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SOVIET AGENCIES OF LAW

Prosecution of war criminals has focused attention on the tribunals of Europe before which the Nazi criminals and local traitors are being brought. An International Military Tribunal with a permanent seat in Berlin has been created for the most serious offenses. Presence of a Soviet judge on this tribunal has brought Soviet jurisprudence into close association with the jurisprudence of the United States, Great Britain and France. Prosecutors of the four countries have shared in the preparation and presentation of the case, and in this cooperation they have exchanged views and argued for principles based upon their own concepts of the function and form of agencies of law. It has become necessary for American jurists to understand systems with which they must now work in concert. It is the purpose of this paper to outline the Soviet court system and to describe the organization of the Soviet Prosecutor's Office, as a guide in this process of orientation.

The role of the Constitution

The Constitution of the U.S.S.R., adopted in 1936, establishes the judicial organs, not only of the U.S.S.R., but of the Republics which have united to form the Union. Pro-
viding, however, only a structural outline, it does not restate the theory on which the courts rest their activities. Every Soviet citizen already knows the basic Marxist principle, that the judiciary is not a third estate, above and beyond the will of the government.¹ Left unmentioned by the Constitution are the principles built on Lenin’s statement that law is politics,² and that the court is the tool of the state in administering the law so as to protect the dictatorship of the toilers. But silence does not signify abandonment, as was made clear at the time the Constitution was adopted.³

Devoting Chapter IX to judicial organs, the 1936 Constitution establishes the court system. It adopts the courts which were functioning at the time of its promulgation, courts which had grown out of nineteen years of experience. Many changes in their types and number are in the record of history. Gone were the early Revolutionary Tribunals, formed to handle the mass of counter-revolutionary crimes during the first years after the “October.” Long since revived were the institutions of a State Prosecutor and a College of Advocates abolished in the first months of the Revolution. Special tribunals had been created and dissolved and sometimes recreated. During the whole period there had been evident the steady broadening of the jurisdiction of the Peoples’ Courts as the basic link in the court system.⁴

Catching up the judicial units which remained as a result of the process of development, Article 102 of the 1936 Constitution established them for the first time as creatures of

¹ “It must not be forgotten that the court and prosecutor-investigating organs are only ‘material accessories’ of the state, are state organs whose nature in no way differs from the nature of the state itself.” See A. Y. Vyshinsky, Sudoustroistvo v. S. S. R. (3izd., Moscow, 1936) 68.
² See 19 V. I. Lenin, Sochineniya (3izd., Moscow, 1935) 212.
³ “What are the tasks of the court under the Constitution? The Constitution does not directly speak of this. But on this subject the Marxist-Leninist theory speaks clearly enough, as does Lenin speaking as early as 1918.” See N. V. Krylenko, Stalinskaya Konstitutsiya v. Voprosakh i Otvetakh, (Moscow, 1936) 48. Krylenko was repudiated on several points in 1937, but not on this point.
⁴ For an extensive treatment of this historical development, see Judah Zelitch, Soviet Administration of Criminal Law, (U. of Penn. Press, 1931) 15-152.
a Soviet Constitution. Later articles set the principles of their composition, their procedure and their duties. Due to the dissimilar names given courts having identical jurisdiction, but forming part of the governmental structure of differing types of governmental units, a reading of Article 102 would give the impression of a highly complicated judicial system.\(^5\) Such is not the case. Struggles with counter-revolutionary situations have made necessary at times the naming of special tribunals, but aside from these and the disciplinary comrades' courts of factory, village, collective farm and apartment house, the judiciary has been simplified until it presents but a three-stepped system in each Republic. Above these systems in each Republic sits the Supreme Court of the U.S.S.R., hearing cases of all-union concern, and supervising the work, not only of the system of courts in the Republics, but also of the special federal or all-union tribunals which have a functional character and are responsible to it alone.

**Courts of the Union Republics**

The basic three-stepped system prevails throughout all Republics and Autonomous Regions of the Union. As a rule the constituent or "Union" Republics, of which there are now sixteen, each have their own three-stepped court system complete in itself. The smaller national minorities, organized in Autonomous Republics or Autonomous Regions, within the Union Republics have a two-stepped judicial system of their own, from which there is the right of cassational appeal to the Supreme Court of the Union Republic, within the confines of whose territory they lie. This amounts to a three-stepped system. The sole exceptions to this outline arise in those Union Republics which are of such small geographical size or of such small populations that in their en-

\(^5\) Art. 102 — "Justice in the U.S.S.R. is administered by the Supreme Court of the U.S.S.R., the Supreme Courts of the Union Republics, the Territorial and Regional Courts, the courts of the Autonomous Republics and the Autonomous Regions, the District courts, the special courts of the U.S.S.R. established by decision of the Supreme Soviet of the U.S. S. R., and the People's Courts."
The Peoples' Court is the basic link in the judicial system. As a court solely of original jurisdiction it hears both criminal and civil cases, separately or joined together, under the provisions of Soviet codes of procedure. Its basic form is a tribunal of three judges, composed of a peoples' judge elected for a term of three years by the citizens of the district, and two peoples' co-judges similarly elected for a term of not more than ten days a year. Candidates are nomi-

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


9 Since 1939 no civil cases may be heard by less than three judges. See Decree of Council of People's Commissars, July 28, 1939, Sobr. Post., S. S. S. R., 1939, No. 48, Art. 381. Previously civil cases of certain types might be heard by a People's Judge sitting alone, i.e. without co-judges. See Law of Dec. 20, 1934, Sobr. Uzak., R. S. F. S. R., 1935, No. 2, Art. 9, carried into Code of Civil Procedure, R. S. F. S. R., as Art. 24-a. These were (1) suits for rent, and payments for communal services supplied in cooperative apartment houses; (2) suits based on documents on which the law allows execution after endorsement by a notary, in those cases when the period to obtain notarial endorsement has expired; (3) cases classed as special procedure — (Defined in Code of Civil Procedure, R. S. F. S. R., Art. 191, as arising out of (a) conflicts over property in decedent estates, (b) decisions of arbitration tribunals, (c) appeals from acts of notaries, (d) requests to restore rights lost by the petitioner due to lost documents) with the exception of cases on exemption from military service because of religious conviction; and (4) conflicts between organs of the socialized (as opposed to the private) sector.

Until the war no criminal cases might be tried by a single judge, but by Decree of Aug. 10, 1940, cases concerning unjustified absence from work or leaving a job without permission shall be heard by a single judge instead of the regular three-judge court. See Ved. Verkh. Sov. S. S. S. R., No. 28 (91), Aug. 22, 1940, p. 2, and Code of Criminal Procedure, R. S. F. S. R., Art. 25, not 2 (1943 edition).

nated by the village, cooperative, army unit, production, educational, or other occupational group of the district, as well as by youth organizations, labor unions, cultural organizations and the Communist Party. All three members of the court have an equal voice in deciding questions of liability or guilt, and the decision or sentence to be pronounced. The support of a simple majority of the three is sufficient for the decision. The dissenting judge has a right to prepare a dissenting opinion for use on appeal.

The election of peoples' judges directly by the people for three year terms is an innovation of the new Constitution. No requirements other than Soviet citizenship exist, although in practice the professional judges are named from persons who have had close professional association with court work, as judges, clerks, examiners or prosecutors. Due to the war, general elections of Peoples' judges have not been held under the rules of the new Constitution, and the judges have been named in accordance with previously existing rules. Judges may also be recalled, under rules existing before the adoption of the 1936 Constitution, but this recall is limited to those cases in which the Regional Executive Committee or the chief executive organ of an Autonomous Republic gives its consent. In order that the electorate may know how the duties of the Peoples' Court are being performed, its judges are required to report periodically to the electorate on the progress of their work.

11 See idem, Art. 24.
13 Art. 109.
Special qualifications formerly required of members of the Peoples' Court hearing cases involving interpretation and application of labor laws have been abolished.\(^{17}\) Previously one of the peoples' co-judges represented the Labor Union and the other the Management.\(^{18}\) Likewise there were formerly commissions to hear cases involving crimes committed by minors, composed of a representative of the division of peoples' education as president, and two members — a peoples' judge and a doctor. These were abolished at the time of the drive against crimes committed by minors.\(^{19}\) Today the Peoples' Court in its regular form hears cases involving minors over twelve years of age, while measures deemed necessary for children under that age are entirely the responsibility of the Peoples' Commissariat of Education. While the Peoples' Court hearing cases relating to minors is no longer composed in a special manner, it usually is one specializing in the crimes of minors,\(^{20}\) so that the youth obtain skilled attention, and sentences are designed with the problems of the juvenile delinquent in mind.

Jurisdiction\(^{21}\) of the Peoples' Court in the criminal sphere extends to crimes against life, health, freedom and the dignity of citizens — namely murder, bodily injury, illegal abortions, illegal deprivation of liberty, rape, intentional avoidance of alimony payments, insult, rowdyism and slander. It also includes crimes against property — namely, banditry, robbery, larceny, obtaining property by false pretenses, extortion and crimes committed by responsible officials while performing their duties, such as, misuse of authority, exceeding authority, failure to use authority, waste, lack of care, fraud, failure to give full weight or measure, and exceeding ceiling

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20 See op. cit., supra, note 6 at 287.
prices. Finally, jurisdiction includes crimes directed against the public order, such as violation of the electoral laws, intentional failure to pay taxes, refusal to perform compulsory delivery of crops and to perform compulsory duties, evasion of military service, and violation of government orders. Jurisdiction over civil causes extends to suits relating to property, labor laws, payment of alimony, and inheritance.

**INTERMEDIATE COURTS**

Appeals in the Continental sense of the word do not exist in the Soviet Union. Tsarist Russian appellate courts were permitted to rehear an entire case, calling witnesses and examining evidence. Such a system was abolished at the time of creation of Soviet judicial organs. In its place there has been developed a system of cassation and revision whereby the case is reviewed solely on the basis of the record in the court of original jurisdiction. Errors in procedure, misapplication of a law, or clear variance between the facts as shown in the record and the sentence or decision may serve as cause to remand the case for retrial, or to change the decision without remanding if no further examination is needed to discover new facts. A decision may be changed under this procedure only if a law has been incorrectly applied, or if on the facts in the record the decision is insupportable. In such cases criminal sentences may be revised only to provide a lesser penalty.

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23 Code of Civil Procedure, R.S.F.S.R., Art. 237 and Code of Criminal Procedure R.S.F.S.R., Art. 413. While all criminal cases, except those of terrorist acts may be appealed by way of cassation, some civil cases were until 1936 not subject to appeal. These were cases (a) involving 100 rubles or less; (b) involving suit for not more than one month's wages; (c) when defendant did not contest either his liability or the amount claimed; (d) involving capitalization of an annuity previously adjudged when the organ paying the annuity is being liquidated. Code of Civil Procedure R.S.F.S.R., editions prior to 1938, Arts. 235 (note), 235-a and 235-b.
The cassational function is performed by the Regional Courts, composed of tribunals of three permanent judges, named by the Regional Soviet of Toilers Deputies for five year terms. In the Union Republics where the middle step does not exist, the work of these courts is performed by the Supreme Court of the Republic.

In addition to their cassational jurisdiction, these Regional Courts have original jurisdiction over criminal cases relating to counterrevolutionary crimes, especially dangerous crimes directed against the state administration, larceny of socialist property, especially important administrative and economic crimes and civil cases in which both parties are government or community agencies, enterprises or organizations. The crimes over which the Regional Court has original jurisdiction may be roughly distinguished from those over which the Peoples’ Court has original jurisdiction in that the penalties provided by the articles of the Criminal Code relating to crimes within the competence of the Regional Court permit of application of supreme measures — shooting and confiscation of property. The Peoples’ Court applies articles having terms of imprisonment as the maximum penalty. The Regional Court may assume jurisdiction of any case in any court subordinate to it, but the Presidium of the Supreme Court of the R.S.F.S.R. has directed that courts do this only in exceptional cases, and with the sanction of the presiding justice of the Regional Court.

When sitting as a court of original jurisdiction, the Regional Courts have a bench composed of a single permanent judge and two people's co-judges. Co-judges are named by the Regional Soviet, and serve for short periods of time, like their counterparts in the People’s Courts.

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26 See Judiciary Act of the U.S.S.R., cit., supra, note 10 at Art. 35.
27 Constitution, Art. 108.
28 See op. cit., supra, note 6 at 305 — 306.
31 See Judiciary Act of the U.S.S.R., cit., supra, note 10 at Art. 34.
In the City of Moscow, due to its unusual size, the Regional Court has a special division, known as the Moscow City Court, which acts in every respect like a Regional Court, with original and cassational jurisdiction, hearing cases appealed from the People's Courts which operate in the various Departments of Moscow. As a court with the power of a Regional Court, cassational appeals from its tribunals of original jurisdiction lie directly to the Supreme Court of the R.S.F.S.R.

Supreme Courts of the Union Republics

As a third step in the system, there is the Supreme Court of the Union Republic, its members named by the Supreme Soviet of the Union Republic for five year terms. It has cassational jurisdiction over cases heard by the Regional Courts, or the Supreme Courts of the Autonomous Republics within the Union Republic, and also original jurisdiction over cases of peculiar importance to the state. Its civil jurisdiction is the following: (1) Criminal — (a) cases of exceptional importance placed on its calendar by the Presidium of the Central Executive Committee of the Republic, by the Plenum of the Supreme Court, by the Prosecutor of the Republic or by the Chief of the State Political Administration of the People's Commissariat of Internal Affairs. The Supreme Court may transfer cases referred to it by the Prosecutor or the Commissariat of Internal Affairs to a Regional Court; (b) crimes committed in their official capacity by members of the Central Executive Committee of the Republic, People's Commissars of the Republic, members of the collegia of the People's Commissariats, members of the Presidium of the Supreme Council of National Economy, members of the Supreme Court, assistants to the Prosecutor of the Republic, and members of the collegium of the State Political Administration of the People's Commissariat of Internal Affairs, and also (c) crimes committed in their official capacity by Regional Prosecutors and their assistants, members of the Presidia of Regional Executive Committees and the Chiefs of their departments, Presidents and Vice Presidents of the Regional Courts. All cases in this group may be heard by the Supreme Court or transferred by it to any Regional Court. See Art. 449, Code of Criminal Procedure, R.S.F.S.R. (It will be noted that the terminology of the Article has remained unchanged since the adoption of the 1936 Constitution under which Supreme Soviets succeeded to the functions of Central Executive Committees of the Republics. Some of the other agencies mentioned have also gone out of existence, or been replaced.) (2) Civil — The Supreme Court may take jurisdiction over any case pending in any court or transfer a case or category of cases to any Regional Court. See Art. 24 Code of Civil Procedure, R.S.F.S.R. By Art. 419 the Supreme Court also has jurisdiction...
and criminal colleges include the customary two people’s co-
judges, called from a panel named by the Supreme Soviet
of the Republic, and a single permanent judge, when sitting
as a tribunal of original jurisdiction.\textsuperscript{35} When its colleges sit
in a cassational capacity, the bench is composed of three
permanent judges, without people’s co-judges.\textsuperscript{36} The Court
has a general supervisory function, exercised over all Courts
in the Republic. Even though a party to a suit originating
in a People’s Court has no right of cassational appeal to the
Supreme Court, the Supreme Court may review\textsuperscript{37} a decision
or sentence, even after confirmation by a Regional Court,
if a protest is filed with it by the Prosecutor of the U.S.S.R.,
or of the Republic, or by the Presiding Justice of the Supreme
Court of the U.S.S.R. It may also assume jurisdiction for
review on the initiative of its own Presiding Justice.

\textbf{Courts of Autonomous Republics and Regions}

Autonomous Republics have their People’s Court with the
same jurisdiction as People’s Courts in the Union Republics.
The second step is provided by the Supreme Court of the
Autonomous Republic, having the same jurisdiction as a Re-
gional Court in a Union Republic.\textsuperscript{38} Its judges are named by
the Supreme Soviet of the Autonomous Republic for five year
periods and sit in benches constituted similarly to those of
the Regional Courts when sitting as cassational courts or as
courts of original jurisdiction.\textsuperscript{39} Cassational appeals from
its action as a court of original jurisdiction proceed directly
to the Supreme Court of the Union Republic within whose
territory the Autonomous Republic lies. Except for this
cassational review they are otherwise independent of the

\begin{footnotes}
\textsuperscript{35} See Judiciary Act of the U.S.S.R., cit., supra, note 10 at Art. 49.
\textsuperscript{36} See idem, Art. 50.
\textsuperscript{37} See idem, Art. 51.
\textsuperscript{38} See idem, Art. 40.
\textsuperscript{39} See idem, Arts. 42 and 43.
\end{footnotes}
Union Republic, making reports to and being responsible only to the Supreme Soviet of the Autonomous Republic. They are, however, bound by interpretations of laws, as made by the Supreme Court of the Union Republic.

In each Autonomous Region the two steps are the People's Courts and the Regional Court, which are integrated into the general system of courts of the Union Republic in which the Autonomous Region lies. This places them in a less independent position than the courts of the Autonomous Republics, but like the latter they use the native language of the Autonomous Region, rather than that of the Union Republic in which they lie.  

Some less developed areas of national minority culture are organized as "national districts" of the R.S.F.S.R. These are in no sense autonomous, but exist to preserve and develop the culture of a small remote national minority, especially those minorities in the Far North. In these districts there is a District Court in addition to the customary People's Courts, which in fact has the same original and cassational jurisdiction as the Regional Courts of the R.S.F.S.R., but is different in that its President must be a judge of the Regional Court of the Region of the R.S.F.S.R. in which the national district may lie.

**FEDERAL COURTS**

Over the courts of the Republics stands the Supreme Court of the U.S.S.R. It directs a series of Special Courts, which may sit in any part of the Union, without regard to bound-

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41 Law of March 10, 1933, Sobr. Uzak., R.S.F.S.R., 1933, No. 21, Art. 70. To avoid confusion in reading laws, mention must be made of administrative districts in huge territories of the Far North and East in which Regional Courts are divided into sections (these sections sometimes being called District Courts), sitting permanently in these administrative districts. This division is wholly apart from principles underlying division into national districts as they are not formed to protect national minorities but to facilitate administration. Appeals from these district courts lie directly to the Supreme Court of the Republic. See Law of April 10, 1936, Sobr. Uzak., R.S.F.S.R., 1936, No. 11, Art. 67.
aries of Republics. All were formed by the federal government to deal with crimes of a nature involving the interests of the Soviet Union as a whole, and not of its various republics singly. Military, railroad transport and water transport crimes fall within their jurisdiction.\textsuperscript{42} In time of war the jurisdiction of some is broadened, for when an area is declared to be a theater of war, nearly all criminal acts are tried by the Military Tribunals.\textsuperscript{43}

The Military Tribunals are composed of three officers in the military-jurists department of the Red Army.\textsuperscript{44} Sitting in districts defined by Armies, Fronts or Fleets they have four grades: (1) Division, (2) Corps, (3) Army or Flotilla, and (4) Military District, Front or Fleet.\textsuperscript{45} All grades have original jurisdiction, depending on the military rank of the person to be tried, and the last grade also has the right to review petitions from sentences of the lower tribunals.\textsuperscript{46} Petitions from decisions of the top grade go before the military college of the Supreme Court of the U.S.S.R., which, in addition to this jurisdiction may hear a case as a court of original jurisdiction when matters of momentous importance are involved.\textsuperscript{47} Jurisdiction in all tribunals is not limited to military personnel, but extends even in peace time to all civilians who commit acts of treason, espionage, terror, arson, explosion, or other types of diversion.\textsuperscript{48} During wartime jurisdiction over these crimes when committed by civilians is retained by the Military Tribunals, but those additional crimes brought within the orbit of the Military

\textsuperscript{42} See Judiciary Act of the U. S. S. R., cit., supra, note 10 at Art. 53.
\textsuperscript{45} See Judiciary Act of the U. S. S. R., cit., supra, note 10 at Art. 57 and decree of June 22, 1941, cit., supra, note 43 at sec. 10.
\textsuperscript{46} See Judiciary Act of the U. S. S. R., cit., supra, note 10 at Art. 59.
\textsuperscript{47} The cases against Bukharin, Zinoviev, Kamenev, Pyatakov, Radek, et al in 1936, 1937 and 1938 were heard by this college, sitting as a court of original jurisdiction.
Tribunals by the declaration of a state of war are heard by Military Tribunals of the People's Commissariat of the Interior, rather than the Military Tribunals of the Red Army.\(^{49}\) If the case relates to labor discipline and no Military Tribunals of the People's Commissariat of the Interior are conveniently near, the Military Tribunals of the Red Army have jurisdiction.\(^{60}\) If no Military Tribunals of any kind are available, the case is brought before a Regional Court or a Supreme Court of an Autonomous Republic. In this event the wartime restrictions on appeal apply.\(^{61}\)

Military Tribunals have no civil jurisdiction, and consequently may not hear a civil claim which might have been joined to the criminal prosecution in the ordinary courts.\(^{62}\) During wartime, there is no right of cassational appeal, but the officials of a court sentencing a defendant to death must wait 72 hours after telegraphing the President of the Military College of the Supreme Court of the U.S.S.R. and the Chief Prosecutor of the Red Army or Red Fleet before executing the sentence.\(^{53}\)

Railroad and Water Transport Courts sit in districts defined by individual Railroad systems or River Basins,\(^{54}\) with jurisdiction over criminal acts directed to the disorganization of labor discipline and other crimes upsetting the normal work of transportation,\(^{55}\) whether the accused be an employee of the transport system or an ordinary citizen.\(^{56}\)


\(^{51}\) Idem.


\(^{54}\) See Judiciary Act of the U.S.S.R., cit., supra, note 10 at Art. 61.

\(^{55}\) See idem, Art. 60.

\(^{56}\) If a case relates to inexcusably absence or departure from a job and no transport court is conveniently located to try the case, the director of the enter-
During the war with the mobilization of railroad transport, the railroad transport courts were reorganized as railroad military tribunals. In peacetime, cases are heard by a bench of a professional judge and two people’s co-judges, but in wartime the militarized tribunals are composed only of professional judges. Peacetime cassational appeals lie to the Railroad or Water Transport College of the Supreme Court of the U.S.S.R.

SUPREME COURT OF THE U.S.S.R.

In addition to the Military, Railroad Transport and Water Transport colleges hearing cassational appeals from the lower federal courts and acting as courts of original jurisdiction over crimes of momentous national importance, the Supreme Court of the U.S.S.R. has colleges for criminal cases and for civil cases. Like all judges of the Supreme Court, the members of the tribunals serving in these colleges are named by the Supreme Soviet of the U.S.S.R. for five year terms. In addition to their cassational jurisdiction, these colleges have original jurisdiction over cases selected by the Presiding Justice of the Supreme Court because of their general importance. When sitting as courts of original jurisdiction the bench of three judges consists of two co-judges selected from a panel named by the Supreme Soviet of the U.S.S.R.

To provide a board of review over the work of the various colleges, all judges of all colleges, together with the Presiding Justice and the Vice Presidents, meet not less often than once every two months as a Plenum. This Plenum hears
protests brought before it by the Presiding Justice or the Prosecutor of the U.S.S.R., and issues guiding orders for court practice on the basis of the matters reviewed. These orders are published for the use of all courts within the Union. Before the 1936 Constitution the Plenum had the power to recommend to the Presidium of the Central Executive Committee of the U.S.S.R. that a law or order of a People's Commissariat of the Union, of the Council of People's Commissars or of any other central organ of the Union be voided as contrary to the Constitution. Although this power was wide it did not extend to the power to protest the laws of the Central Executive Committee or its Presidium.

The 1936 Constitution has made a substantial change in this right of Constitutional surveillance, for the Supreme Court is relieved of this duty which is passed to the Prosecutor of the U.S.S.R. as the general guardian of the law. Decision as to whether the protest is well founded remains with the legislative organ, which became the Supreme Soviet of the U.S.S.R. under the 1936 Constitution. Laws of this Supreme Soviet are not included in the list which may be protested. Nothing in the Constitution prevents the Supreme Soviet from asking the advice of any organ on questions of constitutionality. The Supreme Court might be called upon for this service.

Apart from cassation and relief through the exercise of review by courts, there remains the power of pardon and amnesty, given to the Union Government when a matter of

62 See idem, Art. 75.
63 1924 Constitution, U. S. S. R., Art. 43.
65 See idem, Art 49 (e).
66 Art. (e) of the Constitution, U. S. S. R. refers only to decisions and orders of the Council of People's Commissars of the U.S.S.R. and of the Councils of People's Commissars of the Union Republics. It does not provide for protests against enactments and orders of the Supreme Soviet in Autonomous and Union Republics. If these conflict with all-union laws, they are declared automatically inoperative under Art. 20 of the Constitution, declaring the all-union law to be paramount in case of a conflict.
all-Union concern, and reserved to the governments of the Union Republics when the sentence concerned had been pronounced by a court of the Republic. This power is exercised by the Presidium of the Supreme Soviet of the U.S.S.R., or by the Presidium of the Supreme Soviet of the Republic.

**NON-JUDICIAL ORGANS TO SETTLE DISPUTES**

Wholly outside the court system lies the system of State Arbitration, and the system of Comrade's Courts. Although neither are mentioned in the Constitution, they play an important part in the life of the U.S.S.R. and form an integral part of the system of administering justice.

The arbitration tribunals have jurisdiction over commercial disputes between government corporations or disputes in which a party is a foreign firm, which consented to jurisdiction in its contract with a Soviet enterprise. The organization and jurisdiction of these tribunals has been described in detail elsewhere.

The Comrade's Courts have jurisdiction over small cases which may be settled informally, and for which small fines, public censure, or small damages are wholly adequate. Evolved as a result of many changes since 1919, they now consist of a bench of three judges, elected from the producing unit, village, or dwelling unit. They hear the case with-

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70 1937 Constitution, R.S.F.S.R., Art. 33 (g).
71 Soviet Commercial Arbitration by John N. Hazard. 1 International Arbitration Journal 8-17 (1945).
out being bound by the usual rules of court procedure, but their work is subject to review by the People's Court of the district.\textsuperscript{75}

**The State Prosecutor**

Strict centralization of the office of the State Prosecutor is the basic principle laid down by the Constitution. There is absolute independence of the Commissariats of Justice or of the local governmental organs,\textsuperscript{76} to make possible the fulfillment of the task of prosecuting all violators of law, be they local civilians or government officials.\textsuperscript{77}

This principle of independence, for which Lenin argued even against some members of the government in the first months of the Revolution,\textsuperscript{78} finds clear expression in the requirement that all Prosecutors of Union Republics, Regions, Autonomous Republics and Autonomous Regions be named by the Prosecutor of the U.S.S.R.,\textsuperscript{79} who is himself named for a period of seven years by the Supreme Soviet of the U.S.S.R.\textsuperscript{80} Prosecutors in areas or districts within the larger Regions are appointed by Prosecutors of the Republic, but only after receiving the approval of the prosecutor of the U.S.S.R. Prosecutors in areas or districts within the larger Regions are appointed by Prosecutors of the Republic, but only after receiving the approval of the Prosecutor of the U.S.S.R.\textsuperscript{81} With the creation of the Office of Prosecutor of the U.S.S.R. in 1933,\textsuperscript{82} resulting in the divorcing of the local prosecutors from the sole control of the Commissariats of Justice of the Republics, the system of Prosecution was placed on the road which led to the simplified independent system it is today.

\textsuperscript{76} Constitution, U. S. S. R., Art. 117.
\textsuperscript{77} Idem, Art. 113.
\textsuperscript{78} See 27 V. I. Lenin, Sochineniya (3izd., Moscow, 1935) 299-300.
\textsuperscript{79} Constitution, U. S. S. R., Art. 115.
\textsuperscript{80} Idem, Art. 114.
\textsuperscript{81} Idem, Art. 116.
\textsuperscript{82} Law of June 20, 1933, Sobr. Zak., S. S. S. R., 1933, I, No. 40, Art. 239.
Basically the system is three-stepped in each Union Republic, with the Prosecutor of the U.S.S.R over all. Thus there are Chief Prosecutors in each of the sixteen Union Republics, and below them in the intermediate position are Prosecutors of each Region, with the place at the base of the pyramid taken by Prosecutors of Districts. Where there exists an Autonomous Republic there are District prosecutors, and a Prosecutor of the Autonomous Republic, responsible to the Prosecutor of the Union Republic in which the Autonomous Republic may lie. Likewise there are Prosecutors in the Autonomous Regions, responsible to the Prosecutor of the Union Republic within which they are situated. In large cities there is a city Prosecutor, with the full authority of a Regional Prosecutor, his position paralleling that of the City Court.

Terms of service are uniform for all — five years, with the exception of the seven year term of the Prosecutor of the U.S.S.R.

As Specialized Prosecutors, there are divisions of the Office of Prosecutor of the U.S.S.R headed by the Military, Transport, and Water Transport Prosecutors. These direct, independently of the Prosecutors of the Republics, a network of subordinates in these special fields, who are responsible only to their Chiefs. Each prosecutes cases

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86 "Neither in substance nor in character do these duties present anything extraordinary or exceptional ... the transport and military prosecutors in general are not extraordinary organs of the Prosecutor's Office. They are specialized organs, and in that and only in that is to be found their special character." See A. Y. Vyshinsky and V. S. Undrevich, op. cit., supra, note 6 at 468-469.
90 See statutes, cit., supra, notes 87, 88 and 89.
over which the Military, Transport and Water Transport Courts have jurisdiction. In the military divisions deputy Prosecutors are distributed according to Fronts, Armies and Fleets; in the transport division according to the part of a railroad known as a single system and operated by a single government corporation, and in the water transport division according to navigation basins so that they parallel the jurisdiction of the courts in which they work, although not being attached to these courts.

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

To provide an additional precaution against violation of the law the right is given the representative of any social organ — labor union, labor inspector, technical sanitary or other organ of inspection — to appear in a case to present pertinent facts and an analysis of the social and political factors involved, whether the Prosecutor also is present or not.

Prosecution in criminal cases is only a part of the task of this office. A Prosecutor must take part in civil cases, when the interests of the State or of the toiling mass are involved. He must supervise the legality of detention, and

82 See Criminal Code of the R.S.F.S.R., Art. 4 (Art. 5 makes an exception for persons enjoying the right of extraterritoriality) and Civil Code of the R.S.F.S.R., Introduction, Art. 8, providing that rights of foreigners are governed by agreement with the country involved. In the absence of agreement these rights may be limited by the Central Organs of the Government, with the consent of the People's Commissariat of Foreign Affairs. No agreement on such matters has been executed by the U.S.S.R. and the United States so that the provisions of the Civil Code apply to American nationals.
arrest, a task magnified many times by the Constitution which forbids arrest without the order of a court or the sanction of a Prosecutor. As the guardian of the law, his is the task of seeing that rights listed in the Constitution are not violated.

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

Since 1933 the Prosecutor has been entrusted with control over the People's Commissariat of the Interior, which at that time was given the function of performing in modified form the work formerly done by the Cheka and later the O.G.P.U. This supervision falls under the "Special Section" of the Prosecutor's Office of the U.S.S.R. It in turn brings under his care the organs subordinate to the Commissariat such as the Militia, the court executioners and the Division of Correctional Labor, which has been occupied on such monumental tasks as the building of the Baltic-White Sea Canal, and the Moscow-Volga Canal.

96 Idem, Art. 127.
97 See lex., cit., supra, note 83 at Art. 19.
98 Soviet investigating organs have no counterpart in the United States. Although under the supervision of the Prosecutor's Office, they are not given the task of proving the case for the prosecution. Law requires them to deal impartially with the investigation and to find all facts supporting the innocence of the suspected person, as well as those indicating his guilt (Code of Criminal Procedure, R. S. F. S. R., Art. 111). Should the facts examined and collected seem inadequate to indicted, the investigator may drop the examination (idem, Art. 221). Organizationally there are three grades of investigators: (a) Investigator, attached to the District Prosecutor; (b) Senior Investigator, attached to the Regional Prosecutor; and (c) Investigator for especially serious cases, attached to the Republic Prosecutor. Investigation by any one grade does not require trial by the corresponding court, for jurisdiction is determined by the facts disclosed by the investigation.
99 See lex. cit., supra, note 83 at Arts. 4d and 8.
100 The militia is the branch of government to which the duty of preserving law and order was delegated after the abolition of the Tsarist police, and which still performs these functions. It is in no sense a national guard in the American sense of the term.
The duty of protesting to the cassational college of any court falls on the Prosecutor. Should the period for protest have expired, he may still raise the issue by way of surveillance (nadzor) and ask the cassational tribunal to decide whether a rehearing should be had.\footnote{101} This is an exceptional right, exercisable only when there has been a violation of a principle of revolutionary law of such a nature that the decision or sentence cannot be permitted to stand.\footnote{102}

In 1936 there was a complete revision of the principles on which the departments of the Office of the Prosecutor of the U.S.S.R. were organized.\footnote{103} The revision eliminated the duplication of work formerly existing as a result of departmentation on production or area principles, so as to provide organization on a functional basis. The departments handling crimes in production, agriculture, trade, cooperatives, finance, social and cultural fields have been replaced by three basic juridical divisions — investigators, criminal courts and general supervision. The first controls all court investigators. The second examines all criminal cases for errors, and the last has the task of passing upon the legality of all organizations, responsible officials and citizens of the U.S.S.R. There is a division of personnel, which also has the task of exposing crimes by court workers. A new division to perform the duties of surveillance over civil cases of interest to the state was created in 1936. Divisions continued unchanged from 1933 were the divisions of information and statistics, the specialized division for supervising the work of organs of the People’s Commissariat of the Interior, a special division with no defined functions, a division for supervision over places of detention and divisions concerned with the work of the specialized Prosecutors — Military, Railroad Transport and Water Transport.

\footnote{101}{See Judiciary Act of the U.S.S.R., cit., supra, note 10 at Art. 16.}
\footnote{102}{See M. S. Strogovich, Ugolovnyi Protsess (Moscow, 1940) 299.}
CONCLUSION

American jurists will find in the Soviet system of courts and prosecution some structural situations which differ sharply from the American counterparts. At no point do juries appear in the Soviet system. Something of the function of a jury is performed by the two lay judges who sit in most courts of original jurisdiction with the professional judge. These lay judges have broader powers than the American juror since they are competent to decide issues both of fact and law and may outvote the professional judge.

The different relationship between Soviet Republics and the Union of which they form a part makes for different relationships between the federal and Republic courts in the U.S.S.R. than are to be found in the American system. Soviet federal courts, except for the Supreme Court, are limited to highly specialized jurisdiction over cases relating to national security and transport. The great bulk of civil and criminal cases are heard by the courts of the Republics.

The Office of Prosecutor in the U.S.S.R. provides striking contrast to the courts in that it is organized along federal lines alone. All prosecutors represent the federal government and are not responsible to the government of the Republic or Region in which they may perform their services. There is no dual system of prosecution, with one prosecutor representing the federal government and its interests and another the Republic government and its interests, as is characteristic of the American scene.

The three-stepped system of Soviet courts looks similar to those of most American states and of the federal government. Some dissimilarity appears in the restrictions upon appeal beyond one higher level, as these restrictions are more extensive than those common in the United States. A provision permits a higher court to call for a record from a lower court, even after a decision or sentence has come into force after affirmance on appeal, and to review it for errors.
While the differences between American and Soviet systems of courts and prosecution are marked, those who know Continental jurisprudence will find many familiar features in the structure of Soviet courts and prosecution. Soviet jurists have drawn largely upon the experience of the Continent in drafting their judiciary acts and their procedural codes. They are frank to admit it, but they believe they have infused the old forms with a new spirit and created something different both in substance and form.

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