

THE SOVIET CRIMINAL  
JUSTICE SYSTEM UNDER STALIN

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The purpose of this paper will be to examine the criminal justice system of the Union of Soviet Socialist Republics (USSR), with an emphasis on the period in which Joseph V. Stalin was the country's leader.<sup>1</sup>

Stalin used the criminal justice system extensively to dispose of those who threatened or disagreed with him. He felt it necessary to justify these "purges"

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<sup>1</sup>Many sources were very helpful in the formation and completion of this paper. I have leaned heavily on Government, Law, and Courts in the Soviet Union and Eastern Europe, volumes one and two, by Vladimar Gsovski and Kazimierz Grzybowski. (London: Atlantic Books, 1959.) Also useful was Isaac Shapiro, John Hazard, and Peter B. Maggs' The Soviet Legal System (Dobbs Ferry: Oceana Publications, 1977.) Not to be confused with its companion, The Soviet Legal System: Legislation and Documentation (Dobbs Ferry: Oceana Publications, 1978) compiled and translated by William E. Butler, which contains many of the texts and documents referred to in The Soviet Legal System. Used as well were N.S. Khrushchev: The Secret Speech (Nottingham: Bertrand Russell Press Ltd., 1976), published to mark the twentieth anniversary of its world-wide publication, Harold J. Berman's Soviet Criminal Law and Procedure-- The RSFR Codes (Cambridge: Harvard University Press, 1966) and his Justice in Russia (Cambridge: Harvard University Press, 1950.) Periodicals were used less extensively, with the journal Soviet Law and Government being the most prominent. Exact locations of periodical references are to be found in the corresponding footnotes. Lectures from Slava Lubomudrov's class Politics in the U.S.S.R (Political Science 347) were also very useful, especially in that they presented ideas that helped stimulate my topic choice, as well as providing information concerning it.

in a legal framework. We will look at some of the laws that allowed Stalin to do so. Many changes have been made in the criminal justice system since Stalin's death in 1954, beginning with Khrushchev's denunciation of Stalin's concepts in the famous "secret speech" presented to the 1956 Congress of the Communist Party.<sup>2</sup> A return to "socialist legality"<sup>3</sup> as conceived by Lenin became the pledge of the new leaders. This paper, however, will concentrate on the Stalinist period. In some instances, though, current references are included to note what seems to be the continuation of some of the policies.

Societies tend to reflect their philosophies, goals, prejudices and problems in what they punish as crime. The Soviet Union is no exception. Under Stalin what was reflected was one man's philosophy, goals, prejudices and problems.

Soviet law has been used to achieve political goals from the beginning of its existence as a sovereign state. "A law is a political measure, it is politics" (emphasis added) said V.I. Lenin in 1916.<sup>4</sup> The enemies of the

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<sup>2</sup>Released on June 4, 1956 by the State Department for Foreign Affairs of the United States Government.

<sup>3</sup>Hazard, Butler, and Maggs. The Soviet Legal System, p. 3

<sup>4</sup>V.I. Lenin, "Concerning a caricature of Marxism and concerning imperialist economism," 23 Sochineniia (Collected works). Quoted from The Soviet Legal System, p. 5

system have been presumed to be those who opposed it-- the remnants of the "bourgeois" class from Tsarist times: the landowners, factory owners and managers, etc. It was expected that as capitalist elements were rooted from the economy, the major threats to communism would disappear. Thus criminal law (as with other branches of law) would wither away as well. Under Stalin, enemies of the system grew to include not only the capitalist elements but also communists that he perceived as being threatening to his rule.

Originally, the criminal statutes had another function beyond eliminating class enemies. This was to also prepare the way of achievement of ultimate goals, by defining the actions it would not permit and also a system of penalties that would perform a dual role: as a deterrent to prospective offenders, and as a means of rehabilitation.

While such thoughts of social engineering have been prominent in Soviet criminal law since the revolution of 1917, under Stalin short-term solutions were usually more prominent. Such an element is the maintenance of the death penalty. While perhaps a deterrent to prospective offenders, it leaves no hope for rehabilitation.

Many of the codes and provisions that Stalin used were already in place when he took command. When Soviet penologists drafted a criminal code in 1922, considerable latitude existed in the implementation of it.<sup>5</sup> More important, the principal of "analogy", once found in Tsarist codes, was reintroduced.<sup>6</sup>

Two criminal procedures operated: the one that was officially outlined in the enacted codes of criminal procedures, and the other being what the courts and administrative agencies engaged in various phases of penal prosecution have actually followed. These "de facto" proceedings can be determined from material coming from various speeches, articles, and other materials coming from persons of authority in the post-Stalin period. Khrushchev's secret speech is probably the most important document concerning the revelation of the unwritten rules of de facto procedure that was practiced.<sup>7</sup>

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<sup>5</sup>Ibid, p. 6

<sup>6</sup>Article 1, Civil Code, RSFSR, Decree of October 31, 1922, effective January 1, 1923. Under this principle, an individual who was considered "socially dangerous" could be convicted of a crime even if he had not violated any specific article of the code. Dropped after Stalin's death.

<sup>7</sup>Paraphrasing Gsovski and Grzybowki, Government, Law and Courts in the Soviet Union and Eastern Europe, p. 856.

These real criminal procedures were not always reflected in the official codes, and sometimes they perhaps were even in conflict, but it was the law that was actually applied.<sup>8</sup>

The code of official criminal procedure is specific on only one point, in that it "expressly exempts from the provisions of the code the determination of political crimes which are investigated by the agencies of the secret police."<sup>9</sup> Quoting Soviet legal scholar M.S. Strogovich in 1938: "There is no difference in principle between police examination and pre-trial investigation in Soviet criminal procedure although both these concepts are maintained in the code of criminal procedure now in force. Police examination as well as material of pre-trial investigation is evidence and may be used by the courts as evidence in rendering judgement."<sup>10</sup> Similar provisions exist today. Again quoting Strogovich, this time from '77: "The agencies of preliminary and police

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<sup>8</sup>Ibid, p. 856

<sup>9</sup>Ibid, p. 858

<sup>10</sup>M.S. Strogovich, Uchebnik ugolovnogo protseesa. (Textbook of Criminal Procedure), 1938. Quoted in Government, Law and Courts..., p. 858.

investigation is evidence and may be used by the courts as evidence in rendering judgement."<sup>11</sup>

In pre-trial proceedings Soviet criminal procedure was characterized by limited opportunities for defense. As there was no intrinsic difference between police inquiry and judicial investigation, it is possible to assume that the suspect had no right of defense during these stages. Although both the Judiciary Act of 1938, Section 8, and the Constitution of 1936, section 103 state that "the accused shall be secured the right of defense,"<sup>12</sup> the council for the defense was completely shut out from any participation in the pre-trial proceedings. These provisions are generally understood to mean that the defense council is admitted only at the trial.<sup>13</sup> The right to defense is still a part of Soviet code: "an accused shall have the right to defense."<sup>14</sup>

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<sup>11</sup> ----, On the Rights of the Individual in Soviet Criminal Procedure, Sovetskoe gosudarstvo i pravo, 1976, no. 10. Translated in Soviet Law and Government, Vol. 15: pgs. 3-17, Spring '77.

<sup>12</sup> Gsovski and Grzybowski, p. 864

<sup>13</sup> Ibid, p. 864

<sup>14</sup> Confirmed by law of the USSR Supreme Soviet, December 25, 1958. Quoted in The Soviet Legal System: Legislation and Documentation, p. 688

Another way used by Stalin for the prosecution of his enemies was the process of "suspicion tantamount to guilt." Past activities and/or departures from official party lines were, in many cases, adequate reason for the labeling of a person as an "enemy of the people." This made him liable to trial and conviction, and was usually equivalent to a condemnation. Quoting Khrushchev:

"...Stalin originated the concept 'enemy of the people.' This term automatically rendered it unnecessary for the ideological errors of a man or of men engaged in a controversy to be proven; this term made possible the usage of the most cruel repressions, violating all norms of revolutionary legality, against any one who in any way disagreed with Stalin, against those who were only suspected of hostile intent, against those who had bad reputations. This concept 'enemy of the people' actually eliminated the possibility of any kind of ideological fight or the making known of one's views on this or that issue, even those of a practical character. In this main, and in actuality, the only proof of guilt used, against all norms of current legal science, was that of the 'confession' of the accused himself; and as subsequent probing proved 'confessions' were acquired through physical pressures against the accused. This led to glaring violations of revolutionary legality and to the fact that many entirely innocent persons, who in the past had defended the party line, became victims."<sup>12</sup>

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<sup>12</sup>N.S. Khrushchev: The Secret Speech, p. 26. After Stalin's death, the law was changed so that a 'confession' was not enough evidence to convict a suspect; more proof was needed.



Suspicion based on social status was also tantamount to presumption in some cases. Under this notion in the criminal code of crime as a "socially dangerous act" all persons not actually supporting the regime in power were branded as "kulaks", "capitologists", "fascists", and "reactionaries" and are therefore were considered as real and potential "enemies of the people."<sup>13</sup>

Another feature of the Soviet criminal procedure was trial without presence of parties. "Parties" according to the code of criminal conduct were the public prosecutor, the defendant and his council. From 1934 to 1956 there occurred instances in which trial without parties was mandatory upon the court.<sup>14</sup> Economic subversion, terrorism committed against Soviet officials, and sabotage<sup>15</sup> were tried in this fashion. These laws were repealed after Stalin's death. There is, however, still a law on the statute books which leaves

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<sup>13</sup>Paraphrasing Gsovski and Grzybowski, p. 881

<sup>14</sup>Ibid, p. 883

<sup>15</sup>RSFSR Criminal Code, Section 58-7, 58-8, 58-9. Again from Gsovski and Grzybowski.

it up to the courts whether to hear a criminal case with or without parties. When the laws of 1934 were struck down, the only change was that there were to be no mandatory cases which must be tried without party. From Section 381 of the RSFSR Code of Criminal Procedure:

"Admission of prosecution and defense at the trial in the gubernia court shall not be mandatory and shall be decided in each case in an executive session of the court depending on the complexity of the case, upon the special political or public interest in the case."<sup>16</sup>

These are just some of the laws that Stalin was able to use to eliminate his "enemies", and do it a legal framework. These are by no means the only means used. Testimonies and cases were fabricated, sometimes with sentences prepared in advance. Secret trials are permissible under Soviet law in police and military courts. Sentences were even passed ex post facto, in some cases after the suspects had been killed.

It is interesting that Stalin felt he needed to carry out the disposal of his opponents through the legal system. But because of this, the criminal justice

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<sup>16</sup>From RSFSR Criminal Code, Sections 58-7, 58-8, 58-9.

was unjust, with many innocent people suffering. While most of the unjust laws were dropped in the reforms of the system that occurred after Stalin's death, some remain.