esen and Professor Dr Hıfzı Timur; Deputy Governors: Mr. Tahir Sebük; Dr Nurettin Gürsel; Professor Dr. H. A. Göktürk. Controllers: Professor Söheyib Derbil and Dr Zahit Candarli.

USA

In May 1953 a meeting of the Association of the Bar of the City of New York was held to discuss the work of the International Commission of Jurists. Present at the meeting were many distinguished guests, including Judge *Learned Hand*, former Justice *Joseph M. Proskauer*, the Honorable *John J. McCloy*, Dr *George N. Shuster*, and Mr. *Bethuel M. Webster*, the then President of the Association. After hearing various reports on the activities of the Commission, the Association adopted resolutions strongly endorsing the program of the International Commission of Jurists in exposing injustice and denials of individual rights and pledged their sympathy and support. A special Committee, among whom are Mr. *Dudley B. Bonsal*, *Eli Whitney Debevoise*, *Harold R. Medina Jr.*, *Whitney North Seymour*, *Benjamin R. Shute*, *Bethuel M. Webster*, was appointed to consider ways and means by which cooperation with the Commission could be established.

The work of the International Commission was discussed at the annual meeting of the American Bar Association held in Boston in August 1953. Mr. *Robert I. Storey*, then President of the Association, had been present at the First International Congress of Jurists held in West Berlin in 1952 and enthusiastically supported the aims of the Commission.

The vivid interest and assistance of the American Bar is of great inspirational value to the Commission and the Commission sincerely endorses the view that by exposing systematic injustice and fighting for the preservation of individual rights, the Commission will help preserve the heritage of freedom not only of the American lawyer but that of many other lawyers as well.

BULLETINS

This is the first of the regular bulletins of the International Commission of Jurists. With its appearance the Commission enters a new phase of activity and it is contemplated that additional bulletins will appear and will deal with the various aspects and phases of systematic injustice, not only in the form of legislation but also with documents of living reality and the application or mis-application of laws.

The material used by the Commission in its Bulletins is authentic and verified. All laws and depositions referred to are available in or accessible to the office of the Commission in The Hague. Honesty in the presentation of its materials is one of the guiding principles of the work of the Commission.

While the sources of information of the Commission are extensive and increasing, the Commission welcomes any additional information its readers may have to offer in the way of documents, trends, or personal experiences. The Commission will treat all such information in confidence, if so required.

Requests for additional copies of this bulletin and all correspondence and inquiries should be addressed to: International Commission of Jurists, 47 Buitenhof, The Hague, Netherlands.

KLIMOWICZ CASE

On 31 July 1954, a young Polish sailor named Anthony Klimowicz was freed from his illegal imprisonment in the captain's cabin aboard the Polish freighter Jaroslaw Dabrowski. Previous to his imprisonment, Klimowicz made known his intentions to seek political asylum in England to a group of stevedores while the ship was being unloaded in London. An attempt by Klimowicz to plead his case was frustrated by the ship's captain who immediately ordered the arrest of the young sailor. A writ of Habeas Corpus order, signed by the Lord Chief Justice of England, was disobeyed by the ship's authorities. In spite of these obstacles, Klimowicz was freed from his imprisonment, his request for political asylum was heard and granted.

The victory of British justice was a complete one. A sacred

principle of law and justice was re-asserted and in circumstances duplicated only once before in the history of justice-jealous England, when in the 18th century Lord Chief Justice William Murry Manefield ruled that a slave known to be abroad a ship in the port of London became automatically free the moment the ship was within British jurisdiction.

The International Commission of Jurists has taken a deep interest in the case of Anthony Klimowicz. The affair is not only important because an individual was freed from illegal arrest and *the faith in Western justice re-affirmed*. It is also important because the entire question of the principle of political asylum and its importance as part of the whole body of individual rights has been brought to the forefront at a time when some countries refuse to accept, or do so with obvious reluctance, persons who have the courage to risk their lives to become living objections to regimes of injustice.

The Secretary-General of the Commission, together with other lawyers investigated in detail the many aspects of the Klimowicz case. In addition to a public statement to the British press and radio audience, a broadcast was made to the people of Poland to assure them that there is deep concern in the West for the rights of the individual behind the Iron Curtain and the Commission is now actively undertaking the investigation and exposition of any violations of those rights

Book Reviews

René David and John N. Hazard: "Le Droit Soviétique" (Soviet Law), Paris: Librairie générale de Droit et de Jurisprudence, 1954.

A gap in French juridical literature has recently been filled by the publication of the book "Le Droit Soviétique" (Soviet Law). This book is — according to one of its authors, Professors David — "the fruit of a collaboration of a special nature". In fact, the second part constitutes a translation into French of Professor John N. Hazard's book, published in England in 1953, under the title "Law and Social Change in the USSR".

The work of Messrs. René David and John N. Hazard has been published under the auspices of the Institute for Comparative Law of the University of Paris, in the series "The Systems of Contemporary Law" (*Les systèmes de droit contemporains*). We may point out at the same time that this series enables a Hungarian author, Mr. I. Zajtay, to publish an excellent "Introduction to the Study of Hungarian Law." The exceptional qualities of this latter work permit us to express our regrets that the author limits himself to a study of the historical formation of civil law. We hope that he may soon decide to give us a complete study of contemporary Hungarian law.

The work of Professor David has the qualities one is apt to call "French": clear outline, direct style, great logic in the exposition of ideas.

We note with interest that Professor David included a more or less complete study of the "Russian Juridical Tradition" (*Tradition juridique russe*) (Chapter One), which is omitted by authors of books on Soviet Law.

But the importance attributed to the history of the Russian

law — a law which, in spite of all, remained a democratic one in the Western sense of the word — brings Professor David to more or less ignore in the rest of his work the complete *ceasura* between Soviet Law, based on communist ideals, and Western Law inspired by democratic ideals. To qualify Soviet Law as a "law of a new type" seems to us insufficient and even dangerous, since the fundamental difference between the Totalitarian State and the Legal State becomes blurred.

Chapter II deals with the "*Marxist Doctrine and the Law*" (Doctrines marxiste et le droit), while Chapter III is devoted to the "Sources of Soviet Law" (Sources du Droit soviétique), in which the author stresses the consequences of the Stalin bureaucracy, i.e., the close observance of that Soviet Law which is essentially Statute Law and which, in effect, regulates in the smallest detail the life of the citizen due to the elimination of Custom Law.

"*The Jurists and the Organization of Justice in the USSR*" (L'Organisation de la Justice et les Juristes dans l'URSS) constitutes the subject of Chapter IV — last chapter of the book. In addition, we may refer our readers to the appendix, containing a very extensive list of books on Soviet Law, in Russian, French, English, Spanish, and German.

George C. Guins, "*Soviet Law and Soviet Society*"
(Martinus Nyhoff: The Hague, 1954)

The International Commission of Jurists considers it a pleasure to have been of assistance in the publication of Professor Guins' recent work, "*Soviet Law and Soviet Society*".

In the Western hemisphere there are few books on Soviet law; good books are even fewer. For the greater part of these books — so far as they exist at all — are written for experts and scholars, and not for the average law student, lawyer or judge who, in a not too strenuous way, would like to find their way in the maze called Soviet Law. For those who are interested, without having made long, preliminary studies, in the character and nature of the Soviet system of law, Professor Guins has written an excellent introduction,

throwing light on all the aspects of the matter in a clear, convenient and often arresting style. The author, who teaches at the University of California, is a follower of Leo Patrzycki, the founder of the Russian psychological school of law, which influences his approach to the subject. The approach is a mixture of that of a jurist, of a political scientist, and of a sociologist, which gives the book an unusually lively character.

There are two factors of interest here. Firstly, as indicated in the title, the author constantly brings into play throughout the book the development of the Soviet legal system and of Soviet society. Secondly, he compares over and over again the fundamental principles of the monolithic Soviet State, with its unscrupulous policy, with those of the Western democracies with their ethical traditions, rule of law, and the principle of the inviolability of individual rights. In this manner, Professor Guins treats the philosophical features of Soviet law in its various facets — Economic Law, Civil Law, Land and Labor Law, State Law — and then goes on to the discussion in separate chapters, of the organization of Soviet society and Soviet justice, the Soviet conception of international law, and, finally, the law of the People's Democracies and the more than accidental influence of Soviet law on the law of its satellites.

This is one of the few books on Soviet law that devotes any space to the development of law in the People's Democracies and the impact of Soviet law thereon. There is a desperate need for further research and publication in this field. Some works in German and French have appeared but apparently only a rudimentary effort is being put forward to systematize the research and make available the great amount of other research already done.

It is hoped that scholars like Professor Guins, whose many years of labor and knowledge qualify him to do so, will not only find the time to publish more detailed studies on the various aspects of Soviet law, but will also contribute the benefit of their knowledge in that critically important field of Sovietized satellite law.

What Is Necessary To "Prepare" A Trial?

In the course of our study we have pointed out the danger that is present in the work of "preparing" a trial by the police, in the first place to the accused and, secondly, to the independence of the judge.

It is interesting to see what part is played by the counsel in the trial in the Soviet Orbit. Kudryavatzev, Deputy-Minister of Justice of the USSR, in *Literaturnaya Gazeta* of 7 June 1951, defines the role of the counsel as follows:

"So far as our Soviet advocacy is concerned, it is improper and inadmissible to speak still of the duty of the counsel towards his client, of the professional secret of the lawyer, of the right of defense by any means in a lost and unjust cause. Under the conditions of Socialist justice, these kinds of problems do not arise: the Lenin-Marxist doctrine of State and law, as well as our Communist ethics, eliminate these questions."

In the February 1953 issue of *Review of Juridical Sciences* (*Jogtumádanyi Közlöny*, Budapest), the part played by a Soviet counsel prior to and during the trial is set forth in the following words:

"The Soviet counsel is the loyal auxiliary of the court; in collaboration with the court, he must establish by all means the substance of the facts. But the counsel participates also in another function of justice, that is, the educative function. Through all his activities and by his every word he must popularize Soviet justice and law; he must strengthen the impression that the Soviet court judges in complete equity. There is no doubt that a good Soviet counsel exercises an educative influence not only on the accused but also on the public following the proceedings."

Then comes the phrase which shows that the preparative

se prior to the public trial the counsel finds himself excluded from any preliminary procedure:

"The role of the counsel for the defense commences only in the course of the public trial. The defense is excluded from the preliminary investigations and the preparation(!) of the trial. The concept of 'defense' is unknown in the preparatory stages; the Soviet counsel has to stand aside in favor of the police, the examining magistrate."

We would like to point out to our readers that the International Commission of Jurists will publish in one of its future bulletins a complete study on the advocacy in the Communist countries.



The originals of the documents cited in this publication are located in the office of the International Commission of Jurists, 47 Buitenhof, The Hague, Netherlands.