

SOVIET JUDICIAL ORGANS AND THE STALIN
CONSTITUTION

Keeping in step with political and economic changes is the task of Soviet jurisprudence. Soviet jurists never conceive of law as static. Soviet judicial organs are never permitted to continue unchanged (for years after) they have become outmoded.

The twentieth year (of the Revolution) opens with another step in this historical chain of events--a broadening of the base of the dictatorship of the working class, and with this development Soviet judicial organs are once again remodelled. While restating much already accomplished, the new Stalin Constitution introduces changes in the principles underlying the judicial system to keep pace with the new. Actual laws formulating these changes in concrete way have yet to be worked out on many points.

Going even farther than the first All-Union Constitution of 1924, the Constitution of 1936 does not confine itself to outlining the judicial organs of the U.S.S.R. alone as did the earlier document. It reaches out to outline principles to govern the whole judicial system throughout the eleven Union Republics, the twenty-two Autonomous Republics, and the nine Autonomous Regions. Providing, however, only a structural outline, it does not restate the theory and functions of courts in the Soviet state. Every Soviet schoolchild has already learned this basic Marxian principle: the judiciary is not a third estate, above and beyond the will of the government. Left unmentioned by the

Constitution are the principles built on Lenin's statement that law is politics⁷ and that the court is no more than the tool of the state in administering this law so as to protect the dictatorship of the toilers⁸. But silence does not signify abandonment. Commentators remind the student that Marxist-Leninist theory is essential in interpreting the document⁹.

Devoting Chapter IX to judicial organs, the new Constitution lists the courts still functioning after nineteen years, courts which have grown out of the fierce struggle with counter-revolution. Many changes in their types and numbers are in the record of history. Gone are the early Revolutionary Tribunals, formed to handle the mass of counter-revolutionary crimes during the first years after the "October". Long since revived are the institutions of a State Prosecutor and a College of Advocates abolished in the first months of the Revolution. Special tribunals have been created and dissolved and sometimes recreated, and during it all there has been evident the steady broadening of the jurisdiction of the People's Courts as the basic link in the court system¹⁰. Catching up the judicial units which remain, Article 102 of the new Constitution lists them for the first time in a Soviet Constitution. Later articles outline principles of their composition, their procedure, and their duties. With these new principles in mind it will be the purpose of this survey to outline the judicial structure existing when the Stalin Constitution was adopted, and at the same time to trace those changes which already have been

made as a result of the Constitution and those foreseeable in the future.

Due to the different names born by the courts having identical jurisdiction although located in different governmental units¹¹, a reading of Article 102¹² would give the impression of a highly complicated judicial system. Such is not the case. Struggles with counter-revolution still make necessary special tribunals, but aside from these and the disciplinary comrades' courts of factory, village, collective farm, and dwelling cooperative, the judiciary has been simplified until it presents but a three-stepped system in each Republic. Above these systems in each Republic sits the Supreme Court of the U.S.S.R., hearing cases of all-union concern, and supervising the work, not only of the system of courts in the Republics, but also of the special federal or all-union tribunals responsible to it alone.

Courts of the Union Republics

This basic three-stepped system prevails throughout all Republics and Autonomous Regions of the Union. As a rule the Union Republics each have their own three-stepped court system complete in itself. Autonomous Republics and Autonomous Regions within these Union Republics have a two-stepped judicial system of their own, with cassational appeals to the Supreme Court of the Union Republic within the confines of whose territory they lie, thus having what amounts to a three-stepped system. The sole exceptions to this outline arise in

those Union Republics which are of such small geographical size that in their entirety they are no larger than a single Regional division of the huge R.S.F.S.R.¹³ For them the middle step is eliminated and we have but the first and third steps as represented by their People's and Supreme Courts.

In considering each of these links in the judicial system in turn, we start with the basic one, the People's Court¹⁴. As a court solely of original jurisdiction it hears both criminal and civil cases, separately or joined together as is permitted by Soviet Codes of Procedure¹⁵. Its basic form is a tribunal of three judges¹⁶, composed of a people's judge elected for a term of three years by the citizens of the district, and two people's co-judges elected for a term of six sessions (six days) by the villages, army unit, producing, educational and other occupational groups of the district¹⁷. All three have an equal voice in deciding questions of liability or guilt, and the decision or sentence to be handed down¹⁸; the support of a simple majority of the three being sufficient for the decision¹⁹.

The election of people's judges directly by the people for three year terms is an innovation²⁰ of the new Constitution²¹, considered as one of the most vital changes²². There apparently remains unaffected the previously existing right of recall before the expiration of a term of service although the new Constitution makes no such specific provision. This recall at the present time may be accomplished on the

order of the Executive Committee of the Region, or Autonomous Republic, but must always be carried out under the supervision of the People's Commissariat of Justice of the Republic²³. The White Russian S.S.R.²³ requires that the order issue from the Plenum of the Supreme Court of the Republic.²⁴

Whereas the composition of the People's Courts is primarily uniform, there are some whose judges must be specially qualified.²⁵ Should the case concern the interpretation and application of labor laws, the people's co-judges must be elected so that one comes from the Labor Union and the other from the Management.²⁶ Their terms are four days.²⁷ Likewise there were formerly commissions to hear cases involving crimes committed by minors, composed of a representative of the division of people's education as president, and two members--a people's judge and a doctor. These have been abolished²⁸, and today cases of children over twelve years of age are heard by the People's Courts, while measures deemed necessary for children under that age are entirely in the hands of the People's Commissariat of Education. The People's Court which hears cases involving minors from the ages of twelve to eighteen is not, however, a regular People's Court, but one specializing in these cases. It sits with people's co-judges in the usual manner.²⁹

Appeals in the Continental sense of the word do not exist in the Soviet Union. Tsarist Russian appellate courts might rehear the entire case--call witnesses and examine evidence. Such a system was abolished at the time of the creation of Soviet judicial organs.³⁰

In its place there has been developed a system of cassation and revision whereby the case is reviewed solely on the basis of the record in the court of original jurisdiction. Errors in procedure, misapplication of a law, or clear variance between the facts as shown in the record and the sentence or decision handed down may serve as cause to send the case back for a rehearing³¹, or to change the decision without remanding if no further examination is needed to discover new facts, provided a law has been incorrectly applied, or on the facts in the record the decision is insupportable.³² In such cases criminal sentences may only be revised to lesser penalties.³³

This cassational function is performed by the Regional Courts, composed of tribunals of three permanent judges³⁴, elected by the Regional Soviet of Toilers' Deputies for five year terms.³⁵ In those Union Republics where the middle step does not exist, the work of these courts is performed by the Supreme Court of the Republic.³⁶

In addition to their cassational jurisdiction, these Regional Courts also have "colleges", which sit as courts of original jurisdiction over crimes of a serious nature.³⁷ Their competence also exceeds that of the People's Court in that they may apply the supreme measure of social defense--shooting and complete confiscation of property.³⁸ Their original jurisdiction is not limited to the criminal division, for the Code of Civil Procedure also extends it in certain cases, depending on the character of the parties and the amount of the claim.³⁹

When sitting as a court of original jurisdiction they have a bench composed of a single permanent judge and two people's co-judges⁴⁰, the latter elected as in the People's Courts but required to have had not less than two years standing in government, social, or professional organizations.⁴¹

Added to these civil and criminal colleges of original and cassational jurisdiction the Regional Court also includes a so-called "Special College" which hears counter-revolutionary cases of the type formerly heard by the O.G.P.U. Jurisdiction does not include treason, espionage, terror, explosions, arson, and other types of diversion, which remain under the jurisdiction of military tribunals.⁴² Whereas this tribunal is bound by the rules of the Code of Criminal Procedure, its bench is composed of three permanent judges and consequently has no people's co-judges.⁴³

All judges of all tribunals when sitting together form the Plenum⁴⁴, while specially named members of the court together with the Director of the local Institute of Soviet Law sit with the President and his assistants to form the Presidium, or steering committee.⁴⁵

In the City of Moscow, due to its unusual size, the Regional Court has a special division, known as the Moscow City Court, which acts in every respect like a Regional Court, with original and cassational jurisdiction, hearing cases appealed from the People's Courts which operate in the twenty-three Departments of Moscow, each of which is in turn split up into from six to ten districts.⁴⁶ As a court with the power of a Regional Court, cassational appeals from its tribunals

of original jurisdiction lie directly to the Supreme Court of the R.S.F.S.R.

To fill in temporary vacancies there are several reserve judges attached to each Regional Court subject to the orders of the President.⁴⁷

As a third step in the system stands the Supreme Court of the Republic, its members elected by the Supreme Council of the Republic for five year terms.⁴⁸ The law gives it cassational jurisdiction over cases heard by the Regional Court in its colleges of original jurisdiction⁴⁹, and also original jurisdiction over cases of peculiar importance to the state.⁵⁰ Its civil and criminal colleges include the customary two people's co-judges with the single permanent judge when sitting as a tribunal of original jurisdiction⁵¹, but provide a bench of three permanent judges, without people's co-judges when sitting in their cassational capacity.⁵² A "Special College" acts as cassational tribunal from the "Special College" in the Regional Court below, and at the same time has original jurisdiction over more serious state crimes. When sitting as a tribunal of original jurisdiction as well as a cassational tribunal the three judges of the "Special College" are all permanent, just as they are in the "Special College" below.⁵³

The same division of Plenum and Presidium exists as in the Regional Courts below, and their functions are nearly similar.⁵⁴

Courts of Autonomous Republics and Regions

Autonomous Republics have their People's Courts with exactly the same jurisdiction as People's Courts in the Union Republics.⁵⁵ The second step is provided by the Supreme Court of the Autonomous Republic, having a combination of the jurisdiction of the Regional Courts in the Union Republics and the administrative duties of a Supreme Court of a Union Republic.⁵⁶ Its judges are to be elected by the Supreme Council of the Autonomous Republic.⁵⁷ Cassational appeals from this Supreme Court go directly to the Supreme Court of the Union Republic within whose territory the Autonomous Republic lies.⁵⁸ Except for this cassational review they are otherwise independent of the Union Republic's organs, making reports to and being responsible to only the Supreme Council of the Autonomous Republic.⁵⁹ They are, however, bound by interpretations of laws as made by the Supreme Court of the Union Republic.

In the Autonomous Regions the two steps are the People's Courts and Regional Court⁶⁰, with jurisdiction identical to that of the Regional Courts of the Union Republics. Appeals from this Regional Court go directly to the Supreme Court of the Union Republic within whose territory the Autonomous Region may lie.⁶¹ In contrast to the independence of the Supreme Courts of the Autonomous Republics, these Regional Courts of the Autonomous Regions are subject not alone to the cassation review of the Supreme Court of the Union Republic, but also to its jurisdiction as an administrative center.⁶²

For the "national districts" of the R.S.F.S.R., which are in no sense autonomous, but are units to preserve and develop national culture, there exist in addition to the customary People's Courts a District Court which in fact has the same original and cassational jurisdiction as the Regional Courts of the R.S.F.S.R. They have a unique feature in their construction in that their President must be a judge of the Regional Court of the Region of the R.S.F.S.R. in which the national district may lie.⁶³

In any national area, be it Autonomous Republic, Autonomous Region or national district the courts utilize as fully as possible persons of the national group concerned. Article 110 of the new Constitution restates a principle of long-standing--that procedure in these areas is to be carried on in the national language⁶⁴.

Courts of the Union

Over the courts of the Republics stands the Supreme Court of the U.S.S.R. It directs a series of Special Courts which may sit in any part of the Union, without regard to boundaries of Republics. All were formed by the Central Government to cope with crimes of a nature involving the interests of the Soviet Union as a whole, and not of its various republics singly. Military, railroad transport, and water transport crimes fall within their jurisdiction. These special courts are the following:

The Military Tribunals are composed of three commanders in the military-jurists department of the

Red Army. Sitting in districts defined by Armies, Fronts, or Fleets they have three grades : (1) Division, (2) Corps, (3) District [Army, Front, or Fleet]⁶⁵; their jurisdiction differing only in the military rank of the person who may be tried.⁶⁶ Whereas the District Court has both original and cassational jurisdiction, the lower two are limited to original jurisdiction.⁶⁷ Cassation from decisions of the District Court lies to the special military college of the Supreme Court of the U.S.S.R., which may hear cassational appeals from sentences passed by any one of the three classes of tribunals, while at the same time having original jurisdiction itself in unusual cases.⁶⁸ Jurisdiction in all tribunals is not limited to military personnel, but extends to all civilians who commit acts of treason, espionage, terror, arson, explosion, or other types of diversion.⁶⁹

Military tribunals have no civil jurisdiction, and consequently may not hear a civil claim which might have been joined to the criminal prosecution in the ordinary courts. The Criminal Code and Code of Criminal Procedure of the Republic, within the limits of whose territory they are sitting is binding on them,⁷⁰ just as it is on all special tribunals. During wartime there is no right to cassational appeal of sentences of these tribunals, although the higher tribunals' right of review (nadzor) is never waived.⁷¹

Railroad Transport Courts sit in districts defined by individual Railroad systems.⁷² The bench of judges is composed of a permanent judge of rank equal to that

of a regional judge, and two people's co-judges, elected for six day terms from among workers on the Railroad. Within their jurisdiction fall cases concerning transport, whether the accused be a worker in the transport system or an ordinary citizen who steals from trains or disrupts service. Even then, minor cases within these categories must be tried by the People's Courts.⁷³ Appeal by way of cassation lies directly to the Special Transport College of the Supreme Court of the U.S.S.R.⁷⁴

Water Transport Courts are divided according to the chief trading basins of the Union.⁷⁵ In consequence they sit in the basins of the Black and Caspian Seas, and the Dnieper and Upper, Middle, and Lower Volga. From them appeal lies directly to the Water Transport College of the Supreme Court of the U.S.S.R. Transportation in all of these basins includes the interests of more than one Republic, and demands the attention of a federal court. For the various smaller basins wholly within the territory and navigable approachability of a single Republic (R.S.F.S.R. and White Russian S.S.R.) there were special water transport Tribunals of the Regional Courts to hear cases, and from which appeal lay not to the Supreme Court of the U.S.S.R., but to the Water Transport College of the Supreme Courts of the Republics. These have now been united in the system of federal courts.⁷⁷ Jurisdiction of all water transport courts includes not only crimes committed by officials in the water transport system, delaying of shipments, and disciplinary cases of personnel, but also cases involving theft from units of water transport committed by any citizen.⁷⁸

To hear appeals from these occupational federal courts, the Supreme Court of the U.S.S.R. has corresponding colleges: Military, Transport, and Water Transport.⁷⁹ These same colleges also enjoy original jurisdiction within these spheres when there have been crimes of momentous importance. Thus treason on a large scale, as represented in the Kamenev-Zinoviev case was tried by the Military College of the Supreme Court of the U.S.S.R.⁸⁰ Whether sitting as a cassational tribunal or as a tribunal of original jurisdiction in cases of large all-union importance the bench is composed of three permanent judges, who are members of the Supreme Court, and in the Military College—of the military jurists' section of the Red Army as well, being elected by the Supreme Council of the U.S.S.R. for a term of five years, as are all judges of the Supreme Court.⁸¹

These colleges are not the sole tribunals of the Supreme Court of the U.S.S.R., for there are Civil and Criminal Colleges of original jurisdiction⁸² to hear cases concerning the Union as a whole⁸³. To review cases in any court of any Republic or in the colleges of the Supreme Court of the U.S.S.R., there is a College of Review (nadzor).⁸⁴ Approach to this college is not by direct appeal, but through one of the organs permitted to initiate action in a court having the duty of hearing cases by way of review.⁸⁵ There is as well a "Special College" to hear cases appealed from the "Special Colleges" of the Supreme Courts of the

Republics.

Republics.⁸⁶ To complete the picture there is a Special Session, which is not a college at all, but a tribunal chosen ad hoc by the Plenum of the Supreme Court to hear cases which may be referred to it.⁸⁷ The judges on this tribunal need not be members of the Supreme Court, but may be chosen as the Plenum sees fit from citizens of the Union.⁸⁸ It has jurisdiction over cases concerning a member of the Union Central Executive Committee, Council of People's Commissars, or Council of Labor and Defense, if the question is of extreme importance and rises out of ^{the misuse of} their position. Also it may hear any case the Central Executive Committee refers to it.⁸⁹

The Supreme Court as a whole is presided over by its President, who supervises the work of all tribunals of the Court, and directs the work of the Plenum, composed in turn of the President, his Assistants, the Presidents of the Supreme Courts of the eleven Union Republics, a representative of the People's Commissariat of Internal Affairs, and the Presidents of the various tribunals of the Supreme Court itself.⁹⁰ Its duties include supervision over the work of all tribunals of the Supreme Court, the right to protest any order, decision, or sentence of Supreme Courts of the Republics by way of review (nadzor), the duty to choose judges for the ad hoc special session. Before the Stalinist Constitution it had the power to recommend to the Presidium of the Central Executive Committee of the U.S.S.R. that a law or order of a People's Commissariat of the Union, of the Council of People's Commissars, and

of any other central organ of the Union be voided as contrary to the Constitution.⁹¹ Although very wide, this privilege did not extend to the right to protest the laws of the Central Executive Committee or its Presidium.

Making a substantial change in this right of Constitutional surveillance, the Stalin Constitution relieves the Supreme Court of this duty and passes the duty of protest to the Prosecutor of the U.S.S.R. as the general guardian of the law.⁹² Decision remains with the legislative organ⁹³, named under the new Constitution, the Supreme Council of the U.S.S.R. Laws of this Supreme Council are not included in the list which may be protested.⁹⁴ Nothing in the Constitution prevents the Supreme Council from asking the advice of any organ on questions of constitutionality. The Supreme Court might be called upon for this service.

Apart from cassation and relief through the exercise of the right of review by courts, there remains the power of pardon and amnesty, given to the Union government when a matter of all-Union concern⁹⁵, and reserved to the governments of the Union Republics when the sentence affected has been pronounced by a court of the Republic.⁹⁶ This power is exercised by the Presidium of the Supreme Council of the U.S.S.R.⁹⁷, or by the Presidium of the Supreme Council of the Republic.⁹⁸

Non-Judicial Organs to Settle Disputes

Wholly outside the court system lies the system of State Arbitration, and the system of Comrades' Courts. Failure of the Constitution to mention them does not doom them to oblivion. Both now form an

integral part of the system of administering justice, and the Comrades' Courts remain as a unit included among the organs of justice listed in the Program of the Communist Party,⁹⁹ from which the Constitution does not, of course, depart.

Providing several systems of arbitration tribunals the law fits the structure and sponsorship of the tribunal to the type of case involved. For disputes between economic units within the same Commissariat there is created a system under the control of the Vice Commissar.¹⁰⁰

For disputes between economic units under different Commissariats there is a system of State Arbitration, composed of Regional, Republic (Union, Autonomous, and with the same jurisdiction - Autonomous Regional), and All-Union divisions.¹⁰¹ Jurisdiction in the first two steps is limited by the amount of the claim, while jurisdiction in the last is determined by the character of the parties as economic units within the All-Union system or in systems of different Republics.¹⁰²

When foreign firms are involved in disputes with Soviet economic units, cases may be heard by the special system of Arbitration set up under the All-Union Chamber of Commerce¹⁰³, a system of increasing importance since the law permitting all contracts with foreign firms to be made within the Soviet Union, and thus conferring jurisdiction on Soviet Courts and application of Soviet law to the contract.¹⁰⁴

Disputes arising from shipping in Soviet waters are heard before the Maritime Arbitration Commission, also under the All-Union Chamber of Commerce.¹⁰⁵

Although defined as wholly outside the court system,¹⁰⁶ Comrades' Courts perform a valuable function in relieving the People's Courts of the burden of small cases which may be settled informally, and for which small fines, public censures, or small damages are wholly adequate. Evolved as a result of many changes since 1919, they now consist of a bench of three judges, elected from the producing unit¹⁰⁷, village¹⁰⁸, or dwelling cooperative,¹⁰⁹ They hear the case¹¹⁰, without being bound by the usual rules of court procedure. As punishment the court may order a special censure, warnings, small fines to ten rubles, repayment of damages, or request the competent authorities to exclude the defendant from production or labor union for a definite term. Jurisdiction is over disciplinary matters, and personal delinquency, recognized as a hangover from pre-revolutionary codes of morals and behavior.¹¹¹ Organized, directed, and subject to review by the People's Court of the district¹¹² they may not err from established revolutionary principles.

People's Commissariats of Justice

Extensive changes in the character of the Commissariats of Justice are to be the result of the Stalin Constitution. Only four months prior to its adoption, control over all local Prosecutors and the organs which they supervise--investigators, executors of court decisions, and places of detention--had been removed from the Commissariats of Justice.¹¹³ To it was left only the task of organizing and directing the courts and college of advocates. Although remaining silent as to the functions of the Commissariats¹¹⁴, the Constitution incorporates the major principle of this decree in outlining the principle of independence of the Prosecutor.¹¹⁵

By providing for a People's Commissariat of Justice of the U.S.S.R.¹¹⁶, the Constitution prepares for a unification of courts, and for a single system of the four basic codes to be uniform throughout the Union¹¹⁷ instead of the system of codes with extensive variations which now exist in each of the Union Republics.

With these changes in view the structure of the various Commissariats of Justice will take the following lines. Each Union Republic will have its Commissariat, provided for in its constitution¹¹⁸, and having as its function the organization and direction of all court organs, and even the right to review and protest their decisions.¹¹⁹ To these duties is added the preparation of personnel for these organs of the Republic. Autonomous Republics also have their Commissariat of Justice to direct the work of organs of the Autonomous Republic.¹²⁰ Although subject to the review of the Commissariat of the Union Republic within whose territory the Autonomous Republic lies, and required to follow directions defining general lines of policy, and interpretations of laws of the Union Republic, it is at the same time wholly independent in questions involving organization, preparation of personnel for courts, and interpretation of laws of the Autonomous Republic.¹²¹

Limited by the new Constitution to functions of a court organ¹²², the Supreme Court of the U.S.S.R. loses its former powers of administration of the court system, and these powers pass to the Commissariat of Justice of the U.S.S.R.¹²³ The Supreme Court becomes solely an organ of judicial review and original jurisdiction.¹²⁴

This Commissariat of Justice of the U.S.S.R. is given extensive tasks;¹²⁵ organization and leadership of the activities of court organs, involving supervision of the application by the courts of the Judicature Act and the four basic all-union codes--Civil, Criminal, Civil Procedure, Criminal Procedure. This duty amounts to working upon projects for changes and additions to the codes, and to the issuing of orders assuring correct and unified court practice. Organizational duties include leadership of the whole judicial system which, being interpreted, means organizing elections of judges, and distribution of courts over the whole territory of the Union. This charge of leadership extends to control over the college of Advocates, over the work of the Comrades' Courts, over the work of the State Notarial Organs, over legal education and the Law Institutes. Codification of Union Laws and the giving of advisory opinions to the Council of People's Commissars of the Union are also its duties. Duties of codification include duties of publication of all codes and legal literature. Finally it must compile court statistics and keep the list of persons deprived of electoral rights by the courts. Orders of the Commissariat are binding on the Commissariats of Justice in the various Union Republics.¹²⁶

Advocates

Guaranteeing the right of defense the Stalin Constitution raises the College of Defenders to constitutional status¹²⁷. With this advance the college is once again undergoing a reorganization following in a

long line of changes which have come after the revolution's complete abolition of the institution.¹²⁸ Even the much-criticized name will now go, and they will be renamed "advocates".¹²⁹

Doing their work for the most part collectively, they have been grouped in districts from which they may be obtained to defend any right, whether it be that of plaintiff or defendant in civil suits or that of the defense in criminal prosecutions.¹³⁰ Although as a usual case the President of the collective assigns the advocates to the clients as they come in, a right of choice has been permitted the client of recent years.¹³¹ The trend is towards permitting individuals either to engage in private practice or to work in the collective,¹³² although if in a collective, private practice in addition is forbidden.¹³³

Requirements of admission were few, being only practical knowledge, evidenced by two years of practical legal experience in a position not lower than investigator.¹³⁴ Legal education was not required, although if such existed, it served as a substitute for the practical experience as a prerequisite for admission. Today even those with legal education will be required to serve a two-year apprenticeship under the guidance of a member of the college of advocates before he may be admitted to practice wholly on his own initiative without supervision.¹³⁵

Fees, although waived in cases of inadequate funds¹³⁶, are payable not to the individual but to the collective, where they are distributed according to special rules.¹³⁷

Under these methods, distribution is according to quantity and quality of work done, allowance being made for better advocates, who are rated by the President of the collective as deserving of a higher rate of daily return.¹³⁸

Control over the College will now be exercised by the Commissariat of Justice of the U.S.S.R., which controls organization and discipline.¹³⁹

The State Prosecutor

Strict centralization of the office of the State Prosecutor (State Attorney) is the basic principle laid down by the Constitution--absolute independence from Commissariats of Justice and from local organs¹⁴⁰ to make possible the better fulfilling of the task of prosecuting all violators of Revolutionary law, be they local citizens or government officials.¹⁴¹

A principle for which Lenin fought even against some members of the government in the first months of the Revolution¹⁴², it finds its clearest restatement in the requirement that all Prosecutors of Union Republics, Regions, Autonomous Republics, and Autonomous Regions be named by the Prosecutor of the U.S.S.R.¹⁴³, who is himself named for a period of seven years by the Supreme Council of the U.S.S.R.¹⁴⁴. District Prosecutors are appointed by Prosecutors of the Republic, but only after receiving the approval of the Prosecutor of the Union.¹⁴⁵ With the creation of the office of Prosecutor of the U.S.S.R. in 1933¹⁴⁶, resulting in the divorcing of the local
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prosecutors from/sole control of the Commissariats of Justice of the Republics, the system of Prosecution started on the road to the simplified independent system it is today.

Basically the system is three-stepped in each Republic, with the Prosecutor of the U.S.S.R. over all. Thus there are Prosecutors of each of the eleven Union Republics; Prosecutors of each Region; Prosecutors of each District (Raion).¹⁴⁷ Where there exists an Autonomous Republic there are District Prosecutors, and a Prosecutor of the Autonomous Republic, responsible to the Prosecutor of the Union Republic in which the Autonomous Republic may lie. Likewise there are Prosecutors in the Autonomous Regions, responsible to the Prosecutor of the Union Republic in which they are situated.¹⁴⁸ In large cities there is a city Prosecutor, with the full authority of a Regional Prosecutor, his position paralleling that of the City Court.¹⁴⁹

Terms are uniform for all--five years¹⁵⁰, with the exception, as stated above, of the Prosecutor of the U.S.S.R.

As Specialized Prosecutors¹⁵¹, there are divisions of the Office of Prosecutor of the U.S.S.R. headed by Military¹⁵², Transport¹⁵³, and Water Transport¹⁵⁴ Prosecutors. These direct, independently of the Prosecutors of the Republics, a network of subordinates in these special fields, who are responsible only to their Chiefs.¹⁵⁵ Each prosecutes cases over which the Military, Transport, and Water Transport Courts have jurisdiction. The regular Prosecutor handles accusations before the "Special Colleges" of Regional, Republic Supreme Courts, and Supreme Court of the Union.¹⁵⁶ In the military divisions deputy Prosecutors are distributed

according to Fronts, Armies, and Fleets; in the transport division according to railroads, and in the water transport division according to navigation basins so that they parallel the jurisdiction of the courts in which they work, although not being attached to these courts.

Duties of the Prosecutors of all stages have been outlined as surveillance over violations of law by all People's Commissariats, and organizations subordinate to them, by persons in responsible positions, and by all citizens of the U.S.S.R.¹⁵⁷. Although foreigners are not here mentioned, the Criminal and Civil Codes have long contained references to their binding force for foreigners as well as Soviet citizens.¹⁵⁸

To assist in the colossal task of keeping a check on the operations of all organs in the Union, there have been developed two basic systems of information: (a) legal sections of the village soviets¹⁵⁹ which report on irregularities in the area from which they are elected, and (b) "Groups of Cooperation"¹⁶⁰ which are groups of persons elected in each factory, office, or collective farm to recount to the Prosecutor everything which occurs in the organization so that he may judge whether laws are being violated.

In addition to these checks, there is the right given the representative of any social organ--labor union, labor inspector, technical, sanitary or other organ of inspection--to prosecute a case with rights equal to those of a Prosecutor, whether the Prosecutor also be present or not.¹⁶¹

Prosecution in criminal cases is only a part of the tasks of this office. A Prosecutor must take part in civil cases, when the interests of the State or of the toiling mass are involved.¹⁶² He must supervise the legality of detention, and arrest¹⁶³, a task magnified many times by the Constitution which forbids arrest without the order of a court or the sanction of a Prosecutor.¹⁶⁴ As a guardian of the law, his is the task of seeing that rights listed in the new bill of rights of the Constitution¹⁶⁵ shall not be violated.

To the Prosecutor falls the task of supervising and directing the work of the Investigating Organs¹⁶⁶, which are themselves divided into three classes, each being under the control of the corresponding Prosecutor.¹⁶⁷

Since 1933 the Prosecutor has been entrusted with control of the People's Commissariat of the Interior, which at that time took, in a modified form, the work formerly done by the Cheka and later the OGPU. This supervision falls under the "Special Section"¹⁶⁸ of the Prosecutor's Office of the U.S.S.R. It in turn brings under his care the organs subordinate to the Commissariat such as the Militia¹⁶⁹, the court executioners, and the Division of Correctional Labor¹⁷⁰, which has been occupied on such monumental tasks as the building of the Baltic-White Sea Canal¹⁷¹, and the Moscow-Volga Canal¹⁷², where criminals are provided with work as a measure of "reform through toil"¹⁷³.

The duty of protesting to the cassational college of any court falls on the Prosecutor¹⁷⁴. Should the

period

period for protest have expired, he may still raise the issue by way of surveillance (nadzor) and ask the cassational tribunal to decide whether a rehearing should not be had. This is an exceptional right, exercisable only when there has been a violation of a principle of revolutionary law of such a nature that the decision or sentence cannot be permitted to stand.¹⁷⁵

The year 1936 has seen a complete revision of the principles on which the departments of the office of Prosecutor of the U.S.S.R. are organized.¹⁷⁶ Gone is the duplication of work formerly existing as a result of departmentation on "production principles" which meant that departments were organized to handle crimes in production, agriculture, trade, cooperatives, finance, social and cultural fields. With a view to simplification of procedure the following system has been evolved. There are three basic juridical divisions--investigators, criminal courts, and general supervision. The first will control all court investigators. The second will examine all criminal cases for errors, and the last will have the task of supervising and determining the legality of the acts of all organizations, responsible officials, and citizens of the U.S.S.R. Besides these there is a division of personnel which includes the task of exposing crimes by court workers. Unchanged are the former divisions of information and statistics; special section supervising the work of organs of the People's Commissariat of the Interior, and of the "Special Colleges" of the Supreme Courts of the Republics; the extra special sector; and the division for supervision over places of detention.

Newly created is a civil division to perform the duties of surveillance over civil cases of interest to the state and toilers. No change occurs in the Specialized Prosecutors--Military, Transport, and Water Transport.

Summary

Examination of the judicial structure remaining after the adoption of the new Constitution provides an illustration of Stalin's oft-quoted words, "The draft of the new Constitution is a summary of the path that has been traversed, a summary of the gains already achieved".¹⁷⁷ While reflecting the past, at the same time it points up the structure of these organs to meet the changed demands of today.

Nineteen years have brought the Soviet Union to the point where the democratic base of the dictatorship of the proletariat has been broadened, and the first stage of communism, known as socialism is being ushered in. There still remains the delicate task of piloting the state through this period of socialism until there comes the time when the state, conceived of as an organ of control in the interests of the governing class, will no longer be needed and may wither away.

The Constitution is a creature of this state organism, finally drafted after listening to the proposals of thousands of toilers. As such it is a document from which any pretense of mysterious sacredness has been removed. It is man-made, and no Communist would claim that it is a norm and law above the state. It is recognized as a tool in the class struggle, which is still of vital import, due as Stalin explains, to the remnants of

capitalism within the country, and the presence of a resolute bourgeoisie without.¹⁷⁸ As such a tool it will serve the purposes for which it was forged, and when obsolete will be replaced by another document drafted to fit the needs of that future society which will then hold the stage.

Stalin's words set the background and define the task of this Constitution: "Unlike bourgeois constitutions, the draft of the new Constitution of the U.S.S.R. proceeds from the fact that there are no longer antagonistic classes in society; that society consists of two friendly classes of workers and peasants; that it is these classes, the toiling classes, that are in power; that the guidance of society by the state (dictatorship) is in the hands of the working class, the most advanced class in society; that a Constitution is needed for the purpose of consolidating a social order desired by and beneficial to the toilers."¹⁷⁹

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FOOTNOTES

1. "The distinguishing features of our Soviet law lie in this, that it is linked with the system of movement; the transition from one period to another; the dialectic system of our politics." See E. Pashukanis, Za Markso-Leninskuyu Teoriyu Gosudarstva i Prava (Moskva, 1931) 25 [For a Marxist-Leninist Theory of the State and Law]

2. See J. V. Stalin, On the Draft Constitution of the U.S.S.R. (Report delivered at the Extraordinary Eighth Congress of Soviets of the U.S.S.R., Nov. 25, 1936-- Eng. ed., Moscow, 1936) 28

3. "The new Constitution expresses in a brief and simple form the peculiar features of the stage already reached in the socialist transformation of society and the abolition of classes." See A. Stetsky, The Constitution of the Socialist State (Eng. ed., Moscow, 1936) 20

4. For Russian text see Izvestiya, No. 283(6140), of Dec. 6, 1936. For English translation see V 5 Moscow Daily News, No. 280(1382), of Dec. 6, 1936.

5. For Russian text see Istoriya Sovetskoi Konstitutsii v Dekretakh i Postanovleniakh Sovetskogo Pravitelstva, 1917-1936 (pod. red. A. Alymova, Moskva, 1936) 255-267 [History of the Soviet Constitution in Decrees and Enactments of the Soviet Government, 1907-1936] For official French translation including amendments, see Annuaire Diplomatique du Commissariat Pour Les Affaires Etrangères (Moscou, 1935) 5-22. For English translation, see T. A. Taracouzio, The Soviet Union and International Law (N.Y., 1935) 355-369.

6. "It must not be forgotten that the court and prosecutor-investigating organs are only 'material accessories' of the state, are government organs whose nature in no way differs from the nature of the government itself" See A. Y. Vyshinskii, Sudoustroistvo v SSSR (3 izd., Moskva, 1936) 68 [The Judiciary in the U.S.S.R.]

7. See 19 V. I. Lenin, Sochineniya (Izd. 2 ili 3, Moskva, 1923-1935) 212 [Works]

8. "Consequently the Constitution is saying in Article 112 no more than that the judges must carry out the will of the toiling masses of our Soviet Union, as it is reflected in Soviet laws, the will of the Party as the vanguard of this mass. The independence of the judges is not their independence from the politics of the governing power." See N. V. Krylenko, Sovetskoe Pravosudie (Moskva, 1936) 14 [Soviet Justice]

9. "What are the tasks of the court under the Constitution? The Constitution does not directly speak of this. But on this subject the Marxist-Leninist theory of the court speaks clearly enough, as does Lenin speaking as early as 1918." See N. V. Krylenko, Stalinskaya Konstitutsiya v Voprosakh i Otvetakh (Moskva, 1936) 48. [The Stalin Constitution in Questions and Answers]

10. For an exhaustive treatment of this historical development, see Judah Zelitch, Soviet Administration of Criminal Law, (Univ. of Penna. Press, 1931) 15-152

11. The basic units are eleven Union Republics. Within the geographical confines of some of these are Autonomous Republics, governing themselves, but under the supervision of the Union Republic of which they form a geographical part. Stalin lists three principles controlling the advancement from Autonomous to Union status (a) Geographical location bordering on a foreign state, permitting the right of secession factually to be exercised. (b) Constitution of the nationality whose name the Autonomous Republic bears as a more or less compact majority within that Republic. (c) Population of more than a million. See J. V. Stalin, op. cit. supra, note 2 at 36-37. In addition to the Union and Autonomous Republics there are autonomous Regions, more extensively under the control of the Union Republic, and finally national districts, which are not autonomous at all, but cultural reservoirs.

12. Art. 102 - "Justice in the U.S.S.R. is administered by the Supreme Court of the U.S.S.R., the Supreme Courts of the Union Republics, territory and region courts, courts of the Autonomous Republics and Autonomous Regions, district courts, special courts of the U.S.S.R. which are created by decision of the Supreme Council of the U.S.S.R., and people's courts."

13. White Russian, Georgian, Azerbaidjan, Armenian, Turkomen, Uzbek, and Tadjik Soviet Socialist Republics. See A. Y. Vyshinskii i V. S. Undrevich, 1 Kurs Ugolovnogo Protsessa (2 izd., Moskva, 1936) 305 [Course in Criminal Procedure]

14. "We understand a sole people's court to mean that it is the basic court through which are passed the basic mass of cases subject to decision in court, but we do not see a violation of this oneness in the fact that regional courts hear cases concerning crimes especially dangerous for the Soviet social order, just as we do not see a violation in the fact that they operate alongside general and special courts--military, transport, etc." See idem at 268.

15. "The injured persons, having suffered damage as a result of the crime, has a right to bring civil suit against the accused, and against persons who are materially responsible for the acts of the accused, which irregardless of the amount of the claim is heard together with the criminal case where jurisdiction over the latter may lie." Code of Criminal Procedure, R.S.F.S.R., Art. 14

16. Civil cases of certain types may be heard by a People's Judge sitting alone (without People's Co-judges). They are the following: (1) suits for rent, and payments for communal services supplied in cooperative apartment houses. (2) suits based on documents on which the law allows execution after endorsement by a notary, in those cases when the period to obtain notarial endorsement has expired. (3) cases classed as special procedure (Defined in Code of Civil Procedure, R.S.F.S.R., Art. 191 as arising out of (a) conflicts over property in decedent estates (b) decisions of arbitration tribunals (c) appeals from acts of notaries (d) requests to restore rights lost by the petitioner due to lost documents), with the exception of cases on exemption from military service because of religious conviction. (4) conflicts between organs of the socialized (as opposed to private) sector. See Law of Dec. 20, 1934, Sobr. Uzakon. R.S.F.S.R., 1935, No. 2, Art. 9 carried into the Code of Civil Procedure of the R.S.F.S.R. as Art. 24-a.

No criminal cases may be heard by a single judge.

17. Elected to fill a plan of allotment drawn up by a commission composed of a member of the local central executive committee, a representative of the prosecutor's office, and a people's judge, who outline the number of persons each occupational unit must elect to complete the roll of 200 required for each year's sessions of each people's court of the district. See Judiciary Act of 1926, R.S.F.S.R., sec. 21, Sobr. Uzakon., R.S.F.S.R., 1926, No. 85, Art. 624

18. See Judiciary Act, 1926, R.S.F.S.R. sec. 27.

19. Code of Criminal Pfocedure R.S.F.S.R. Art. 325.:
Code of Civil Procedure, R.S.F.S.R., Art. 174

20. Formerly they were elected by the District Executive Committee, and in cities by the City Soviet for a period of one year, see Judiciary Act, 1926, R.S.F.S.R., cit supra note 17 at Sec. 16 as amended by Law of Oct. 10, 1930, Sobr. Uzakon. R.S.F.S.R., 1930, No. 51, Art. 627

21. Stalin Constitution, Art. 109. This principle of popular election does not, however, effect the prerequisite of experience--two years in a responsible position in government institution or social organization, or three years in the Soviet judicial system in a post not lower than that of people's investigator, see Judiciary Act, R.S.F.S.R., 1926, cit. supra note 17 at sec. 15

The former additional limitation that a candidate have the right to vote, while still of moment as regards persons deprived of electoral rights by courts, is no longer of importance since Art. 135 of the Stalin Constitution removes the restrictions on electoral rights formerly existing by virtue of Art. 69 of the 1925 Constitution of the R.S.F.S.R. For text of R.S.F.S.R. Constitution of 1925 see Sobranie Zakonov R.S.F.S.R., 1925, No. 30, Art. 218

Additional requirements for judges in Regional Courts may appear, as the project for the new Judiciary Act requires candidates for this tribunal to have completed special legal preparation, see op. cit. supra note 13 at 325

22. "The fundamental and basic change is the following that the People's Judges according to the Constitution are to be elected directly by the people.", see N. V. Krylenko, op. cit. supra., note 9 at 49

23. See Judiciary Act, R.S.F.S.R., 1926, Sec. 16: Law on Revolutionary Legality, Sobranie Zakonov S.S.S.R., 1932, I, No. 50, Art. 298, sec. 6

24. op. cit. supra, note 13 at 331

25. For ordinary sittings no special qualifications are required to be a People's Co-judge, but toilers excluded from social or professional organizations for a disgraceful offense or unbecoming conduct may not be elected until after the passage of three years from the date of exclusion or until a sentence has been fully served. Judiciary Act, R.S.F.S.R., 1926, cit. supra., note 17 at sec. 18

26. This is the basic form in the R.S.F.S.R. today, replacing former rules by which co-judges were elected for a term of one year for labor cases, one from the labor union, and one from the management, see Judiciary Act, R.S.F.S.R., 1926, cit. supra note 17 at sec. 35 and op.cit. supra note 13 at 283-284.

27. See Zin Grishin, Sovetskoe Trudovoe Pravo (Moskva, 1936) 225-226 [Soviet Labor Law]

28. Law of May 31, 1935, Sobr. Zakonov, S.S.S.R., 1935, I, No. 32, Art. 252, Sec. 21

29. See op. cit. supra, note 13 at 287.

30. Decree No. 1 on the Court, Dec. 5, 1917, Art. 2, par. 4. For text see History of the Soviet Constitution, cit. supra., note 5 at 40

31. Code of Civil Procedure, R.S.F.S.R., Art. 237; Code of Criminal Procedure R.S.F.S.R., Art. 413. While all criminal cases may be appealed by way of cassation, some civil cases were until recently not subject to appeal--Cases (a) involving 100 rubles or less; (b) involving suit for not more than one month's wages; (c) where defendant does not contest either his liability or the amount claimed (Code of Civil Procedure R.S.F.S.R., Arts. 235a, 235b and note to 235); (d) involving capitalization of any annuity previously adjudged when the organ paying the annuity is being liquidated (idem. Art. 414). These limitations were recommended for repeal by the Supreme Court of the R.S.F.S.R., and action has been taken although the Code has not yet been amended. - Prof. Borisov, Review Lecture in Civil Procedure. Moscow Law Institute, April 28, 1936.

32. Code of Civil Procedure, R.S.F.S.R., Art. 246c; Code of Criminal Procedure, R.S.F.S.R., Art. 419a.

33. Code of Criminal Procedure, R.S.F.S.R., Art. 419a.

34. Judiciary Act, R.S.F.S.R., 1926, cit. supra note 17 at sec. 51

35. Stalin Constitution, Art. 108

36. See, op. cit. supra., note 13 at 305-306

37. Including counter-revolutionary crimes; crimes against the administration especially dangerous to the U.S.S.R.; armed robbery; crimes by persons in responsible positions and made possible by virtue of the position; delivery of bad quality goods systematically or on a large scale; misappropriation, wasting, or stealing of state funds and property; non-fulfillment of a contract made with the government or its organs because of bad faith. For number of code sections concerned see Code of Criminal Procedure, R.S.F.S.R., Art. 26a.

38. Articles of the Criminal Code which may be applied by the People's Courts do not include as designated punishment this supreme measure. See also, op. cit. supra. note 13 at 296

39. Conflicts between organs of the socialized sector if they (a) arise out of operation of the State Bank, and if they are in an amount in excess of 1000 rubles, when the State Bank is a party; (b) arise out of contracts of railroad, water, or air transport amounting to more than 10,000 rubles, except for claims on general contracts of mass planned shipments; (c) arise between concessionary and foreign firms and Soviet organs of the socialized sector when the claim is for more than 10,000 rubles. In addition the Regional Court may assume jurisdiction of any case in any court subordinate to it. See Code of Civil Procedure, R.S.F.S.R., Art. 22

40. Stalin Constitution, Art. 103 and Judiciary Act, R.S.F.S.R., 1926, cit. supra., note 17 at Sec. 51.

41. Judiciary Act, R.S.F.S.R., 1926, Sec. 43.

42. Law of July 10, 1934, Sobr. Zakonov, S.S.S.R., 1934, I, No. 36, Art. 284, sec. 2.

43. Idem, Sec. 1.

44. Its functions: (a) periodically hear reports of the Presidium of the Regional Court, leaders of different sectors of its work, People's Judges, etc.; (b) hear reports on the revision and examination of the People's Courts of the Region, and take measures directed toward bettering their work; (c) approve instructions and orders about the work of the Regional Court and People's Courts; (d) examine in connection with any case questions arising as a result of lack of clarity or incompleteness of existing laws, brought before the Plenum by the President of the Regional Court, the tribunals of original or cassational jurisdiction of this court of the Regional Prosecutor; (e) examine by way of review any sentence of a People's Court sustained by the cassational college of the Regional Court. See Judicature Act, R.S.F.S.R., 1926, cit. supra., note 17 at secs. 49 and 119. Presidents of the Regional Courts in the Autonomous Regions lying within the Administrative Region are also members, Idem.

45. Its functions: (a) division of the work among the members of the Regional Court; (b) decision of questions about the organization of the work of the People's Courts of the Region; (c) questions of transfer of the hearing of a case from one People's Court to another, or from a People's Court to the Regional Court; (d) issuing of circulars on administrative-organizational questions for the People's Courts of the Region; (e) preliminary discussion of questions of basic principle referred to the Plenum of the Regional Court. See Judicature Act, R.S.F.S.R., secs. 48 and 117.

46. Law of March 20, 1933, Sobranie Uzakoneni, R.S.F.S.R. 1933, No. 23, Art. 81.

47. Judicature Act, R.S.F.S.R., 1926, sec. 57

48. Stalin Constitution, Art. 106

49. Code of Criminal Procedure, R.S.F.S.R., Art. 434;
Code of Civil Procedure, R.S.F.S.R., Art. 235

50. This jurisdiction is the following: (1) Criminal-- (a) cases of exceptional importance placed on its calendar by the Presidium of the Central Executive Committee of the Republic, by the People's Commissar of Justice, by the Prosecutor of the Republic or by the People's Commissar of Internal Affairs. The Supreme Court may transfer cases referred to it by the Prosecutor or the Commissar of Internal Affairs to a Regional Court; (b) crimes committed in their official capacity by members of the Central Executive Committee of the Republic, People's Commissars of the Republic, members of the Supreme Court of the Republic, the Prosecutor of the Republic and his assistants, and also Regional Prosecutors and their assistants, members of the Executive Committees of the Regions and the Chief of their departments, Presidents and Vice Presidents of the Regional Courts. Cases involving Regional officials may be heard by the Supreme Court or transferred to a Regional Court in another Region. See Art. 449, Code of Criminal Procedure, R.S.F.S.R. : (2) Civil--The court may take jurisdiction over any case pending in any court. See Art. 24 Code of Civil Procedure, R.S.F.S.R. It has jurisdiction over cases of insolvency of cooperatives and limited liability corporations, the preponderant part of whose stock is owned by cooperatives if these be of all-union or republic importance. See Art. 419, idem.

51. See Judiciary Act, R.S.F.S.R., 1926, cit. supra. note 17, at sec. 183 People's co-judges for the Supreme Court sessions are drawn from a special list approved annually by the Presidium of the C.E.C. of the R.S.F.S.R. See idem.

52. See idem, sec. 182
53. Law of July 10, 1934. Sobr. Zakonov S.S.S.R., 1934, I, No. 36, Art. 284, sec. 1.
54. Judiciary Act, R.S.F.S.R., 1926, secs. 179, 180
55. See Basic Principles for the Judiciary; U.S.S.R., 1924, sec. 7. Sobr. Zakonov, S.S.S.R., 1924, I, No. 23, Art. 203 and Judiciary Act, R.S.F.S.R., 1926, at secs. 151, 152.
56. Judiciary Act, R.S.F.S.R., 1926, sec. 154. These courts were called Chief or Higher Courts until changed in name by Art. 107 of the Stalin Constitution. No change occurs in their position in the Judicial structure.
57. Art. 107 Stalin Constitution.
58. Judiciary Act, R.S.F.S.R., 1926, sec. 8
59. Idem, sec. 166. Copies of the report must be sent to the Supreme Court of the R.S.F.S.R. and the People's Commissariat of Justice of the R.S.F.S.R., idem.
60. Idem, Art. 2a and 3 and Basic Principles for the Judiciary, U.S.S.R., 1924, cit. supra, note 55 at sec. 2.
61. Judiciary Act, R.S.F.S.R., 1926, sec. 129. For relations between Autonomous Regions and the governmental organs of the geographical region in which they lie, see Law of Oct. 29, 1928, Sobranie Uzakon., R.S.F.S.R., 1928, No. 137, Art. 889.
62. The Regional Courts of Autonomous Regions have the same position and rights as ordinary Regional Courts of Administrative Regions, see Judiciary Act, R.S.F.S.R., 1926 - sec. 129.
63. Law of March 10, 1936, Sobr. Uzakon. R.S.F.S.R., 1936, No. 21, Art. 70. To avoid confusion in reading laws, mention must be made of administrative districts in huge territories of the Far North and East in which Regional Courts are divided into sections (these sections sometimes being called District Courts), sitting permanently in these administrative districts. This division is wholly apart from principles underlying division into national districts as they are not formed to protect national minorities but to facilitate administration. Appeals from these district courts lie directly to the Supreme Court of the Republic. See, Law of April 10, 1936, Sobr. Uzakon. R.S.F.S.R., 1936, No. II, Art. 67

64. The use of the national language is linked with the process of instituting nationals of the area as court workers, a process known technically as korenizatsiya. June 1, 1931, figures showed the percentaged of "korenized" courts to be in the R.S.F.S.R.: in Autonomous Republics 70%; in Autonomous Regions - 62%. See op. cit. supra, note 13 at 306.

65. Law of Aug. 20, 1926, Sobr. Zakonov, S.S.S.R., 1926, I, No. 57, Art. 413, sec. 1

66. Idem, sec. 10

67. Idem, sec. 2

68. Idem, sec. 29, and sec. 10

69. Idem, sec. 8 (Amended in Sobr. Zakonov, S.S.S.R., 1927, I, No. 50, Art. 504; sec. 5; 1930, I, No. 49, Art. 509; sec. 2; 1934, No. 12, Art. 78; and 1934, No. 37, Art. 295;). These crimes by civilians subject to the jurisdiction of military courts are further defined in Act on State crimes, Sobr. Zakonov, S.S.S.R., 1927, I, No. 12, Art. 123 (Amended in idem 1929, I, No. 10, Art. 91; idem No. 21, Art. 182; idem 1931, I, No. 4, Art. 44; and idem 1935, I, No. 43, Art. 359a)

70. Law of Aug. 20, 1926, cit. supra, note 65 at sec. 19(b)

71. Idem, sec. 30

72. See Law of Nov. 27, 1930, Sobr. Zakonov, S.S.S.R., 1930, I, No. 57, Art. 601; amended in idem 1931, I, No. 4, Art. 43, and idem 1933, I, No. 55, Art. 324 (placing these courts under the Supreme Court of the U.S.S.R.).

73. Order of the Supreme Court of the R.S.F.S.R., Jan. 23, 1934 - Sovetskaya Yustitsiya, 1934, No. 5, page 23

74. Law of Nov. 27, 1930, cit. supra, note 72 at sec.9

75. Law of June 7, 1934, Sobr. Zakonov, S.S.S.R., 1934, I, No. 33, Art. 251, sec. 1

76. Idem, sec. 1
77. Law of April 7, 1936, Sobr. Zakonov, S.S.S.R., 1936, I, No. 18, Art. 150, sec. 1
78. Lex cit. supra, note 75 at sec. 5
79. 1924 Constitution of the U.S.S.R., Art. 44 (as amended)
80. Law of July 10, 1934, Sobr. Zakonov, S.S.S.R., 1934, I, No. 36, Art. 284, sec. 2, defining jurisdiction.
81. Stalin Constitution, Art. 105
82. Law of Feb. 6, 1935, Sobr. Zakonov, S.S.S.R., 1935, I, No. 8, Art. 68, Part II, sec. 6
83. This original jurisdiction is: (1) Criminal-
(a) crimes committed in two or more Republics [metro-Vickers Case] (b) Terrorist acts and wrecking, under Law of Dec. 1, 1934, Code of Criminal Procedure, R.S.F.S.R., Arts. 466-470; (c) crimes committed by high officials of the U.S.S.R., 1924, Constitution, U.S.S.R., Art. 43e. (2) Civil- (a) cases in which two Republics are parties, 1924 Constitution, U.S.S.R., Art. 43d. (b) cases having general character and importance [Lena Goldfields Concession and Hammer Concession cases] (3) Civil and Criminal - cases affecting personal legal liability of the members of the Central Executive Committee, now Supreme Council, and Council of People's Commissars of the U.S.S.R., 1924 Constitution, U.S.S.R. Art. 48
84. Lex. cit. supra, note 82 and also Law of July 10, 1934, Sobr. Zakonov, S.S.S.R., I, No. 36, Art. 284, Part II
85. For organs with competence to instigate review, and the procedure involved, see M. S. Strogovich, Kurs Ugolovnogo Protsessa (3 izd., Moskva, 1936) 128 [Course in Criminal Procedure]
86. See Law of July 10, 1934, cit. supra, note 84 at Part I, sec. 1
87. See Act on the Supreme Court, Sobr. Zakonov, S.S.S.R., 1929, No. 54, Art. 445--Rules for constituting in Secs. 9(d), 12 and 13

88. Idem, secs. 12 and 13
89. Idem, sec. 29
90. 1924 Constitution, R.S.F.S.R., Art. 45
91. 1924 Constitution, U.S.S.R., Art. 43. For practice see op. cit. supra, note 13 at 310
92. Stalin Constitution, Art. 113
93. Stalin Constitution, Art. 49e
94. Art. 49a applies, however, only to decisions and orders of the People's Commissariats of the U.S.S.R. and the Union Republics. It does not provide for protests against enactments and orders of the Supreme Councils in Autonomous and Union Republics. If these conflicts with all-union laws, they are declared automatically inoperative under Art. 20, declaring the all-union law to be paramount in case of a conflict.
95. Stalin Constitution, Art. 14w
96. 1937 Constitution of the R.S.F.S.R., Art. 19z. For text see Izvestiya, No. 20 (6182) of January 22, 1937. For English translation see VI Moscow Daily News, No. 18 (1421) of January 22, 1937.
97. Stalin Constitution, Art. 49h
98. 1937 Constitution of the R.S.F.S.R., Art. 33g
99. Communist Party of the Soviet Union (Bolsheviks), Program and Rules - Revised edition, Art. 11, par. 5 (Eng. ed., Moscow, 1935)
100. Law of June 7, 1932, Sobr. Zakonov, S.S.S.R., 1932, I, No. 45, Art. 269. Rules governing the arbitration tribunals in each Commissariat are collected by I. K. Gamburg, Arbitrazh (Moskva, 1935) 88-169 [Arbitration]

101. Created by law of May 3, 1931, Sobr. Zakonov, S.S.S.R., 1931, I, No. 26, Art. 203. Amended, idem, 1931, I, No. 31, Art. 239; idem, 1932, I, No. 45, Art. 269; idem, 1932, I, No. 74, Art. 451. In its present form with amendments incorporated, in op. cit. supra., note 99, at 19-22

102. Law of May 3, 1931, supra, sec. 4

103. Law of June 17, 1932, Sobr. Zakonov, S.S.S.R., 1932, I, No. 48, Art. 289.

104. Law of July 27, 1935, Sobr. Zakonov, S.S.S.R., 1935, I, No. 44, Art. 367. Interpreted as requiring, where possible that such contracts be concluded in the U.S.S.R., see A. Rosenholtz, The Foreign Trade of the U.S.S.R., Pravda, No. 324 (6980), Nov. 25, 1936, p. 5. For English translation, see V. Moscow Daily News, No. 272 (1374), Nov. 27, 1936, p.2

105. Law of Dec. 13, 1930, Sobr. Zakonov, S.S.S.R., 1930, No. 60, Art. 637, amended by Law of Jan. 8, 1933, idem, 1933, I, No. 2, Art. 12

106. See M. S. Strogovich, op. cit. supra, note 85 at 29

107. Law of Feb. 20, 1931, Sobr. Uzakon. R.S.F.S.R., 1931, No. 14, Art. 160, carried into Code of Criminal Procedure, R.S.F.S.R., as Art. 25e.

108. Law of Sept. 29, 1930, Sobr. Zakonov, S.S.S.R., 1930, I, No. 51, Art. 531, amended in idem, 1931, I, No. 15, Art. 145; 1932, I, No. 29, Art. 180; and No. 61, Art. 355; and No. 82, Art. 503. There are corresponding laws in the Republics, see law of Oct. 10, 1930, Sobr. Uzakon. R.S.F.S.R. 1930, No. 51, Art. 629, and idem, 1931, No. 49, Art. 368, carried into Code of Criminal Procedure, R.S.F.S.R., as Arts. 25b, c, and d.

109. Law of June 30, 1931, Sobr. Uzakon. R.S.F.S.R., 1931, No. 36, Art. 295; carried into Code of Criminal Procedure, R.S.F.S.R., as Arts. 25fb, c, and d.

110. In regions of the far north, one of the judges is a member of the People's Court.

111. Specifically their jurisdiction lies in cases of (a) violation of labor discipline, (b) property claims if the sum does not exceed 50 rubles (75 in villages) and is a liquidated sum, (c) crimes of petty larceny up to 50 rubles (60 in dwelling coops), insults, beating if bodily injury is not involved, rowdyism, etc. See each law, cited in notes 106, 107, and 108 for sections concerning each type of court.

112. See law of Oct. 10, 1930, cit. supra, note 107.

113. See law of July 20, 1936, Sobr. Zakonov, S.S.S.R., 1936, I, No. 40, Art. 338, sec. 2

114. Stalin Constitution, Arts. 72 and 73, outlining general tasks of leadership in all Commissariats. Krylenko has rephrased these articles to outline especially the duties of the Commissariat of Justice, see op. cit. supra. note 8 at 17.

115. Stalin Constitution, Art. 117, "The Organs of the Prosecutor perform their functions independently of any local organs whatsoever, being directly responsible only to the Prosecutor of the U.S.S.R."

116. Stalin Constitution, Art. 78

117. Idem, Art. 14u

118. See 1937 Constitution of the R.S.F.S.R., cit. supra, note 96, art. 69.

119. See Basic Principles of Judicature, U.S.S.R., 1924, cit. supra, note 55 at Art. 12, and Judicature Act, R.S.F.S.R., 1926, sec. 5.

120. See Basic Principles U.S.S.R., idem, and Judicature Act, R.S.F.S.R., sec. 173

121. Judicature Act, R.S.F.S.R., sec. 149

122. Stalin Constitution, Art. 104

123. For law creating the new Commissariat see - lex. cit. supra, note 113., sec. 1.

124. See N. V. Krylenko, op. cit. supra, note 8 at 16-17

125. Statute of the People's Commissariat of Justice of the U.S.S.R., Law of December 8, 1936, Sobr. Zakonov, S.S.S.R., 1936, I, No. 62, Art. 455

126. Idem, sec. 16

127. Stalin Constitution, Art. 111. The law of Dec. 1, 1934, deprived the accused of the right to be represented when accused of a terrorist act directed against the leaders of the Soviet Government. See Sobr. Zakonov, S.S.S.R., 1934, I, No. 64, Art. 459, and Sobr. Uzakon. R.S.F.S.R., 1935, No. 2, Art. 8, carried into Code of Criminal Procedure R.S.F.S.R. as Arts. 466-470. Although the law apparently remains in force counsel were offered to the accused in the Kamenev-Zinoviev trial of Aug. 1936.

128. See Decree on the Court, No. 1, cit. supra, note 30 at Art. 3

129. See M. Dubrovskii, Sovetskaya Advokatura [Soviet Advocacy], Izvestiya, No. 304 (6161), Dec. 30, 1936, p. 3

130. See Judiciary Act, R.S.F.S.R., 1926, sec. 11

131. See Instruction of Commissariat of Justice, R.S.F.S.R., of Feb. 27, 1932, Part VII, sec. 2. Sbornik Tsirkulyarov N.K.Yu, R.S.F.S.R. (Moskva, 1934) 19 at 21-22.

132. See Dubrovski, op. cit. supra, note 129

133. See Instruction of Commissariat of Justice, cit. supra, note 131 at Part II, sec. 4.

134. See Judiciary Act, R.S.F.S.R., 1926, sec. 81

135. See M. Dubrovskii, op. cit. supra, note 129

136. See Judiciary Act R.S.F.S.R., 1926, Art. 84a, and 89a. Also Circular of the People's Commissariat of Justice of R.S.F.S.R., Sbornik Tsirkulyarov N.K.Yu. R.S.F.S.R. (Moskva, 1934) 22 concerning advocates not in collectives.

137. Judiciary Act, R.S.F.S.R., secs. 89-90 - and op. cit. supra, note 136 at 19 - Art. VI, sec. 5

138. See op. cit. supra, note 131 at 19, Part VI, sec. 6

139. Law of Dec. 8, 1936, Sobr. Zakonov, S.S.S.R., 1936, I, No. 62, Art. 455 at sec. 2e

140. Stalin Constitution, Art. 117
141. Idem, Art. 113
142. See 27 V. I. Lenin, Sochinenie (2 ili 3 izd. Moskva, 1923-35) 299-300
143. Stalin Constitution, Art. 115
144. Idem, Art. 114
145. Idem, Art. 116
146. Law of June 20, 1933, Sobr. Zakonov, S.S.S.R., 1933, I, No. 40, Art. 239; amended 1936, I, No. 18, Art. 150. For statute on organization, see Law of Dec. 17, 1933, Sobr. Zakonov, S.S.S.R., 1934, I, No. 1, Art. 2b, amended 1934, I, No. 33, Art. 251; 1936, I, No 18, Art. 150
147. Stalin Constitution, Art. 115 - also Judiciary Act, R.S.F.S.R., 1926, secs. 62, 63, and 64, amended by law of Oct. 10, 1930, Sobr. Uzakon. R.S.F.S.R., 1930, No. 51, Art. 627, secs. 9, 10, and 11.
148. Statute on the Prosecutor's Office, Art. 10, lex. cit. supra, note 146, also Judiciary Act, R.S.F.S.R., 1926, Art. 64
149. Law of March 20, 1933, Sobr. Uzakon. R.S.F.S.R., 1933, No. 23, Art. 81.
150. Stalin Constitution, Arts. 115, 116
151. "Neither in substance nor in character do these duties present anything extraordinary or exceptional... the transport and military prosecutors in general are not extraordinary organs of the Prosecutor's office. They are specialized organs, and in that and only in that is to be found their special character." See A. Y. Vyshinskii, and V. S. Undrevich, op. cit. supra, note 13 at 468-469
152. Law of Aug. 20, 1926, Sobr. Zakonov, S.S.S.R., 1926, I, No. 57, Art. 413, amended by law of Oct. 26, 1929, Sobr. Zakonov S.S.S.R., 1929, I, No. 70, Art. 655; and 1934, I, No. 20, Art. 154
153. Law of Nov. 27, 1930, Sobr. Zakonov S.S.S.R., 1930, I, No. 57, Art. 601, amended idem 1931, I, No. 4, Art. 43, and 1933, I, No. 55, Art. 324

154. Law of June 7, 1934, idem, 1934, I, No. 33, Art. 251, amended idem 1936, I, No. 18, Art. 150

155. Statute on Prosecutor's Office U.S.S.R., cit. supra, note 146 at Art. 9. Also see Law on Military Tribunals, cit. supra, note 65 at sec. 11, and law on Water Transport Tribunals, cit. supra, note 75 at sec. 4, ^{and} and Law on Transport Tribunals of 1933, cit. supra, note 72 atd sec. 1

156. No special prosecutors were created for this college, nor were prosecutors in military or other divisions transferred. See op. cit. supra, note 13 at 397.

157. Stalin Constitution, Art. 113

158. See Criminal Code of the R.S.F.S.R., Art. 4 (Art. 5 makes the exception of International Law for persons enjoying the right of extraterritoriality) see Civil Code of the R.S.F.S.R., Introduction, Art. 8 providing that rights of foreigners are governed by agreement with the country involved. In the absence of agreement these rights may be limited by the Central Organs of the Government, with the consent of the People's Commissariat of Foreign Affairs. Factually in the absence of such limitations, the code applies to foreigners not governed by special treaty.

159. See 1925 Constitution of R.S.F.S.R., Art. 64e

160. For substance of Regulations concerning groups of cooperation see op. cit. supra, note 13 at 491

161. Code of Criminal Procedure R.S.F.S.R., Art. 50

162. Code of Civil Procedure R.S.F.S.R., Arts. 2, 226, and 246a

163. See Statute on Prosecutor's Office U.S.S.R., cit. supra, note 146 at Art. 4d

164. Stalin Constitution, Art. 127

165. Idem, Chap. X: Arts. 118-133

166. See lex. cit. supra, note 146 at Art. 19

167. Soviet investigating organs have no counterpart in America. Although under the supervision of the Prosecutor, they are independent in the sense that they have not the task of proving the case for the prosecution. Law required them to deal impartially with the investigation and find all facts supporting the innocence of the suspected person, as well as those suggesting his guilt (Code of Criminal Procedure R.S.F.S.R., Art. 111). Should the facts examined and collected seem inadequate to indict, the investigator may drop the examination (idem, Art. 221). Organizationally there are three grades of investigators: (a) Investigator, attached to the District Prosecutor; (b) Senior Investigator, attached to the Regional Prosecutor; (c) Investigator for especially serious cases, attached to the Republic Prosecutor. Investigation by any one grade does not signify that the case may not be transferred to a different tribunal, higher or lower, as the facts may require. See Judiciary Act, R.S.F.S.R., 1926, sec. 73.

168. See Statute on Office of Prosecutor U.S.S.R., cit. supra, note 146 at sec. 4d and sec. 8

169. The organ to which was allotted the duty of preserving law and order after the abolition of the Tsarist police, and which still performs these functions. In no sense a national guard in the American understanding of the term.

170. Lex. cit. supra, note 169 at sec. 4d and sec. 8

171. For a narrative of the work of this construction see Belomorsko-Baltiiskii Kanal im. Stalina (Istoriya Stroitelstva, pod. red. M. Gorkogo, L. Averbakha, S. Firina, Moskva, 1934) The White Sea-Baltic Canal named in honor of Stalin

172. For a report of the work of this division see I. D. Averbakh, Ot Prestupleniya k Trudu (Moskva, 1936) [From Crime to Work]

173. For the theory, regulations, and results of this type of social defense and rehabilitation see B. S. Utevskaia, Sovetskaya Ispravitelno-Trudovaya Politika (Moskva, 1934) [Soviet Policy of Correctional Labor]

174. Lex. cit. supra, note 169 at art. 6

175. See M. S. Strogovich, op. cit. supra, note 85 at 127

176. See Novoe v Rabote Prokurora (Interview with A. Y. Vyshinskiĭ), Izvestiya, No. 266 (6123), Nov. 17, 1936, p. 4

177. See op. cit. supra, note 2 at 18

178. See Report to XVI Party Congress, in 2 J. Stalin, Leninism, (Eng. ed., Moscow, 1953) 294

179. See op. cit. supra, note 2 at 19-20