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Part Three

NEW SUBSTANTIVE CRIMINAL LAW

PART III

NEW SUBSTANTIVE CRIMINAL LAW

Soviet Union
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I. General Survey

A particular feature of the criminal law of the Soviet Union is that heavy penalties are imposed, not only by the courts, but also by administrative authorities, at the present time by the Ministry of the Interior, the MVD, by administrative action. While the courts are supposed to be guided by the Criminal Code and Code of Criminal Procedure, the MVD is not, strictly speaking, bound by any rules of substantive or procedural law. A full picture of Soviet

criminal law may be obtained only by an analysis and presentation of material relating to both aspects of the Soviet penal system.

In almost every country some petty offenses are dealt with by the administrative authorities, but in the Soviet Union the administrative agency, called in succession Cheka, Vecheka, OGPU, People's Commissariat for the Interior, and now MVD, the Ministry of the Interior, may assume jurisdiction in any criminal case and dispose of it without a court having the right to interfere.

Another characteristic feature of Soviet criminal justice is the fact that it is administered, in peacetime, also by special courts, and with regard to certain crimes committed by civilians, by court-martial.

During the early days of the Soviet regime all the old courts were abolished en bloc by the Decree of December 7 (November 24), 1917, and new courts did not become definitely established until 1922. Criminal justice was administered in the interim period by purely administrative agencies or by the so-called revolutionary tribunals which were courts only in name. Neither the administrative agencies nor the tribunals were guided by adequate rules of substantive or procedural law. It is true that some decrees were issued naming individual offenses and their punishment, but this was done in the most general terms, in a manner tantamount to the grant of very broad, if not totally unlimited, powers to impose punishment.

This initial period of the Soviet criminal policy left a strong birthmark upon the development of Soviet criminal law and procedure which is noticeable up to the present time (June 1955). It is true that since 1922

various codes have been enacted: the Criminal Code, the Code of Criminal Procedure and the Judiciary Act plus some other statutes relating to the administration of criminal justice. Nevertheless none of these codes or statutes was intended to restrict the authorities in meting out penalties and to secure to the new courts an independence or the exclusive power to impose punishment. When the courts were finally set up Lenin stated that:

> The courts shall not do away with terrorism; to promise such a thing would mean to cheat ourselves or other people.

Lenin considered this statement to be,

> frank and fundamental, a statement which is politically true and not legalistically narrow-minded. (Lenin, Coll. works, Russian 3d ed., 1932 Vol. 27, p. 296.)

Likewise Krylenko, for some time a noted prosecutor, wrote that:

> To a certain extent the courts must be just like the Cheka, an instrument of terrorism. The courts and the Cheka, being agencies of the government authority, perform the same task. (Krylenko, Lenin on Courts (Lenin o Sude), Moscow, 1934, p. 111.)

As late as 1936, Andrey Vyshinsky wrote in his university text on the judiciary that "the OGPU and the courts represent various forms of the class struggle of the proletarian dictatorship." (Vyshinsky and Undrevich. Course in Criminal Procedure, Vol. 1, The Judiciary (in Russian), 1st ed., 1934, p. 5, 2d ed., 1936, pp. 28-29.

Being inspired by these ideas the compilers of the Soviet criminal codes filled them with provisions couched in indefinite terms and elastic clauses, leaving room for loose interpretation and arbitrariness. These were combined with provisions resembling the Imperial codes or codes of capitalist countries designed to protect the individual and restrict the judge, a fact which may deceive superficial readers in judging the true nature of Soviet criminal law.

The Soviet penal codes, as originally promulgated, used a terminology derived from Western European penological doctrines considered to be advanced in the 20th century and a departure from the traditional. Having transferred the new terms from legal treatises to the statutes, the Soviets claimed that they had entered a new path in the treatment of crime and punishment, which confused several American and European students of Soviet criminal law. In particular, the RSFSR Criminal Code of 1926, as originally promulgated, did not use such terms as crimes, offense, punishment, and imprisonment, but, instead, socially dangerous acts, measures of social defense, and deprivation of liberty with or without isolation. However, this reform, as will be shown infra, was confined to terminology only. The new terms did not designate new concepts and in the long run they were abandoned. As a result, the terminology used in Soviet criminal law was, from the beginning, contradictory in itself, and at the present time it still lacks consistency. The new and old terms are being used interchangeably in Soviet penal statutes.

In contrast to some other fields of law, such as for example property, marriage, and inheritance, Soviet criminal law shows, in its practical operation, less sharp turns and sudden changes. The course of a criminal case in the Soviet Union, say in 1922, in 1938, or in 1947, displays the same general characteristics. But there were several changes in penal theory and penal philosophy reflected in penal legislation, and various concepts were read by Soviet theorists in the penal clauses of the Soviet statutes. To understand Soviet criminal law as it operates now, one needs to be familiar with these developments.

A lawyer reared in the concepts of American and English criminal law faces an additional handicap. With all its real or merely seeming

novelties, the Soviet criminal law is an offshoot of Continental European criminal law. The latter, by the 20th century, shared the same basic principles with American and English law, being strongly influenced by the English, but sought to achieve the basic aim of fair justice by somewhat different technical legal devices. Inasmuch as the framers of the Soviet codes deemed it proper to return to the legal tradition, they resorted to the continental European tradition.

Thus the American student of the problem, in forming his judgment of Soviet criminal law, should distinguish carefully between Soviet innovations and distorted remmants of Imperial law identical with the best Continental European pattern. Therefore the study of Soviet law, for him, must be interwoven with some excursion into the pattern of criminal law and procedure in Continental Europe which is different from the Anglo-American, but inspired by the same aim of fair justice.

II. Sources of Criminal Law: RSFSR Criminal Code and Others

There is, strictly speaking, no federal criminal code in the Soviet Union. Until 1922 the courts and administrative authorities were not guided, in imposing penalties, by definite rules embraced in a code. In 1922 a criminal code was enacted for RSFSR, the largest of the Soviet states. It was then put into effect in the Byelorussian and the Central Asian Soviet republics and was followed almost word for word in the Ukrainian Code. In 1924 after the official formation of the Soviet Union, general principles of a federal criminal law were enacted, containing only the so-called General Part dealing with general principles of punishment, its application, defense, mens rea, etc., without definitions of specific crimes. In addition, a Statute on Offenses against the State and a Statute

on Military Crimes were put into effect by federal legislation. Then, the codes of the individual republics were revised to fit the federal legislation, and in the RSFSR a new Criminal Code was promulgated in 1926 and the Statute on Offenses against the State was inserted after its Sec. 58 as Secs. 58^{1}-58^{14} and 59^{1}-59^{13}. The Statute on Military Crimes was inserted after Sec. 193 as Secs. 193^{1}-193^{31}.

The codes to be found in the other fifteen Soviet republics either repeat the RSFSR Code word for word or deviate from it only in minor details. (RSFSR Code of November 22, 1926, RSFSR Laws 1926, Text 600, in effect since January 1, 1927; Ukrainian Code of June 21, 1927, in force since July 1; Ukrainian Laws, 1927, Text 132; Byelorussian Code of November 23, 1928, in force since November 15; Byelorussian Laws 1928, Texts 287, 288; Uzbek Code of June 16, 1926, in force since July 1; Tadjik, Georgian, Armenian Codes, Turcoman and Azerbaijan Codes were enacted in 1928. The RSFSR Code was put into effect in the Baltic Republics.)

Later, criminal legislation was enacted almost exclusively by the federal authorities. In some instances the new federal criminal laws instructed the authorities to amend their codes correspondingly, and in others new penalties and new crimes were established not fitting the system of the criminal codes and occasionally leaving in doubt whether new provisions should apply side by side with the codes or repeal their provisions. The instruction to amend the codes sometimes was followed; sometimes it was not. Consequently, even the criminal law as applied by the courts is not confined to the criminal codes which are wrapped in numerous scattered and not co-ordinated laws and decrees.

In general the criminal law applied by the Soviet courts is essentially a uniform federal law, although it is contained in codes of individual republics and scattered federal statutes. The 1936 federal Constitution which is still in force reserves criminal legislation to the federal jurisdiction, but no federal criminal code or code of criminal procedure had been enacted thus far.

For all these reasons, in this and other chapters, only the RSFSR Criminal Code is quoted, but the provisions therein stated represent union-wide legislation. Whenever a penal clause was not included in the code, the particular statute is cited.

III. Soviet Criminal Law Applied by the Courts

1. Penalty by Theory Underlying the Criminal Code

The Criminal Code of 1922 was enacted after the inception of the New Economic Policy which implied a number of concessions to private initiative in economy, and return to traditional legal precepts. Nevertheless the Criminal

Codes have shown a continuity of policy respecting crimes initiated under Militant Communism. Kursky, then Commissar for Justice, stated at that time that "the Criminal Code represents a so-to-speak crystallized concept of the law of agencies engaged in rendering justice in the soviet republic." (Speech at the May, 1922 Session of the Central Executive Committee, Fundamentals of the Soviet Law, edited by Magerovsky (in Russian 2d ed. 1929) 545.) Stuchka defined the Code of 1922 as "a codification of revolutionary practices consolidated on a theoretic basis. (Stuchka 1 Course 85.)

This theoretic basis was to be derived from Marxian philosophy. But except for "the class concept of justice" and a deterministic approach to the problem of human behavior, Marxism did not offer a sufficient theoretic basis for a new criminal law. In spite of numerous attempts the Soviet jurists have failed thus far to arrive at a unanimously accepted "consistent Marxian" penal theory. Again, the Soviet rulers did not intend, in the words of Krylenko, to have "their own hands bound" (Krylenko, "On the Draft of a New Criminal Code" (in Russian 1935) Soviet State No. 11, 1; Estrin, Course in Criminal Law (in Russian 1935) 114.) by codification of criminal law, i.e., the criminal code had to leave broad room for arbitrary imposition of punishment. Therefore the compilers of the Criminal Code of 1922 and especially of the Code of 1926 derived their theories not from Marxism, but in fact from criminological writings which appeared in their eyes the most radical rupture with the traditional criminal law. The teachings of Enrico Ferri, the most outstanding representative of the so-called Italian sociological or positivistic school in criminology, exercised a definite influence upon the Code of 1922 and especially upon that of 1926 (Piontkovsky, Marxism and Criminal Law, in Russian, 2d ed., 1929). At least the

basic terminology was borrowed by the soviets from that source (see infra).

The positivistic trend in penology sought to detach the treatment of crime and punishment from any ethical basis. Delinquincy for positivists is primarily a social phenomenon to be studied as a product of circumstances, social and physical, and not a wrong or guilt. Enrico Ferri placed particular emphasis on social danger as the main element of crime. He defined crime as:

> An act determined by anti-social motives which offend the conditions of existence of a society at a given time and in a given place. (E. Ferri, La justice penale (1898) 11; see also his Criminal Sociology (English translation, Boston, 1917) 336, 337.)

In the fourth edition of his Sociologia Criminale, Ferri quoted approvingly the following definition from Colajani's Sociologia Criminale, Vol. I, 64:

> Punishable acts (delicts) are those acts which, being determined by individual and anti-social motives, disturb the conditions of existence and shock the average morality of a given people at a given moment. (Ferri, op. cit. 81)

Thus Ferri advocated "protective measures" to be substituted for punishment.

In his draft of an Italian Criminal Code, Ferri called these measures sanctions. All the new codes adopted in Europe between the two world wars paid tribute to Ferri's teaching, but none of them adopted it as an exclusive basis of criminal legislation. This is true for the Polish Code of 1932 (Sections 60, 70-79) and the Yugoglavian Code of 1929 (Sections 76, 52-54). (Cf. Gsovski, New Codes in the New Slavic Countries Washington, D. C. 1934.) Even in Italy Ferri's draft of 1921 had to give place to that of Rocco in 1930. They all selected a halfway course: besides the punishments imposed by evaluation of the guilt, they introduced "preventive measures," i.e., special restrictions imposed upon professional and habitual criminals; educational treatment of juvenile offenders; and confinement of mentally

defective perpetrators in an appropriate medical institution.

2. Guilt versus Social Danger Under Soviet Law

In the light of the theory of punishment as a protective measure, the personal guilt in a given case is supplanted by the idea of protection of society. A social danger may be presented in the act of a person who is not capable of controlling himself (e.g., a lunatic), or a responsible person may commit through force of circumstances an act which is dangerous, though he himself is a good citizen. Likewise, a person may be dangerous although there is no evidence of his participation in a given crime (e.g., a notorious criminal who has never been caught, a criminal with a record, a maniac). If a measure is really a protective one, it should be applied against any dangerous person, no matter whether responsible, guilty, active, or not.

Without totally accepting the concept of crime as a social danger, the framers of the Soviet Code have couched its provision justifying highly arbitrary imposition of punishment in terms borrowed from this doctrine. The idea of protection of the whole of society as the objective of criminal law has been transformed by the Soviet penologists into the protection of the ruling class and the Soviet regime as the prime objective of the Soviet criminal law.

> 6. Any act of commission or omission shall be considered socially dangerous if it is directed against the Soviet regime or violates the legal order established by the workers' and peasants' government for the period of transition to a communist regime. (RSFSR Criminal Code)
>
> Note: An act shall not be considered a crime if, although formally showing the elements of crime set forth in a section of the Special Part of the present Code, it is nevertheless devoid of socially dangerous character because of its insignificance and the absence of harmful consequences.

Social danger is conceived by Soviet Text books on criminal law as danger to the interest of the ruling class. "Crime is an act of commission or omission dangerous for the interest of the ruling class" (Men'shagin, editor, Criminal Law, General Part 4th ed. 1948 p. 269).

In the Code of 1922, socially dangerous acts were not identified with crimes but constituted an additional category. The purpose of the Soviet criminal law was there set forth as "legal protection of the State of toilers from crimes and socially dangerous acts" (Section 1). But the federal Basic Principles of 1924 and the RSFSR Code of 1926 sought to abandon the term crime completely and apparently identified crimes with socially dangerous acts. Section 1 of the Code of 1926 reads:

> 1. The aim of the Soviet penal legislation shall be to protect the socialist State of the workers and peasants and the legal order therein established from socially dangerous acts (crimes) by applying to the person who commits them measures of social defense specified in the present code.

In the rest of the 1926 Code the term "socially dangerous act" was used originally instead of crime or offense. Likewise, the 1922 Code purported to apply to the perpetrators "punishments or other measures of social defense," while in the Basic Principles of 1924 and the 1926 Codes, measures of social defense alone are mentioned.

But this reform did not go beyond terminology, which again in the long run was abandoned.

Thus it follows from Section 1 that the Code of 1926 identifies crimes with socially dangerous acts and applies to them "measures of social defense." But these measures are divided into two categories: (a) measures of medical or medico-educational nature on the one hand and (b) measures of a judicially correctional nature.

The enumeration of measures of a judicially corrective nature given in Section 20 of the Code leaves no doubt that penalties are meant by this term. Thus this term covers: the supreme measure--death penalty (Sec. 21 Note), various kinds of confinement, exile, forced residence, fine, confiscation of property, forced labor without confinement and deprivation of rights (Sec. 20). As to the prerequisites of their application the provisions are somewhat ambigious and inconsistent. On the one hand all kinds of measures of social defense, including penalties may apply under Section 7 not only to persons "who have committed socially dangerous acts," i.e., crimes, but also to those "who represent a danger in view of their connections with criminal elements or in view of their past activities." On the other hand, Section 10 sets specific

conditions for the application of "measures of social defense of a judicially correctional nature" and it is clearly stated that these measures - penalties - may be imposed only for an act committed intentionally or by negligence, i.e., to persons guilty of an offense. This Section reads:

> 10. Measures of social defense of a judicially correctional nature shall apply to a person who has committed a socially dangerous act only where such person:
>
> (a) Acted intentionally: i.e., has foreseen the socially dangerous character of the results of his actions [and] has desired these results or has deliberately allowed them to occur;
>
> (b) Acted negligently: i.e., has not foreseen the results of his conduct, although he ought to have foreseen them, or carelessly hoped to prevent these results.

Again according to Section 11 these measures may not apply to those non compos mentis. The inconsistency of the new terminology was well pointed out by a Soviet writer in 1927:

> The result of the 'abolition of punishment' [in the Soviet law] was merely a very radical reform in terminology, but it did not affect the substance of repression. We abolished punishment, but there is a crime. There is a crime, but guilt is abolished. Guilt is abolished, but we recognize criminal intent and negligence . . . which makes no sense whatsoever, unless we accept in advance the idea of guilt. Staroselsky, "Principles of Construction of Penal Repression in the Proletarian State" (in Russian) in Revolution of Law, 1927, No. 2, p. 92.

By 1935 this view was accepted even by the most ardent advocates of the new term and in 1937 the whole earlier trend was condemend as a subversive misinterpretation of Soviet law and Marxism. Thus, traditional terminology was restored. In 1938 even the term 'prison' (tiur'ma) and in 1943, the term 'penal servitude (hard labor - Katorga) appeared in Soviet law.

The recently enacted penal laws, beginning with the Act of May 8, 1934 (USSR Laws, Text 255) on treason, used the terms "crime" and "punishment."

The incorporation of some of these laws into the Criminal Code deprived it of any terminological consistency. The terms "socially dangerous acts" and "measures of social defense of a judicially correctional character," being synonymous with crime and punishment, are interchangeably used in the Code in its present text.

In recent theoretic discussion, any treatment of crime and punishment after the fashion of the "positivistic" school is condemned, and a crime is treated also as a wrong and punishment-likewise, as an "expression of the condemnation of the culprit by the State" and not merely a measure of reform and social protection. (Estrin, "On Guilt and Responsibility in the Soviet Law" the Soviet State (in Russian 1935) No. 1/2, 112; Criminal Law, General Part, edited by Goliakov (in Russian 1943) 64, 218 et.seq.)

3. Punishment of Innocent Persons Under Soviet Law

Although in general guilt is required for imposition of punishment, there are instances under the Soviet Criminal Code in which an innocent person may be legally penalized in court. Moreover, administrative authorities may subject individuals, deemed by them socially dangerous, to punishment. Thus, under Section 1^3 of the Federal Code of Political Crimes (Sec. 58^{1c} of the RSFSR Criminal Code) enacted on June 8, 1934, if a man in military service takes flight abroad by air or otherwise, in peace as well as in wartime, the adult members of his family who had knowledge of his plans are subject to imprisonment for from five to ten years plus confiscation of property, but those who had no such knowledge, though living with him or dependent upon him, are subject to exile to remote localities of Siberia for five years. Commenting on these provisions, some Soviet professors of criminal law went so far as to justify guilt both by association and collective responsibility.

For example, Estrin, for a time a leading writer on criminal law, wrote in 1935 as follows:

> When the circumstances of the class struggle required taking of most energetic and decisive steps to suppress the class enemies and uproot activities which may cause disorganization among us, Lenin did not hesitate to advocate most severe forms of repression and admitted collective responsibility, though under certain circumstances and by way of exception. For example, /he advocated/ responsibility of members of the family for a criminal who is a capitalist (Lenin's Sbornik, XXl, p. 183); responsibility of hostages (Lenin's Sbornik, XVIII, p. 145); responsibility of the entire staff of an enterprise placed on a blackboard (Collected Works, 2nd edition, XXII, p. 414); collective responsibility of all members of a military detachment sent to collect food up to shooting of every tenth soldier in case of looting by a single member (Id. Vol. XXX, p. 387) or shooting on the spot of one of a score of those guilty of loafing (Id. Vol. XXII, p. 167). In separate cases the proletarious dictatorship may and must use collective responsibility. (Estrin "On Guilt and Responsibility in the Soviet Law" the Soviet State (in Russian) 1935 No. 1/2 p. 115.)

4. The Significance of the Doctrine of Social Danger in Soviet Law

Although, in general, social danger of an act committed was not substituted for guilt as a reason for punishment, such danger is an important consideration in the imposition and selection of penalty. The Code nowhere states that the penalty must be commensurate with the guilt. In the general instructions to the court regarding punishment (Sec. 45) the Code emphasizes the necessity of considering "the social danger of the crime committed". Likewise, in dealing with partnership in crime (Sec. 18), the Code directs the judge to reckon not with the degree of individual guilt but with "the degree of danger of the crime and the person who committed it". Social danger is also stressed in connection with aggravating circumstances, as it follows from Paragraph 1 of Section 47, which reads:

> Section 47 (as amended in 1927 and 1930). The basic question to be decided in each case is the question of social danger represented by the case under trial.

In selecting one measure or another of social defense provided for in the present code, the following circumstances shall be considered as aggravating:

(a) If the crime is committed with the purpose of restoring the power of the bourgeoise;

(b) If there is a possibility that the interests of State or the toilers could have been endangered by the crime, even though the crime was not specifically directed against the interests of the State or the toilers;

(c) If the crime is committed by a group or a band;

(c^1) If the crime is committed by a person who had previously committed some crime, except in instances where the person concerned is considered to have no criminal record (Sec. 55) or if the statute of limitation has expired since the date when the previous crime had been committed or the sentence relating to the previous crime had been rendered. However, the court shall have the authority, in considering the nature of the previously committed crime, to abstain from attaching to such crime the significance of an aggravating circumstance;

(d) If the crime was committed for mercenary or other base motives;

(e) If the crime was committed in a particularly cruel, violent or sly manner or against persons who were subordinate to the offender, or were under his care, or were in an especially helpless state because of their age or for other reasons.

The attention of the reader may be also drawn to clauses (a) and (b) of the Sections 47. It is also striking that a person may be exempt from penalty for a crime committed if his act lost the character of social danger, as it follows from these provisions:

8. If a particular act, when committed, was a crime within the meaning of Section 6 of the present Code but by the time it comes up for pre-trial investigation or trial in court has lost its socially dangerous character by reason of a change in the criminal law or by the mere fact of a change in the social or political situation, or, if the person who committed the act may not, in the opinion of the court, be considered socially dangerous any longer, then such an act shall not entail the application of a measure of social defense to its perpetrator.

It may also be recalled that under the note to Section 6 quoted above, an act which has the indicia of a crime specified in the Code shall not be considered a crime if "it is, nevertheless, devoid of socially dangerous character."

Finally, banishment from the confines of the RSFSR or from certain localities with or without forced residence in a certain place or prohibition of residence in certain localities may be applied by court to "convicts whose residence in a given locality is deemed by court to be socially dangerous." (Sec. 31) All these references to social danger as an important element of crime confuse the issue of guilt in imposing penalties without consistently substituting such danger for consideration of guilt.

5. Crime by Analogy

Following the legislative technique of the modern European criminal code the Soviet Code consists of two parts: the General Part, laying down the general principles of crime and punishment and a Special Part (Sec. 58 and following), where in individual sections the constitutive elements of particular crimes and their punishments are specified. But here the resemblance to non-soviet codes ends. In these, the specific provisions on individual crimes formed the real condition for imposition of punishment. The General Part as a rule contains a formal definition of crime as an act prohibited under penalty by statute at the time when committed. This principle is expressed by the Latin maxim nullum crimen sine lege i.e., an act is not a crime unless it bears the indicia of a crime specified by the statute. This maxim precludes the application of punishment to an act lacking the description of crime given by the statute. It prohibits such application where the act merely resembles a statutory definition. In other words, it

precludes application of penal clauses by analogy.

The principle nullum crimen sine lege evolved from the liberal movement in the criminal law of the eighteenth century. The principle called for a strict construction of penal statutes: a penal clause could be applied only to an act exactly fitting the clause. The idea to protect the citizen from arbitrary prosecution prohibited the imposition of penalty for an act not specified in advance by statute.

As was mentioned, the Soviet Code gives a substantive definition of a crime not as an act forbidden by the statute but as "any act of commission or omission directed against the Soviet regime or violating the legal order established by the Soviet government" (Sections 1, 6).

Thus, it may happen that an act comes within this definition but is nevertheless specified as a crime in the Special Part of the Code among the particular crimes. In such instances the Soviet Code instructs the court to resort to analogy, in defiance of the maxim nullum crimen sine lege, for application of penaly by virtue of mere resemblance of the act committed to the statutory definition.

> 16. If a socially dangerous act is not directly specified by the Code, the basis and limits of punishment for it shall be determined by applying the sections of the Code which specify crimes of the kind closely resembling the act.

Thus, under the Soviet Code an individual may be legally punished in court for an act which is not characterized as crime by the Code and vice versa may not be punished for an act directly specified as a crime in the Code.

In addition to this general invitation to arbitrariness a more definite invitation is offered by the provisions relating to individual crimes (See infra V).

6. Severity of Soviet Law

(a) Attempt and partnerships in crime. Several problems of punishment are decided by the Code in a manner most unfavorable to the offender. Thus all the European Codes are unanimous in that the attempt is subject to penalty. They differ, however, in attaching various degrees of punishment to various degrees of attempt. The French Code (Article 2) provides that the attempt at a major crime, discontinued involuntarily is to be treated as a crime itself. The Belgian (Articles 51-52), German (Sec. 43-44), Hungarian of 1878, Swiss (Sec. 21) and Yugoslavian of 1931 (Sections 31-32) punish the attempt, even involuntarily interrupted more mildly than the accomplished crime and provide for further leniency in case the attempt was discontinued voluntarily. Of all these possibilities the Soviet Code selected the strictest and punishes any attempt as an accomplished crime (Article 19).

Likewise most of the European Codes punish a mere accomplice more mildly than other partners in crime. The Soviet Code punishes accomplices equally with instigators and any other partners in crime.

(b) Minors. At the present time the Soviet law treats juvenile delinquents almost as it does adults. The original Soviet Criminal Code clearly stated that minors under the age of 16 were not subject to its provisions. Juvenile delinquents between 16 and 18 years of age were dealt with primarily under special educational measures. But the Act of April 7, 1935 amended the Code to provide that "minors who have reached 12 years of age and are accused of larceny, violence, bodily injury, maiming, murder, or attempted murder shall be tried by the criminal court, which may impose upon them any kind of punishment" applicable to adults, which included the death penalty (U.S.S.R. Laws, 1935, Text 155; RSFSR Criminal Code, Section 12, as

amended in 1936). In 1941 a further amendment extended this provision to minors who committed such crimes by mere negligence, without intent (Vedomosti, 1941, No. 25). In 1940 the same provision was extended to minors who committed an act endangering railroad traffic, such as loosening the rails, placing objects on the rails, etc. (Vedomosti, 1940, No. 52). These amendments were incorporated in Section 12 of the RSFSR Criminal Code. Provisions for minors of age 12 and over committing offenses other than those mentioned above were still lacking in Soviet law. However, the Act of 1941 ordered that for all other offenses, minors of age 14 and over are subject to prosecution (Vedomosti, 1941, No. 32). Strangely enough, this provision was not incorporated into the text of the RSFSR Criminal Code, although it is still in force. An executive order of June 15, 1943, established special reformatory colonies under the Ministry of the Interior for confinement, without judicial procedure of minors from 11 to 16 years of age, who are waywards, vagrants, or who have committed petty larcenty or other minor offenses (Criminal Law, Moscow, 1943, p. 137). Thus minors can be prosecuted by court decision under the same penalties as adults, or can be confined by the Ministry of the Interior in administrative action.

(c) Death penalty. Death has been the penalty for 70 individual crimes defined in 47 sections of the RSFSR Criminal Code. There have been also two laws not incorporated in the Criminal Code providing for the death penalty (Law of August 7, 1932, U.S.S.R. Laws, Text 360, and of November 21, 1929, Id. 1929, Text 732) thus bringing the total number of instances for which capital punishment may apply to 74.

Crimes defined in 21 sections deal with military crimes, but civilians may fall within their provisions if they are parties in crime committed by

military persons.

In 32 instances (18 non-military and 14 military crimes) death is the mandatory prima facie penalty, while in other instances it should be applied if the court finds aggravating circumstances. This high number of instances in which the death penalty is applicable may be contrasted with the Russian Imperial Code of 1903 which provided for the death penalty in only five sections. Among the codes enacted between the two wars, the Italian of 1929 provided for death in five sections, the Yugoslavian of 1930, for three and the Polish of 1932, for four crimes.

Sections of the RSFSR Criminal Code which threaten the death penalty are:

*58-1a, *58-1b, *58-2, 58-4, *58-5, 58-6, *58-7, *58-8, *58-9, *58-10 (two crimes), *58-11, *58-13, 58-14, 59-2, 59-3, 59-3a, 59-3b, *59-3c (2 crimes), 59-3d, 59-6, 59-7, 59-8 (2 crimes), 59-9, 136, 167 (3 crimes), *193-2 (5 crimes), 193-3, 193-4, *193-7 (6 crimes), *193-8 (2 crimes), *193-9, *193-10 (3 crimes), 193-10a, *193-12 (3 crimes), *193-13 (3 crimes), 193-14, 193-15, 193-17, *193-20, *193-21, *193-22 through *193-25, 193-27, 193-28. (In sections marked with *, death is the prima facie penalty.)

The death penalty was abolished in the Soviet Union several times but was always restored after a short interval. It was abolished on January 17, 1920 and restored in May of the same year (abolition: RSFSR Laws, 1920, Texts 22, 61; restoration: Decrees of May 11 and 20, 1920, Ibid., Texts 190, 214). After World War II, the death penalty was abolished by the Edict of May 26, 1947, substituting for it confinement in a camp of correctional labor for twenty-five years (Vedomosti, 1947, No. 17). But it was restored by the Edict of January 12, 1950 for "traitors to the country, spies (and) subversive-diversionists" without a more exact definition of these crimes (Vedomosti, 1950, No. 3).

Since the Decree does not indicate precisely the sections of the Code under which it may apply, and since the 70 instances of the death penalty are

couched in a language permitting extension of the Decree to them, it seems that the application of the death penalty is practically left to the discretion of the court in all these instances.

(d) Penalty for Murder

But there was even an additional extension of the application of the death penalty to instances in which the Code ordered a milder penalty. The Edict of the Presidium of April 10, 1954, established the death penalty for murder in cases where there are aggravating circumstances. This signified a departure from the treatment of murder in Soviet and pre-Soviet law as established for nearly two centuries. It is worth noting that 200 years ago the death penalty for non-political crimes was abolished in Russia under Empress Elizabeth on September 30, 1754. Since then, under imperial law, no death penalty for non-political crimes was applied under ordinary, i.e., non-military, penal law. The last Criminal Code of 1903 provided for the death penalty only as punishment for three offenses: attack on the life of the Emperor (Secs. 99 and 101), or on members of the imperial house (Sec. 105), and high treason (Secs. 100 and 108).

Although the Soviet provided for the death penalty in numerous instances, the regular penalty under the Criminal Code for murder, if lacking the criteria of a counter-revolutionary crime, armed robbery or banditry committed by a civilian, was, until the publication of the above-mentioned edict, not to exceed eight years imprisonment and, under special specified circumstances, not to exceed ten years (Sec. 136).

The Edict which brought murder under capital punishment did not do so directly; it reads:

The effect of the Edict of the Presidium of the USSR Supreme Soviet of January 12, 1950, (Concerning the application of the death penalty to traitors, spies and subversive-diversionists) is hereby extended to persons who have committed intentional murder under aggravating circumstances. --April 30, 1954 (Vedomosti, No. 11, May 30, 1954, Item 222).

Thus the death penalty is to be applied if there are "aggravating circumstances."

Such wording makes the extent of the application of the death penalty quite ambiguous. The Soviet Criminal Code deals with murder in two sections, one penalizing intentional murder by imprisonment not to exceed eight years (Sec. 131) and another increasing the penalty to ten years in the presence of circumstances specified therein. Again, some of these circumstances are practically identical with those considered to be aggravating circumstances in judging any crimes (Sec. 47).

The Code itself does not make it clear whether the enumeration in Section 47 is exhaustive and mandatory or merely presents some guiding examples. The Soviet writers of authority make clear that the enumerated circumstances are merely examples and the court may consider others not mentioned as aggravating circumstances. Contrariwise, a circumstance mentioned does not always have to be taken as aggravating. (Criminal Law, General Part, Men'shagin editor, USSR Law Institute, 4th ed., 1948, in Russian, p. 530.)

Provisions on Murder Prior to 1954:

Sec. 136. (As amended on September 1, 1934, RSFSR Laws, Text 206.) Intentional murder committed (a) for greed, jealousy (insofar as the criteria of Sec. 138 are lacking) or for another base motive; (b) by a person who has been previously tried for intentional murder or bodily injury and has served a measure of social defense imposed by court; (c) in a manner endangering several people or especially painful for the person killed; (d) with the purpose to facilitate or conceal another major crime; (e) by a person whose duty it was to take particular care of the person killed; or

(f) by making use of the helpless state of the person killed, shall be punished by imprisonment not to exceed ten years.

Murder committed by a person in the service of the armed forces under especially aggravating circumstances shall be punished by the supreme measure of social defense--shooting to death.

Sec. 137. Intentional murder committed without elements stated in Sec. 136 shall be punished by imprisonment not to exceed eight years.

Sec. 138. Intentional murder committed in a state of great emotional excitement suddently caused by application of violence or serious insult inflicted on the offender by the person killed, shall be punished by imprisonment not to exceed five years or correctional labor without confinement not to exceed one year.

Sec. 139. Manslaughter by negligence, as well as any killing committed in excess of self-defense shall be punished by imprisonment not to exceed three years or correctional labor without confinement not to exceed one year.

It is obvious that the circumstances enumerated in Section 136 are aggravating in nature although they are not designated thus therein. Some of them are practically the same as those specified in Section 47, Clauses (c), (d) and (e) (see supra p.15). The recent Soviet Standard Treatise on Soviet Criminal Law even defines murder as specified in Sec. 136 as murder under aggravating circumstances (Soviet Criminal Law, Special Part, USSR Law Institute, Moscow, 1951, in Russian, p. 184 ff). Thus, it seems that in instances coming within the province of Section 136, the application of the death penalty is mandatory, while in the presence of circumstances specified in Section 47 (Clauses (a), (b), and (c)) which are different from those stated in Section 136, it is within the discretion of the court to take them as aggravating and apply the death penalty or not. The court may also take any other circumstance not specified either in Sec. 136 or Sec. 47 as an aggravating one and apply the death penalty. This is indicative of the great latitude left to the discretion of the court in

applying the death penalty for murder.

Again, the regular penalty for murder (without aggravating circumstances) remains imprisonment not to exceed eight years. Thus, the court has only one alternative in selecting punishment for intentional murder--imprisonment not to exceed eight years. or condemnation to death. Then the power of the court appears both very wide and arbitrary on the one hand and greatly restricted on the other. Under the generally broad powers of the court in applying the death penalty for murder such a restricted choice is hardly justified and could be attributed to careless drafting of the Edict of 1954.

The reasons for which the punishment for murder was increased so drastically are not stated. The treatise on criminal law published in 1951 claimed that murder cases are decreasing continuously, even since the war, and contrasted this tendency with a reverse trend in non-Soviet countries. Evidently, either this claim is unfounded or murder occurs in the Soviet Union more frequently now than before 1951.

It is also worth noting that, although the edict refers to petitions of citizens for the establishment of the death penalty, no such proposals were made at the recent session of the Supreme Soviet, which is supposed to be the representative assembly of Soviet citizens.

IV. Prosecution of "Socially Dangerous" Persons by Administrative Action

The concept of social danger as a complete substitute for guilt was used in connection with the powers granted to the secret police. As will be shown below, the powers of the police were legally defined for the first time in 1934 when the OGPU was transformed into the People's Commissariat for the Interior (NVD and Narkomindel being the Russian abbreviations). The statutes then enacted still remain in force. One statute of July 10, 1934 (USSR Laws 1934, Text 282) formulated the general power of a Special Board attached to this Commissariat "to apply, by administrative action, exile from certain localities, exile with forced residence in a locality, confinement in a camp of correctional labor up to five years, and deportation abroad" (Sec. 8).

But another statute of November 5, 1934 (USSR Laws 1935, Text 84), issued in the development of the above, stated that these measures may be applied "to the persons deemed socially dangerous." Thus a person does not have to be guilty of a particular offense to be subject to these penalties. The only procedural rule in application of exile or confinement in a camp of correctional labor is to be found in Sec. 4, viz., that "the reasons for application of this measure must be stated and the region and period of exile as well as the period of time of confinement in a camp must be indicated." The powers of the Commissariat, now inherited by the Ministry of the Interior (MVD), are formulated as follows:

> 1. The USSR People's Commissariat for the Interior shall be granted the right to apply the following measures to persons who are deemed socially dangerous:
>
> (a) Exile for a period up to five years to places, the list of which shall be established by the USSR People's Commissariat

for the Interior, where persons are under open surveilance;

(b) Expulsion for a period up to five years, placed under open surveilance and prohibited from residing in capitals, large cities, and industrial centers of the USSR;

(c) Confinement in camps of correctional labor for a period up to five years;

(d) Expulsion from the confines of the USSR of alien subjects who are socially dangerous.

But this power to exile or to confine socially dangerous persons was definitely denied to the court in a ruling of the USSR Supreme Court issued on July 12, 1946 (No. 8/5/y, RSFSR Criminal Code as in force on October 1, 1953, in Russian, p. 79). It is stated there that "the possibility of application by the court of a penalty to a person not declared guilty of the commission of one or another crimes is excluded." The activities of Cheka-OGPU-NVD-MVD are discussed in greater detail below in Chapter VI.

V. Individual Crimes in the Soviet Criminal Code

1. Counter-revolutionary Crimes and Crimes Against Public Administration

In addition to the general invitation to arbitrariness implied in the general provisions of the Code expounded above in Chapter III, there are many possibilities for the prosecution of so-called counter-revolutionary crimes. The notion of such crimes is broader than that of a political crime in many other countries. Individual counter-revolutionary crimes are defined in very broad terms and, in addition to definitions of particular crimes given in 14 sections, there is a "species" definition of counter-revolutionary crime (Section 58-1). It embraces among other things, "any act intended to weaken" the authority of the Soviet government or "the basic economic, political and national conquests of the proletarian revolution." Consequently, any act which may be interpreted as "weakening" such successes may be punished, although it does not come under the definition of any of the 14 specific counter-revolutionary crimes. Among the counter-revolutionary crimes, 15 are subject to the death penalty.

There is also another even broader group definition of "crimes against the public administration" (Section 59-1). Twelve of these crimes are subject to the death penalty. According to the Soviet commentators, these group definitions contain the main criteria of this kind of offense. An act coming under a group definition is subject to prosecution, although it does not fit the definition of a specific crime. (Gernet and Trainin, A Commentary to the Criminal Code of the R.S.F.S.R. (in Russian, 1927), p. 84.) This

also follows from the discussion in Criminal Law, Special Part, Goliakov, editor (in Russian 3d ed. 1943) 36 et seq.)

To quote both these group definitions.

Counter-revolutionary Crimes

> Sec. 58[1] Any act intended to overthrow, to undermine, or to weaken the power of workers' and peasants' soviets, and of the workers' and peasants' governments of the U.S.S.R., the constitutent and autonomous republics elected by the soviets in accordance with the constitutions of the U.S.S.R. and the constitutent republics, or to undermine or weaken the external safety of the U.S.S.R. or the basic economic, political and national conquests of the proletarian revolution shall be considered counter-revolutionary.
>
> In view of the international solidarity of the interests of all the toilers, even if it is not incorporated in the U.S.S.R. (As amended June 6, 1927, R.S.F.S.R., No. 49, Laws, Text 330.)

Crimes Against Public Administration Especially Dangerous to the U.S.S.R.

> Sec. 59[1] (Enacted June 6, 1925, R.S.F.S.R. Laws, 1927, Text 330.) Any act which without being directly intended to overthrow the Soviet power and the workers' and peasants' government, leads, nevertheless, to prejudice against the regular activities of organs of administration or national economy and is coupled with resistance to the authorities and hindrance of their activities, disobedience to laws or any other acts weakening the force and authority of government power shall be considered a crime against public administration.
>
> Crimes against the public administration committed without counter-revolutionary purpose, but which shake the fundamentals of political administration and economic might of the U.S.S.R. shall be considered especially dangerous to the U.S.S.R.

In addition the definitions given to individual crimes are sometimes couched in general, elastic terms devoid of words of legal character and definiteness.

The following provisions deals with the individual counter-

revolutionary crimes showing how much broader they are than the concept of political crimes in other countries.

> Sec. 58^4 Assistance in carrying on hostile activities against the U.S.S.R., given in any manner whatsoever to that portion of the international bourgeoisie which does not recognize the equal rights of the communist system, destined to replace capitalism, and is stringing to overthrow that system, or [such assistance] to any social group or organization which is directly organized by such bourgeoisie or is under its influence,
>
> shall be punished by confinement for a period of not less than three years with confiscation of property in whole or in part,
>
> but if there are especially aggravating circumstances the penalty shall be increased to the supreme measure of social defense-death by shooting or a declaration of that the accused is an enemy of the toilers who loses citizenship of the constitutent republic and thereby citizenship of the U.S.S.R. and is expelled forever from the confines of the U.S.S.R. with confiscation of property (enacted ibidem).
>
> Sec. 58^7 The undermining of government industry, transport, trade, currency, or system of credit, or of the cooperatives, with counter-revolutionary purpose, by appropriately utilizing the government institutions or enterprises or by working against their normal activities or the utilization of government institutions or enterprises, or working against their activities, in the interests of the former owners or of interested capitalistic organizations, shall be punished by the measures of social defense specified in Sec. 58^2 of the present code (enacted ibidem).
>
> Sec. 58^{11} Any organized activity of any kind which is directed towards the preparation or commission of any of the crimes dealt with in the present chapter, or any participation in any organization formed for the preparation or the commission of any of the crimes dealt with in the present chapter, shall be punished by the measures of social defense prescribed in the related sections of the present chapter (enacted ibidem).
>
> Sec. 58^{12} Failure to report a counter-revolutionary crime in preparation or committed in spite of credible knowledge thereof shall be punished by confinement for a period of not less than six months (enacted ibidem).

Sec. 58[14] Counter-revolutionary sabotage; that is, the deliberate failure by any person to discharge a definite duty or discharging it with deliberate carelessness with the special aim of weakening government authority and the operation of government machinery, shall be punished by confinement for not less than one year with confiscation of property, in whole or in part, but if there are especially aggravating circumstances the penalty shall be increased to the supreme measure of social defense--death by shooting, with confiscation of property (enacted ibidem).

2. Economic Crimes

The criminal law of the Soviet Union and its satellites affects the citizenry to a greater degree than does the law of free countries. The concept of non-political crimes in Soviet and satellite law does not coincide with our understanding of ordinary crimes, such as murder, larceny, bodily injury, etc. A citizen of a Soviet-type state is brought to court and convicted as a non-political (non-counter-revolutionary) criminal for acts which, in a non-Soviet society, constitute a legitimate exercise of will and certainly lack that element of moral wrong associated with crime. The worst cases of such an act, as inefficient management, poor work, neglect of duties by an employee, non-performance of contract, and inefficient use of one's property may result in disadvantages other than criminal prosecution. The result may be the loss of a job, or a civil suit for performance, with damages.

In contrast, a state of the Soviet type is, or strives to be, the exclusive owner of all economic resources, of all the relevant business of the country which transforms the private relations of employee and employer into public relations of sovereign and subject. The state entering business regulates human relations flowing from business activities with the full force of an official public authority. Hence, criminal law is supposed to protect efficiency in management and performance

of work in commerce and industry.

A more general purpose is also an attempt to put an end to any economic independence of the individual.

The laws on economic plans, in addition to measures designed to develop industry, agriculture and natural resources, contain elastic clauses giving an opportunity to the authorities to put an end to private enterprise. Penal clauses in the Plan, in the amendments to the Criminal Codes or in special penal laws strengthen this opportunity. The sum total of such provisions forms what is loosely called economic penal law, and economic crimes.

a. Penalty for Normal Sales Activities

1. Statutory Provisions

During the period of NEP (1922-1929) commerce was opened to private persons. With the inauguration of the first Five Year Plan, the policy was changed to "Soviet commerce" which in the words of Stalin is "a commerce without capitalists big or small." The government has the exclusive right to buy commodites for sale and operate every stor of a commercial nature. The producer, the collective, and independent farmer or small artisan may sell their products on the open market directly to the consumer. But private middlemen of any kind are eliminated. Moreover, the artisans are not allowed to "manufacture from their own material to sell at the market clothes, underwear, knit goods, hats, leather footwear, haberdashery (including leather articles), harnesses and similar leather goods, as well as articles made of non-ferrous metals." This is one of the many restrictions on sales by artisans (Instruction of March 26, 1936) which is still in force. This prohibition of private commerce is protected by the following penal provisions.

"In the Joint Resolution of the Central Executive Committee and the Council of People's Commissars of May 20, 1932 concerning the commerce of collective farms, their members and independent peasants, it was enacted, in supplement to the previous regulations against speculation, that the opening of shops and stands by private merchants shall not be allowed and an end should be put by all means to middlemen and speculators who try to enrich themselves at the expense of workers and peasants."

Because, in spite of prohibition, instances of speculation, especially in goods of mass consumption, have recently increased, the Central Executive Committee and the Council of People's Commissars ordered the O.G.P.U. (now superseded by M.V.D.), agencies of public prosecution and the local authorities to take steps to exterminate speculation and to apply to the speculators and middlemen confinement in a concentration camp from 5 to 10 years. [Printed in R.S.F.S.R. Criminal Code, as in force on October 1, 1953 (in Russian 1953) p. 100.]

These provisions were to an extent incorporated in the R.S.F.S.R. Criminal Code as follows:

R.S.F.S.R. Criminal Code as in force Oct. 1, 1953

Sec. 99 Manufacturing, storing, or purchasing for the purpose of reselling, as well as the sale itself, exercised as a trade, of products, materials and manufactured goods with regard to which there is a prohibition or restriction, shall be punished by confinement up to two years with confiscation of [all] property and prohibition of the right to exercise commerce.

Sec. 107 (As amended November 10, 1932, R.S.F.S.R. Laws, 1932 text 385.) Buying up and reselling by private persons for the purpose of obtaining profit (speculation) of agricultural products and articles of mass consumption shall be punished by confinement for not less than five years, with total or partial confiscation of property.

Comment:

U.S.S.R. Supreme Court, Plenary Session, Ruling of June 25, 1948, No. 12/11/u:

> Private traders who are engaged in prohibited trading shall be responsible under Sec. 99 of the R.S.F.S.R. Criminal Code and similar sections of the Codes of other Soviet republics. If such persons are engaged in speculation, they shall be liable under both Secs. 99 and 107 of the R.S.F.S.R. Criminal Code and similar sections of other Soviet republics' laws. [R.S.F.S.R. Criminal Code as in force on October 1, 1953 (in Russian 1953), p. 100.]

U.S.S.R. Supreme Court, Plenary Session, Rulings of December 31, 1938; February 10, 1940; and September 20, 1946:

> The Plenary Session of the U.S.S.R. Supreme Court has resolved to give to the courts the following directives:
>
> 1. ... In cases where the resale of purchased goods is not established but the court arrives at well-founded conclusions that the purchasing took place for resale, with the purpose of obtaining profit, such acts shall be brought under Secs. 19 (attempt) and 107 of the R.S.F.S.R. Criminal Code * * *.

2) Cases

Under the following sets of facts the U.S.S.R. Supreme Court considered the conviction for speculation justified and the cases were remanded to the lower court for imposition of penalties, confinement for not less than five years.

> a) Mintsberg, a former convict, came to the town of Chkalov and started to sell manufactured good purchased to the cities of Andyan and Kokanda on the market at higher prices. He was arrested on the market with the following things:
>
> 5 packs of makhorka, (an inferior kind of tobacco) 134 booklets of cigarette paper, 4 small boxes of tobacco, 11 penknives, etc., as well as 12,000 roubles in cash. Mintsberg did not deny that he sold in the bazaar merchandise he had brought with him.
>
> "Having been indicted for speculation[Sec. 10], Mintsberg was held for trial. However, the People's Court at the trial on April 22, 1942, changed the criminal charge, framing it according to Sec. 105 of the Criminal Code and

sentenced him to one year of correctional labor, the judgment having been motivated on the grounds that the items purchased and sold by him were acquired not for speculation purposes, but "as gifts for comrades." The retrial was ordered for the imposition, under Sec. 107, - of not less than five years confinement.

b) Zolotov, without definite occupation and residence, former convict who served a sentence, was arrested on March 11, 1942, in the proximity of the kolkhoz market in the town of Chkalov, during his sale of home grown tobacco-makhorka for 20 roubles a jar. At the arrest of Zolotov, 6.5 kilograms (about 13 rounds) of makhorka and 190 roubles in cash were seized from him.

Zolotov admitted during the preliminary investigation that, being unemployed and having no permanent residence after his release from confinement, he had traveled around visiting different towns in the U.S.S.R. He had, incidentally, gone to Central Asia and had acquired there 300 jars of makhorka (home-grown), part of which he sold on the market in Chkalov, in order to earn a certain amount of money "for expenses." At the trial he declared that he had bought the makhorka for his own use, but had sold part of it in order to buy bread.

"The People's Court of Chkalov, when tried the case on April 21, 1942, believed Zolotov's invented explanations, changed the charge from Sec. 107 to Sec. 105 of the R.S.F.S.R. Criminal Code and convicted Zolotov for one year of corrective labor. The convicted man did not appeal the judgment."

"The explanations of Zolotov in the court deserve no credit, said the Supreme Court. For six months he had travelled around visiting different towns, his occupation having been to buy up and resell merchandise; he also had been caught in the very act of committing a crime. His allegations to the court that the 300 jars of makhorka had been bought for personal use were intentionally untrue." The case was remanded for retrial and application under Sec. 107, not less than five years of confinement.

As a result of the following facts, persons were convicted under Sec. 107 by the trial court and the appellate court, have in part served the sentence and were acquitted, only upon the extra-ordinary interference of the attorney general, by the U.S.S.R. Supreme Court which reopened their

cases ex officio. This means that convicted persons had no regular remedy against conviction.

c) The husband of Semenova, arriving in December, 1941 to spend his leave, brought home victuals and some packs of makhorka. Semenova bartered one package of makhorka for bread, but two packs were sold by her on the market.

The People's Court of the Pudozhskii borough of the Carelo-Finnish S.S.R. on February 14, 1942 sentenced Semenova under Sec. 107 of the Criminal Code to five years confinement. The Supreme Court of the Carelo-Finnish S.S.R. left this judgment in force.

d) Matvelieva's child became sick. Because of financial difficulties she was compelled to sell a number of things belonging to her: shoes, "loafers," and 2 meters of silk material.

The People's Court for the 8th district of the town o Irkutsk, found Matveieva guilty of speculation and sentenced her to confinement for seven years. The Irkutsk Regional Court upheld the judgment.

e) Valler, having as her dependents two young children and a seventy-year old father, was compelled to sell some things which were her personal property. This was considered speculation, and Valler was sentenced to eight years of confinement by the People's Court of the Sol' Iletskii district of the Chkalov region, under Sec. 107 of the R.S.F.S.R. Criminal Code. The Chkalov Regional Court affirmed the judgment of the People's Court.

f) In a single case Mamedov sold one kilogram of meat. It has not been established in this case that he bought this meat and thereupon resold it with the purpose of speculation there are no other data, showing resale of meat, milk, or victuals by Mamedov, in the case.

The Supreme Court of the Azerbeidzhan S.S.R., notwithstanding the lack of evidence of Mamedov's guilt, left in force the sentence of the People's Court of eight years' confinement. [Judicial Practice of the Supreme Court of the U.S.S.R. (Studebnaia Praktika Verkhovnago Suda SSSR) 1942, No. I. NKIU SSSR (Noskva, 1943), pp. 12, 13, 14.]

g) Defendent was found guilty of selling on the

market for speculative purpose his sewing machine which he had bought for home use, but later had decided to exchange for a bicycle. Witness Belokurov testified to the exchange and stated that Defendent paid to the owner of the bicycle 100 roubles in addition. He was sentenced by the People's Court to confinement for five years, and the conviction was affirmed by the Regional Court of Andizhan.

h) Defendent, a collective farmer, had bought in 1940, 246 meters of fabric, 20 handkerchiefs and 7 napkins, and exchanged some of the fabrics for wool which he declared he needed for felt boots for his family which consisted of 10 persons.

The People's Court convicted him of speculation (Sec. 107 Criminal Code of R.S.F.S.R.) and sentenced him to 5 years' imprisonment and to loss of voting rights for 2 years. The Supreme Court of Komi Autonomous Republic upheld the conviction. [Op. cit., 1942, No. 1, p. 14]

i) The defendents, mother and daughter, had been buying various articles of everyday use, like fabrics, slippers, watches, overcoats, and selling to their acquaintances. It was established that the prices they charged for these articles were those shown on the labels and sales slips or corresponded to prices charged for identical items at state-operated stores. A search in the mother's apartment resulted in the discovery of 8,500 roubles in money and 165 meters of fabric. At the daughter's apartment 1,390 roubles in currency and 150 meters of fabric were found. Several co-workers of the defendents testified that they had asked them on various occasions to buy these articles for them. The alleged purchases and sales had occurred over a two-year period from 1938-1940. Further, it was established that the money was found not in the apartment of the mother but in the apartment of her son who lived with his own family separately from his mother. Witnesses testified that the daughter had obtained the greater part of the fabric as her dowry from her relatives in Central Asis back in 1928-1931.

The People's Court found the defendents guilty of systematic speculation under Sec. 107 of the Criminal Code. The mother was sentenced to seven years' imprisonment and a loss of the right to vote for 5 years; the daughter, to five years of imprisonment and to a loss of the right to vote for three years. This sentence was affirmed by the Leningrad city court. [Op. cit., 1942, No. 2, p. 15]

j) Chavisova was convicted on October 10, 1945 by the People's Court for selling a pair of galoshes for 900 roubles, a man's shirt for 750 roubles, and two bed sheets for 1,500 roubles which were proven to be her own used articles. From the money obtained she bought flour for the family. It was established that "the search at home disclosed goods valued at 58,000 roubles." But the inventory included the house, furnishings, and clothes. [Op. cit. 1947, No. 1, p.22.]

b. Responsibility for Contracts Made with the Government.

Sec. 130 Dissipation by leaseholder or trustee of a legal entity [corporation] of governmental or public property given to him under a contract, shall be punished by confinement for a period of not less than six months [not more than 10 years] with the cancellation of the contract and confiscation of property in whole or in part.

Sec. 131 Failure to perform an obligation arising from a contract made with a governmental or public office or enterprise, if, during a civil trial the malicious character of the failure to perform is established, shall be punished by confinement for a period of not less than six months [this means up to ten years] plus confiscation of property in whole or in part. [R.S.F.S.R. Criminal Code as in force on Oct. 1, 1953 (in Russian 1953) p. 43.]

c. Violation of Monopoly of Foreign Trade.

Sec. 59 Violation of regulations on monopoly of foreign trade shall be punished by confinement for a period up to ten years, with the confiscation of property in whole or in part.

d. Failure to Perform Service and Deliveriesof Products to the Government.

Sec. 61 (As amended February 15, 1931, R.S.F.S.R. Laws, 1931 text 102) Refusal to perform tasks in kind and services, nationwide tasks and works of nationwide importance shall be punished by fine...

five times the cost of the assigned task, service or work; by confinement or corrective labor without confinement for a period up to one year, if committed as a second offense;

the same acts committed by kulak elements or

other persons under aggravating circumstances, such as conspiracy or active resistance to authorities in carrying out the tasks, services or work shall be punished by confinement for a period up to two years, with confiscation of property in whole or in part, with or without deportation.

Comment: The U.S.S.R. Supreme Court, Plenary session ruled on September 28, 1945, No. 12/12/u that under paragraph 2 and 3 or this section the malicious failure to deliver agricultural produce by individual members of collective farms or independent peasants should be prosecuted in peace time.

e. Penalty for Private Transactions Relating to Land.

Sec. 87a (As amended on March 26, 1928, R.S.F.S.R. Laws, 1928 Text 269.) Any violation of laws on nationalization of land committed in the form of an overt or concealed purchase, sale, agreement to sell, gift, mortgage or exchange of plots of land not allowed by law, and, in general, any kind of alienation of the right to toil tenure of land, shall be punished by confinement for a period up to three years, the withdrawal of land involved in the transaction from the one who obtained it, and the forfeiture of compensation given for it in money or property and the deprivation of the right to receive land tenure for a period up to six years.

Further lease of leased land to another person (sublease) in violation of laws in force shall be punished by confinement or correctional labor for a period up to one year or fine up to 500 roubles with or without deprivation of the right to hold land for a period up to six years.

Further lease of the subleased land if repeatedly committed or if committed for the first time but involving two or more plots leased from the toil tenants shall be punished by confinement for a period up to two years with or without deprivation of the right to hold land for a period up to six years.

f. Poor Management

Sec. 128 (As amended May 28, 1928, R.S.F.S.R. Laws Text 907) Mismanagement by a person placed at the head of governmental and public offices and enterprises or of those entrusted by them, based upon a careless or dishonest attitude to the affairs entrusted, resulting in dissipation and irreparable damage to property of the office or enterprise shall be punished

by confinement for a period up to two years or correctional labor without confinement for a period up to one year.

Sec. 129 Dissipation of governmental or public property, in particular the entry into unprofitable business transactions by a person directing a governmental or public office or enterprise committed by agreement with the party to the contract of such office or enterprise, shall be punished by confinement for a period of not less than one year [not more than ten] with or without confiscation of property in whole or in part.

g. Use of Wrong Scales and Measures

Sec. 128b (Enacted as of August 6, 1934, U.S.S.R. Laws, 1934 Text 326, incorporated in the Code, September 10, 1934, R.S.F.S.R. Laws, 1934 Text 216.) Giving faulty weights or measures to customers; using the wrong scales, weights or any other wrong measurement devices when selling, as well as violating established retail prices for goods of mass consumption in shops, stores, stands, eating places, bars, etc.; selling goods of inferior quality at the price for those of superior quality; concealing from customers the prices of goods indicated in the price lists, shall be punished as theft from the consumer and fraud of the Soviet State by confinement for a period up to ten years.

h. Attempt to Carry Private Business under the Disguise of a Cooperative

Sec. 129a (Enacted September 9, 1929, R.S.F.S.R. Laws, 1929, Text 705.) Founding and/or directing the activities of a pseudo-cooperative; i.e., such organizations as are disguised under the form of a cooperative in order to use advantages and privileges granted to cooperatives, but are, in fact, private enterprises and are pursuing the interests of the capitalist elements which have prevailing influence in their composition, shall be punished by confinement for a period up to five years, with the confiscation of property in whole or in part.

Participation in the work of pseudo-cooperative organizations by persons who were fully aware of the fact that a given organization was a pseudo-cooperative and have drived from such participation profit or, in full knowledge of the true nature of the organization, helped to conceal it, shall be punished by confinement for a period up to two years or correctional labor [without confinement] up to one year.

3. Responsibility of Executives Under the Criminal Law

The Soviet law provides for the punishment of directors and technical personnel of governmental business units for poor quality in their output. In 1934, they were made liable to imprisonment for from five to ten years for "the release of products of poor quality or products insufficiently complete by industrial establishments on account of the criminally negligent attitude of directors and technical administrative personnel toward the responsibilities with which they were entrusted." (RSFSR Laws 1934, Text 162, incorporated into the Criminal Code as Section 128a.) Simultaneously, "the mass release or systematic release of products of poor quality from commercial establishments" was made punishable by imprisonment for up to five years. Failure to observe the established standards was made subject to the penalty of imprisonment for up to two years. (RSFSR Laws 1931, Text 162, incorporated into the Criminal Code as Section 128b.)

Under these provisions, a penalty might be imposed if in the first instance defects were caused by the "criminal negligence" of executives, or if the release of defective goods had a mass or systematic character. These prerequisites were dropped by the Edict of the USSR Presidium of July 10, 1940 (Vedomosti 1940, No. 23, incorporated into the Criminal Code by the Edict of the RSFSR Presidium of November 16, 1940) which provided as follows:

> 1. The release of products of poor quality, or of those of insufficiently completed, or released in violation of the established standards, is an anti-State crime equivalent to sabotage.

2. The directors, chief engineers, and chief of the divisions of technical supervision of industrial establishments shall by punished by imprisonment for a period of from five to eight years for the release of products of poor quality or those insufficiently completed, or the release of production in violation of the established standards.

3. The USSR Attorney General shall secure the execution of this decree.

In accordance with this Edict Section 128a of the RSFSR Criminal Code was amended as follows:

Sec. 128a (As amended November 16, 1940). For the release of industrial products of inferior quality or insufficiently completed as well as for release of products in violation of the established standards, the directors, chief engineers, and the chiefs of the departments of technical supervision of industrial establishments shall be penalized as for an anti-State crime, tantamount to sabotage, by confinement in a prison for a period from five to eight years.

(As amended February 10, 1934, RSFSR Laws, 1934, Text 216) Release by commercial enterprises of production of poor quality done in large quantities or systematically shall be punished by confinement for a period up to five years or by corrective labor /without confinement/ up to one year.

Official Comment: USSR Supreme Court, Plenary Session Ruling of September 30, 1949:

4. The courts are instructed that the release of production must be understood to mean not only the delivery of production to the customer but also instances in which the production passed the department of technical supervision and is finally ready for delivery. (RSFSR Criminal Code as in force on October 1, 1953, in Russian 1953, pp. 42, 104.)

4. Heavy Penalty Protects Public Property

Within the communist realm, state property--in some countries called the people's property--enjoys the particular protection of the criminal law. Not only do persons who have committed crimes, as for example theft or embezzlement of government property, receive harsh sentences, but every action or omission which could have any semblance of adverse

effect on the government property is punished. The content of individual sections has been purposely couched in such extraordinarily elastic and vague terminology as to make anything even remotely harmful fit these penal cluases.

The present privileged position of government property on the one hand, and the desire to show the Soviet citizens that their personal property attained increased protection from theft were enhanced by two statutes of June 4, 1947, introducing increased punishment for crimes against property (Vedomosti 1947, No. 19). One statute deals with crimes against government property and public property, which this time is defined as "property of collective farms, co-operatives and other kinds of public property." Another statute deals with larceny and robbery of "property in individual ownership of citizens," apparently designating by this term any kind of ownership allowed to Soviet citizens, including ownership of farmers and handicraftsmen and not only personal ownership as defined in Section 10 of the Constitution.

Prior to these statutes, these crimes were dealt with in the Criminal Code, which provides, comparatively speaking, mild punishment for larceny, the lower bracket being imprisonment for a period not exceeding three months, or even forced labor without confinement for the same period. In specified instances the maximum term is one, two, or five years' imprisonment (Sections 162-165). The term for robbery does not exceed five years, or in case of armed robbery, ten years of imprisonment, but if there are especially aggravating circumstances, the death penalty may apply (Section 167).

With the exception of embezzlement in office, the Criminal Code does not make any particular distinction between the theft of private,

government, or public property. However, under the Law of August 7, 1932, any misappropriation (pillage) of goods shipped by rail or water, government property, or property of collective farms and co-operatives, was made punishable by death (since the Law of May 26, 1947, by confinement in a camp of correctional labor for twenty-five years), or under extenuating circumstances, by confinement for ten years with confiscation of property.

The Statutes of June 4, 1947, increase considerably the penalty for larceny and robbery of private property, but increase even more the penalty for crimes against government and public property.

Regarding private property, a heavier punishment than before is enacted for larceny (defined as concealed or opern asportation) and for robbery. The punishment is confinement in a camp of correctional labor for larceny, for a period of from five to six years, or if committed for the second time or by a band of thieves, for a period of from six to ten years; for robbery the term is from ten to fifteen years, or from fifteen to twenty years if it was coupled with violence dangerous to life and health or similar threats. Robbery is punished, in addition, by confiscation of property. Embezzlement and misappropriation of private property is not affected by the new statute.

Regarding both governmental property and public property, new, heavier penalties are established not only for larceny but also "for misappropriation, embezzlement or any other kind of theft." The minimal penalty for such crimes against government property is confinement in a camp of correctional labor for a period of from seven to ten years with or without confiscation of property, or from ten to twenty-five years if committed for the second time, by a band, or on a large scale. The terms of confinement in case of theft of public property are, respectively, from

re to eight years and from eight to twenty years. Failure to report to blic authorities a committed or prepared robbery of private property, punished by imprisonment for a period of from two to three years or by ile for a period of from four to five years. Failure to report a committed prepared theft of governmental or public property when it is committed the second time, by a band, or on a large scale, is punished by confine- nt for a period of from two to three years or by exile for a period of from re to seven years.

Consequently, an embezzlement of private property is still punish- le under the Criminal Code (Section 168) by imprisonment for a period not ceeding two years, while a similar act against public property entails nfinement in a camp of correctional labor for from five to twenty years l of government property from seven to twenty-five years. The statutes troduce a new classification of property slightly different from that ovided for by the Constitution. The term "personal ownership" is used a broader sense and "public property" in a narrower sense.

Edict of June 4, 1947

Concerning Criminal Responsibility for Theft of Governmental and Public Property

For the purpose of unification of legislation concerning the criminal responsibility for theft of government and public property and strengthening of combat against these crimes, the Presidium of the Supreme Council of the U.S.S.R. has enacted as follows:

a. Larceny, misappropriation, embezzlement or any other theft of governmental property shall be punished by imprisonment in a camp of corrective labor for a period from 7 to 10 years with or without confiscation of property.

b. Theft of government property committed as a second offense as well as when committed by an organized group, or if large in scope, shall be punished by imprisonment in a camp of corrective labor for a period from 10 to 25 years with confiscation of property.

c. Larceny, misappropriation, embezzlement, or any other kind of theft of the property of a collective farm, a cooperative, or any other public property shall be punished by imprisonment in a camp of corrective labor for a period from five to eight years with or without confiscation of property.

d. Theft of the property of collective farms, cooperatives, or any other kind of property committed as second offense as well as committed by an organized group, or if large in scope, shall be punished by imprisonment in a camp of corrective labor for a period from 8 to 20 years with confiscation of property.

e. Failure to report to public authorities a premeditated theft of government property specified in Sections 2 and 4 of the present edict shall be punished by confinement for a period from 2 to 3 years or exile for a period from 5 to 7 years. (Vedomosti, 1947, No. 19, June 4, 1947.)

Edict of June 4, 1947

Concerning the Strengthening of the Protection of the Personal Ownership of Citizens.

For the purpose of strengthening the protection of the personal ownership of the citizens, the Presidium of the Supreme Council of the U.S.S.R. has enacted as follows:

a. Larceny; that is, concealed or open appropriation of property personally owned by citizens shall be punished by imprisonment in a camp of corrective labor for a period from 5 to 6 years.

Larceny committed by a band of thieves or as a second offense shall be punished by imprisonment in a camp of corrective labor for a period from 6 to 10 years.

b. Robbery; that is, attack with the intention of taking possession of the property of another, coupled with violence or threat of violence shall be punished by imprisonment in a camp of correctional labor for a period from 10 to 15 years and by confiscation of property.

Robbery coupled with violence dangerous to life and health of the person injured or with a threat of death or inflicting heavy bodily injury as well as robbery committed by a band or as a second offense shall be punished by imprisonment in a camp of corrective labor for a period from 15 to 20 years and confiscation of property.

c. Failure to report to the authority concerning premeditated robbery shall be punished by imprisonment for a period from one to two years or by exile for a period from four to five years. (Vedomosti, 1947, No. 19, June 4, 1947.)

VI. Imposition of Punishment Without Trial Out of Court -- "Cheka, GPU, OGPU, NKVD, MVD, MGB"

The Soviet regime from its inception has had a particular feature--an omnipotent protective agency of the dictatorial power of the government. The name of this agency has been changed several times: Cheka and Vecheka, 1919-1922; GPU and OGPU, 1922-1924; NKVD--the People's Commissariat for the Interior, 1934-1946; and MVD--Ministry of the Interior, and MGB--Ministry of State Security. But it came into being with broad, legally undefined powers to arrest, imprison and to put to death, and thus it remains to the present time, essentially unrestricted. It is not a court because it is not governed by any binding rules of law and procedure. But is has the same task as the criminal court--to impose punishment. It is a universal instrument of suppression of whatever appears to threaten the regime: opposition within and without the Communist Part, ordinary crimes, political crimes, violation of the rules of communist order, juvenile delinquency and whole groups of the population, considered to be dangerous, such as Balts, Kalmyks, Crimean Tartars, and Kulaki.

In the early days, when it was known as Cheka, it became the main instrument of the policy officially termed as "Red terrorism" by the Decree of September 5, 1918, issued after the assassination of Uritsky, the head of the Leningrad Cheka, and the attempt on Lenin's life. However, the Cheka begun to put people to death before these attempts were made. As early as February 28, 1918 the announcement of Cheka appeared, threatening to shoot on the spot all enemies of the regime, saboteurs, etc. The policy of Red terrorism was not a self-defense of the government, as the Communists claimed. The opposition to the government and attempts at life of some of the Soviet leaders were a response to the terrorism. Sverdlov, the Chairman of the Central Executive Committee, has stated on July 6, 1918 on behalf of

ıe government that the death sentence rendered to Captain Chastny on me 22, 1918 "was not the first case of shooting to death in the Soviet ıpublic and of execution of a death sentence. Death sentences have been ındered by scores in Leningrad and Moscow and in the country--many such ıntences were rendered by the Cheka." After this statement and before ıe attempt on Lenin's life Izvestiia continued to report people being ıot. At the trial of Dubenko, the First Commissar for the Navy, it was ıtablished that he shot from 50 to 100 persons and he was acquitted.

In the said decree, promulgated on September 5, 1921, under the .tle "On the Red Terror", it was stated that the Council of People's ımmissars came to the conclusion "that persons connected in some way with ıe 'white guardists' /anti-bolshevik/ organizations, conspiracies and ırisings, must be shot. It is necessary to publish their names and indicate ıy this measure was applied." Moreover, Petrovsky, the Commissar of the ıterior, issued an order on September 4, 1918, where it was stated:

> . . . notwithstanding constant words about mass terror against the Socialist Revolutionaries, the white guards and the bourgeoisie this terror really does not exist. There must emphatically be an end to this situation. There must be an immediate end of looseness and tenderness. All Socialist Revolutionaries of the right who are known to the local soviets must be arrested immediately. Considerable numbers of hostages must be taken from among the bourgeoisie and the commissioned army officers. At the least attempt at resistance or the least movement among the white guards /anti-bolsheviks/ a mass shooting must be inflicted without hesitation. The local provincial executive committees must display special initiative in this direction. The departments of administration, through the police and the Chekas must take all measures to detect and arrest all persons who are hiding under assumed names and must shoot without fail all who are implicated in white guard (anti-bolshevist) activities.

According to Dzerzhinsky, the head of all the Chekas:

> . . . to be a hostage the prisoner must have a certain value which our enemy cherishes and which would serve as a guarantee that the counter-revolutionaries will not destroy any of our comrades for the sake of that person . . . Whom do they value? They value high government officials, landlords, captains of industry, prominent politicians, eminent scholars, relatives of those who occupied high positions in their governments, etc. (Instruction of Dec. 17, 1918; italics supplied)

It would, however, be a mistake to think that the members of the upper or propertied classes alone were the hostages. No previous position or occupation is indicated for many executed persons, the social standing of others was humble. Kaplan, a Jewish girl who shot at Lenin, was a revolutionary who served a term in a Czarist prison; likewise, Kannegisser, the assassin of Uritsky, was also a Jew and member of the party of Socialist Revolutionaries, while, in reply to their acts, the Czarist ministers, police officers and wards of the prisons were shot. It may be stated that anyone arrested on suspicion of being against the regime could have been executed as a hostage. "The days of the civil war came to an end", stated a Cheka order of January 1921, No. 10, "but they left a difficult legacy -- prisons are overcrowded not with bourgeoisie but with peasants and workers."

It is significant that at the time when the old classes still existed and "class justice" was in full swing the Supreme Court of the RSFSR complained that:

> Recent statistics for 1921 show that the largest percentage of those convicted by the revolutionary tribunal is that of peasants and workers and that a very small percentage of convicts belonged to the bourgeoisie (in a broader sense). This ratio refers to all kinds of punishment including execution by shooting to death.

Statistics published by the RSFSR Supreme Court for 1923 indicate that among those shot by the sentences of the courts, workers and peasants

constituted 70.8 per cent (23.6 per cent workers, 47.2 per cent peasants), intellectuals and white collar workers 20.7 per cent, and others, who include the bourgeois element, 8.5 per cent.

To give an idea of the wholesale execution which took place in response to the above mentioned orders, we may note the following incomplete reports of the Soviet official gazette. Five hundred persons were reported shot by Petrograd Cheka on September 2, 1918 in reply to the attempt on Lenin. There was a promise to publish their names as well as those who are "candidates" for the next shooting in Izvestiia, No. 180, September 3, 1918, p. 4; on the same page it was reported that "Cheka in Nijni shot yesterday 41 persons from the hostile camp" and that the local Soviet newspaper commented as follows: "For every assassination of our comrades and for every attempt at such an assassination we are going to reply with shootings of the hostages taken from among the bourgeoisie because the blood of our killed and wounded comrades needs revenge."

Izvestiia continually reported new shootings: in Moscow 29 were shot (Sept. 5), Moscow 31 (Sept. 8); various places 29 (Sept. 18); Perm' 36 (Sept. 23); Penza 215 (Sept. 29), Viatka 33 (Sept. 27), 212, among them 140 hostages, 3 soldiers, 3 bandits and 8 criminals (Oct. 3), 181 Oct. 6), 16 (Oct.8), 7 (Oct.9), 41 (Oct.10), among them 3 thieves, 1 bishop and i member of Cheka; 20 (Oct. 11); 35 (Oct.13), et cetera.

Complete statistics have never been published and there is no way to ascertain the exact number of executed. Latsis, one of the Cheka leaders, published a popular account of two years' activities where he gives figures which are according to him "far from being complete and refer to only 20 provinces for 1918 and only 15 for 1919", out of about 80 controlled

by the Soviets. "This picture", he says, "is incomplete." For 1918 and the first seven months of 1919 a total of 14,480 persons were shot; 9,498 sent to prisoner's camps; 34,334 imprisoned; 13,111 taken as hostages; and 86,895 arrested.

Although several decrees on Cheka were promulgated (Nov. 2, 1918, February 17, 1919, March 18, 1920) its power remained unlimited. The last named decree stated the Cheka power to place in a concentration camp for not over 5 years "the violators of labor discipline and the revolutionary order, and parasitic elements of population if no evidence sufficient for a judicial procedure is disclosed against them by investigation." As was stated in the Order of the Presidium of the Cheka No. 48 of April 17, 1920 "the law gave the Cheka power to imprison by an administrative procedure those ... whom any court, even the most severe, would always or in the majority of cases acquit."

Krylenko, former Commissar for Justice, characterized the Cheka's activities as follows:

> The Cheka established a de facto method of deciding cases without judicial procedure . . . . In a number of places, the Cheka assumed not only the right of final decision but also the right of control over the court. Its activities had the character of tremendously merciless repression and complete secrecy as to what occurred within its walls. . . . Final decisions over life and death with no appeal from them . . . were passed . . . with no rules settling the jurisdiction or procedure.

Latsis, one of the leaders of the Cheka, wrote in his survey of its activities:

> Not being a judicial body, the Cheka's acts are of an administrative character. ... It does not judge the enemy but strikes. ... The most extreme measure is shooting. ... The second is isolation in concentration camps. ... The third measure is confiscation of property. ... The counterrevolutionaries are active in all spheres of life. ... Consequently, there is no sphere of life in which the Cheka does not work. It looks after military matters, food supply, education ... etc. In its activities, the Cheka has endeavored to produce on the people such an impression that the mere mention of the name Cheka would destroy the desire to sabotage, to extort, and to plot.

GPU - OGPU With the advent of the more liberal New Economic Policy, a new judicial system was established, but the imposition of punishment in a nonjudicial procedure did not come to an end. "The Courts", stated Lenin, "shall not do away with terrorism; to promise such a thing would mean to cheat either ourselves or other people." He considered this statement to be "a frank and fundamental, a politically true (and not a legalistically narrow-minded) statement." Thus up to the present time imposition of heavy penalties by nonjudicial bodies is a part of the Soviet penal system. However, the institution charged with such matters underwent several changes.

The revision of the statutes on the Cheka was ordered on December 30, 1921, and the Cheka was abolished on Febraury 6, 1922, but its functions were assigned to a newly created GPU (Gosudarstvennoe Politicheskoe Upravlenie, State Political Administration), a department of the RSFSR Commissariat for the Interior. When, in 1923, the Soviet Union (USSR) was formed, a federal OGPU ("O" stands for obyedinennoe - federal) was created. In fact, the RSFSR Cheka was reorganized into the RSFSR GPU, and the latter was transformed into a federal institution -- the OGPU. The head of the Cheka, Dzerzinski, became the head of the GPU and, later, of the OGPU. Several statutes on the

Cheka, GPU, and OGPU failed to set up any definite limitation to the power of this institution to deal with offenses and impose punishments. The unlimited power of the OGPU to execute was neither stated nor denied until an ex post facto authentic interpretation of a previous law of November 15, 1923, sanctioned on March 14, 1933, the right of the OGPU to put to death in a verbal language. Circumstances under which this "interpretation" was made public reveal the OGPU continued the tradition of the Cheka to render summary justice without any legal grounds and that the government hastened to justify such action by OGPU ex post facto.

Thus Izvestiia, the official gazette, printed on March 12, 1933, No. 70 an announcement "From OGPU" stating that its "judicial board" sentenced 36 persons to execution, 22 persons to imprisonment for 10 years and another 22 persons to imprisonment for 8 years. This is the full text of the announcement which is the only record made public in the case.

> From the OGPU: By virtue of the Resolution of the Central Executive Committee of the USSR of November 15, 1923, the judicial board of the OGPU, after deliberations on March 11, 1933, upon the case of the prisoner employees in the government service under the People's Commissariat for Agriculture and for State Farming, who were descended from the bourgeoisie and nobility and were accused of counter-revolutionary subversive activities in agriculture occurring in various districts of the Ukraine, the North Caucasus, and Byelorussian--
>
> Resolved to sentence--
>
> for the organization of subversive activities in the government Machine-Tractor Stations and in government farms of some regions of the Ukraine, the North Caucasus, and Byelorussian, which damaged the peasantry and the State, and were accomplished by wreckage and destruction of tractors and implements, by intentional pollution of the fields, by burning of the Machine-Tractor Stations, the repair shops, and the flax plants, by the disorganization of sowing, harvesting and threshing, aiming to shatter the material standing of the peasantry and to create a famine in the country--

> The following most active members of the organization to be shot (36 names are mentioned); the following (22 names) to be confined for 10 years; the following (22 names) to be confined for eight years.
>
> The sentence has been executed.

Three days later, on March 15, 1933 Izvestiia, No. 72 printed a resolution of the Central Executive Committee which confirmed the right of OGPU to apply all the measure of repression depending upon the nature of the crime and referred to the Resolution of November 15, 1923. (See also USSR Laws, 1933, Text 108). This interpretation reads:

> ... the Central Executive Committee of the Soviet Union hereby interprets that the right granted by the by the Resolution of the Central Executive Committee of November 15, 1923 to the Board (Kollegiiu) of OGPU to try in a judicial session cases of subversive activities, arson, explosions, damage caused to the mechanical equipment of government enterprises and to apply all measures of repression, depending upon the nature of the crime committed, must be used with a particular strictness in regard to the employees of government institutions and enterprises who are proved to be guilty of such crimes.

Only one Resolution of Central Executive Committee of November 15, 1923 was ever made public. It deals with the establishment of GPU in place of Cheka and in none of its twelve sections is the "judicial board" or its power mentioned. Still Section 10 of the Resolution states that the agencies of OGPU shall proceed in accordance with the resolutions of the RSFSR Central Executive Committee (Vtsik) of February 6, 1922 (RSFSR Laws, Text 160), of October 16, 1922 (id. Text 844), the resolutions of the Federal Executive Committee of September 2, 1923, and the resolution of the Ukrainian Executive Committee of March 22, 1922. The resolution of September 2, 1923 has never been printed in any official collection. The resolution of February 6 and of March 22, 1922 do not contain any provisions on the

powers of the judicial board. The only act which contains some rules on the power of GPU to impose punishment is that of October 16, 1922 (RSFSR Laws, Text 844). However, these provisions are far from what was ordered by the interpretation of March 15, 1933. The resolution consists of three sections one of the (Section 3) provides for the reports of GPU to the Central Executive Committee. Section 2 grants the power to GPU to confine in a "camp of forced labor" for three years "leaders of anti-Soviet political parties" and persons once convicted for certain crimes enumerated therein. Section 3 reads as follows:

> For the purpose of eradicating of any kind of bandit holdups and armed robberies the GPU shall be granted the right of summary justice out of court including execution by shooting on the spot of the crime of bandit holdups and armed robbery with regard to persons caught red-handed. (Sections 76, 183, para. 2 and 184 of the Criminal Code).

Thus the power "to apply all kinds of repression" was not granted to the GPU nor the OGPU under the Resolution of November 15, 1923 nor was it granted under the resolutions mentioned therein. There is an enormous difference between the power to execute holdup men caught on the spot whose act is legally defined by a reference to the sections of Criminal Code and execution of 36 former officials accused of various misdeeds in office allegedly committed on a territory as wide as the whole of Western Europe and in regions far apart one from another as Byelorussia and North Caucasus. None of them was accused and convicted for crimes stated in the Resolution of October 16, 1922. Consequently absence of a provision of law allowing the OGPU or later NKUD or MVD to put to death is in itself not an obstacle to assuming by this institution such power which will ex post facto be ratified by the government if it is expedient.

In connection with the Five-Year Plan, the OGPU developed a new policy, viz., the employment of convict labor on a large scale. Persons sentenced by the OGPU and by courts to imprisonment for three years and over were confined in "correctional labor camps" managed by the OGPU. The immense projects designed under the Five-Year Plan required difficult jobs to be performed in localities and under conditions which could not attract free labor. Power given to the local soviets in regions assigned for integral collectivization to send into exile peasant families whom these authorities considered to be kulaks placed at the disposal of the OGPU a huge labor army. Moreover, the drive for collectivization of farming and development of the whole national economy along socialist lines since 1930 resulted in prohibition under heavy penalties (imprisonment, confiscation of properties, exile) many acts which per se cannot be classed with criminal deeds. Under a different regime they would be normal exercise of right and they were in fact committed not by the idle or otherwise morally inferior elements of the community. Slaughter of one's own horse or cattle, buying of agricultural products or commodity staples for the purpose of re-sale with moderate profit, barter or renting of pieces of land, evasion of delivery of grain to the government, and that set of violations of agricultural policy which were subject to penalty under the Law of August 7, 1932 on protection of public property were committed primarily by the hard working and economically successful but individualistically minded peasants. They were able and physically fit for work.

It was decided to make use of their working ability and transform the penal institutions into efficient and economically self-supporting enterprises of convict labor. The Moscow prison gave, according to the official report, 2 million rubles net income with the turnover of 10 million in 1924-1930.

Moreover, corruption among the Communists and government officials and criminal responsibility for failure in carrying out government plans or any other inefficiency brought in jail administrators, Communists of low morals but of political reliability. They were the prospective administration for the organization of self-supporting working units. Various unjust convictions for sabotage of various technical specialists supplied the technical personnel.

In 1932 Postyshev, a highly placed man in the Soviet judiciary, reported:

> If some years ago the labor of prisoners in jails could not be always used because there was no large-scale socialist construction projects . . . and there were even thousands of free laborers unemployed, this obstacle is now over. *The labor* of convicts in various convict colonies can be from the beginning included in the mass of socially useful labor as it helps directly the socialist construction.

Thus, all the convicts sentenced by the courts for imprisonment of three years and over were sent since 1930 to the OGPU labor camps and constituted together with those sentenced by the OGPU the manpower which was given to this institution for carrying out convict labor projects on a large scale. Forced labor became an important factor in the economy of the country and the OGPU was charged with the organization and management of the labor.

The convict labor camps organized by the OGPU for its own prisoners developed gradually into large scale economic projects such as those of construction of various canals between the Baltic Sea and White Sea, Moscow-Volga, Volga-Don, or the timber works and fisheries in the North, gold mines in the Arctic regions of the Far East (Mogadan) and coal mines of the North (Ust Pechora). In connection with these projects the OGPU labor camps were

made in 1930 the principal places where long term imprisonment (of three years or more) was to be served. The regime of these camps should be classed with that of hard labor (penal servitude) of other countries.

All observers found convict camps at any important construction project under the Five-Year Plan. Soviet writers mention all kinds of works carried along by the convicts. The total number of prisoners is not available, but an idea of it is given by the amnesty granted upon the completion of the Belomorsk Canal. Thus, 12,484 prisoners were pardoned and 59,516 had their term reduced, a total of 72,000 (Resolution of August 4, 1932). There were in addition those who did not receive any pardon and who perished in this titanic work in the sub-arctic climate. After the completion of the Moscow-Volga Canal in 1937 the pardon affected over 50,000 persons. These are only two projects among many. The largest number of prisoners serving hard labor under the Imperial regime was in 1913 -- 32,000 persons; the highest number of exiles without any forced labor in 1907 was 17,000.

The following provisions of the "Statute on Camps of Correctional Labor" will explain how the convict labor is used for the economic projects of the Soviet government. This statute is mentioned as being still in force by the university text book on criminal law printed in 1952.

Persons confined in the labor camps are divided into three categories according to "their social standing and the nature of the committed crime." (Sec. 14).

To the first category belong "toilers (workers, peasants, and "white collar" employees) who enjoyed the franchise and served their first sentence for not over five years imposed for another than a counter-revolutionary crime", i.e., minor ordinary criminals; to the second category belong

similar convicts serving a term exceeding 5 years, i.e., more important ordinary criminals. The third category is made up of "non-toiling elements" regardless of their crimes and of those sentenced "for counter-revolutionary crimes" regardless of their origin (Sec. 15).

Under a beginner's regime the prisoners are used for works in groups, live in barracks within the camps, and are not permitted to leave the camp. The first category must serve 6 months under this regime; the second, one year; and the third, two years (Sec. 17).

After expiration of these terms the prisoner may be subject to an "easier" regime, i.e., assigned for permanent work in Soviet industrial or commercial enterprise living in barracks specially attached to such enterprises. They may be permitted to go out of the camp, to go to work without convoy, and may receive bonuses (Sec. 16). They may occupy administrative and managing posts in the camp with the exception of non-toiling elements and those convicted for counter-revolutionary crimes (Sec. 16, Remark). Thus this privilege is reserved for the regular criminals.

"Convicts who exercised a bad influence upon others, or are suspected in preparation of an escape, may be placed in solitary confinement" (Sec. 31). Those who persistently violate the established regime and regulations or simulate disability may be placed in special punitive "isolators" and sent to special (punitive) works. (Sec. 32).

A system of bonuses seeks to make the convicts work hard in order to obtain audience with relatives, right of correspondence, which may be in any case confiscated, better food ration (Secs. 23-26). Those who enjoyed franchise before being convicted may be even prematurely released with or without obligation to reside near the camp (Sec. 42). Yet according to

Krylenko "after the expiration of the established term ... they are as a rule exiled and after exile receive so-called minus sixes," i.e., are prohibited to reside in six of the largest cities of the USSR.

When, in 1932, a passport system was introduced subjecting the right of residence in many places to the discretion of the police, the OGPU was granted supervisory powers over enforcement of the passport regulations and its personnel was charged with the appertaining duties.

In 1934, the OGPU (MVD - MGB) was transformed into a federal People's Commissariat for the Interior (Narodny Komisariat Vnutrennikh Del, in abbreviated form Narkomvnudel), and its jurisdiction was defined by two statutes dated July 10, 1934, and statutes of September 17, October 27, and November 5, 1934, September 21 and October 28, 1935. These statutes assign to the Narkomvnudel several functions: like the OGPU, it performs the function of a secret police, of investigator of all crimes, of protector of the frontiers (frontier guard), and it can sentence in a nonjudicial procedure and supervise the enforcement of passport regulations. Moreover, it is in charge of all penal institutions, convoy troops, of Civil Registry Offices (Vital Statistics), and the regular police. It is also in charge of special military units -- troops of internal security or Vokhra (Voiska Vnutrenney Okhrany), and of administration of highways. A Soviet legal dictionary, published in 1945, describes the branches of public administration brought under the Ministry of the Interior (the successor to the Narkomvnudel) as follows:

> The following are under the jurisdiction of the Ministry of the Interior: camps of correctional labor prisons and other houses of detention, militarized guards of industrial establishments, militarized fire departments, frontier guards, troops of internal security, convoy troops police (militsia), state and local archives, macadamized and dirt highways of national importance, and special construction projects.

Statutes dealing with the judicial powers of the Narkomvnudel are are silent on the death penalty; they expressly confer upon a special board attached to the Narkomvnudel the authority to confine those who are "socially dangerous" in a "labor camp," a sentence equal to hard labor, for a period of up to five years, or to exile to a definite locality with or without confinement, or to prohibit residence in certain places for the same period, or to banish from the Soviet Union (supra). There are unlimited facilities for the prolongation of these terms. The Narkomvnudel may undertake an investigation and arrest on any criminal charge. After the investigation is complete, it may either dispose of the case by inflicting one of the above-mentioned penalties or transfer the case for trial in court. Statutory provisions do not specify any limitation to the discretion of the organization in the selection of a judicial or nonjudicial determination of a case. However, not all the cases transferred are triable by regular courts. Those involving "subversive activities" must be tried by court-martial, and those involving crimes committed on railways and inner waterways must be tried by the special courts established for this purpose which, during World War II, were replaced by courts-martial. In the occupied Baltic states it is customary to transfer cases to military tribunals attached to the troops of the MVD.

During the war, the Narkomvnudel was subdivided into two commissariats, one bearing the old name and another the name of Commissariat for Security, but both were again merged under the old name, and again separated. In 1953 they were fused again. In 1946 they were renamed ministries together with other commissariats.

PART III

NEW SUBSTANTIVE CRIMINAL LAW

Bulgaria
By Dr. Ivan Zlatin

I. General Survey

The old Criminal Code of 1896 was repealed on February 13, 1951, when a new Code was approved. This does not mean that until then the communist regime strictly observed the provisions and the spirit of the old Code. The fundamental principles and most of the provisions were gradually repealed and nullified by amendments and by enlarging the powers of the police to administer penal justice (confinement in forced labor camps and deportations). Moreover, the provisions of the old Code were interpreted in the spirit of the order:

> After September 9, 1944, a new socialist content was inserted when these provisions were applied. (Official statement on the reasons for the introduction of the new Criminal Code. Published in Nakazatelen zakon. Text, motivi i predmeten ukazatel. Sofia, 1951, p. 66.)

The new communist Criminal Code (Izvestia No. 13, February 13, 1951) repealed and superseded the Code of 1896 including all its amendments, both those of communist and precommunist origin, as well as a number of penal provisions contained in other laws. The legislator made a point to indicate in the rider attached to the bill introducing it that the principles on which this Code is built as well as its form, content and structure do

not follow the traditional pattern. It was explained to the members of Parliament that some of the expressions of the old terminology have been retained, but they have now a different meaning. The Code also abolished the difference between felony and misdemeanor.

The punishments provided by the communist Code are much more severe than those provided by the Code of 1896. In addition, the new Code eliminates the difference between an accomplished and an attempted act by providing equal punishment for both (Sec. 16).

It is officially admitted that the Ministry of Justice, which prepared the draft of the new Code, primarily was guided by political considerations. The purpose of the Code is to assist the regime in its efforts to impose upon the country a development "on the way toward socialism" (Nakazatelen zakon, p. 66). About half of the sections specifying crimes are more or less of political nature. They deal with all variations of treason, sabotage, conspiracy, noncompliance with an order or directive of a government agency, compulsory delivery of goods, mismanagement of an economic enterprise, etc. It is a Code which is concerned in the first place with the protection of the communist dictatorship (ibid., p. 79) and not so much with the protection of rights of the individual. This principle is expressed in Section 1, in which the purpose of the Code is described.

> Sec. 1. The Criminal Code shall have the purpose of protecting the People's Republic of Bulgaria, and the social order and the legal system established therein by defining the offenses and the punishments therefor;

Another significant feature of the Criminal Code is its class character. This class-discriminatory character of the new Penal Code is strongly emphasized by the drafters of the Code and by the official communist legal literature.

> ...in it [the chapter concerning the offenses against the People's Republic] the class character of the Criminal Code and its great importance as a tool in the class struggle in the hands of the working class is most evident. (Ibid., p. 79)
>
> ...the class approach of the people's democratic legislation is included in the content of the laws..." (Angel Angeloff. Obezpechenie na zakonostta v durzhavnoto upravlenie. Sofia, 1952, p. 12.)

Basically the new Criminal Code is patterned after the Criminal Code of the Russian Soviet Federative Socialist Republic. However, "the provisions of the new Code of the Czechoslovak People's Republic have also been taken into consideration in some respects." (Nakazatelen zakon, p. 66)

The subordination of the regime in Bulgaria to the rulers of the Soviet Union is reflected in the Criminal Code. Section 96 makes punishable acts like treason, spreading false rumors, sabotage, etc. committed in regard to another country with a communist regime.

II. Punishment of Acts Not Explicitly Specified as Crimes by Law

The criminal system of pre-communist Bulgaria was based on the principle that punishment can be imposed only for acts which are defined by laws as crimes (nulla poena sine lege nullum crimen sine lege). While the analogy was allowed in the civil law, it was barred from the criminal law. "An act shall be considered a crime or petty offense when it is declared to be such by law" (Sec. 1).

As in other countries with codified statutes, the prohibition of punishment by analogy served the same purpose as the American due process of law and the prohibition of ex post facto legislation, in order to protect the citizens from arbitrary prosecution. The principle that there are no punishments of offenses other than those specified by statute was not only an outstanding feature of the criminal law but was also generally

accepted by the population as an indispensable condition of a fair administration of criminal justice.

Following the pattern of the Soviet Codes of 1922 and 1926 and the example of Nazi penal legislation, the present regime in Bulgaria abandoned the principle that no punishment should be imposed for acts defined as punishable by law and introduced the punishment by analogy. The Law of April 7, 1948 (Durzhaven Vestnik No. 80 of 1948), incorporated later in Sec. 2, Subsec. 2 of the present Penal Code, stated:

> ...a crime shall be also socially dangerous and an act perpetrated with criminal intent, when, although it is not explicitly defined by the law, it is close in its elements to one of the defined crimes.

The official statement on the reasons for the introduction of the Criminal Code describes the prohibition of the punishment by analogy as "an old formalistic conception which dominated the bourgeois law," and which did not "pay enough attention to the social character of the act and especially to its social danger." No loophole must be left for commission of acts which the regime considers as socially dangerous. The rider to the bill states that "regardless of how careful the law makers may be, they would not be able to foresee all possible future manifestations of criminality" (ibid., p. 68). It is to be noted here that the word "criminality" does not mean, in communist legal terminology, the same thing as it does in the terminology of the civilized world.

> ...according to it /Section 2 of the Criminal Code/ a crime is above all an act which is socially dangerous. This is the first and the most essential feature of a crime. (ibid., p.69)

By the introduction of punishment by analogy the communist regime made it possible to arbitrarily apply the criminal statutes. The citizens of Bulgaria are no longer able to know which acts are permissible and which are punishable. The public prosecutor can prosecute an act (commission or

omission) not specified by the law as a criminal offense and the judge can convict for such an act.

The material at hand covering excerpts from decisions of the Supreme Court discloses an extensive use of punishment by analogy by the courts. The Supreme Court complains that lower courts have not deemed it necessary to make an effort to ascertain whether the act on which they have to pass penal sentence is defined as a crime in one of the sections of the Criminal Code. This practice went so far that the Supreme Court found it necessary to remind the lower courts that punishment by analogy is "feasible only when the act is not declared to be criminal" (Socialistichesko Pravo, No. 2, 1953).

III. Broad and Loose Formulation of Penal Clauses

While the introduction of punishment by analogy opened the door for prosecution of acts which were not defined as crimes by law, another method was also used to permit arbitrary qualification of acts as criminal offenses. This was the use of loose definitions of individual crimes. Thus, another bulwark against arbitrary prosecution was removed for the sake of political expediency.

According to the communist Criminal Code, the essential feature of the crime is the fact that it is a socially dangerous act. However, the provisions of the Code avoid the precise definition of this term. According to Section 3, "socially dangerous" is "any act which endangers or injures the political and social order of the People's Republic or the legal system established therein." This formulation clearly indicates that the violation of a law is not an absolutely necessary condition for an act to become punishable as a criminal offense. It is enough that the commission or omission is considered to be a political ("social") danger for the established

dictatorship.

And it is not only the non-Soviet lawyer who finds it difficult to form an idea of the meaning of the term "social danger" in the Penal Code of Bulgaria. Bulgarian jurists experience the same difficulty. Issue No. 12 of 1953 of the official legal publication Socialistichesko Pravo contains a long article under the title, "The Public Danger as an Element of Crime." The author of the article quotes Vyshinskii, Stalin and Lenin and refers to Soviet criminal law, but he is unable to give a formulation of the content and limit of the notion "public danger." Of course, it is not really possible to define "social danger" because of the nature and the program of the regime. Changes follow so quickly that the only stable criterion is that the tactics and the plans of the Communist Party determine what shall or shall not be considered as a punishable criminal offense.

Not only the general definition of the crime, but also definitions in all sections of the Code are broadly formulated. Particularly interesting in this respect are the formulations of the political and economic crimes and crimes against the public order.

Political crimes are specified in Chapter I of the Special Part of the Criminal Code, entitled "Offenses against the People's Republic." The official statement of the reasons for the introduction of the Criminal Code describe this part as the most important part of the Code (Nakazatelem zakon. Text, motivi i predmetem ukazatel. Sofia, 1951). It deals with treason, sabotage, "spreading untrue rumors," safeguarding of state secrets, etc. The definitions of the communist Penal Code are full of vague expressions which may be used to declare any action punishable, such as: "creating difficulties for the government or undermining its prestige," "creating anxiety in the society," "does not carry out as he should," "any act," "in

any way," "antidemocratic ideology," etc. To give an example, the definition of "wrecking activities" contained in Section 85 reads as follows:

> Whoever disorganizes or subverts the industry, agriculture, transportation, trade, issue of money, the credit system or individual economic enterprises with the intent of impeding the commodity supply of the country, creating anxiety in the society, creating difficulties for the government or undermining its prestige by making use of government agencies or economic establishments or obstructing their work, shall be punished for wrecking, by confinement for not less than 10 years, or in especially serious cases, by death. [Italics supplied]

Sabotage is defined in no less sweeping language:

> Whoever fails to carry out wholly or partially or does not carry out as one should economic assignments or tasks with the intent specified in Section 85, shall be punished for sabotage by confinement for not less than one year or, in especially serious cases, by confinement for not less than 10 years or by death (Sec. 87). [Italics supplied]

Strikingly loose terminology is also contained in other sections of Chapter I:

> Whoever spreads insulting, slanderous or untrue allegations which are likely to injure the dignity of the Bulgarian people or that of the People's Republic, shall be punished by confinement for from one to five years and a fine up to 200,000 leva (Sec. 88).
>
> Whoever desecrates in any way whatsoever the coat of arms, flag, or national anthem of the People's Republic shall be punished by confinement up to one year (Sec. 89).
>
> Whoever, at home or abroad, expresses opinions, publicizes facts or commits acts in any way whatsoever which is likely to damage the good relations with another state or its authorities or agencies, or injures its prestige, shall be punished by confinement up to five years (Sec. 90).
>
> Whoever advocates overtly or covertly a fascist or any other anti-democratic ideology or imperialistic aggression, preserves for distribution or conceals fascist or any other anti-democratic literature shall be punished by confinement up to five years (Sec. 91).
>
> Whoever advocates, praises or approves the commission of acts specified in this Chapter or openly instigates their commission shall be punished by confinement up to ten years,

the punishment never to exceed the punishment specified for the offenses committed (Sec. 92).

Conspiracy with the intent of committing offenses specified in this Chapter shall be punished by confinement for not less than five years, organizers and leaders being punished by confinement for not less than 10 years (Sec. 93).

Preparatory acts towards the commission of offenses specified in this Chapter shall be punished by confinement up to three years (Sec. 94).

Whoever harbors or conceals a person who has committed offenses specified in this Chapter shall be punished by confinement up to 15 years, the punishment never to exceed the punishment specified for the offenses committed. If the act is committed by negligence the punishment shall be confinement up to three years (Sec. 95).

Whoever knows that an offense specified in this Chapter is being, or has been, committed and fails to report this to the authorities shall be punished by confinement up to three years. If the person who has failed to report is in an official capacity and the offense has been committed by one of his subordinates, the punishment shall be confinement up to five years (Sec. 95).

Whoever allows the printing of materials incriminated under this Chapter shall be punished by confinement up to ten years, or if the act has been committed by negligence by fine up to 300,000 leva (Sec. 97).

Similarly broad formulations are contained in the Chapter concerning "crimes against the administration of government":

Whoever disseminates insulting, defamatory or untrue allegations which are likely to create mistrust toward the government or provoke anxiety in the society, shall be punished by confinement up to two years or correctional labor (Sec. 210).

Whoever disseminates untrue rumors, announcements or allegations which are likely to provoke confusion in the economic initiatives of the government shall be punished by confinement up to five years. If this has been committed by negligence, the punishment shall be confinement up to one year (Sec. 211).

IV. Special Economic Crimes

Chapter IV of the Criminal Code deals with "crimes against the national economy." Some of them consist of activities which in free

countries are considered normal, such as obtaining profit from sale of goods. Others would have other than penal consequences, if any; for example, failure or inefficiency in management of economic enterprises, failing in accomplishing some entrusted or required task, duty, delivery, etc.

An official who fails to apply sufficient care in the direction, management or protection of the property entrusted or the work assigned to him, and thereby considerable damage, destruction or waste of property results, or partial or total nonfulfillment of the economic assignments or any other considerable damage to the enterprise results, shall be punished by confinement up to five years or correctional labor. If the act has been committed intentionally and does not contain the elements of a grave crime, the punishment shall be confinement from three to ten years (Sec. 113).

Whoever fails to carry out a lawful regulation concerning performance of work or delivery of products in connection with the economic plan or the economic undertakings of the government shall be punished by confinement up to three years or, in case of minor importance, by correctional labor or fine up to 20,000 leva (Sec. 117).

Whoever uses agricultural products received from the state for purposes other than those for which it has been issued to him, shall be punished by confinement up to three months or fine up to 50,000 leva (Sec. 119).

Whoever without proper authorization purchases with the intention to resell or sell agricultural products or other goods for mass consumption shall be punished by confinement up to five years or correctional labor (Sec. 121).

* * *

The description of the characteristic features of the new Penal Code of Bulgaria would not be complete without reference to the severity of penalties, which is much greater than is usual in modern codes.

The old Code of 1896 provided for two kinds of deprivation of liberty: imprisonment and penal servitude. Persons sentenced to imprisonment were not obliged to work, but could choose the type of work to be performed if they did wish to work. The Code also prescribed that within the limits of the facilities available these persons should be allowed to spend nights in individual cells. They could obtain food from the outside. Especially privileged in these respects were the women and political prisoners (Secs. 18 and 19). In contrast, those sentenced to penal servitude had to perform heavy work. They had to sleep in dormitories, had to wear special clothes and could not receive food from outside.

The new Code eliminates the distinction between imprisonment and penal servitude. It prescribes that all persons sentenced to prison should perform work (Section 23). Thus, confinement is transformed to forced labor. The Code treats all convicts as it treats dangerous or habitual criminals. The prison administration is not obliged to afford a more considerate treatment of women and political prisoners.

The new Penal Code also drops the distinction between an accomplished and an attempted act by providing equal punishment for both (Sec. 16). The old Code made the attempt punishable, but provided a milder punishment for it than for the accomplished act (Sec. 49). Furthermore, the new Code declares punishable the preparatory acts towards the commitment of acts enumerated in the chapter concerning offenses against the People's Republic and the Soviet Union (Sections 94 and 98). Again the term preparatory acts

is so loosely formulated that it permits the prosecution of practically any action even remotely connected with the planned offense:

> Preparing the means, solicitation of accomplices, and in general, creating the conditions for the commission of a premeditated offense prior to the commencement of its perpetration, shall constitute a preparatory act (Sec. 15). /Italics supplied/

The communist Code provides the death penalty in more cases than did the old Code. Moreover, it repeals the provision of the old Code that persons over 65 years of age could not be sentenced to death (Sec. 58). It eliminates the old provision that a minister of the religion of the person sentenced to death should accompany him to the place of execution.

According to the old Code, a person over 18, but under 21 years, was still considered minor and therefore could not be sentenced to death or to hard labor. According to the new Code, a person over 18 years is not a minor, and can be sentenced to death or to heavy penal work.

Section 21 of the Code lists the tasks of punishment in the following order: (1) to "render harmless the enemies of the people," (2) to deprive the offender of the possibility to commit other offenses," (3) "correct and re-educate" the offender, etc. /Italics supplied/ The official statement on the reasons for the introduction of the Penal Code describes the role of punishment as "assisting the progressive development of the society by eliminating and punishing those who hamper it by their criminal activity."

Connotations regarding the humanitarian treatment of offenders have disappeared from the writings of the Bulgarian jurists. Now, communist lawyers and legal publications, etc. are constantly calling for "merciless punishment", "complete liquidation," "elimination," etc. of the "class enemy."

> "The people's democratic administration of criminal law... is called to safeguard the development of our country on the way

> toward socialism, by carrying out an irreconcilable class fight against the capitalist elements until they are completely liquidated (Stefan Pavlov. Nakazatelno pravosudie ma Narodnata Republika Bulgaria. Sofia, 1951, p. 19.)

In conclusion it must be added that the new Penal Code is not the only mechanism in the hands of the government to impose punishments. There is also the Law of 1948 on the Police (Durzhaven Vestnik, March 15, 1948). In emergency situations, it is possible to put the police, instead of the courts, in charge of the administration of justice. No special law is required for this purpose. The present authority vested in the Minister of the Interior (Police) is sufficient.

PART III

NEW SUBSTANTIVE CRIMINAL LAW

Hungary
By Dr. George Torzsay-Biber

I. Introduction

The Soviet Russian military occupation immediately following World War II, and later, in 1948, the complete political domination of the Communist Party caused in Hungary the same drastic changes in criminal law as in all other fields of law. These changes concerned not only the statutory part of Hungarian criminal law but also its theory and "common law-like" tradition. The latter change has cut deeper into traditional Hungarian legal thought than the repeal of old and the enactment of new statutes.

Although a considerable portion of the old statutory criminal law is still effective formally, it might be safely said that the Hungarian criminal law, that which was built on the traditional European legal concept, vanished and a new one was introduced, which in spite of the fact that it was enacted by the Hungarian legislature and applied by Hungarian courts, is not a Hungarian but a Soviet Russian criminal law articulated in the Hungarian languages, but formulated in Russia since the beginning of the Bolshevik regime. Therefore, when we talk about contemporary Hungarian criminal law, in reality we talk about a Soviet Russian criminal law as applied in the legislative and judicial process in Hungary.

At the beginning of the Russian occupation and the Communist Party's rule, the substitution of Soviet Russian criminal law for the Hungarian was difficult to recognize and even more difficult to prove. But in 1950 the Hungarian legislature enacted a new General Part of the *Criminal Code* (Law No. II of 1950) which introduced new, mostly Soviet Russian, principles into the Hungarian criminal law. Since then the interpretation and the application of the statutory substantive criminal law has been according to Soviet Russian legal principles.

II. Sources of Criminal Law

The new General Part of the Criminal Code repealed that of the old Code but the Special Part of the old Criminal Code (Law No. V of 1878) remained partly effective, and together with a multitude of various laws and statutes constituted the Hungarian criminal law. But on August 31, 1952, the Hungarian Ministry of Justice compiled all statutory provisions relating to criminal law, except those relating to petty offenses not in the jurisdiction of courts, effective on the same day, and published them in a

volume under the title A hatályos anyagi büntetőjogi szabályok hivatalos összeállítása (Official Compilation of Substantive Criminal Statutes in Effect). The compilation had been organized on the Soviet Russian pattern and contributed greatly to the sovietization of the Hungarian legal system.

The authority of the Compilation is uncertain because it was neither a legislative act nor a governmental decree based upon constitutional provisions or issued under special authorization of the legislature. It seems therefore, that it is not a sui generis source of law. The Compilation's authority is derived from the specific authority of the various statutory provisions embraced. Hence, the text of the Compilation ought to be a verbatim reproduction of the statutory provisions embraced. But that is not the case. Certain modifications in the text under the changed principles of Hungarian criminal law as well as the social and constitutional structure (e.g. People's Republic instead of Kingdom, prison instead of penitentiary, forint instead of pengö, etc.) seem to be inevitable and natural, and might even find their source in the Constitution. But beyond these modifications changes occur which were introduced arbitrarily by the Ministry of Justice for which no statutory basis may be found. For instance, Sec. 196 of the old Code is incorporated in Sec. 135 of the Compilation without the words "not exceeding"; this actually changed the rate of punishment. This evidently was contrary to law (according to old standards) on the part of the Ministry of Justice but it was nothing exceptional since acting arbitrarily and without any consideration of laws and legal principles was always a common practice of governments of the Soviet Russian type. Furthermore, statutory provisions not formally repealed were omitted from the text of

the Compilation under the pretense that the provisions of the new General Part of the Criminal Code made them "self-evident", "superfluous" or "contradictory to the general principles;" e.g., Sec. 12 of Law No. XL of 1914 grants immunity to persons who withdrew from the criminal act during the preparatory period. This provision although formally not repealed was omitted from the Compilation under the pretext that since par. 1 of Sec. 19 of the new General Part of the Criminal Code declares the preparatory act a crime, and the provisions of Par. 3 are contradictory to any provision assuring immunity, the statutory provision, in our case Sec. 12 of Law No. XL of 1914, had been repealed.

Such omission is either legislation or interpretation. Neither falls within the jurisdiction of the Ministry of Justice. The determination of the relationship of two statutes and their effect upon each other is the primary duty of the courts. The motivation of such intrusion into the jurisdiction of the courts as stated in an article (Bacsó, Ferenc, Compilation of the substantive criminal statues in force [in Hungarian] Jogtudományi Közlöny, October, 1952, p. 427) is that the changes made by the Ministry of Justice are to be considered as an official interpretation for the benefit of the courts, and in the service of socialist justice. In this situation the courts play only a secondary rôle, that is, to that of the executive, in the administration of justice, and their part is purely technical because they are without the power of authoritative interpretation of law. The government attorney's, or public prosecutor's very extensive right of interference in judicial proceedings also impairs the jurisdiction of the judiciary and greatly contributes to the courts'

inferior standing within the government and the legal field as well.

The Compilation contains, under Title One, general provisions which embrace the new General Part of the Criminal Code (Law No. II of 1950), the implementation decree of the above (Edict No. 39 of 1950) and criminal provisions concerning juveniles (Edict No. 34 of 1951). Under Title Two, Special Part, statutory provisions in force are compiled in a systematic order, very similar to that of the Soviet Russian Code, as follows: 1) Crimes against the People's Republic, 2) Crimes against the government and the order of administration, 3) Crimes against the people's economy, 4) Crimes against the family, juveniles, and sexual morality, 5) Crimes against the person and property of the citizens.

III. The General Part of the Criminal Code

The first item, the new General Part of the Criminal Code, is well characterized by its preamble which reads:

> "The new general part of the Criminal Code corresponds to those political changes which took place in our country after the liberation, and enacts those principles of criminal law which serve the interest of building socialism and the protection of social property."

This preamble shows that Hungarian criminal law is exclusively employed by the present rulers in the promotion of a partisan-utilitarian interest, that is, the interest of political socialism and Marxian materialism as expressed through the institution of the Russian concept of socialist property. This thought is carried further, and finally leads to the most eminent change in criminal law, in Sec. 1 of the General Part of the Criminal Code by the statement: "The purpose of criminal law is protection against socially dangerous acts."

A. Social Danger, a Constitutive Element of Crime

Under Sec. 1 of the new General Part of the Criminal law

> "(2) Any act of commission or omission which violates or endangers the political, social, or economic order of the Hungarian People's Republic, its citizens, or their rights, is a socially dangerous act."

Under the influence of the so-called Italian sociological school of criminal law the Soviets introduced "social danger" as an element of crime. This concept was entirely strange to the traditional Hungarian criminal law; nevertheless, it was introduced by the new legislation inspired, if not commanded, by Soviet Russia. Although Sec. 1 of the new General Part of the Criminal Code provides that "(3) a crime is a socially dangerous act for which punishment is to be imposed under a statute," the introduction of "social danger" as a constitutive element of a punishable act laid an entirely new foundation for Hungarian criminal law.

The double standard of offenses, i.e., the two independent constitutive elements, that is the constitutive elements of a specific criminal act and social danger as a constitutive element, make the concept of criminal act exceptionally vague and even ambigious. Although the court decisions do not seem to clarify this situation, at least they seem to indicate that in instances of acts which are offenses provided for by a statute dealing with individual crimes, the punishment depends upon whether they appear socially dangerous. Contrariwise, an act which does not come under any penal statute may be punished if it appears socially dangerous.

The Supreme Court in two of its decisions (Bj. 26, Jogtudományi Közlöny, March 1953; Bj. 48, May-June 1953) relating to abortion stressed

the social danger of abortion as the ground for its punishment. The court said:

> The exceptional social danger of the offense and the defendant, the ethical concept of our society building up socialism, the opposition of the Party and the government to the languid attitude which was characteristic toward this destructive crime, must be emphasized. In a society building up the new order everybody has his place, livelihood, and constructive duties. Every birth of a new child strengthens the masses untiringly fighting for the elevation of the toilers. Whoever stands in the way of this is standing against the society building up socialism. Therefore, not only the correction of the defendant but also the effective protection of the toilers demands the unsparing application of the strictness of the law.

In its decision Bj. 48, the court held that

> The interruption of pregnancy is always a socially dangerous act--except in extraordinary cases, but even then it must be in the interest of the pregnant woman and administered according to the prescribed procedure.

Thus abortion is a socially dangerous act and therefore a crime because it endangers the growth of the masses supporting communism. This departs from traditional Hungarian criminal law, which, to protect the individual, penalized abortion as a moral wrong.

In another case (Bj. 46, Jogtudományi Közlöny, May-June 1953) the court held:

> The defendant appropriated a piece of plywood from the carload entrusted to him. It is true that the value of this thing is comparatively small. But this fact does not affect the social danger of the defendant. The Supreme Court recognized this danger primarily in the personality of the defendant, whose attitude shows that he does not care for socialist property.

Thus lack of respect for socialized property on the part of the defendant made him guilty in this case despite of the insignificance of the value involved.

This is the more noteworthy because the Hungarian new General Part of the Criminal Code after the pattern of the Soviet Russian Code included a provision which reads:

> "Sec. 56. If a crime committed seems upon the consideration of circumstances to be of such unimportance that the infliction of the *minimum* punishment under law appears to be unnecessary, as well as if in [the given] case neither the crime nor the perpetrator appears to be socially dangerous at the time of the rendition of the judgment, the establishment of his guilt and sentencing shall be omitted.

In another case (Bj. 52, Jogtudományi Közlöny, May-June 1953) the court held:

> The defendant [who is a manager of a food store] permitted the employees to take food from the store for their afternoon snack. His act cannot be considered as embezzlement. The defendant committed the act strictly within his authority as a store manager of a cooperative. His dealing was irregular but he committed this irregularity within the limits of his authority and not by appropriation of movable property belonging to another. The socially dangerous character of the act and the defendant is not in the misappropriation but in the management of social property in an abusive and harmful manner.

Thus the court held him subject to punishment. Under the old Hungarian law the manager might have been liable for damages, but certainly not for a criminal act, not because it was customary to allow consumption of food within reasonable limits for the employees of a food store during working hours, but because no law rendered such an act punishable and nullun crimen, nulla poena sine lege was the arch principle of the Hungarian administration of criminal justice. This case is an outstanding example of imposition of punishment not directly specified by statute.

In another case (Bj. 40, Jogtudományi Közlöny, April 1953) a textile merchant after the socialization of his business went into geese

trading without a license; he sold under market price and suffered considerable losses. The lower court acquitted him, holding that the defendant did not commit any punishable act. The Supreme Court held him guilty for the following reasons:

> The district court failed to take into consideration the very high degree of social danger arising from the personality of the defendant. It is obvious that the defendant does not want to comply with the rules of socialistic life and even less to accept this life, and wishes to secure his livelihood by criminal acts instead of work. From this it may be inferred with certainty that the person of the defendant--in accordance with his class position--means a great danger to society and the economic order of our people's democracy at the present time. Smaller profit and selling under the market price established for Budapest cannot be considered as decisive points [in favor of the defendant] because they do not change the character of defendant's way of life, i.e., that he is in opposition to the rules of socialistic life by attempting to secure a regular income through speculation instead of work.

This decision indicates that under the present Hungarian criminal law a case may be adjudicated exclusively, that is, not having been specifically rendered a punishable act by law or rather statute, on the merit of the social danger involved. This is the more remarkable because the new Hungarian law, contrary to the Soviet Russian and many other so-called satellite laws, does not have a provision on punishment by analogy.

The importance of the function of social danger, and that it is really a constitutive element of a crime, is manifest in the provision of Sec. 14 of the new General Part of the Criminal Code which excludes the criminal responsibility of a person "who committed the act in an erroneous assumption that the act was not socially dangerous, provided he had sound reason for his assumption."

B. Summary of Major Changes and Innovations

The major changes introduced by the new General Part of the Criminal Code may be summarized as follows:

The new General Part eliminated the difference between attempted and accomplished act by providing equal punishment for both (Sec. 18), whereas the old Code, although rendering the attempt punishable, provided a milder punishment for it than for the accomplished act (Secs. 65 & 66 of the old Code).

The new General Part also eliminates the traditional division of punishable acts into felony and misdemeanor, and uses only the expression büntett, which formerly was used for felony. To express this unified new category in English we shall use the word "crime" in order to avoid reference to a system which differenciated between felony and misdemeanor.

Section 30 of the new General Part enumerates the punishments. These are: death, imprisonment, fine, forfeiture and confiscation of property, prohibition from public activities, prohibition from expulsion and the exercise of a profession.

The introduction of uniform imprisonment as the sole type of deprivation of liberty seems to be the logical consequence of the elimination of the different categories of punishable acts. The other punishments, except expulsion, were known to Hungarian criminal law. It cannot yet be established whether expulsion is the equivalent of deportation, as known in the former legal system, and applies only to aliens or whether it is a new type of punishment including the deportation of citizens.

Furthermore, the new General Part has provisions on protective custody for persons criminally not responsible, or commonly dangerous (Sec. 49); on dispensing penalties (Chap. V); on discharge from the consequences of previous convictions (Chap. VI); and on petty offenses (Chap. VII).

C. Correctional Educational Labor

Sec. 48 introduced a new type of correctional measure known only to Soviet Russia and her satellites called "correctional educational labor."

> "Sec. 48 (1) If by taking the perpetrator's social position, the causes of the commission of the crime, and all circumstances of the case into consideration, it may be expected that the purpose of the punishment can be reached without deprivation of liberty, the court may order the perpetrator to perform some specified labor for a term between one month and two years, instead of imposing a sentence of imprisonment."

Whoever is sentenced to "correctional educational labor" shall be assigned a definite place to perform it and shall receive a reduced wage. According to the statute, his liberty shall be limited solely for the purpose of the penal measure. What this provision means is not clear, but certainly it seems to leave ample possibilities for its misuse by the enforcement authorities. The whole provision seems to have been kept in line with the Soviet doctrine by the following provision:

> "Sec. 48. (4) If a person obliged to perform such labor fails without a good reason to fulfill his obligation, or displays an attitude seriously violating the labor discipline, a term of imprisonment shall be substituted for a period equivalent to the time of the correctional educational labor not yet served."

No information is available on the execution of the "correctional educational labor" and among the published decisions of the Supreme Court few deal with the question; in most cases they reverse the lower courts in

cases in which they imposed "correctional educational labor".

IV. Special Part of the Compilation

A. System and Method

The special part of the Criminal Code is at the present substituted by the Special Part of the Compilation*, and as it has been already mentioned it consists of five parts which follow the order of the Soviet Criminal Code.

The principles and technique followed in preparing the Compilation are presented in Bacsó's previously mentioned article, according to which the Compilation needed a system "corresponding to the socialist idea." Bacsó leaves us in the dark as to the meaning of the "socialist idea" but we may very well suspect that it means conformity to the Soviet Russian legal development. Furthermore, he explains that the relinquishment of the system of the Special Part of the old Criminal Code was rendered necessary by the multitude of new crimes introduced after World War II, which just would not fit into the old system. But Bacsó did not mention the fact, which is the real reason for discarding the old Code in its entirety, that "class justice", protection of the State's economic interests and the Cummunist Party against the interest of the citizens just would not be possible under the old legal system. When the partisan political party interests became dominant, then the old criminal law, as any other "old" law, had served its usefulness and had to disappear.

B. Political Crimes

Of the five parts of the Special Part of the Compilation,

*A new criminal code is reported to be under preparation but no detailed information is available on the plan and progress of this work.

three, crimes against the People's Republic, crimes against the government and the order of the administration, and crimes against the people's economy, deal with political crimes, that is, with acts the punishment of which is motivated by purely political reasons, and which acts in their vast majority are not punishable, i.e., are not crimes, in any of the Western legal systems.

1. Crimes against the People's Republic

Part I, crimes against the People's Republic is divided into four chapters: (1) crimes against the internal security of the State, (2) crimes against the external security of the State, (3) crimes against the interest of national defense, and (4) crimes against the peace, war crimes, and crimes against the people.

The whole Part I is characterized by offenses which are new in the Hungarian legal system. The definitions of crimes are not only loose in composition but also extremely broad that nearly any act, or omission may come under them. It does not seem to be necessary to present translations of definitions extensively because all are the same in language, style and character as well. Sec. 1 of the Compilation, under the title "Crimes against the people's democratic state-order, and against the People's Republic" seems to be a good illustration of this point.

> Sec. 1. (1) Whoever commits an act, initiates, leads or financially supports a movement or organization aimed at the overthrow of the people's democratic state-order or the people's republic as established in the Constitution of the Hungarian People's Republic, shall be punished for a crime.
>
> (2) Similarly, whoever actively participates in or promotes a movement or organization set out in the preceeding subsection, commits a crime.

This example makes it quite obvious that the Hungarian communists follow the Soviet pattern and concept of criminal law rather

closely (see the corresponding chapter on Russia). The Soviet pattern is so closely followed in the above "definition", if we may call it that, and it is so vague that even an analysis seems to be impossible because not even the constitutive elements of the crime in question are stated.

Crimes included in Chapter I are: Crimes against the people's democratic form of government and the People's Republic (Secs. 1-12) treason against the territorial integrity of Hungary (Secs. 13-16), revolt (Sec.s 17-24), prohibited organization of an armed group (Sec. 25), incitement (Secs. 26-32), illegal use of explosives (Sec. 33), and illegal use of firearms and ammunition (Sec. 34.).

Crimes included in Chapter II are: treason and espionage (Secs. 35-47), unauthorized border crossing and abuse of passport (Sec. 48), and crimes against good international relations (Sec. 49).

It is noteworthy that abuses committed with explosives or firearms are not included in Chapter VIII, covering crimes against the public order and security, as it used to be under the old Code, but are under the title: "Crimes against the internal security of the State". Bacsó says in his article that the reason for considering the abuse of explosives and firearms as acts directed against the very existence of the State, is the present state of the class struggle. The same applies to abuse of passport and illegal or unauthorized border crossing.

It may be of interest to point out that the importance of crimes committed by the abuse of passport and illegal or unauthorized border crossing is stressed to such an extent that these were incorporated among crimes against the external security of the State in the second chapter and were placed immediately after treason and espionage.

Chapter III on crimes against the interest of national defense does not seem to carry provisions unusual or genuinely new on the subject. The penalties are stiffer, and the definitions are vaguer as well as broader than the old provisions on the same subject used to be, but these are characteristic of the whole new criminal law.

Chapter IV on crimes against the peace, war crimes, and crimes against the people deals with crimes new to the traditional European concept of criminal law. There can be no doubt that the concept of crimes against the peace of postwar legislation, which is incorporated in the Compilation, was conceived in the Nürnberg ideology of international criminal law. The same applies to the war crimes embraced in the Compilation.

The category of crimes against the people, enacted in 1945, was devised to punish everybody at the new regime's pleasure who held any position in the pre-war regime, or during the war. The provisions of the 1945 statutes were extended in the Compilation to persons who were undesirable to the communist regime by the simple device that the Ministry of Justice changed arbitrarily the expression "democratic" or "popular and democratic" of the original text to "people's democratic" in the text of the Compilation (as in Sec. 86(1)g of the Compilation) whereby a whole new category of persons, i.e., non-communists, were included in these provisions.

2. Crimes against the Government and Order of Administration

Part II, Crimes Against the Government and Order of Administration, is divided into the following chapters: Chap. V. Assault against the government and government organs, Chap. VI. Protection of state and

and official secrets, Chap. VII. Crimes committed in office, and Chap. VIII, Crimes against the public order and security, Chap. IX, Crimes against the administration of justice.

Chap. V, under the title "Assault against the authority and official persons", embraces offenses based upon old statutes. But it is noteworthy that the last title of this chapter brings within this category the unlawful disposal of goods under attachment (zártörés, Verstrickungsbruch). In the old Code this offense had its place among offenses against property, since by such action property rights were invaded. According to Bacsó such offenses are characterized not by the invasion of property rights, but by the evasion of an official order, that is, that the perpetrator by his act "opposes the government".

Chap. VI on the protection of the state and official secrets, and Chap. VII on crimes committed in office are based upon old statutes, and only the punishments and their limits are new. Changes occurred in the definition of the "public officer". Sec. 116 gives a lengthy definition which is based on the No. 1 Directive of the Supreme Court as made public in January 1953 (Jogtudományi Közlöny, No. 1) which reads:

> "... the term 'public officer' includes only 'officers', which capacity is determined either by the place of employment or by the duties assigned, and which covers only the following persons:
>
> The following are officers by virtue of place of employment: members of the Cabinet and administrative bodies as well as persons employed with these organizations or public transportation enterprises or acting under appointment of the same.
>
> By virtue of duties assigned, the term includes anyone who by reason of employment or appointment holds a leading or confidential position or is engaged in any activity of governmental character at any government agency, government enterprise, cooperative, or mass organization."

Although this judicial interpretation is restricting, in so far that it put an end to the impossible situation where a messenger boy of a social enterprise or a cafeteria cook of a plant could be considered "public officers", it is still very broad and tenders special protection to such a large circle of citizens that it is difficult to separate the "public officers" from the communist masses.

Crimes included in Chap. VIII are: falsification of public documents (Secs. 144-157), falsification of a landmark (Secs. 158-159), crimes concerning the consolidation of land tenure (tagosítás, Sec. 160), assault against private persons (Sec. 161), arson (Secs. 162-167), causing floods (Secs. 168-171), endangering transportation--damages dangerous to the public (Secs. 172-183), crimes against the public health (Secs. 184-187), quackery (Sec. 188), crime committed under intoxication or influence of alcohol (Sec. 189). All these offenses are based upon old statutes and the Compilation did not bring about changes except those of the rate punishment by operation of the General Part. But the grouping of these offenses is not only surprising but it is also an outstanding example of the new point of view, i.e., that the State is in the center of the criminal law, and the individual's rôle may only be that of the defendant.

Chap. IX, under the title "Crimes Against the Administration of Justice", includes: Bearing false witness (Secs. 190-201), malicious prosecution (Secs. 202-206), defamation before an authority (Secs. 207-216), escape of a prisoner (Secs. 217-22), unauthorized publication [of trials] (Sec. 223), crimes committed by attorneys (Secs. 224-226), and unlawful legal practice (Secs. 227-228).

All of the offenses included in this chapter, except that rleating to the escape of a prisoner, are based upon old laws. The escape of a prisoner was made a sui generis punishable act in 1950 (Edict No. 11 of 1950), before that it was punished by disciplinary means after the prisoner was captured. The grouping of the offenses in this chapter is another good example, if not evidence, of the diminishing part the individual's interest plays in criminal law. Everything is centered about the State and its interests are those which are protected.

C. Economic Crimes

Part III of the compilation bears the title "Crimes Against the People's Economy". This part deals only in the last three out of its seven chapters with offenses already known to the old Code. These three are Chapters XIV, XV, XVI, embracing foreign currency offenses, the crimes of counterfeiting money and postage stamps, and financial crimes, which mean tax and revenue violations. Besides these, the whole part is composed of statutes enacted or issued without exception after World War II, and is devoted to the protection of the soviet type economy of present day Hungary and contributes generously to the elimination of personal rights and private enterprises.

1. Statutory Crimes

Part III embraces the following provisions:

Chap. X on crimes against socialist property. This subject was originally regulated in 1950 (Edict No. 24 of 1950). The definition of socialist property is given in Sec. 229 of the Compilation according to which, under Art. 4 of the Constitution (Law No. XX of 1949) socialist property is the property of the State, public institutions, and cooperatives.

The theft, embezzlement, misappropriation, and damaging of socialist property shall be punished by imprisonment from six months to five years (Sec. 231). The punishment is increased to the death penalty if the damage is great and the perpetrator has a record (Sec. 232), or if the damage was done through robbery, setting the property on fire (which need not necessarily be arson) or blowing it up (Sec. 233).

Chapter XI concerns crimes against the economic plan. The subject was originally regulated in 1950 (Edict No. 4 of 1950), and, concerning agriculture, in 1952 (Decree No. 80 of 1952 (IX. 16) M.T.). The definitions of individual offenses are rather intricate but have the common characteristic that in order for an act to be called "criminal," the economic plan has to suffer. The definitions are so vague that nearly any economic activity may qualify as a crime against the plan. The first definition concerning this subject is so broad that it might very well be considered a so-called group definition which otherwise is non-existent in the Hungarian criminal law. This definition reads:

> Sec. 237. Whoever endangers the realization of the people's economic plan, or a detailed plan, by intentionally damaging a thing, or rendering it unfit for its proper use, or destroys it, commits a crime and shall be punished by imprisonment from one to five years.

There are definitions which in a certain degree are more definite than the above, but all of them suffer from such expressions as "endangers," "produces in a manner not corresponding to the needs existing or to be expected," "violates the requirements of reasonable production," etc. Since these and similar expressions are defined neither by statute nor by the courts, and have an equivocal meaning in the Hungarian language, the definition seems to be a <u>lettre de cachet</u> for the government to prosecute

anybody at its pleasure. The punishment for crimes against the plan range from one year's imprisonment to the death sentence (Secs. 238, 245); confiscation of property is an additional punishment (Sec. 248).

Chapter XII deals with crimes against labor discipline (see also the chapter on Labor Law). The subject was originally regulated by several statutes, prewar and postwar alike. The criminal acts embraced in this chapter originally belonged to a select group of offenses at the time of the compilation because more serious acts, as well as leaving the job arbitrarily and unjustified absence from the job, were considered dangerous to the plan, and, therefore, crimes against the plan (Supreme Court, No. B. IV. 80.208/1951--December 28, 1951). But after the introduction of the so-called "New Course," the Supreme Court reversed itself and the above-mentioned acts, formerly prosecuted as crimes against the economic plan, were not qualified anymore as such by the courts. The principle is stated by the Supreme Court as follows:

> 1. The unilateral termination of employment by leaving arbitrarily, or unexcused absence from work does not in itself constitute a crime. But if such conduct violates the duty of production, handling, use, registration, delivery, acquisition, or putting into circulation of a product or produce, and such conduct endangers the successful realization of the national economic plan, or a detailed part thereof, the crime defined by Sec. 240, Para. (1) of the Collection is consummated.
>
> 2. Criminal responsibility shall be established only when the act of endangering is real. The criminal responsibility for endangering the plan may not be established if the production lost through the violation of discipline may, under the circumstances of the establishment, be substituted without any difficulty within the ordinary course of labor organization.
>
> 3. If the crime had been committed under circumstances rendering considerable excuse for the conduct of the perpetrator, the unlimited mitigation of the punishment under Sec. 14, Para. (2) of the Compilation, or acquittal based

upon Sec. 56, may be justified [Leading Decision of the Supreme Court in Criminal Matters, No. VI (173)].

Violation of labor discipline by a member of a production cooperative cannot constitute a crime against the plan [Supreme Court, Decision in the Interest of Legality, No. B. 3197/1953 (185)].

The chapter embraces the following offenses:

(a) Violation of the provisions of a collective contract, which covers the violations of government regulations pertaining to collective contracts (maximum and minimum wages, working hours, etc.) as well as the violation of an already effective contract. These offenses are punishable by imprisonment not exceeding two years (Sec. 253; Decree No. 4194 of 1949 (VIII. 7) Korm., Sec. 26; and Decree No. 13 of 1950 (I. 15) M.T., Sec. 4).

(b) Violation of the rules of manpower recruitment, which covers duress, or giving false information concerning labor conditions and wages in the interest of recruiting manpower. These acts are punishable by imprisonment not exceeding two years (Sec. 254; Decree No. 40 of 1951 (II.11) M. T., Sec. 12).

(c) Enticement of laborers of a government enterprise is punishable by imprisonment not exceeding six months (Sec. 255; Decree No. 161 of 1951 (VIII. 28) M.T., Sec. 6 (1); see also Decree No. 18 of 1952 (III. 8) M.T., Sec. 12 (3), and Decree No. 35 of 1952 (V.4) M.T., Sec. 6).

(d) Crime against the interest of manpower management is defined as follows:

> Sec. 256. Whoever intentionally employs laborers in large numbers without workbooks, or a laborer who left his work arbitrarily or was removed by disciplinary action without the assistance of the employment office, shall be punished by imprisonment not exceeding five years (Decree No. 28 of 1952 (IV. 8) M.T., Sec. 4).

(e) Publicly dangerous efforts to avoid work are discussed in Secs. 257-264 of Law No. XXI, 1913. The incorporation of these offenses into the chapter "Crimes against the People's Economy" manifests the principle expressed in the Constitution (Law No. XX of 1949) that in the Hungarian People's Democracy everybody has to work. Efforts to avoid work and vagrancy are petty offenses punishable by confinement in a jail not exceeding eight days. An act will be a crime if it is repeated, if it damages the family of the offender, if the offender supports himself by earnings obtained through criminal acts, if he supports himself through gambling (Law No. XL of 1879, Sec. 37), or if he makes a prostitute support him. In the latter case, the punishment may be three years of imprisonment. It is difficult to detect the implications which make this case a crime against the "people's economy."

Chapter XIII deals with crimes of profiteering and crimes against the public supply. Originally the subject was regulated by various statutes of which Decree No. 8800 of 1946 (VII. 28) M.E., and Decree No. 80 of 1952 (IX. 16) M.T., regarding agriculture, may be considered fundamental.

Rigid price control is maintained by means of criminal law. The most important and most common price control violations are the following: (a) offer to buy above the ceiling price and the acceptance of such an offer; (b) demanding a price exceeding an equitable profit (anything in excess of the permissable profit is considered inequitable); (c) price increase by an unnecessary intermediate commercial transaction--instead of selling to the consumer directly; (d) restriction of output or sale; (e) fraudulent misrepresentation or concealment of material facts intended to mislead the price control authorities; (f) trading without a license.

The punishment for violation of a provision on price control is imprisonment from three to ten years. Any merchandise, goods or products

involved in the crime must be confiscated. The confiscation shall be decreed even if the object is not owned by the defendant but by a third party--not a party to the record--who had actual or constructive knowledge of the crime committed (A. Bedo, "Price Control and Regulation," Highlights, Washington, D. C., Library of Congress, April 1954, Vol. II, No. 4, pp. 102-105).

The same applies to the rent of apartments and other premises; furthermore, to transportation of merchandise as well as to labor and other services rendered by an industrial or commercial enterprise (Sec. 268; Decree No. 8800 of 1946 (VII. 28) M.E., Sec. 4).

It seems that crimes against public supply defined in Secs. 269 and 270 have a distinct role in restricting the individual personally, as well as his initiative. The provisions demand full conformity with the economic ideas of Communism. The Collection states:

> Sec. 269. A person commits a crime against the interest of public supply who
>
> (a) fails to fulfill his legally prescribed duties concerning the compulsory production of produce (livestock, animal or vegetable products) or products (raw material, half-finished products, finished products), or does not produce to the extent or by the method prescribed by statute;
>
> (b) expends, consumes, destroys or otherwise renders unusable, or does not preserve in a usable state the supply of produce or products under his control in violation of the provisions of law or the rules of orderly economic management;
>
> (c) conceals the supply of produce or products by failing to make a report prescribed by authorities, or making a false or incomplete report;
>
> (d) conceals, hides, disposes of or otherwise withholds from the public supply or the management of materiel, in violation of a statute, the supply of produce or products attached for the purpose of public supply under the disposition of the management of materiel, or fails to comply with the official notice concerning the transfer or delivery

of the supply;

(e) withholds from marketing the supply of produce and products under his control in violation of a statutory provision, or puts it into circulation in a manner, quantity, or for a purpose other than provided for by the statute, or violates or evades the regulations based upon statutory provisions concerning their transportation;

(f) violates his legally prescribed duties of compulsory delivery of produce and products;

(g) transports without an official permit any produce or product abroad.

Sec. 270. A person commits a crime against the public supply who

(a) purchases--for his own use--produce or products contrary to a statutory provision, or in a quantity prohibited by a statute, for a price in excess of the official ceiling price;

(b) procures a right (official coupon, assignment) for the purchase, transportation or consumption of produce or products through false registration, concealing the truth or other fraudulent means, or speculates with such right (official coupon, assignment);

(c) falsifies a public document or alters the content of an original public document (official coupon, assignment) in order to prove the right to purchase, transport or consume produce or products as well as puts into circulation, purchases or uses a public document (official coupon, assignment) falsified or its content altered by any other person, provided he knows that the document is false or altered.

The punishment of these offenses is the same as that for the violations of price control, and the confiscation may extend to the whole property of the perpetrator (Sec. 275 (1).

A civil servant who commits a crime against the interest of the public supply or the management of materiel in the course of his official duties may be punished by death (Sec. 277).

The following provision may throw light on the impairment of free thought and speech in present-day Hungary:

> Sec. 278. (1) A person commits a crime and shall be punished by imprisonment not exceeding five years, who in the presence of two or more persons makes such an untrue statement, or presents the truth in such a manner that the purchasing power or the market value of the Hungarian forint might be impaired, or which might shake the confidence in same.

Neither one of the last three chapters (Foreign Currency Violation, Counterfeiting Money and Postal Stamps, and Financial Crimes) contains anything extraordinary, or provisions out of line with the customary concept and organization of criminal law.

2. Confiscation

The above material concerns crimes which, one way or another, are related to economic activities. No matter how much we might disapprove of such interference in economic life, we have to recognize the fact that these offenses have--at least under the Communist economic system--certain economic aspects. But economic disadvantages are also attached to other offenses besides those embraced in Part III of the Compilation. The technique of ruining someone economically is, in the system of the present-day Hungarian criminal law, a punishment, which, although not new, has been extended so immensely that its function is certainly different from that of the old one. This punishment is confiscation.

Section 37 of the new General Part of the Criminal Code contains the rules of confiscation and concerns only items of property which, one way or the other, are involved in a criminal act. But Section 38 presents an entirely different picture. It reads:

> Sec. 38. (1) Confiscation may take place in cases for which the statute explicitly provides.
>
> (2) The perpetrator's whole property, or a definite part, percentage, or individually defined items thereof, may be confiscated.

(3) The confiscation may also be extended to such items of the perpetrator's property which were conveyed by the perpetrator to others in order to defraud the public authorities, provided the acquisitor knew or should have known the purpose of the conveyance; similarly, also, upon such items of his property which were gratuitously conveyed by the perpetrator after the crime had been committed.

"Confiscation may be applied in cases for which a statute explicitly provides." The statute provides in the following cases for confiscation:

(a) Crimes against the democratic order of the State (BHO-11, Law No. VII of 1946, Sec. 10);

(b) Crimes against cooperatives (BHO-32, Decree No. 2560 of 1949 (III.19) Korm., Sec. 3);

(c) Treason (BHO-46, Edict No. 39 of 1950, Sec. 8);

(d) Crimes against the national defense (BHO-78 (3), Edict No. 39 of 1950, Sec. 8);

(e) Crimes against the peace (BHO-80, Law No. V of 1950, Sec. 1);

(f) War crimes and crimes against the people (BHO-91, Decree No. 1440 of 1945 (V.1) M.E., Sec. 1, and Law No. XXXIV of 1947, Sec. 1);

(g) Violation of State and official secrets (BHO-112, 113, Edict No. 21 of 1951, Secs. 6,7);

(h) Crimes endangering the national economy (BHO-247, Edict No. 4 of 1950, Sec. 12);

(i) Crimes against the economic plan (BHO-248, Edict No. 4 of 1950, Sec. 12);

(j) Crimes of profiteering and crimes against public supply (BHO-274, 275, Decree No. 8800 of 1946 (VII.28 M.T., Secs. 11, 12); and

(k) Violation of foreign currency regulations (Edict No. 30 of 1950, Secs. 64, 66).

This list includes eleven offenses of which only four ("h"-"k") are of economic character. The other six are typical political crimes, some of which include a whole series of individual offenses of such variety that anyone alive may be guilty.

It seems to be beyond doubt that these confiscations have neither "corrective" purpose (which the Communists constantly boast is one of the great achievements of "socialist law" over "capitalist" law) nor justified punitive end. The sole reason for this kind of confiscation is the destruction of the individual's economic standing, which thereby renders him harmless in the economic "revolution."

D. Crimes against Family, Juveniles and Sex Morality

Part IV, Crimes against Family, Juveniles, and Sex Morality, consists of nothing deserving special attention. The provisions of the law are rather conservative and no court practice contradicting traditional principles is discoverable. The most important questions concerning juveniles are regulated separately in Edict No. 34 of 1951 which is incorporated in the Compilation. This Edict has only one remarkable feature, unknown to the traditional legal concept, and that is the right conferred upon the local soviets to supervise the juveniles (Sec. 38).

E. Crimes against the Person and Property of Citizens

Part V, Crimes against the Person and Property of Citizens, is a rather conservative part of contemporary Hungarian criminal law. This part is composed solely of prewar provisions which were left mostly intact by postwar legislation. It is rather unusual to deal with crimes against the person (murder, homicide, assault and battery, etc.) and crimes against the property of citizens (theft, misappropriation, trespass, etc.) under the same

title, but this may be well understood if we look upon the whole construction of the Compilation and realize how sharply acts concerning the State, the Communist Party in any way, and acts concerning only the individual citizen are differentiated.

V. Petty Offenses

When the new General Part of the Criminal Code of 1950 abolished the threefold division of punishable acts--felony, misdemeanor, violation--and united the first two into one category under a name which is translated in this paper by the word "crime," and kept the violations of smaller importance apart under a name which is translated here as "petty offense," then the new regulation of the "administration of justice" in matters of petty offenses was inevitable.

After a number of regulations from 1950 onward, the Hungarian Government finally issued Edict No. 16 of 1953, by which an entirely new foundation was laid for the administration of justice in the matter of petty offenses.

This Edict offered three provisions of basic importance. First, it abolished the judicial, or quasi-judicial authority of the police in matters of petty offenses, and divided this jurisdiction between the executive councils of the local soviets and the courts; second, it deprived the executive councils of the local soviets of their rights to impose jail sentences, banishment from a place, and prohibition from the exercise of a profession, and transferred this jurisdiction to the county courts; and third, created a new institution, a procedure in which fines may be imposed for violation of administrative statutes.

By this rearrangement all petty offenses calling for punishment exceeding one month's confinement were transferred to the jurisdiction of

county courts, and all offenses which were under the jurisdiction of police courts and called for a punishment not exceeding one month's confinement or fine as the principal punishment, together with the matter of administrative violations were transferred to the jurisdiction of the executive councils of the local soviets.

The jurisdiction of the executive councils of the local soviets was considerably curtailed in spite of the large number of cases newly referred to them. The Edict (Sec. 5) provides that the executive council may impose only fines as the principal punishment, and if it is found that the social danger involved in the case is so grave that it calls for confinement, then the case must be transferred to the county court. In connection with this, the Edict provides that in cases in which the old statutes provided for confinement not exceeding one month, fines must be imposed instead of confinement.

The maximum amount of fine which may be imposed by the executive council of the local soviet has been set at 2000 forint.

Appeal is allowed in both cases, but it is kept within the same branch of the government where the proceedings were initiated. From the county court, the appeal may be taken to the district court, and from the executive council of the local soviet to the executive council of the local soviet of the second instance. What this expression means could not be clarified from the material available. Does it mean a set-up of soviets of appellate jurisdiction or is it a local soviet to which such power is delegated ad hoc in an individual case? The significance of the provision is in the fact that no appeal may be made from local soviets to courts.

Some quasi-judicial functions were retained by the police in cases of traffic and registration of address violations, with the right to impose a fine not exceeding 100 forint (circa $8.00).

The exceptionally large number of petty offenses which came within the jurisdiction of the executive councils of the local soviets renders the value of the abolition of the police courts illusory. No matter how much one wishes to see the authority of the police curtailed, one cannot forget that both police and soviets are Party organs, and it is difficult to see any significance in the shifting of the matter of petty offenses from one place to another.

In the hands of the Communist regime criminal law, more than anything else, lost its standing among the old disciplines of law, and sank to the status of a mere tool in the hands of the authority.

PART III

NEW SUBSTANTIVE CRIMINAL LAW

Poland
By Alfons Sergot

I. Sovietization of the Fundamental Principles of the System of Polish Penal Law. (General Part of the Code of 1932.)

Polish criminal law is an exclusively statutory system. It is constituted of two basically different parts. One is the Polish Criminal Code of 1932 which provides the central piece of legislation of Polish Penal law; the second part includes a large number of special laws issued both before September 1939 and after 1944. In addition, numerous provisions in the laws on public administration, public finances, economy, etc. provide punishment for their violation.

The Polish Criminal Code which is still in force was issued in 1932 in order to unify the penal system in Poland, which was inherited from the three Powers which had partitioned Poland and introduced, during their domination, in each part of the Polish territories a different legal system.

The Polish Criminal Code was the result of eleven years' work of the Polish Codification Commission and, as Dr. V. Gsovski puts it, "One may say that everything has been done in an effort to comply with the counsel that modern science could render the legislator."

The legislators of the Code avoided giving a substantive definition of "crime" or "offense." Article 1 of the Code says:

> A person is criminally responsible for an act committed at a time when such an act is prohibited under penalty of the law then in force,

which is a reference to purely formal criteria.

For this reason, it has been easy for the new rulers of the country to put new concepts into the formally retained penal system. The practice of courts, including the decisions and general rules issued by the Supreme Court and, finally, new compendiums and commentaries written and edited by leading Communist jurists in Poland have developed basic definitions of crime which are officially binding "under the new conditions in Poland" and are used as directives for the application of "old provisions." One of them is the definition of crime as it is given in an officially recognized manual for college students in law ("The Penal Law in People's Poland," L. Andrejew, L. Lernell, J. Sawicki), which reads:

> An offense is every act of man (viz., action or omission) socially dangerous; that is, dangerous to the working masses of People's Poland during the intermediate period leading towards socialism; an illegal act, based upon guilt and prohibited under the threat of penalty by the law in force when it was committed.

This definition--clear as it is in its formulation from the class point of view of the rulers behind the Iron Curtain--agrees

completely with the pertinent principles of the Constitution of 1952, now in force:

> Art. 3. The Polish People's Republic:
>
> (1) Safeguards the achievements of the Polish working people of town and country and protects their power and freedom against forces hostile to the people;
>
> *****
>
> (4) Limits, ousts, and abolishes those classes of society which live by exploiting the workers and peasants.
>
> Art. 4.
>
> (1) The laws of the Polish People's Republic express the interests and the will of the working people.

Prewar criminal law, in particular the Polish Criminal Code of 1932, is, however, only formally in force. No laws in conflict with the "interests and the will of the working people" may be even formally considered as being still in force. Another manual edited by the same authors quoted above puts the problem this way:

> Among the regulations of penal law issued before September 1939, there are also those which, although not expressly abrogated, are in conflict with the social and political principles of the Polish People's Republic and thus, considering the character of our State, cannot be considered as being in force. Among these is Article 172 [of the Polish Criminal Code of 1932] which provided punishment for so-called blasphemy against God.

This provision--really out of force since 1945--was explicitly abolished by law in 1949 (D.U. 1949 No. 63, Law No. 334).

> Those legal regulations, issued before September 1939 but having been in force up to now, have changed their class substance under the new socio-economic conditions. ...Thus, the function of the legal regulations in force, although issued before September 1939, is the same as the function of regulations issued by the organs of [People's] Poland after the liberation....In this respect,

> what Joseph Stalin said must be born in mind: 'Whenever certain laws of the old system can be used in the struggle for the new order, then the old legislation should be fully utilized.'

According to Article 1, the Polish Criminal Code recognizes in full the principle nullum crimen, nulla poena sine lege. This principle has been formally retained in force in the Polish People's Republic.

The Polish Supreme Court openly condemned any "formalistic" interpretation of the law--particularly of the Polish Criminal Code--and stated in an opinion given at the request of the Minister of Justice that:

> Construction of laws must not obstruct or hamper the defense of the socialist economic system but should serve its purpose....It must take into consideration the purpose of the law; namely, socialist legality, the protection of the interest of the workers, of the peasant masses, and of the working intelligentsia. Interpretation of the law should not be concerned with its literal meaning, but should aim at the realization of its social purpose and take into consideration that it is an expression of the will of the broad social masses.

The principle of the individualistic approach to the problem of punishment has been incorporated into Articles 15 and 54 of the Code. "Circumstances which call for a heavier punishment shall be taken into consideration only when the offender knew or should have known of them"; and "consequences of a criminal act which invoke a heavier penalty shall be taken into consideration only when the offender foresaw or should have foreseen them" (Art. 15).

When imposing a penalty the court shall take into consideration the motives and behavior of the offender, his relation to the person injured, the degree of mental development and the character of the offender,

his past life, and his behavior after committing the offense (Art. 54).

The principles of Article 54 were still being fully applied in 1947 when the Supreme Court stated in a criminal case:

> According to Article 54 the value of the damage caused by the offense may not influence the imposition of punishment. The Criminal Code transfers the center of gravity to the internal sphere of the offender and the punishment shall correspond not to the value of the damage but to the moral value and the social harmfulness of the culprit /Zbior Orzeczen Sadu Najwyszego No. 99/1947/.

But this aspect was soon changed. In the meantime (in 1949), Polish Criminal Procedure had been partly reformed and in connection with these amended rules, the Supreme Court, in its decision of January 23, 1950 decreed that:

> Punishment shall be determined not only according to the provisions of Article 54 of the Criminal Code which establishes the principles of subjectivism and individualization, but also according to objective criteria: the social harmfulness of the act for which the perpetrator is going to be punished. The judicial determination of punishment shall be the result of considering the subjective criteria concerning the person of the perpetrator as well as the objective criterion--the social harmfulness of the criminal act, under the new constitutional conditions of the People's State.

Giving the reasons for the above decision, the Supreme Court also emphasized that the imposed punishment must in every individual case meet "the demands caused by the necessity of protecting the new social order in the People's State."

Among educational measures provided by the Code to be applied under some conditions to offenders sentenced to confinement is the conditional release. It could be applied to an offender who had served not less than two-thirds of the penalty, whose conduct during the time

of serving the sentence, and whose personal circumstances would justify the opinion that he would not commit a new offense. The released convict might be placed under supervision for a period of probation, not less than one year and not more than 5 years. The conditional release should be revoked if the convicted person committed, during the period of probation, "a new offense with the same motives or of the same class as the prior offense" or "another offense" as mentioned above, "in which he evaded supervision or misconducted himself." "If the revocation did not occur within 3 months after the end of the period of probation, the penalty should be considered as served." The Communist rulers of postwar Poland considered these provisions too individualistic and instrumental in establishing a bourgeois policy.

On the other hand the Communists considered it useful to also introduce into this educational measure the element of labor. Thus, by a special law of October 1951, the provisions of Articles 65-68 of the Criminal Code of 1932 were superseded by new detailed regulations based upon the Soviet pattern. According to these new rules, "a convicted person serving his penalty in confinement could be released and his penalty conditionally remitted, in accordance with the recommendation of the prison authority, provided his conduct and conscientious attitude towards work justified the hope that after his release he would live as an honest working man. The convict's hope of conditional release is used as a method of obtaining more work from a convict during his imprisonment. "If the convict has distinguised himself by particularly conscientious and efficient work, every day of such conscientious work shall be counted double towards his conditional release; in such a case, the convict shall

be released conditionally not later than the date on which the remaining part of the penalty to be served equals the period during which he distinguished himself by his labor."

Conditional release shall not be granted before the convict has served one half of the imposed confinement and, when sentenced to confinement for life, not before he has served 10 years. Excluded from conditional release are persons convicted of espionage, terroristic assault, or sabotage.

A convict who has been released conditionally is under mandatory probation and, when ordered to, shall report every change of address to the proper public prosecutor. The court may revoke a conditional release if the convict, during the period of probation, committed a new offense or did not live honestly as a working man, or failed to report the change of his address if ordered to do so.

In cases of confinement imposed for one year or less, conditional release may be granted by the Attorney General of the Republic or by an authorized agency; in other cases, of more than one year's confinement, the release may be granted only by the proper provincial court upon a motion of the public prosecutor.

A. Measures of Security

The basic principle of social defense of the Polish Code of 1932 has been expressed therein in a special system of "measures of security" provided for in Chapter XII.

Among other measures, in cases concerned with aversion to work, the court may direct that after serving the sentence the offender shall be placed in a workhouse for a period of 5 years (Article 83, Sec. 1).

After one year, the court may order the release of the convict (Sec. 2). This provision was never fully applied before the outbreak of the last war. However, it has been discussed and condemned by Communist jurists as an apparent instrument of the prewar Polish regime to oppress and terrorize progressive political elements and the discontented masses in Poland. Nevertheless, this institution was introduced in Poland by the Communist regime in a slightly different form as a separate punishment applied by the "Special Board" against "class enemies" of the working masses in order "to combat abuses and acts harmful to the national economy." (See infra.)

Article 84 of the Criminal Code provides that "offenders who have repeated an offense three times or who are professional or habitual offenders may be ordered by the court to be placed in an institution for incorrigibles if they are considered dangerous to the legal order." Such confinement shall last at least 5 years; "after each period of 5 years the court shall decide whether the confinement of the convict in the institution for another five-year period is necessary."

The Communist regime has considered this institution in open conflict with the principles of criminal policy in a Socialist or People's State. But it was never formally abolished.

In a case where the court of first resort sentenced a professional criminal to be placed in an institution for incorrigibles, the Supreme Court ruled (April 8, 1952) as follows:

> The placing of convicts in an institution for incorrigibles is basically contrary to principles of socialist criminal law. This institution originated in the so-called positivistic school of criminal law, a school which expresses imperialistic interests and

which, with its theses concerning preventive measures, serves the cause of fascist terror by means, among others, of concentration camps. This institution shall by no means be applied in Poland because it is in open conflict with the principles of people's legality and the paramount thesis that in a People's State no incorrigible criminals exist. The People's State makes it fully feasible to rehabilitate everyone by means of re-education of the offender within the creative efforts of the nation after the offender has served his sentence.

II. Crimes and Offenses of the 1932 Code in the Practice of the Communist Courts

The Polish Code consists of 295 articles, 92 of which constitute the General Part and the rest the Special Part. The General Part lays down directions for the application of the provisions contained in the Special Part and also in all additional laws providing for the punishment of offenses other than those defined in the Code. These additional laws are those dealing with industrial property, unfair competition, espionage, economic offenses, etc.

On the other hand the Polish Criminal Code "tried to avoid fixing by law the degrees of a given crime punishable more severely or more mildly; instead, it affords a broad enough definition to leave this matter to the discretion of the judge" (Gsovski, "New Codes in the New Slavic Countries," 1934). This "discretion" left to the judge must be exercised, however, according to the General Part of the Code dealing with the circumstances of the offense, "the motives and the behavior of the offender," other objective elements of the act, and particularly subjective elements concerning the offender.

The individualistic approach of the Polish Code has been criticized by Communist jurists and in court practice in Poland as being in open conflict with the principles of socialist law and the interests of the working masses.

The Supreme Court issued the following ruling binding all

courts in the application of the law (January 23, 1950).

> The amended Code of Criminal Procedure states that punishment shall be determined not only according to the provisions of Article 54 of the Criminal Code which establishes the principles of subjectivism and individualism, but also according to the objective criterion: the social harm caused by the act for which the perpetrator is going to be punished. The juridical determination of punishment shall be the result of considering the subjective criteria concerning the person of the perpetrator as well as the objective criterion: the social harmfulness of the criminal act under the new constitutional conditions of the People's State.

The Supreme Court also emphasized that the imposed punishment must in every individual case meet "the demands caused by the necessity of protecting the new social order in the People's State."

An additional illustration of the treatment the provisions of the 1932 Code received from the hands of the Communist courts in Poland and the impact of the new concepts included in the new laws upon the provisions of the Code is court practice in cases involving crimes of public officials.

The Polish Penal Code of 1932 has a separate chapter dealing with offenses of officials, covering various specific offenses such as abuse of power (Sec. 286), disclosure of official secrets (Sec. 289), receiving material or personal profit (Sec. 290), etc. The Code also provided that for any offense committed by an official in the performance of his duty or in connection therewith, the court may impose a penalty higher by one-half than the highest penalty fixed for such offense (Sec. 291). Under the Code public officials are not only those in the service of the central or local government, but also persons charged with duties connected with the affairs of the central or local government and

employees of any public institution (Sec. 292).

As soon as the Code was put into practice, a controversy arose as to the basic concept of a "public official" and what constitutes his offense. Polish courts tended to a restrictive interpretation of these two basic concepts. The Supreme Court considered as "public officials" only those persons who are in some way connected with public administration. Thus, for instance, the mere fact that a person is employed by the government is not enough. In addition, such a person must be charged with public functions involving what is known in European jurisprudence as imperium, and may be rendered as "exercise of sovereign power." Persons employed in government economic enterprises; e.g., members of the administration of national forests or farms, were not considered public officials in this case. A second limitation was that all actions of public officials within their statutory discretionary powers could not be subject to prosecution under the provisions of the Code relating to the offenses of public officials.

After 1945 the continued expansion of government control over various fields of the national economy, nationalization of trade and industry, and the collectivization of agriculture, artisans, and professions created an entirely different situation. The administration of economic resources, and not only economic planning but also direct business management of enterprises, became one of the main functions of government. All this found its expression in various enactments and in a totally new attitude regarding the two problems of who is an official and what constitutes an offense by an official, problems which were restrictively interpreted in prewar Poland. The Small Penal Code of 1946 provided

(Sec. 15) a higher penalty for certain offenses if committed by a member of Parliament, a local national council, an official of the central or local government, a member of the armed forces, a representative of a trade union or a political or social organization. Sec. 46 provided that employees of central or local government enterprises in which the government has financial interests or which are under its administration, as well as employees of organizations in charge of functions delegated to them by the central or local government, shall be considered as officials in the meaning of Section 292 of the Penal Code of 1932. In addition, managers and employees of cooperatives and audit unions also came under penal legislation applicable to officials.

In another decision which laid down the broad lines of application of the penal provisions to offenses committed by public officials, the Supreme Court stated that:

> All offenses, and in particular those committed by officials, must be considered in connection with the nature, spirit, and direction of the present social and political organization of the State, and the present political reality.
>
> It is impossible, therefore, to consider offenses by officials from a purely formal and abstract standpoint, in view of the fact that various provisions regulating the scope of their powers, and providing restriction of their interference with the rights of the citizens, have lost validity (Supreme Court Reports, Penal Div., 1949, Vol. 1, p. 78).

The new character of the functions of the public official was stated by the Polish Supreme Court in another case in 1951 as follows:

> The extension of the provisions of Sec. 46 of the Small Penal Code to employees of the socialized branch of the national economy...in the first place aims at the proper transformation of financial

> responsibility for damages resulting from the administration of government property into a personal responsibility (which does not exclude financial responsibility).
>
> In order to arrive at a proper appreciation of charges brought against a government official occupying an economic post connected with his managerial activity, and in order to determine his responsibility, it is necessary to review his actions or omissions from the point of view of his duties as a "good manager"; this review should not be limited strictly to those omissions or activities separately from the sum total of the performance of his duties....An official in such a post ought to take, on his own initiative, all measures to prevent loss or destruction of government property under his care, irrespective of whether his superior has issued proper regulations....Vigilance of that kind is obligatory in the system of a planned socialist economy, in which every public official ought to consider himself as a co-manager of public property (Supreme Court Reports, Penal Div. (1951), Case No. 19).

The rulings of the Polish Supreme Court in this case may be reduced to two principles. One is that a manager of a government enterprise is punished for his lack of success as a businessman. The other is that his conviction stands in no relation whatsoever to the violation of a legal rule, but follows his lack of vigilance and foresight. Normally an unsuccessful manager would merit discharge and/or financial responsibility, but not a criminal charge.

Once the concept of a public official was extended, the question arose what jobs or kinds of employment would be involved. The tendency was to extend this responsibility to simple jobs and occupations:

> All persons employed in a government or government controlled enterprise, and, therefore, also workers at the workbench, must be considered as government officials (Case No. K.1290/48, Panstwo Prawo, 1952, No. 11, p. 636).

In another decision the Supreme Court stated:

> A milkmaid on a government farm may be prosecuted under Section 286 of the Penal Code, as Section 46 of the Little Penal Code extended the application of penal provisions applicable to officials to the functionaries of government enterprises (ibid., p. 639, Case No. K. 1344/49).

All offenses of public officials defined in the Penal Code of 1932 as in force until 1939 were punishable as a rule if committed with criminal intent. In some cases expressly provided for, minor crimes were punished if they resulted from negligence. But in such cases the punishment was substantially milder.

The postwar decisions of the Supreme Court tend to make officials guilty also in cases of lack of foresight and negligence. In a decision describing the duties of a good manager, the court indicated that lack of vigilance of the accused provided grounds for his punishment. In another case the Supreme Court showed an even more radical departure from the principles of the Code. In this case, a tug collided with a ship which it was maneuvering into the harbor. The tug was commanded by a newly promoted skipper who gained the new post as a result of what the Court calls "social promotion," which is the stock phrase for promotion for political services. The skipper was convicted under Section 286 (Subsection 1) of the Penal Code, and the Supreme Court upheld the conviction. The harbor at the time of collision was full of ice floes, and the Supreme Court stated:

> The accused, overestimating the resistance of the ice, ordered higher speed than required, with the result that his order to reverse the speed came too late, at the moment when SS "Arabert" was some 40 to 50 meters away (Panstwo i Prawo, 1950, No. 11, p. 650, Case No. K.1418/50).

In another case the Supreme Court rejected an appeal from a lower court conviction of a manager of a cooperative whose failure to keep proper books resulted in chaos in the affairs of the cooperative. The defendant claimed that he was not properly trained and had no idea how to keep books. The Court stated that this fact alone constitutes no defense (ibid. 1950, p. 654, Case No. K.287/51). In both cases the lack of proper training on the part of the accused was considered to constitute his guilt.

This line was constantly maintained in the following years. In 1951, a manager of a cooperative meat factory was found guilty under Section 286 (Subsection 2) of the Code because two other employees of the factory under his management were processing meats from illicit slaughter, although no evidence was produced that the accused had knowledge of their doings (Panstwo i Prawo 1953, No. 10, p. 568, Case No. I.K.1690/51/I).

In another case the Supreme Court upheld a conviction of a forester who neglected his duties owing to constant drunkenness. His negligence led to several thefts in his section of a State forest. The accused was sentenced also for abuse of power under Section 286 (Subsection 1) of the Code, which required criminal intent (Panstwo i Prawo No. 1, 1953, p. 148, Case No. I.K.1946/51). In all four cases of abuse of power reported above, conviction was upheld.

The lengths to which the interpretation of "detriment to public interest" is pushed is illustrated by the decision of the Polish Supreme Court (June 23, 1954) in which a person was found guilty of a crime although no actual damage to public interest of any sort resulted.

As the Court stated:

> An officer of a comptrolling or auditing office who drinks alcoholic beverages together with persons belonging to the personnel of the establishment when performing his duties in the audited establishment, acts to the detriment of public interest by weakening labor discipline, demoralizing the personnel and creating conditions facilitating the occurrence of abuses.

The main difficulty which the Communist lawyers encountered in adapting the Polish Criminal Code to the needs of the Communist administration of justice is the precision of the definitions of the Code, particularly in its Special Part where it defines the individual offenses. The Polish Communist leaders and jurists of the Communist regime complained that the definitions of the Code are too precise, and thus too difficult to understand, for the average man. The correct application of the Code requires a well-educated, precisely thinking judge. This is also, to a great extent, the reason why the Communist regime in Poland, while retaining in force the Code of 1932 until the time of the enactment of a new Criminal Code, had to resort to new legislation more adjusted to the new constitutional, economic and social order.

III. Counter-revolutionary Crimes and Crimes against the New Order

The Penal Code of 1932 and prewar Polish legislation were inadequate to meet the needs of penal repression under the Communist regime in Poland as it was struggling for power. A number of decrees were enacted which dealt with various dangers threatening the Communist regime, and opposed the new order.

> In all People's Democracies new penal provisions; namely, special laws or new penal codes, were issued, which have equipped the working masses with arms for the struggle--in the first place, against feudal vestiges, the agents of imperialism, and the counter-revolutionary resistance of the defeated classes.
>
> After the inauguration of socialism, numerous provisions were issued aiming, above all, at the protection of the people's power against acts of terror and against efforts to undermine this power.

Penal laws of the first group are now almost entirely repealed, while those of the second, very often amended and extended, are still in force. To the first group belong, among others, the Decree of October, 1944 on the Protection of the State which aimed at protecting government authorities and Soviet troops. It punished with death or imprisonment both the perpetrators and those who failed to inform the authorities in due time. In this group also belonged the Decree of August 24, 1944 which declared dissolved all Polish secret military organizations active in the "liberated" Polish territories.

To the second group of postwar penal legislation which is still in force belongs a special law issued in August, 1944 "on the punishment of Fascist-Hitlerite criminals guilty of murder and torture of civilians, war prisoners, and traitors to the Polish Nation." It was superseded by the Decree of February 16, 1945 and another Decree of December 10, 1946 .

In this form this law is still in force. According to its provisions, the following persons shall be punished by death:

> Whoever aided the authorities of the German State or another State allied with it; participated in killing persons (civilians, military personnel, or prisoners of war); acted to the detriment of persons sought after or persecuted by the German occupation authorities for political, national, religious, or racial reasons by informing on them or apprehending them. Any person who aided the German occupation authorities ...to the detriment of the Polish State, of a Polish corporation, of a civilian, or a military person, or a prisoner of war shall be punished by imprisonment for a period not less than 3 years, or for life, or by death.

Taking advantage of the conditions caused by war to extort benefits from persons threatened by persecution or any other action to the detriment of persons sought after or persecuted by the occupation authorities shall be punished by imprisonment for a period not less than 3 years or for life.

Participation "in criminal organizations...or in political organizations acting in the interest of the German State" shall be punished by imprisonment for not less than 3 years, or for life, or by death.

A Decree of October 20, 1949 supplemented Article 289 of the Criminal Code providing that "an official who discloses any official secret to the detriment of the State shall be punished by imprisonment up to 5 years." Acting in the same manner in order to obtain profit is punishable by imprisonment up to 10 years.

The preamble to the Decree states that the law aims "at preventing the dissemination of information, which should be kept secret in the interest of People's Poland; the transmission of such information to centers hostile to the People's Poland; the use of this information

to the detriment of People's Poland.

The Small Criminal Code

On November 16, 1945, a Decree was passed on Criminal Acts Particularly Dangerous during the Period of National Reconstruction. It was superseded by a new Decree of June 13, 1946 under the same title, which supplemented the Criminal Code of 1932 and embodied a number of new provisions outside the Criminal Code. This Decree is known as the Small Criminal Code, and provides that as long as the provisions of the Small Criminal Code remain in force, the provisions of the Criminal Code of 1932 shall be suspended in so far as they deal with matters regulated by this Decree of June 13, 1946.

The substantive law in this Decree is divided into four chapters, which deal with the security of the State, the protection of public order, the protection of the national economy, and with certain specific regulations.

Chapter 1, on the Security of the State, deals with acts termed the most dangerous crimes aimed against the basic national and social order of the State. The purpose of these provisions is declared to be the protection of internal security. The Decree claims to safeguard normal conditions for the functioning of the army, of government agencies and social organizations of a public character, and to secure normal operation of the principal enterprises of public services or transportation. A similar protection is provided for members of the Legislative Assembly, members of the people's councils, officials of public administration, members of trade unions and of political or social organizations of a national character. This protection is afforded as long as the members of the above bodies are acting in their official capacity.

Particular provisions of this chapter deal with espionage, acts related to it, violent assault on units of the Polish or allied military forces, incitement to crimes, sabotage jeopardizing national defense or the functioning of public installations, the manufacture, collection, or storing of arms, ammunition, conspiracy and organization of clandestine military forces, etc.

Many of these provisions replaced the provisions of the 1932 Criminal Code or special laws.

Chapter 2, on the Protection of Public Order, contains provisions serving chiefly the purpose of securing the normal functioning of the people's councils, the enforcement of land reform, and the fulfillment of levies in kind assessed on land and their collection.

Other provisions in this chapter deal with measures against spreading false rumors, which may cause actual harm to the interest of the State or undermine the authority of the government and its agencies. Still other provisions have the purpose of combating all Fascist and similar activities and of suppressing all acts of an anti-racial, anti-national, or anti-denominational character. Severe punishment is provided for any discrimination against particular groups or individuals in connection with their racial, national, or denominational membership.

Chapter 3 contains provisions on special protection of the national economy. Enterprises owned by the State or managed by State corporations or by cooperatives are protected. The declared object of this protection is to achieve the proper operation of economic enterprises. The protection extends not only to the safeguarding of production, but covers also the safeguarding of a planned distribution of goods among the population. Whoever, having been entrusted with functions to distribute

goods according to a plan, and then acts to the detriment of public interest, is also liable to punishment.

A separate provision deals with the protection of workers and provides for the punishment of managers or employers for a malicious or continuous failure to comply with legal or common duties to provide due care in the furtherance of the employees' welfare. Penalties are also provided for stealing objects left without proper care due to the war or another extraordinary event.

Chapter 4 deals with certain specific regulations pertaining to offenses committed by officials. In consequence of the change of the economic system of the country, the number of State-owned enterprises and of enterprises remaining under the management of public administration increased immensely. This, in turn, extended the range of persons subject to criminal liability for crimes committed while acting in an official capacity. It now includes officials of enterprises owned by the State and officials of enterprises supported financially by the State. The range also embraces officials of organizations entrusted with functions within the scope of public administration.

New and somewhat strange measures have been introduced with the purpose of suppressing bribery. The Criminal Code of 1932 provides in all instances for punishment of both parties, the party giving and the party receiving the bribe, creating a kind of common guilt for both offenders. The Small Criminal Code, for reasons of criminal policy, now provides that the party who offers material benefit to an official upon the latter's demand in the course of the performance of his duties, shall not be subject to punishment, if the offering party reports the

case of bribery to the prosecuting authority before the detection of the crime.

The Small Criminal Code itself provides for the trial of the offenses mentioned therein by a variety of courts, including courts martial and special summary criminal proceedings. The Special Board is not mentioned. However, offenses provided for in the Small Criminal Code were often brought before the Special Board by a motion of the prosecuting attorney.

The Small Criminal Code introduced into Polish criminal legislation a new kind of legislative technique. This Code was still far removed from the Soviet pattern. In its wording it followed the Polish Criminal Code of 1932. But at that time, already a much looser form of defining crimes was adopted. This new approach was more and more in evidence as time went by and new legislation was adopted. According to Article 51 of the Small Criminal Code, criminal acts dealt with in its first chapter and acts of high treason are tried by courts martial. In this way the provisions of Articles 93-102 and 104-105 of the 1932 Code defining crimes against the State (high treason), crimes against the interests of the State, treason during time of war, subversion, defeatist propaganda, sabotage in the manufacture of war equipment, have been replaced by the provisions of the Military Criminal Code of 1944.

The Military Criminal Code represents another step in the Sovietization of the Polish law. It resorts to vague terminology and loose definitions. The most striking innovation according to the Soviet pattern is that civilians charged with high treason and with crimes defined in Chapter 1 (Articles 1-18) of the Small Criminal Code are tried by courts martial. For the trial of civilians, however, the court martial

appoints a special bench composed of 1 military judge and 2 civilian lay judges. The effect of this innovation, however, goes much further than that. Not only were the provisions of the Special Part of the Penal Code of 1932 repealed for that purpose, but also the provisions of the General Part of the 1932 Code do not apply to cases tried by courts martial.

Contrary to the provisions of the Code of 1932, the Military Code recognizes as aggravating circumstances also those of objective character, irrespective of whether or not the offender could or could not be aware of them. It provides that the court shall take in consideration as aggravating circumstances the fact that the committed crime may be detrimental to the interests of the Polish State or of states allied to Poland, although the crime was not directed immediately against those interests.

According to Trybuna Ludu, the mouthpiece of the Communist Party in Poland, a new law transferred all cases of crimes committed by non-military persons from courts martial to the civil courts. Only crimes provided for in Article 7 of the Small Criminal Code--espionage--shall remain within the jurisdiction of courts martial, even when committed by civilians.

IV. The Special Board and its Activities

The Special Board to Combat Abuses and Acts Harmful to the National Economy was established by the Decree of November 16, 1945 which was amended twice. The amendments were incorporated into a revised text of the Decree which was promulgated on August 31, 1950 and in this form it was in force until December 31, 1954.

Under this special law confinement in a labor camp was imposed, for a wide and rather indefinite group of offenses, by a Special Board and its provincial agencies.

The Special Board was comprised of a chairman, his deputy, and 7 members appointed by the People's State Council; it also acted through its provincial agencies. The provincial agencies of the Special Board had a chairman and 2 to 5 members (in practice, usually 3) appointed by the Presidium of the Provincial People's Council. The Special Board and its provincial agencies acted upon the motion of the prosecuting attorney.

The Special Board, though given wide jurisdiction, was not a court, but an agency of the executive power consisting usually of laymen appointed by the People's Councils, which were administrative bodies.

As a completely new agency in the Polish administration of justice, it was purely an administrative agency vested with judicial power, which encroached upon the normal task of the courts. The Polish Government deemed it necessary to establish the Special Board as an instrument for the furtherance of its punitive policy to consolidate the regime's political and economic program. This was

conceded by official circles in Poland.

So, for instance, in the discussion of the Special Board as it appeared in Panstwo i Prawo, the author concluded his remarks as follows:

> The need for the existence of the Special Board will cease, as soon as crime in the social and economic field, which is harmful to the progress of Poland, is checked, and also as soon as the economic life of the country, ravaged by war and occupation, is stabilized, and the planned reorganization of the regular judiciary as the exclusive organ of the administration of justice is accomplished.

The Executive Order of the People's State Council of October 12, 1950 defined in Section 11 the jurisdiction of the Special Board and in Section 16 the jurisdiction of its agencies. The Special Board decided:

a) cases of corruption, bribery, creation of panic in order to harm the interest of the working masses;

b) cases in which the prosecuting attorney made a motion to restrain the offender from taking up residence in the province in which he has had his domicile;

c) cases which the prosecuting attorney referred to the Special Board on account of their particular circumstances.

The provincial agencies decided cases enumerated in Articles 1 and 6 of the Decree of November 16, 1945, with the exception of cases reserved to the decision of the Special Board. In particular, they passed decisions in cases of misappropriation of public property, speculation, clandestine slaughter of one's own animals, illegal tanning of hides, and clandestine distilling.

A. Penalties

The Special Board and its provincial agencies had the authority:

a) to confine the offender to a labor camp for a term up to two years and to impose a fine.

B. Procedure

The law expressly stated that proceedings in which confinement to a labor camp was imposed were to be conducted without a defense counsel. (Art. 9).

The enforcement of the sentence passed by the Special Board and its agencies was entrusted to the prosecuting attorney.

All decisions of the Special Board or its agencies were final and there was no appeal from them.

The Decree of November 16, 1945, regarding the Special Board, provided for the sentencing of offenders to forced labor. The amendment of May 14, 1946 to the above Decree referred to this penalty as "labor camp," although the Criminal Code of July 11, 1932, which is still binding, does not provide for a penalty called labor camp.

Article 43 of the Criminal Code provided only for the introduction of special "workhouses." They had, however, not been established prior to the outbreak of the war and, according to the provision of the Criminal Code, they were intended to be used only in specific instances in which the court could order the performance of work as a substitute for a fine which was uncollectible or where

its collection would have exposed the offender to financial ruin. Another provision, Article 83 (1) of the Criminal Code, provided that: "If the act was connected with aversion to work, the court might direct that, after the satisfaction of the penalty, the offender should be placed in a 'workhome' [house for compulsorylabor] for a period of 5 years."

After the lapse of one year, the court might make provision for his liberation. There was no doubt that the institution of workhouses provided for in Article 43 was not the institution of "forced labor camps" or even "labor camps" as provided for by the discussed Decree.

The previous text of Article 10 of the Decree of November 16, 1945 as amended by the Decree of May 14, 1946 (again amended in 1950) was closer to the conecpt of the provision of Article 83 of the Criminal Code (cited above). It reads:

> The Special Board, having investigated the case, if it decided not to direct the case to the court, might order the confinement of the offender to a labor camp, if the activity of the offender had been connected with aversion to work or indicated that he might engander the national economy. Confinement to a labor camp might be ordered for a period of time not to exceed two years.

The Decree of December 23, 1954, according to Article 8, totally repealed the Decree of November 16, 1945. Consequently, the Special Board and its measures of punishment (confinement in a labor camp for a period up to two years and the additional penalty--or we should call it, rather, a measure of security--of restraining the offender for a term of 5 years from taking up residence in the province in which he had his domicile) were abolished.

It will be only a question of political consideration whether the once introduced and still active labor camps will be further maintained as a special means of punishment for "reactionary" elements now prosecuted by the courts for economic offenses. At the present time, the question is open and we have no special information in this respect. The provision of Article 83 of the Polish Criminal Code discussed above is still in force. Its application in all cases where it will be deemed appropriate according to the present rules instructing the courts in this respect is only a question of "criminal policy."

V. Economic Crimes

The Decree of March 4, 1953 on the Protection of the Purchaser's Interests in Trade superseded Article 14 of the Decree of June 4, 1947 on Combating High Prices and Excessive Profits in Trade. Article 14 defined the offenses and fixed penalties. The new provisions not only incorporated Article 14 but elaborated its provisions into a complex institution which repealed in practice the respective provisions of the Special Part of the Criminal Code.

The most important provision aiming apparently at combating the enemies of the new order is contained in Article 1, Section 1 of the Decree. It is reproduced here in order to provide an example of the Soviet legislative technique adapted to Polish needs:

> Whoever speculates with articles of everyday consumption or other goods, in particular by buying up goods in establishments or other places of retail trade with the purpose of selling them for profit; hides or hoards goods of everyday consumption, with such purpose, in excessive amounts; charges prices in such establishments, for any goods, thus gaining excessive profit in cases in which there is no properly fixed price; or by any other action contributes to difficulties in retailing goods, conducted deliberately with speculative purposes shall be punished by detention (maximum of 5 years) and fine or by imprisonment up to five years and fine.
>
> Sec. 2. Whoever conducts speculation habitually or has already been sentenced for an offense defined in Section 1 shall be punished by imprisonment from 2 to 10 years and a fine.

To what interpretation such and similar provisions may lend themselves is best demonstrated by the decision of the Supreme Court of March 14, 1950:

> The buying up, hoarding, or hiding of goods in amounts exceeding considerably the normal needs constitutes a dishonest action which may cause an increase of prices as provided for in Article 14, Section 1 of the Law of

June 2, 1947....

> Law in People's Poland is a system of rules... which are instruments in the struggle of the ruling majority of the Polish nation, the broad masses of the people, in particular of the workers, the majority of peasants, and the working intelligentsia, fighting for the submission of the classes of exploiters and their followers, for the strengthening of the achievements of People's Poland and for the hastening of its march towards socialism. The problem of the socialist system of national economy is within the scope of the basic tasks of our administration of justice. The interpretation of laws shall neither nullify nor hamper this protection of the socialist system of national economy but must serve it.
>
> The quintessence of a 'dishonest action' is that it endangers our planned economy and then becomes dangerous to our system. Whoever buys up, hoards, or hides goods in amounts exceeding his and his next of kin's normal needs shows lack of confidence in our State and acts to the detriment of the social interest by committing an act which may cause an increase in prices. His activity is dishonest. Then, whoever acts in a way which may cause an increase in price commits an act dishonest according to the meaning of Article 14, Section 1 of this law and it is not at all necessary to determine that he purchased these goods with the intention of reselling them immediately. Subject to this offense may be both tradesmen as well as non-tradesmen.

Closely based upon the Soviet pattern are two Decrees of March 4, 1953--(1) concerning the strengthening of the protection of socialist property and (2) concerning the protection of socialist property against petty theft, both amended by the Decree of December 23, 1954.

The preamble of the first law expressed the aims of the law as follows:

> Socialist property is the basis of the structure of the Polish People's Republic. The Polish People's Republic affords special care and protection to socialist property and assures particular safeguards for it. Every citizen of the Polish People's Republic is obliged to protect socialist property and strengthen

> it as an unshakable foundation for the development of the State, a source of wealth and power for the fatherland. Any assault on socialist property must be severely punished.

A few examples of the particular provisions may display the character of these laws.

Article 1, Section 1 states that whoever steals, appropriates, obtains without intent to pay or in any other way seizes socialist goods shall be punished by imprisonment up to 5 years. In Section 2 it is stated that whoever commits an offense defined in Section 1, having been already sentenced for the seizure of socialist goods, shall be punished by imprisonment up to 10 years. According to Section 3, in aggravating circumstances, the theft of socialist property is punished by imprisonment up to 10 years and not less than 2 years. Section 4 provides that if the offender has caused major damage to the economic interests or the defense of the State, the imposed punishment shall be imprisonment for a period not less than 5 years or even for life.

The Decree on protection of socialist property against theft provides punishment of confinement up to 1 year. But, contrary to the Criminal Code which provides for petty theft, only detention from 1 week up, this law provides only imprisonment for a period not less than 6 months. The Decree provides that "petty theft" shall be considered theft (of socialist goods) of a value not exceeding 300 zlotys (officially $75.00, but really about $10.00).

****

The Decree of November 16, 1945, amended in 1949, introduced summary criminal proceedings. According to this Decree, summary criminal

proceedings are applied exclusively in the prosecution of crimes which are explicitly made subject to these proceedings. All other crimes are excluded, their prosecution taking place in ordinary proceedings. Summary criminal proceedings have no application in criminal matters prosecuted by a court martial.

The following are subject to summary criminal proceedings

a. Criminal acts wilfully committed as defined in the Criminal Code in Chapter 38 on Major and Minor Crimes Resulting in Public Danger, crimes defined in Article 225, Section 1, Articles 258 and 259 of the Criminal Code (murder and simple and aggravated robbery).

b. Crimes committed to the detriment of the State, public authorities, institutions of a public character, cooperatives, enterprises owned or managed by the State or public authorities, and other criminal acts which endanger the economic interests of the People's Republic or expose it to considerable losses.

c. Criminal acts as defined in Article 14 of the Decree of June 13, 1946 on Criminal Acts Particularly Dangerous During the Period of National Reconstruction, except where the conspiracy has as its aim a crime defined in Chapter 1 of this Decree under the title Criminal Acts against Public Security or where its aim is the commission of high treason as defined in Articles 85-88 of the Military Criminal Code.

d. Criminal acts defined in Articles 32 and 43, Section 1 of the Decree on Criminal Acts Particularly Dangerous During the Period of National Reconstruction, and in Article 33 of this Decree, insofar as this deals with taking part in an understanding that has for its purpose the commission of crime defined in Article 32, or with taking

part in an unlawful public gathering which jointly commits such a crime.

e. Cases directed by the Special Board to courts upon indictment for abuses and acts harmful to the national economy.

Summary Criminal Proceedings shall also be applied if the prosecuting authority, out of regard for the circumstances of the case, files a motion to try the case under such proceedings.

For crimes tried in Summary Criminal Proceedings, the following basic punishments are imposed, irrespective of the punishment included in statutes for the particular crime:

a. the death penalty, or

b. imprisonment for life, or

c. imprisonment for a minimum term of three years, and

d. fines in addition to confinement in instances where the crime was committed with the aim of material gain.

No lesser punishment may be imposed than the minimum punishment provided for in a statute for the particular criminal act. Together with conviction for crimes specified under "b" and "c" the court may impose as an additional punishment the forfeiture of all or part of the defendant's property.

The Criminal Procedure of March 19, 1928, in the new uniform text published on September 2, 1950 (D.U. 1950, No. 40, Law No. 364) is applicable in summary criminal proceedings in the absence of provisions to the contrary. Crimes which are subject to summary criminal proceedings are tried before a special division of the Provincial Court.

The purpose of summary criminal proceedings is to expedite the trial. The arraignment for the final trial is ordered immediately,

disregarding the time generally allowed the defendant for the preparation of his defense. The period within which the defendant may petition for the admission of other persons and offer evidence other than that indicated in the indictment is shortened to three days. The sentence and the reasons are pronounced at once. The trial court is a court of last resort; from its decision no appeal is possible to a higher court.

The court may impose the death penalty only upon a unanimous decision. The defendant must have a defense counsel at the trial. If a case is reopened by the Supreme Court, the matter cannot be tried again in summary criminal proceedings.

Summary criminal proceedings are not applicable to persons who at the time of committing the crime were not 17 years of age, to pregnant women, or to persons whose capacity for criminal responsibility is doubtful.

PART III

NEW SUBSTANTIVE CRIMINAL LAW

Romania

I. New Principles of Criminal Law: Socially Dangerous Crimes, Abolition of Principle Nullum Crimen Sine Lege, Analogy of Crimes

The new concept of criminal law in the Romanian People's Republic, inspired by Soviet criminal law (Codes of 1922 and 1926), departed from the basic principles of Romanian and European law, in general, by abolishing the principle of nulla poena, nullum crimen sine lege and by introducing, instead, the concept of "analogy of crimes" and of "social danger" as an essential element of crime.

The Penal Code was amended in 1948 (B.O. No. 48, February 27, 1948), and then by the Decree of April 30, 1949, No. 187 (B.O. No. 25) a new text was enacted as follows:

> Article 1. The aim of penal law is to defend the Romanian People's Republic and its social order by punishing those who commit acts dangerous to the community. Acts of commission or omission, which violate the social, economic or political order or the security of the Romanian People's Republic, or disturb the legal order established by the people under the leadership of the working class, shall be considered as acts dangerous to the community.

Article 21 of the Penal Code, as amended, provided that, when imposing punishments, the court shall select the penalty "according to the degree of social danger presented by the offense and the offender himself, as well as by the circumstances in which the offense was committed."

The concept of "socially dangerous acts" in Romanian law is derived by present Romanian legislators from Soviet criminal law where it is tainted with political considerations. This follows from the statements in the Soviet textbook on penal law edited by Professor V. M. Cihicvadze excerpts from which were published in Justitia Noua No. 5, 1953, pp. 579 seq.:

> The maneuvers of the imperialist agents and of their accomplices, who try to undermine the defensive capacity of our great country, are socially dangerous crimes against the Socialist State. Socially dangerous are also the acts of rascals and traitors who deserted to the camp of the enemies of the working people and of the working class. Socially dangerous is the poisonous propaganda of war mongers, who try to start an aggressive war against the U.S.S.R. and the countries of people's democracy. Socially dangerous are the plots against Soviet citizens, committed by anti-social elements. Socially dangerous are the acts of thieves and drones, who try to live by stealing public or government property or the property of working people, or speculate or obtain unearned profits. Socially dangerous are acts violating the State's discipline, cases in which the State is cheated, cases of producing goods of bad quality, of bureacracy, et cetera.

In other words, persons who commit socially dangerous acts are those who oppose in one way or another the Communist regime and are made scapegoats for Communist shortages and failures. The same Article 1 of the Penal Code, as amended, provides as follows:

> Such acts considered dangerous to the community shall be punished even if they are not specified in a statute as offenses. In such cases, the grounds and the limits of the responsibility shall be determined according to the provisions of law dealing with similar offenses. /Compare with Section 16 of the R.S.F.S.R. Code./

By expressly calling for application of punishments to acts "not specified in a statute as offenses," this amendment of the Penal Code abolishes the basic principle: nulla poena, nullum crimen sine lege, explained above. Thus, people's attorneys appointed by the Communists may freely ask for punishment of acts interpreted by them as socially dangerous even if they are not specified in statutes as criminal offenses, and the courts, again appointed or elected by Communists, may punish such acts through free interpretation and analogy with alleged similar crimes. Such arbitrary action will be within the legal limits of the Penal Code.

II. Broad Definition of Crimes

In addition to the general loose meaning of a socially dangerous act, the new Romanian criminal law also defines individual crimes in a loose and broad manner borrowed from or inspired by Soviet law. Thus, for instance, Law No. 16 of 1949 punishing crimes which endanger the State's security and national economic prosperity (republished in the B.O. No. 64 of August 12, 1950) provides the death penalty not only for "treason" and "work for the enemy" but also for "any prejudice against the government power." The same Law in Article 3 punishes by death not only the destruction of equipment, machinery, etc., but also "purposeful omission or the intentional careless fulfillment of duties" if the result was a public catastrophe.

Decree No. 183 of 1949 (B.O. No. 70 of August 17, 1950), punishing economic offenses, provides for imprisonment from 1 to 12 years for "non-observance of orders issued by the Council of Ministers, government departments or local agencies of the government concerning the fulfillment of the State Plan, as well as non-observance of orders concerned with management, organization or control of production, circulation and consumption of goods

and products."

Another example of loose terminology and broad definitions of crimes is Law No. 9 of 1950 for the protection of peace (B.O. No. 117 of December 16, 1950), which provides for punishment of from 5 to 25 years' imprisonment for "war mongering propaganda, ...suggestive or false news...as well as for...any other activities favoring the outbreak of war."

The above-mentioned criminal laws have been incorporated in the Penal Code by Decree No. 202 of May 14, 1953 (Collection of Laws, Decrees, etc. May-June, 1953), which maintained some of the existing broad definitions of crimes and of the loose terminology and, in addition to that, introduced some new terms relevant to punishment such as, "grave consequence," "grave damage," "undermining the national economy," "counter-revolutionary" acts.

For instance, Article 209 (1) of the amended Penal Code punishes by 5 to 25 years of hard labor the "undermining of the national economy with counter-revolutionary aim," without defining either acts constituting such "undermining" or "counter-revolutionary aims." This concept of "counter-revolutionary aims"is particularly peculiar in Romania where no actual revolution ever took place and where the communist regime has been established by the Soviet Army.

The same article of the Penal Code mentions that in cases of particularly "grave consequences," the punishment shall be death. The same terms, "grave consequences" or "grave damage" determining capital punishment are used in other articles dealing with treason, spying or sabotage (infra), again without giving any criteria for such gravity.

The same amendments to the Penal Code carried in the previously mentioned laws on State Security and on Economic Offenses such terms as

the punishment is death.

In an identical manner as Law No. 16, the new Article 209 (3) of the Penal Code punishes not only the intentional commission but also the deliberate "nonfulfillment, or fulfillment with deliberate carelessness, of duties," when such acts aim at "undermining the regime of the People's Democracy." In such cases the punishment is from 5 to 25 years' hard labor, or death in cases of "grave consequences."

In all these cases an attempt is punishable as severely as a crime actually carried out (Art. 209 (4)).

IV. Economic Crimes

In a free society economic activity is based on private interest and initiative. In a socialist society, private interest is replaced by economic plans and strictly enforced orders. Disobedience or even mistakes must be drastically punished. Therefore, many acts which in a normal legal system would be considered as having an administrative or civil character or, at most, barely a minor penal character, become important crimes in Soviet, and now in Romanian, penal legislation.

Such are the economic crimes provided for first in the Romanian People's Republic Decree No. 183 of April 30, 1949 (republished in B. O. No. 70 of August 17, 1950) and then incorporated by Decree No. 202 of 1953 in the Penal Code.

The Decree No. 183 of 1949 provided for punishment of from 1 to 12 years' hard labor plus a fine for "non-observance of orders issued by the Council of Ministers, government departments or agencies of local government with regard to fulfillment of the State Plan" as well as for non-observance of such orders with regard to production, distribution and consumption of

the death penalty for some more important offenses, which had been punished only by imprisonment in Decree No. 183 of 1949. In general, the 1953 amendments made the treatment of economic crimes even harsher.

The amended Penal Code also provides for punishment of other economic crimes, such as: "carelessness, lack of foresight or laxity" in performance of duties or in taking care of tractors, machinery or animals; failure to deliver agricultural products to the government; refusal to carry out public works; breach of collective labor contracts; misuse of industrial equipment; infringements of regulations concerning ration cards; production and circulation of goods; requisitions; non-payment of taxes, etc.

The punishments range, on the average, from 1 month to 5 years and in some cases from 3 or 5 years to 10 years (for example, Articles 242 and 268 (30) dealing with railway accidents and with foreign trade monopoly). In the case of counterfeiting currency and bonds, the newly established penalty was increased from 5 to 25 years and in cases when such crimes "caused or could cause grave damage to the financial system" the punishment is death (Art. 385).

Divulging "commercial or industrial secrets" is punished by 5 to 15 years of hard labor and "revealing inventions or technological improvements," by 10 to 20 years of hard labor (Art. 506).

Nearly all of the above-mentioned economic crimes are inspired by or copied from the Soviet Penal Code (for example, Section 131 of the Soviet Code punishes "nonfulfillment of obligations under contract"; Section 128 penalizes "maladministration ...due to dishonest or negligent attitude"; Section 94 (4) penalizes "criminally negligent treatment of a horse"; Section 80 punishes "damage to a submarine cable caused by carelessness" etc.).

"carelessness," "lack of foresight" or "levity" in the performance of duties, for determining heavy penalties. The exact legal meaning of these words taken from common speech remains undefined and leaves wide room for interpretation.

III. Political Crimes

Crimes against State security, provided for first in Law No. 16 of 1949, have been incorporated in the Penal Code (Decree No. 202 of 1953).

Law No. 16 of 1949 punished by death the following acts: treason, working for the enemy, acts causing prejudice against the State power, procurement and transmission of State secrets, plots against internal and external security and acts of terrorism or sabotage (Art. 1).

The new Articles 194 (1) to 194 (4) of the Penal Code provide for punishments ranging from 5 to 25 years of hard labor and confiscation of property for acts which qualify as: spying, treason, revealing State secrets, removal of such State secrets for transmission, etc. The punishment is death if such acts "caused or could cause grave consequences."

Even in the case when the documents involved were not State secrets but when "they were not designed for publicity," their removal or transmission is punished by 5 to 15 years' hard labor.

The new Articles 209 (1) to 209 (4) provide for punishment from 5 to 25 years of hard labor for undermining, with counter-revolutionary purpose, the national economy through "misusing or sabotaging government enterprises for the benefit of the former owners" (Art. 209 (1)) or through "destruction or damage, with counter-revolutionary purpose" of factories, machinery, railroads, communications or any other equipment or products of community need and interest (Art. 209 (2)). In cases when such acts caused "grave consequences,"

goods, requisitions, and for instigations to disregard obligations undertaken in collective labor agreements (Art. 2).

"Presentation of erroneous information or adulterated or confusing reports concerning the State Plan," as well as "divulgence of any terms or elements concerning the elaboration of fulfillment of the State Plan" or any "concealment, destruction or alteration of products or goods" were punished by from 5 to 15 years of hard labor plus a fine (Art. 4).

Some less important crimes, as, for instance, non-observance of orders concerning price ceilings, sale of goods with inaccurate price tags, and substitution of goods or products were punished by from 6 months' to 6 years' imprisonment plus a fine (Art. 3).

The 1953 amendments of the Penal Code incorporated in Articles 242 and 245 the violation of duties or carelessness directed against the State Plan, providing punishments of from 3 months to 10 years, and in Article 268 (1) - 268 (34) the violations of regulations concerning production and distribution of goods, punished now by imprisonment from one month to 5 years.

The crimes of spreading erroneous information, divulging information or of concealing, destroying or altering goods or products are now partly covered in the amended Articles 209 (1) - 209 (4), which qualify them as counter-revolutionary sabotage (punished by from 5 to 25 years of hard labor or death, as described before); partly by Article 245, punishing abuses of official duties by 2 to 10 years' imprisonment; and partly by Article 506, which punishes the unauthorized divulgence of secrets by imprisonment for 3 to 15 years or from 10 to 20 years.

Although in some less important cases a milder punishment was introduced by the 1953 amendments of the Penal Code, these amendments provided for

An interesting detail is that in some instances the Romanian Code provides for more severe penalties than does the Soviet Code. For example, spoiling a tractor by careless treatment is punished in the U.S.S.R. by no more than 6 month's hard labor (Sec. 792) but in Communist Romania it can be punished by up to 1 year of correctional imprisonment (Article 268 (5)); unlawful slaughtering of cattle is punished in the U.S.S.R. by up to 2 years' imprisonment (Sec. 791) but in Romania by up to 3 years (Art. 268 (15)); promotion or management of a pseudo-cooperative is punished by imprisonment up to 5 years in the U.S.S.R. (Sec. 129 a) but is punishable by up to 7 years' imprisonment in Romania (Art. 268 (3)) etc.

This difference of treatment indicates that, in Romania, the tendency to oppose Communist measures is probably even stronger than in the U.S.S.R.

V. Political Aims of Penal Repression

The drastic punishments provided for in the criminal laws of Romania do not indicate the desire to correct and re-educate offenders but, rather, to liquidate them. Although the laws concerning government attorneys and the organization of courts (Laws No. 5 and 6 of 1952) state that courts shall "educate" citizens for socialist construction, this may mean only that the terror created by drastic sentences has to deter the rest of the citizens from opposing the regime.

The death sentence provided for most political crimes is not an educational measure for the offender. The same may be said about hard labor punishment ranging up to 25 years, owing to the conditions in which this penalty is applied today in Romania. In addition, the system of penalties in the Penal Code of Communist Romania is the source of forced labor.

According to Article 28 of the Penal Code, as amended in 1948, the sentence of hard labor, after a preliminary period of solitary confinement, shall be served "in mines, publicly useful works, or in industrial establishments." According to Article 32 of the same Code, the prisoner sentenced to strict confinement "shall serve his sentence in the penitentiary... or outside the penitentiary at publicly useful work."

Further, according to Article 39 of the Penal Code, after a certain period of time, a convict may be transferred to so-called "penal colonies to serve the rest of his term." The so-called penal colonies, ostensibly places of rehabilitation, are, in fact, organized in the Soviet manner. Their purpose, as in Soviet Russia, is to provide cheap manpower and, at the same time, to liquidate the elements who oppose or could oppose the regime. The Danube-Black Sea Canal Works, the Bicaz Power Plant, and other public works have already become legendary examples of forced labor camps.

The principles of present-day Romanian criminal law, involving: analogy of crimes, the concept of social danger, broad definitions and loose terminology used in the Code, the newly created crimes with political and economic character, as well as inhuman punishments and harsh ways of executing them, makes of new criminal law a tool of the Communist regime. It is adapted to liquidate political opposition, to provide manpower for forced labor and, at the same time, to subdue by terror the rest of the population.

PART III

NEW SUBSTANTIVE CRIMINAL LAW

Czechoslovakia
by Dr. Jaroslav Jira

I. Sources of Pre-Communist Criminal Law

In Czechoslovakia, until July 31, 1950, there were in force the following Codes of Criminal Law: the Austrian Criminal Code of 1852, in force in Czech Lands (Bohemia, Moravia and Silesia), the Hungarian Criminal Code (Legal Art. No. V) of 1878 on major and minor crimes, and the Criminal Code on petty offenses (Legal Art. No. XL) of 1879, which were in force in Slovakia only. The Military Criminal Code of 1855 was in force in the entire Czechoslovak territory; furthermore, there were many particular Supplementary Statutes of criminal substantive law. All this code legislation and even some Communist statutes of 1948, altogether 48 statutes, were repealed by Sec. 311 Criminal Code of 1950.

Despite certain differences between the former Austrian and Hungarian Criminal Codes, they were based fundamentally upon identical or similar principles. The Criminal Codes inherited by the Communist regime were characterized by a humanitarian and liberal spirit. This was

especially true of some of the Czechoslovak laws enacted after 1918, notably law on suspendee sentence and parole, on the treatment of juvenile delinquents, and law on treatment of political offenders etc. (Law No. 562/1919 Coll. on Suspended Sentence and the Release on Parole; Law No. 123/1931 Coll. on the State Imprisonment; Constitutional Law No. 293/1920 Coll. to Protect Personal Freedom, Inviolability of Residence and Privacy of Mails and Communicated News; Law No. 111/1928 Coll. on Cancellation of Entries in the Penal Register; Law No. 48/1931 Coll. on Juvenile Delinquents).

II. Criminal Codes of 1950

A. Underlying philosophy

In 1950 uniform legislation for all of Czechoslovakia was enacted. Neither Criminal Code of 1950 followed the Soviet Russian pattern to the extent that it was followed in some of the other satellite countries. The Czechoslovak Criminal Codes are highly hypocritical pieces of legislation. They resemble modern criminal codes of free countries. However, the intention of their framers was different and resulted in broad and flexible definitions of individual crimes allowing for arbitrary applications. The present day Czechoslovak jurists read into the codes the subordination of the legal interests of the individual to the interests of the totalitarian State and the class principle as well as the paramount aim to protect and strengthen the regime of "proletarian dictatorship" by means of criminal law. The spirit of the Code is explained in the following quotations from the main collective work on the new Code:

> Socialist legality means the precise application and observance of such laws as are in accordance with the interests of the working class and of the toilers; its aim shall be to crush the people's enemies and to protect and strengthen the dictatorship of the working class in order to construct Socialism and later Communism.
>
> (J. Filipovsky et al., O obecne casti trestniho zakona /On the General Part of the Criminal Code/, Praha, Orbis, 1951, p. 35.)

The message of the Cabinet introducing the Bill for the Criminal Code of 1950 reads:

> As every legal provision is an effective weapon of the ruling class in the fight for establishment and strengthening of its power, then an even more effective weapon is every criminal law in which the class character of the State is reflected directly, practically and openly.

The objective purpose of rendering impartial justice is frankly denied by the present Czechoslovak jurists for their new Criminal Codes, both those for the use by courts and by administrative bodies. Thus, the above mentioned treatise expressly states that the new Criminal Codes are based on so called "political principles" (p. 32), which are explained as follows:

> The new Criminal Codes shall be sharp weapons of the working class against the class enemy. This meaning of the Codes is expressed in the contents as well as in the form of the law. (ibid.)

The same treatise refers also to Section 143 of the Constitution as being a justification of the principle of "interpretation of the law from the class point of view" by providing that "judges are obliged to interpret the laws in the spirit of the Constitution and of the principles of the people's democratic legal order."

The above statements are made in conventional terms of of Marxian philosophy. These terms must be analyzed to show their true meaning. References to "the will of the working class," its dictatorship, the ruling class, etc. must be understood in the light of the Communist theory that the Communist Party has the monopoly to speak and act for the working class and to exercise its dictatorship. Thus the term "class enemy" or "people's enemy" means any person suspected of lacking sympathy with the present Communist regime. The protection of the "people's democratic legal order" means the protection of the regime established by the Communist Party since

it seized power in Czechoslovakia in February 1948. These Communist tenets are embodied in the leading provision of the new Criminal Code:

> The purpose of Criminal Law:
>
> Section 1. The Criminal Law shall protect the people, the democratic Republic, the building up of Socialism, the interests of toilers and of the individual, and shall educate in the observance of rules of the socialist community. The means to attain this purpose shall be the threat of punishments, imposition and execution of punishments and protective measures.

B. The nature of definitions of individual crimes and cases

The Czechoslovak Criminal Codes did not include general provisions of the Soviet Russian Code which justify arbitrary application of the criminal clauses to acts provided by the Code. There are no provisions for the application of criminal provisions by analogy nor are there any group definitions of crimes. However, the door for arbitrariness is left open by defining of individual crimes in broad, indefinite and vague terms. The available sources given infra show also that a broad interpretation of these terms is not only possible but is actually done by the courts. Even guilt is sometimes established not by evidence but by conjecture or mere probability. This is especially true of the provisions on the so-called economic crimes which aim to protect the new socialist economy.

The provisions concerning sabotage are particularly illuminating in this respect. Sabotage is defined as follows:

> 1. Whoever fails to fulfil or violates the duty of his profession, occupation, or of his service, or evades the discharge of such duty, or commits another act with the intent:
>
> (a) to frustrate or obstruct the progress or fulfilment of the Uniform Economic Plan in some sector, or
>
> (b) to cause a serious disturbance in the activities of a public authority or of a public agent or a public enterprise,
>
> shall be punished by confinement for from five to ten years.

2. The offender shall be punished by confinement for from ten to twenty-five years
(a) if he commits the act specified in Subsection 1 as a member of a conspiracy,
(b) if such an act defeats or obstructs the progress or fulfilment of the Uniform Economic Plan in some particularly emportant sector,
(c) if a serious disturbance has actually been caused in the activities of a public authority or public agent or a public enterprise, or
(d) if another particularly aggravating circumstance is involved.

3. The offender shall be punished by confinement for life or by death
(a) if the act specified in Subsection 1 endangers the defense interests of the country to a considerable extent,
(b) if such an act causes a serious disturbance in supplying a considerable part of the population with commodities,
(c) if such an act endangers many human lives,
(d) if the offender commits such an act at a time of an increased danger to the country and any of the circumstances specified in Subsection 2 is involved.

4. In addition to the penalties specified in Subsections 2 and 3 the court may declare the loss of nationality; if it does not impose this penalty, it shall impose forfeiture of property.

The Code fails to define with sufficient precision the activity which falls under Section 85, Criminal Code. It refers merely to "the failure to fulfil" or violation or even mere evasion of the duty of the offender's profession, employment or service." There is a great deal of uncertainty as to what is the duty the violation of which is subject to the imposition of penalty. The vagueness of this formula is epitomized by the clause "or commits any other act." The intent also is described in vague terms.

In addition to the normal penalty which is confinement of from five to ten years, Section 85 provides for penalty from ten to twenty-five years and even for life imprisonment and the death penalty "in most serious cases." The selection of one or another of these penalties is dependent on numerous circumstances. In many instances the existence of such circumstances is practically left to the discretion of the court.

The manner in which the Communist courts apply these provisions amounts to the outright abuse of judicial powers. As an illustrative example of this abuse the following sentence of the People's Court in Frydland, which was officially published in the Czechoslovak newspaper upon the order of the Public Prosecutor may be cited:

Sentence of the People's Court
of Frydland, April 7, 1953
(Cesta Miru, Liberec, August 1, 1953)

> The accused Frantisek Chlupac, born May 27, 1922, in Horni Taveri, farmer, former member of the agricultural collective of Detrichov, at present in custody, was found guilty of the following:
>
> As a member of the agricultural collective of Detrichov until December 24, 1952, he worked carelessly, arrived late for work, neglected the machines which were entrusted to him, carried out the construction work for which he was responsible in a slip-shod way and thereby neglected and shirked his vocational duty. He probably acted thus with the intention of hindering the fulfilment of the economic plan on the front of agricultural production. Since the accused has thereby committed the crime punishable under para. 85 of the Penal Code, he is sentenced, bearing in mind the right of the Court to exercise indulgence, to four years' deprivation of liberty and a fine of 50,000 crowns, with the alternative of another six months' imprisonment in the event of his being unable to meet the fine. In accordance with para. 43 of the Penal Code, he forfeits his civil rights for a period of five years. In accordance with para. 53 he is forbidden to reside in the district of Frydland for a period of ten years. In accordance with para. 54 of the Penal Code, the judgment is made public at the discretion of the District Government Attorney. Probation is refused.

In this case the court found the accused guilty, not on the basis of evidence since no evidence was provided regarding the defendant's criminal intent, but by sheer conjecture. The court simply declared that the defendant "probably acted with the intent of hindering the fulfilment of the economic plan...", and found the defendant guilty of sabotage and imposed upon him unconditionally the harsh penalties indicated in the abstract of the sentence shown above.

Another provision regarding economic offenses, which is also often abused, especially against independent farmers, is Section 135. This provision is sometimes applied against defendants who cannot possibly be convicted of the much more serious crime of sabotage under Sections 84 and 85 of the Criminal Code. Section 135 reads:

Endangering the Uniform
Economic Plan

Section 135

1. Whoever by negligence frustrates or obstructs the operation or the development of a state, national, communal or other public enterprise or of a People's cooperative, particularly by failing to discharge, or by violating, the duty of his profession, occupation, or his service, by evading the fulfilment of such a duty, shall be punished by confinement not to exceed one year and by fine.

2. The offender shall be punished by confinement for from three months to three years by a fine if by any act specified in Subsection 1 the accomplishment or fulfilment of the Uniform Economic Plan in some of its sectors is frustrated or rendered more difficult.

How this provision is applied by the courts is shown by the following sentence, rendered by the District Court in Horazdovice and officially printed in Pravda, Pilsen, May 5, 1952:

In the Name of the Republic!

The District Court of Horazdovice, division two, has pronounced sentence at the trial held on 29th April 1952 as follows: the accused, Karel Korbel, born 25th June 1895 in Svoradice in the district of Horazdovice, a farmer, resident in Svoradice No. 58 in the district of Horazdovice is found guilty of the following:
In his capacity as an independent farmer in Svoradice in the year 1951 he did not fulfil his delivery obligations, for he failed to deliver 9.2 tons of beef, 13 kg of pork, 4,813 liters of milk, 1,610 eggs, 1.27 t. olive-plants and 35 kg of pulses, and raised 3 milking cows and 13 hens fewer than the number decreed by the plan. He has therefore rendered more difficult the working of a people's co-operative and the fulfilling of the general economic plan on the agricultural sector. He thereby committed the crime of endangering the general economic plan according to Section 135, Subsections 1 and 2 of the Penal Code and is sentenced accordingly, under Section 135, Subsection 2 and with reference to Section 19 of the Penal Code, to 18 months confinement. In accordance with Section 48 of the Penal Code he is further sentenced to a fine of 50,000 crowns, with an alternative sentence of 6 months confinement in the event of his

inability to meet the fine. In accordance with Section 54 of the Penal Code the sentence will be published in the newspaper "Pravda" and on the notice boards of all local national committees in the district of Horazdovice at the expense of the accused. Conditional suspension of sentence, as provided for under Section 24, Subsection 1 of the Penal Code, is not granted.

District Court of Horazdovice,
division two, on 29th April 1952

Vaclav Votacek

The same provision (Section 135) is also used to coerce workmen and other individuals, like public servants and former businessmen, drafted by the Government, into involuntary labor, especially in mines. Thus, the District Court in Ostrava rendered this sentence (printed officially in Nova Svoboda, August 29, 1952):

In the Name of the Republic!

Division 5 of the criminal court of the district of Ostrawa has passed the following sentence on May 2nd, 1952: The accused, Jan Ramik, born 7th May 1905 in Slezska-Ostrawa, minor, last address: Ostrawa VIII, Takubska Osada No. 556/13, at present held by order of the Public Prosecution in Ostrawa, is found guilty of the following: When working as a minor in the Zarubek mine in Slezska-Ostrawa he violated his professional duty 91 times in 1951 and 6 times in 1952 without adequate reason inspite of a stern warning not to absent himself from his place of work. Through the nonfulfilment of his professional duty according to para. 135, 1, of the Penal Code, he endangered the general economic plan and disturbed the functioning of a national enterprise by negligence. He is therefore sentenced under Section 135, Subsection 1, of the Penal Code to 4 months confinement and a fine of 1,000 crowns, with an alternative of 10 days confinement. The sentence is made public in accordance with Section 54 of the Penal Code. The carrying out of sentence is not deferred.

Only a few private businessmen exist owning the smallest enterprises. In the whole of the economic life no private person operates independently. Every entrepreneur or employee is bound by the duties set forth by the overall economic plan. The few private businessmen and their employees are also exposed to severe penalties for any "negligence" which could affect the discharge of "duties" or other public business relation

imposed upon the enterprise by the governing Economic Plan.

In the free countries such violation of contractual duties would entail only the cancellation of the contract, firing of the employee concerned, and/or civil suit for damages. But under a Communist regime any "negligent" private entrepreneur may be jailed for a term up to 6 months and by a fine not under 1,000 crowns and not to exceed 10,000,000 crowns (Section 48, Subsection 2). The respective provision of Section 136 Criminal Code reads:

> If a private businessman or the person who is responsible for the management of his enterprise fails to discharge, even through negligence, an obligation resulting from the Uniform Economic Plan or from public deliveries or public works, he shall be punished by confinement not to exceed six months and by fine.

C. Discrimination against political offenders

The legislation of the democratic era recognized the political offenses and, in the best spirit of humanitarianism and tolerance, granted to their perpetrators a privileged treatment. Such treatment was accorded to the offender who violated certain statutory provisions in cases where the nature of the offense and the circumstances of its commission proved that the offender acted to influence the course of public, political or social affairs, provided that the offense was not especially repugnant by the manner of its commission or means applied or the results caused, and was not committed from "a base or dishonest motive." (Sec. 1, Subs. 1, Law No. 123/1931 Coll. on the State Prison.) In order to exclude in advance any uncertainty or arbitrariness the legislator gave examples of offenses considered as "especially repugnant." The following offenses were mentioned: military treason; inciting to abetment of and instigation to, and accessories after the fact of a military crime; inciting to a mass perpetration of certain minor crimes under Sections 47-51 of the Law of National Defense;

the illicit hiring of military troops; counterfeiting of currency or securities; murder, manslaughter, and major crimes by which the health of individuals was seriously impaired, or a considerable damage inflicted upon public or private property, as well as attempts of the above listed major crimes. The Supreme Court was just as liberal in ruling that:

> The law requires the special repugnance of the act, which is manifest from the means chosen or from the consequences caused; it does not consider as especially repugnant the political aim in itself. (Coll. Vazny, Trestni cast, No. 5090.)

The offense which fall within the category of major and minor political crimes were the following:

> The major crime of insurrection and sedition (Secs. 68-73, 75); major crimes of public violence (Secs. 76-78); minor crimes of agitation against public authorities under Section 300, Criminal Code of 1852, and under Articles III and IV, Law No. 8/1863; certain major and minor crimes of a political nature defined in Law No. 50/1923, Coll. to Protect the Republic. (Vl. Solnar, op. cit., p. 38.)

The Law No. 232/1946, Coll. on the Criminal Jury, extended the jurisdiction of criminal juries even to major and minor crimes which by their nature, and by the circumstances of their commission, evidence the offender's endeavor to influence the conduct of public affairs. (cf. Trestni rad, Code of Criminal Procedure, F. Kovarik et al., eds., Praha, V. Tomsa, 1947, p. 704, annotation No. 5.) Besides the privilege of a special jurisdiction (trial by jury, by State Court, or by special benches of the Regional courts [cf. Sec. 1, Law No. 68/1935 Coll.], the political offenses and offenders were granted the following privileges: according to international agreements the political offenders, as a rule, were not subject to extradition; instead of the penalty of hard labor, penitentiary or penal servitude set forth in the penal clause, the court had to impose the penalty of State prison, and the penalty of simple or hard imprisonment had also to be carried out under the provisions of the law on State imprisonment (Sec. 1, Subs. 1, 2, Sec. 5 Law No. 123/1931 Coll.).

The offenders placed in the State prison had these privileges: the usage of their own clothes, linen, shoes; they could not be forced to any work, but were allowed to occupy themselves with suitable work of their own choice; they were not bound to clear their cells; they were allowed to have their own simple food, stay four hours a day in fresh air and take physical exercise, and to get and read books and periodicals, to use writing materials, to smoke, to receive visits within the regulations (Sec. 5, Subs. 2). Above all, the loss of honorable rights, public employment, academic grades and professions, pensions and other income from public funds, the loss of election rights, active and passive, and any such legal disabilities imposed by law, ceased on the same day when the term was served, pardon granted, or the penalty barred by lapse of time (Sec. 4, Subs. 3 Law No. 123/1931 Coll.).

It may be said that the Communists, while leading their struggle against the Czechoslovak democracy between World Wars I and II, made ample use of all the privileges accorded to political offenders. After they had instituted their own legal order, however, they repealed all these generous provisions and abolished special courts, special prisons and milder penalties for political offenders. The Communist Code inflicts far more severe penalties upon political offenders than upon common felons. It is only the political offenders, i.e. those who have manifested by their offense hostility toward the people's democratic order, and who have not proved during the serving of their term, by their work and behavior, their improvement, who may be placed, after serving their full terms of confinement, in camps of forced labor for an additional term of from three months to two years (Sec. 36 Criminal Code of 1950). The Communist lawyers have taken the following stand regarding political offenses:

> In the people's democracy we do not recognize as political offenses those acts which are directed against the people's

democracy and socialism, because these acts are directed against the just /social/ order and against the Government of the large majority of the working people, against the removal of exploitation and of all inequalities which follow from exploitation and the laborless accumulation of profits. Therefore, we do not recognize as political offenses acts committed against the people's democratic Constitution or against the socialist development of the Republic. (J. Filipovsky, et al., op. cit. p. 49, 50.)

Indeed, we have in the new international treaties (especially with the People's Democratic Poland) the provision that we shall not extradite /the offenders/ for political offenses, but this provision shall be interpreted according to the above expounded viewpoints on political offenses. (J. Filipovsky, et al., p. 50.)

D. Forced labor

1. Under the Criminal Code for Courts of 1950 forced labor appears in two forms. First, as a confinement in a forced labor camp (Sec. 36) which is imposed after a term of confinement for a political offense has been served and the convict has not shown that he has reformed. Secondly, there is also forced labor without confinement (called "corrective measure", Sec. 37 of the Criminal Code) which may be imposed instead of the penalty of confinement.

2.

Section 36

Confinement in a forced labor camp:

(1) Whoever, by committing an offense, manifested his inimical attitude against the people's democratic order and, while serving the term of punishment, did not prove by his work and conduct an improvement justifying the hope that he would follow the orderly life of a working man, may be placed in a forced labor camp for a period of from three months to two years after he has served the full term of his penalty of confinement.

(2) A person who has not reached eighteen years of age may not be confined in a forced labor camp.

The words "whoever...manifested his inimical attitude against the people's democratic order" show that the measure is to be imposed exclusively upon political offenders. J. Filipovsky (op. cit., p. 131) declares clearly:

Confinement in a forced labor camp is a means of effective

> struggle against the remnants of the capitalist society who endeavor to restore capitalism in our country, or who attempt at least to slow down or render more difficult our way to socialism. Where the offender does not show the result of the educational punishment and remains hostile toward the State, further means must apply.

However, the communist legislator has established another, even broader possibility for confining convicted persons, including political offenders, in the "transitional establishments" (which is the new name for the forced labor camps). Under Section 279 (amended by the Law No. 67/1952 Coll.):

> The convicted person, who has otherwise fulfilled the conditions for his release on Parole, may be confined in a "transitional establishment" for the rest of his term, if his release on Parole would be contrary to the purpose of punishment; this measure may be revoked if the conduct of the convicted person gives grounds therefore.

The decision concerning confinement of convicted persons in "transitional establishments" in the above described instances is arrived at by a special extra-judicial body ("Parole Board") consisting of one professional judge and two people's judges (laymen); the latter are selected and trained politically by the Communist Party. A new provision inserted into the Code of Criminal Procedure of 1950 is Section 279(a), which sets forth the following:

> (1) The Parole Board shall decide by a majority vote upon the motion made by the provincial government attorney.
>
> (2) If the provincial government attorney so proposes, the Parole Board shall submit the case for a review of its decision to the Minister of Justice, who shall make the final decision; he may, however, change the decision of the Parole Board to the disadvantage of the convicted person only if the provincial government attorney made the motion to present the case to the Minister of Justice within three days after the receipt of the notice about the decision of the said Board.

The convicted person himself has no right to appeal from the

decision which places him in a "transitional establishment" after he has entirely served his original term.

These provisions controvert the purpose of the institution of release on parole as it is generally established in the democratic countries. It offers to a convicted person who has shown good behavior and reform not a premature release, but a possibility of another form of incarceration.

3. Correctional Measure

Correctional labor without confinement has been introduced into the Czechoslovak Penal System for the first time by the Criminal Code for Courts (Law No. 86/1950 Coll., Sec. 18, Subs. 1, Clause "c", Secs. 37-41). It was, however, unknown in the Administrative Criminal Law until Law No. 102/1953 stipulated that this penalty may be imposed for the administrative offenses, which under the Administrative Criminal Code are punishable by the penalty of confinement.

The term of this penalty must last at least 14 days, and may not exceed double the upper limit of confinement set forth for the respective administrative offenses (Sec. 14, Subs. 1). The normal limits are: 6 months of confinement and/or fine up to 500,000 Czech crowns. Penal Boards may not impose a longer term of corrective measure than three months; longer terms of from one to six months may be imposed only by Courts (Sec. 2, Subs. 1 and 3; Sec. 14, Subs. 1, Law No. 102/1953 Coll.; cf. also Sec. 37, Criminal Code for Courts).

Instead of the penalty of confinement not exceeding 3 months, the court may impose the corrective measure for a period of from 1 to 6 months (Sec. 37, Subs. 1, Criminal Code). Corrective measure is carried out while the offender is at liberty, however, he must carry out the work assigned to him, mostly of a physical nature, at reduced wages and without certain social advantages which could otherwise follow from the employment (Sec. 15). For important reasons the offender may be assigned a new, less responsible and

less profitable job, or moved to a new working place. One fifth of his earnings are forfeited to the Government, although this levy may be mitigated to one twentieth (Sec. 16, Subs. 2) in instances where this measure is imposed for an administrative petty offense. In instances where the corrective measure is imposed for an offense falling under the Criminal Code for Courts No. 86/1950 Coll., the amount forfeited to the Government equals one fourth of the offender's wage, but the Court may mitigate it up to one tenth (Sec. 39, Subs. 2, Criminal Code for Courts). The work and time spent at correctional labor shall not be counted from his term if the offender does not report to work on time, or works carelessly; the court shall convert the penalty into confinement and shall impose one day of imprisonment for every two days of unserved correctional labor (Sec. 17).