FOR THE RULE OF LAW

SOVIETIZATION OF ESTONIA'S LAWCOURTS

SPECIAL STUDY NO. 1

INTERNATIONAL COMMISSION OF JURISTS

THE HAGUE

SOVIETIZATION

OF ESTONIA'S LAWCOURTS

BY

PAUL POOM

FORMER MEMBER, SUPREME COURT OF ESTONIA

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After the so-called incorporation of Estonia into the USSR in the summer of 1940, the Bolshevik authorities began to reorganize the entire way of life in Estonia, not only with regard to government and the economic field, but also with regard to the judicial system.

In this latter respect Lenin's dictum was strictly adhered to, viz., that the old judicial system and apparatus must be completely destroyed and swept away (cf. also the book "Ueber die Sowjetjustiz" by A. Y. Vyshinsky, the late chief Soviet delegate at the United Nations, p. 31).

However, in Estonia this was not realized all at once but only gradually, step by step, so that the process may be divided into several periods.

1. Activities of Estonian Lawcourts under the Bolshevik Regime from June 21, 1940, until January 1, 1941

a) Changes in the Personnel of the Lawcourts

The lawcourts of independent Estonia functioned until the end of 1940 but during the period in question, the Bolsheviks undertook several changes in their personnel.

As the 1937 Constitution of the Republic of Estonia was still in force in the period from June 21 until August 24, 1940, it was impossible to dismiss judges or to transfer them without their consent otherwise than by means of a court sentence (Art. 116). The same provision was included in Art. 199 of the Law on Lawcourts of independent Estonia which law was valid until January 1, 1941 (Eesti NSV Teataja - The Official Gazette - 1940, No. 73, Art. 1007).

In order to make it possible to dismiss more quickly and easily judges who were considered unsuitable by the Communist regime, the Bolsheviks declared Art. 199 of the Law on Lawcourts invalid as from July 30, 1940 (Riigi Teataja 1940, No. 87, Art. 835). Later Art. 42 of the Law on Civil Service was extended to be applicable even to judges which made it possible to discharge them by an administrative rule in case it was found that their activities were "injurious to the interests of the state" (Eesti NSV Teataja, 1940, No. 28, Art. 319).

For instance, by a decree of the council of People's Commissars of the Estonian SSR, dated November 29, 1940, judges of the Tartu circuit court, Georg Maim and Kristjan-Georg Läänesaar, Tartu district judge Bruno Peterhoff and Pärnu district judge J. Kurg were discharged under Art. 42 of the Law on Civil Service, i.e., by an administrative ruling, under the pretext that they "have not shown sufficient revolutionary vigilance in their struggle against speculation, which is injurious to the interests of the state."

Up to the end of 1940 the Bolsheviks discharged 21 judges and four public prosecutors out of the 232 persons constituting the judiciary personnel of the Republic of Estonia. The dismissals affected all resorts of the courts, from the Supreme Court down to the Courts of first resort. In certain cases direct pressure was applied, e.g., the People's Commissar for Justice of the Estonian SSR demanded that Vladimir Kuusik, chairman of the Tallinn circuit court, resign immediately which the latter was obliged to do in fear of possible reprisals. He was dismissed on October 23, 1940.

While judiciary personnel were being dismissed, several judges were arrested by the People's Commissariat for Home Affairs (NKVD) of the Estonian SSR. This fate befell all the higher judges.

Among those arrested we might mention justices of the Supreme Court Aleksander Hellat (in August 1940), Peeter Kann and Paul Välbe (in December of the same year, P. Kann being arrested in his office), justices of the Court of Appeal Hendrik Vahtramäe and Gustav Laanekörb, and judge Friedrich Kuusekänd of the Tallinn Circuit Court.

The only data about the further fate of the arrested judges come from their wives who in their turn acquired them at a meeting with their husbands in the prison. The arrested judges had been sentenced to 5 - 20 years of loss of liberty by the Military Tribunal of the Baltic Military District, the charge being that during Estonia's independence - which had been officially recognized by the Bolsheviks under Tartu Peace Treaty of 1920 - they had been active on their official posts, or in the Home Guard, i.e., they were sentenced retrospectively under Art. 58^{13} of the Criminal Code of the Russian SFSR.

These dismissals and arrests were obviously connected with investigations concerning the former activities and views of the judges, which were conducted by means of appropriate questionnaires; the judges who were dismissed and arrested were in the first place those who had been active in the Home Guard, the Association of the Veterans of the War of Liberation or some other patriotic organization, had fought against the Bolsheviks in the War of Liberation 1918 - 1920 or had worked at some politically important posts before they had been appointed judges.

The questionnaires had to be filled in 5 - 6 times and contained up to 45 questions. They dealt with the social origin of the judges, their property, membership in political and patriotic organizations, participation in Estonia's War of Liberation, travels abroad, relatives living in foreign countries, etc., etc. At last a circular of the People's Commissariat for Justice of the

Estonian SSR, dated October 16, 1940, No. 2493, provided that the entire judiciary personnel, clerks included, were to submit their detailed biographies and photographs.

The posts that became vacant after the dismissal of judges and public prosecutors, were but partly filled again at that time, because a reorganization of the courts was to be expected.

The Amendment of the Law on Lawcourts (Riigi Teataja 1940, No. 87, Art. 835), dated July 30, 1940, had altered the conditions and procedure regulating the appointment of judges; therefore it was possible to appoint persons whose political convictions were more acceptable to the new regime than those of the former judges.

This meant that now persons could be appointed who were less than 25 years old, had not graduated from the juridical faculty of the university, lacked the court experience as stipulated by the law, had been removed from court office or expelled from the bar.

In the second place, the said amendment abolished the provision that a vacant judge's post had to be advertized in Riigi Teataja, the applications of the candidates examined by a collegiate body consisting of the Minister for Justice, the Chancellor of Justice, the Chairman of the Supreme Court and the Chairman of the Court of Appeal, and the judge appointed by the President of the Republic.

Henceforth the appointment of judges depended exclusively on the administration because the courts had been deprived of their right to make proposals or express their opinion in these matters.

This meant that from August 25, 1940, until the end of the year, the Council of People's Commissars of the Estonian SSR appointed all judges without consulting anyone.

Junior district judges were appointed judges of district courts while auxiliary district judges became judges of circuit courts. As from October 18, 1940, the Council of People's Commissars of the Estonian SSR appointed Heinar Grabe to the post of chairman of the criminal board of the Tallinn circuit court (Eesti NSV Teataja 1940, No.31). Grabe was a 28-year old law student who lacked totally the knowledge and experience required for a judge's work. At first H. Grabe did not attend the court sessions because he did not know the court procedure. According to his personal file he was a CP member since July 1940.

b) Changes in Criminal Law

The establishment of the Communist dictatorship in Estonia influenced the valid criminal laws, various acts which seemed injurious to the new regime being criminalized and in other cases penalties stipulated by the law being increased.

For instance, on July 27, 1940, in connection with the nationalization of shipping, Estonian ships in foreign waters were forbidden to leave or enter a harbour without a permission of the government, in order to secure that these ships could be brought back to Estonia. A violation of this regulation by the ships' masters was punishable with forced labor for an indefinite period. At the same time it was stipulated that the ships' masters disobeying the government's orders about the return of Estonian ships to the home country, would be treated as traitors, and their families and closest relatives held responsible (Riigi Teataja 1940, No. 84, Art. 804).

Particularly severe were the penalties to be applied to traitors residing abroad and members of their families, which law was to be enforced retroactively (Riigi Teataja 1940, No. 93, Art. 916).

Under this law the refusal of a citizen to return to the home country on government orders, was considered "desertion into the camp of the enemies of the working class" and high treason. A person guilty of this crime was proscribed and sentenced in absentiam to be shot, and his entire property confiscated. The members of his family who in some way or other had aided this "high treason", were to be sentenced up to 10 years of prison and confiscation of their entire property.

Crimes of this kind had to be tried by a collegiate "special court" at the Ministry for Home Affairs; no appeal was admitted against the sentences passed by this court.

The incorporation of a new crime - speculation - in the Crime Code served plainly terroristic purposes, directed against wealthier citizens.

Under a ruling of the Presidium of the Supreme Soviet of the Estonian SSR, dated October 2, 1940, the Criminal Code was amended in such a manner that a new article, Art. 239^2, was added, making speculation a punishable offence, speculation being defined as purchasing of articles of mass consumption and their resale with a view to earning a profit, the stipulated sentence being imprisonment from 5 to 10 years and confiscation of property (Eesti NSV Teataja 1940, No. 17, Art. 204).

The application of this article caused considerable difficulties to the courts.

In the first place, under circular No. 2363 of the People's Commissariat for Justice of the Estonian SSR, dated October 7, 1940, the courts were allowed five days to try cases of speculation, and it was extremely difficult to comply with this regulation which greatly hampered the normal working of the courts.

In the second place, the compulsory minimum sentence stipulated for this crime - five years of prison - was plainly unjust and far too severe for quite unimportant cases of speculation.

Moreover, this law was also unjust with regard to its premises because in those troubled times the overwhelming majority of citizens had procured certain reserves, food, clothes, etc., obviously for their own use and not for resale. - The reserves in question were frequently quite insignificant as regards value and quality, e.g., in one case the indictment concerned six bedsheets.

And finally, the majority of citizens had acquired their reserves long before Art. 239^2 took effect, because the government of independent Estonia had recommended the population to acquire as large reserves as possible when the troubled times came, which means that the accused and sentenced persons had often acted in good faith in accordance with the above recommendation.

For these reasons, the courts of first resort (district courts) began to acquit large numbers of persons prosecuted for speculation. The Bolshevik authorities considered this unwarrantable and the People's Commissariat for Justice of the Estonian SSR as well as the prosecuting magistracy began to influence the courts in the most direct meaning of the word, demanding more convictions and heavier sentences in speculation cases.

Methods how the courts were actually influenced, will be dealt with in a following chapter.

As mentioned above, the Bolshevik authorities increased the penalties for some acts which were punishable even before.

Thus the Criminal Code provided that infringements of certain trade regulations be punished with up to six months of arrest or a fine of 3000 kroons; the punishments were now increased to up to 6 years of prison or a fine of 30,000 kroons, with the additional penalty of partial or total confiscation of property (Riigi Teataja 1940, No. 109, Art. 1106).

Here it ought to be added that the Criminal Code of independent Estonia never stipulated the confiscation of the culprit's property as the main or additional penalty (Chapter 3 of Estonia's Criminal Code).

Thus it is quite natural that the Bolshevik authorities, providing this additional punishment for a number of crimes also published an amendment to the general part of the Criminal Code, defining the conception and contents of confiscation (Riigi Teataja 1940, No. 109, Art. 1106).

Even in this case the purpose of the authorities was plain - to seize the property of prosperous people and turn it over to the state also in those cases when they had only infringed the most unimportant trade regulations.

One more law worth mentioning is the law on the term during which payment for overtime may be demanded (Riigi Teataja 1940, No. 96, Art. 946).

In connection with the nationalization of industrial enterprises, workers began in great numbers to sue for overtime payment, and the courts were granting their pleas in as great numbers. As this was quite displeasing to the Bolsheviks, a law was promulgated ruling that all claims for overtime payment which had come into being before June 21, 1940, were superannuated.

In other words, the workers lost the payment they had earned, not to mention the fact that the civilized world knows of no case where a civil claim of the citizen could be proclaimed superannuated retroactively or a law to this effect enforced retroactively.

c) Formation of Soviet Prosecuting Magistracy

The Bolshevik Prosecuting Magistracy was formed in Estonia in the second half of 1940, i.e., at a time when the lawcourts of independent Estonia were still functioning. The Soviet Prosecuting Magistracy differed from that of independent Estonia with regard to its structure as well as its functions.

The Soviet Prosecuting Magistracy as a whole is headed by the Prosecutor General of the USSR in Moscow, appointed by the Supreme Soviet of the USSR for a period of seven years (Constitution of the USSR, Art. 114). Directly subordinated to him are the public prosecutors of the constituent republics, appointed by the Public Prosecutor of the USSR for a period of five years (cf. Constitution of the Estonian SSR, Art. 87).

Directly subordinated to the Public Prosecutor of the Estonian SSR were the regional and town public prosecutors, appointed by the Public Prosecutor of the Estonian SSR for a period of five years, their appointment being confirmed by the Prosecutor General of the USSR (Constitution of the Estonian SSR, Art. 88).

Prosecuting agencies of the Estonian SSR were independent of other government agencies and subordinated only to the Prosecutor General of the USSR in Moscow (Constitution of the Estonian SSR, Art. 89). It was the duty of the public prosecutors to check on the exact fulfilment of the law by all people's commissariats and their subordinate agencies, as well as by individual functionaries and private citizens (Constitution of the Estonian SSR, Art. 86).

Thus in the guise of the prosecuting magistracy the Bolsheviks created an agency in Estonia which had to check on everything and report all they learnt to the central prosecuting magistracy in Moscow. - The Prosecuting Magistracy of the Estonian SSR was created by a decree of the Council of People's Commissars of the Estonian SSR, dated October 23, 1940 (Eesti NSV Teataja, 1940, No. 31, Art. 351).

At the same time the prosecuting magistracies of independent Estonia, attached to the Supreme Court, the Court of Appeal and the circuit courts, were being liquidated and their activities wound up by the end of 1940. A number of the public prosecutors of independent Estonia were dismissed in the middle of December 1940, the rest (constituting the majority) as from January 1, 1941.

When one considers the views, education and former profession of people holding responsible posts in the Soviet prosecuting magistracy, it appears that they consisted of: (1) CP members with an appropriate professional training and experiencesin Russia; (2) Estonian jurists who had worked at the courts of prosecuting magistracy of independent Estonia, and were not Communists; and (3) Estonians who lacked juridical training and had formerly held simple jobs, but were considered suitable by the new regime owing to their political views.

The posts within the magistracy were divided among these three groups so that the central prosecuting magistracy as well as the district and town magistracies were headed by local Estonian functionaries who lacked juridical training and had held simple jobs hitherto, but held political views approved by the Soviet regime. Obviously they were unable to direct the work of the prosecuting magistracies and had only been appointed in order to

create an impression as if local Estonians had been entrusted with the task of directing the prosecuting magistracy.

In conformity with this principle one Karl Paas was appointed Public Prosecutor of the Estonian SSR. He was about 35 - 40 years old, of Estonian nationality, had sat in prison for a long time on account of his Communist activities, but had neither the training nor the experience required in a prosecutor's work. As a result he remained unnoticed in the background and a more important role was played by his aides, S. Nosterov and S. Nikiforov, both Russians from the USSR not even speaking Estonian.

Equally unqualified were the district and town prosecutors. E. g., the Virumaa district prosecutor was the shoemaker Ross, the Järvamaa district prosecutor - the oil shale miner Normak, and the Viljandimaa district prosecutor - one Undusk, a worker from Narva.

The actual leaders of the prosecuting magistracy of the Estonian SSR were people who had come from Russia where they had acquired the proper training, were probably all CP members, some being Russian, others Russified descendants of Estonian parents.

d) Influencing the Courts

The influencing of courts by administrative agencies, which is a characteristic feature of the Soviet judicial system, was in evidence already during the transitional period mentioned above.

Art. 85 of the Constitution of the Estonian SSR, which came into force on August 25, 1940, and stipulates that "the judges are independent and subordinated only to law" was actually an empty phrase.

In the first place, the influencing of jurisdiction was effected through the Estonian People's Commissariat for Justice inviting the judges individually or in groups to explain the sentences passed by them. Another means of influencing were circulars of the same agency.

Despite the fact that these directives concerning jurisdiction were illegal and grossly violated the Constitution of the Estonian SSR, the courts were actually compelled to obey these orders because of the Communist terror which found its expression in the dismissal of some judges and the arrest of others.

All such illegal instructions aimed in the first place at more severe punishments and a greater number of convictions for some offences, more particularly cases of speculation. The judges were accused of "liberalism" with regard to these cases and directed to pay more attention to the viewpoints of the Communist Party than to law.

In a case of speculation the judge of the 8th district court in Tallinn acquitted the culprits because it appeared under the trial that their profits on the four calf hides they had bought and resold, had been only 50 sents (15 US cents according to the rate of exchange in 1940). V. Saar, deputy people's commissar for justice, summoned the judge, reproached him for this, and later demanded an explanation in writing. Under pressure from the prosecuting magistracy, the Tallinn circuit court, i.e., the court of second resort, repealed the sentence of the district judge and sentenced the defendants to 5 years of prison.

By this circular No. 2512 of October 30, 1940, the People's Commissar for Justice directed the attention of the courts to the circumstance that in cases of speculation the courts usually confiscate only the objects of speculation although the law permits the confiscation of the defendant's entire property. The circular urged that even the personal property of the defendant be confiscated, although under the law it was the judge who had to settle this at his own discretion.

In another circular - No. 3192 of November 30, 1940 - the judges were reproached that they acquitted too many defendants in speculation cases. The erring judges were enumerated by name and the circular wound up with the announcement that because of these errors the People's Commissar for Justice had proposed to the Council of the People's Commissars of the Estonian SSR, to dismiss a number of judges.

The circulars also urged heavier punishments in cases concerning unauthorized leaving of, or absence from, work (Decree of the Presidium of the Supreme Soviet of the USSR, dated June 26, 1940). A circular of the deputy People's Commissar for Justice of the Estonian SSR, V. Saar, dated December 18, 1940, No. 3647, <u>forbade</u> to apply Art. 51 of the Soviet Criminal Code to those offences because under the said article the courts were entitled to pass milder sentences than provided for by the law, if the courts considered it necessary on account of special circumstances.

2. Formation of Soviet Courts in Estonia

a) Introduction of Soviet Laws

Preparations for a complete boshevization of the courts started already in August 1940 when the People's Commissariat for Justice ordered the translation of Soviet laws from Russian into Estonian; certain older experienced Estonian judges and officials of the Ministry for Justice of independent Estonia were compulsorily detailed to execute this task. The translations were completed in December 1940.

However, already earlier, under a decree of the Presidium of the Supreme Soviet of the Estonian SSR, dated November 16, 1940 (Eesti NSV Teataja, 1940, No. 45, Art. 523), all courts of independent Estonia were liquidated and replaced by courts formed on the Soviet pattern: people's courts, regional courts and the Supreme Court of the Estonian SSR, to start their activities as from January 1, 1941 (Eesti NSV Teataja, 1940, No. 73, Art. 1007).

Apart from these courts a special court was created, viz., the Military Tribunal of the NKVD Troops of the Baltic Military Area, which later was to try the so-called counter-revolutionary crimes (Eesti Teataja, 1941, No. 15, Art.171).

At the same time the All-Union Judicial Code (Eesti NSV Teataja, 1940, No. 73, Art. 1007), and the following laws of the Russian SFSR: the Criminal Code, the Civil Code, the Laws on Marriage, Family and Tutelage, as well as the Codes of Criminal and Civil Procedure which in the meantime had been translated into Estonian, came into force on Estonian territory. The Criminal Code was made valid already on December 16, 1940.

In other words, as from January 1, 1940, the Bolsheviks enforced in Estonia laws that were completely alien to the spirit of the Estonian people, their way of life, economic conditions and historical traditions, laws that had originated in the interior of Russia, i.e., under absolutely different ethnic and economic conditions.

b) Personnel of Soviet Courts in Estonia

The principle governing the appointment of judges of the Soviet Courts acting in Estonia from January 1, 1941, was to select politically loyal persons irrespective of their theoretical training and practical experience.

It goes without saying that the former judges were not considered sufficiently trustworthy. On the other hand, it was to be expected that at the start of their activities the Soviet courts would be heavily burdened because a number

of cases already tried by the former courts had to be retried. As untrained personnel could not possibly cope with this task, it was unavoidable that the judges of independent Estonia had to be employed at first.

In order to teach them Soviet law, the People's Commissariat for Justice of the Estonian SSR arranged appropriate courses in Tallinn and Tartu, each consisting of 100 lectures and starting in October 1940. The courses dealt with the following subjects: principles of Marxism-Leninism, Constitutions of the Estonian SSR and the USSR, the Soviet judicial system, criminal and civil law and criminal and civil procedure.

Particular attention was paid to Marxist-Leninist theory and the Soviet constitutions, the lecturers on these subjects being CP functionaries (cf. Rahva Hääl No. 120, October 25, 1940). The lectures were compulsory and their attendance checked upon.

However, in the beginning of 1941 not all judges of independent Estonia were appointed to the Soviet courts but only some of them. The selection was carried out on the basis of the questionnaires and biographies submitted to the People's Commissariat for Justice of the Estonian SSR, as described above. -Those judges who had been active in the Home Guard or some political or patriotic organizations, did not qualify. The rest were thoroughly investigated by the Cadre Department of the People's Commissariat for Justice, and the CP and the said Cadre Departments determined/who would be suitable for the new courts to begin with, and submitted their names to the Supreme Soviet of the Estonian SSR and the appropriate town and district agencies for election. /-together

Of the total number of judicial workers in independent Estonia - 232 - only 76 were considered worthy to be appointed in the manner described above. Of the former 25 public prosecutors, only 3 were permitted to work in the Soviet prosecuting magistracy.

The major group among the recently appointed Soviet judges were junior judicial workers who had formerly held lower posts, such as aspirant judges, court secretaries, a few former bailiffs and some young lawyers. As regards higher courts, a few important Communist functionaries had been recruited to them from the very beginning, viz., deputy chairman of the Supreme Court of the Estonian SSR A. Korotkov (from Russia) and judge of the same court H. Grabe, already mentioned in these pages.

The procedure under which all these judges were appointed, did not conform to the stipulations of the All-Union Constitution and the Constitution of the Estonian

SSR. Under articles 106 and 109 of the All-Union Constitution and articles 80 and 81 of the Soviet-Estonian Constitution, the Supreme Court of the Estonian SSR was to be elected by the Supreme Soviet of the Estonian SSR, and the people's courts by the citizens of the towns and communities through general, direct, equal and secret elections. Moreover, these stipulations can be found in detail in the All-Union Judicial Code.

Actually no elections at all took place as the "nominees" had been selected in advance by the Cadre Department of the People's Commissariat for Justice and the CP, and the Supreme Soviet of the Estonian SSR as well as the appropriate town and district agencies were compelled to appoint them.

In this connection it ought to be pointed out that none of the judges of independent Estonia who were appointed to posts in Soviet courts, had expressed a wish or applied for these posts. In fact, their consent was not even asked. After they had been appointed judges, they were unable to resign as this would have been considered sabotage or at best a politically suspect action.

As the Bolshevik principle was to appoint people who were loyal to them politically, it is obvious that the majority of judicial workers of the independence period could not hope to retain their posts for any length of time. Aksinov from the People's Commissariat for Justice had said to the deputy chairman of the Tallinn circuit court at an early date that the personnel of the court appointed in the beginning of 1941 and including several judges of the independence period, was only a seasonal personnel.

Therefore it is natural that even after the Soviet courts had been formed, the checking on the views and former activities of the judges went on still; those attending to this problem were deputy commissar for justice of the USSR, Morozov, despatched from Moscow for this purpose, and head of the Administration of Civil Judicial Organs, Aksinov, neither of whom knew any Estonian.

During the long and exhaustive interrogations carried out for the purpose they ascertained whether the judges had taken part in the War of Liberation against the Soviets in 1918-1920, and whether they had belonged to the Home Guard or political and patriotic organizations. At the same time they checked on the "political education" of the judges by examining them on CP history and policy, subjects they had been introduced to at the courses in the autumn of 1940. Most of the judges were found to be very ignorant in this field.

The result was that the People's Commissariat for Justice took steps to train new judges whose views were more or less in accord with the new regime.

For this purpose juridicalcourses were arranged in Tallinn, beginning on March 3, 1941, and lasting three months. The course was led by A. Korotkov, deputy chairman of the Supreme Court of the Estonian SSR, and attended by 59 persons whereof 57 passed the final tests. In their overwhelming majority the participants had only an elementary school education and some of them could hardly write. They were office workers, shop assistants, skilled and unskilled workers. Only one of them was a graduate of the juridical faculty at the university.

Parallel with the abovementioned courses the judges of independent Estonia /as recently as January 1, 1941, were being dismissed one by one. Already during February of the same year altogether seven judges were dismissed from the Supreme Court and the regional courts. In the following months, March and April, again several judges were dismissed, thus, e.g., on April 21, 1941, all judges save one of the independence period who still worked at the Supreme Court of the Estonian SSR. On May 9, 1941, 13 judges of regional courts were dismissed. The same fate befell the people's judges; by the end of June 1941 only a few judicial workers of independent Estonia still had employment at the Soviet courts. For instance, only one judge of the independence period still worked at the Supreme Court of the Estonian SSR and the Tallinn regional court respectively. /appointed

The dismissal of these judges was as illegal as their appointment. They were dismissed under a decree of the Presidium of the Supreme Soviet of the Estonian SSR, if they were judges of the Supreme Court or regional courts; by an order of the appropriate district or town executive committee of the working people, if they were people's judges. This was a direct infringement of the Soviet Judicial Code which was in force in Estonia at that time. Under Art. 17 of the said Code, judges could be dismissed only if they were recalled by their voters, or else because they had been convicted by a court of law. Under the law the people's judges were elected by the local population, and the regional judges by the soviets of the working people in the appropriate region (Art. 22 and 30).

In the decrees dismissing the judges of the Supreme Court of the Estonian SSR and the regional courts, the cause of dismissal was not set forth. As regards people's judges, it was said in three cases that the motives of dismissal were "political reasons", in one case that the judge had been deputy director of a prison under the

"bourgeois government" and in other cases simply that they had been judges of "bourgeois courts".

After their dismissal many of the judges of the independence period were arrested by the NKVD, mostly by night. All the arrested were deported to Russia and no data are available about their fate.

To how great an extent the judicial personnel had to suffer losses caused by the Bolshevik terror, appears from the following figures. On June 21, 1940, altogether 232 judges and public prosecutors were employed at the courts of the Republic of Estonia; during the Bolshevik regime 65 of these died orwere arrested, deported, and murdered.

The vacancies caused by the above-described dismissals in the people's courts, were to a great extent filled with people who had been put through the above-mentioned 3-months juridical courses. However, some of the appointees lacked even this scanty training. The former professions of the new people's judges in Tallinn were of the most varying kinds: Reinhold Mark had worked at an industrial enterprise, August Toomsalu had been a floater, Urke a former violinist, Leopold Tamme a locksmith at a factory, Leena Taevas a children's nurse.

All these new judges were appointed in the same illegal way that had been employed at the beginning of 1941, i.e., not elected by the people but appointed by order of the appropriate executive committees. For instance, the minutes of the Tallinn Executive committee, dated June 17, 1941, state that candidates to the posts of people's judges had been set up by the People's Commissariat for Justice, that they were workers, had finished the 3-months juridical course and that their candidature had been approved by the Tallinn Committee of the Estonian Communist Party.

c) Political Trends in the Soviet Courts of Estonia

Characteristic for the activities of the Soviet courts in Estonia was their subordination to politics, as evidenced by the influencing of the courts by CP organs and, in the second place, by their taking into account the social origin of the parties and their membership in the CP in passing judgment.

Under the Soviet system the court is an instrument of Soviet politics, a weapon of the dictatorship of the proletariat, and accordingly the judge is no "judge-official" but a "judge-revolutionary", a fighter for the

proletarian revolution and the interests of the working class, "proceeding solely from the interests of his class, not permitting any deviations from the general line of the party", - according to a quotation from "Judicial System of USSR" by A. Y. Vyshinsky, pp. 118 and 188 (Sudoustroistvo v SSSR, Moscow 1940).

The book contains even another stipulation (p. 188), viz., that the law has to be interpreted on the basis of works dealing with Soviet policy, and that consequently the judges do not need any judicial training but only a knowledge of Marxist-Leninist theory and Soviet policy.

Even the organizers of Soviet courts in Estonia demanded that the principles of Communist policy be taken into account in the work of the courts. This was emphasized at the lectures read to the jurists in the autumn of 1940, and from this point of view the judges were frequently reproached by word of mouth.

In the secret circular No. 27/21 of the People's Commissar for Justice of the Estonian SSR, dated February 1, 1941, the attention of all the courts was drawn to the necessity of closer ties between the courts and the Communist Party and trade union agencies. At the same time it was pointed out that the foremost task of the courts was "to defend the social and government order, socialist economy and property against all attacks as set forth in the constitutions of the USSR and the Estonian SSR".

The predominancy of Soviet policy over Soviet laws is one of the most characteristic features of the Soviet courts. How great the difference between the actual state of things and the stipulations of Soviet law really is, appears from the following.

Art. 2 of the Soviet Judicial Code states: "... The task of jurisdiction in the USSR is to safeguard an exact and undeviating obedience to all Soviet laws by all the agencies, organizations, officials and citizens of the Soviet Union", and Art. 3 of the same Code proclaims: "... By its activities the court educates Soviet citizens in a spirit of loyalty towards the Fatherland and Socialism, in a spirit of exact and undeviating obedience to the Soviet laws ..."

This principle was, however, not actually adhered to in practical jurisdiction, as is amply proved by the short-lived activities of the Soviet courts in Estonia in 1941. It happened that judges with Communist views actually and directly violated the existing laws. Even the organizers of the Soviet courts in Estonia often wilfully ignored the Soviet laws by influencing the courts politically.

The following examples should illustrate the political trends in jurisdiction. After the outbreak of war between Germany and the USSR, all Soviet Estonian citizens were ordered to turnin their radio sets; the citizens disobeying this order were indicted and punished with 5 years of prison, in some cases even longer. The Tallinn regional court under the chairmanship of Th. Unt (a CP member) acquitted the defendant in one such case, the motivation being that relatives of the defendant had participated in the attempted Communist coup d'état in Estonia on December 1, 1924, and suffered as a result.

In another case the said regional court, likewise under the chairmanship of Th. Unt, convicted the defendant for having beaten a former policeman of independent Estonia. A. Joeäär, People's Commissar for Justice, summoned the judges and said that the defendant ought to have been acquitted because the plaintiff had been a policeman of the bourgeois era. As in this case only Communist judges had been engaged, the Commissar expressed his amazement that so "highly qualified" judges could have pronounced so "incorrect" a judgment.

A third example: at that time the People's Commissariat for Home Affairs arrested great numbers of people accused of so-called counter-revolutionary activities during Estonia's independence, to be tried by the military tribunals. As these "offences" could result in an additional punishment, the confiscation of the entire property of the culprit, this property was distrained already when the accused was taken into custody, i.e., before he had been tried.

It often happened that not only the property of the arrestee was distrained but also objects belonging to third persons, in most cases things that were the personal property of his wife. In such cases the third persons in question applied to the people's court in order to protect their interests and whenever proof of ownership could be brought, the courts granted exemption from distraint for the objects in question.

As soon as he heard of such verdicts, G. Shevchenko, deputy commissar for Justice of the Estonian SSR, summoned the people's judges of the 5th and 11th districts to explain this their behaviour, reproached them and said that these pleas ought to have been rejected because the persons concerned had been bourgeois politicians or "counter-revolutionaries".

It follows that the people's commissariat aimed not only at the confiscation of the defendants' property but also that of their wives, i.e., third persons, despite the fact that Art. 40 of the Soviet Criminal Code provided only for the confiscation of the culprit's own property.

In order to reach this illegal goal more surely, circular No. 27/109 of the People's Commissar for Justice of the Estonian SSR, dated May 24, 1941, stipulated that petitions concerning the ownership of distrained property and exemption from distraint in political cases, are outside of competence of the courts and that third persons had to approach the agency that executed the distraint.

The above circular is in direct contradiction with Art. 21 of the Soviet Code of Civil Procedure, stipulating that the above claims are to be settled by the people's courts.

d) "Counter-Revolutionary" Trials

Political trends and purely terroristic tendencies towards anyone thinking differently, could be observed without any camouflage in the punishments meted out for so-called counter-revolutionary crimes.

The general definition of "counter-revolutionary" crimes is to be found in Art. 58 of the Criminal Code of the Russian SFSR, in force since 1926. Under it every deed aiming at the weakening or subversion of the dictatorship of the Communist Party in the USSR is considered counter-revolutionary.

Under the last count of the same Art. 58^{1} these acts are considered counter-revolutionary even in cases they are directed against the workers of some other country which is not a member state of the USSR. The punishment of these acts is said to be necessary because of the international solidarity of the interests of all the workers.

The said Criminal Code stipulates among other things that "terroristic acts" directed against the "activities of the revolutionary organizations of workers and peasants" and participation in such acts are counter-revolutionary (Art. 58^{8}).

Furthermore, under Art. 58^{13} "active steps or an active struggle against the working class or revolutionary movement, which have occurred under the Tsarist regime or the counter-revolutionary governments during the period of Civil War, and whose perpetrators served on responsible or secret posts (such as secret service agents) "also come within the scope of counter-revolutionary crimes."

The ordinary punishment stipulated for these crimes is execution by shooting or "being proclaimed an enemy of the working people" together with the confiscation of property.

Under Art. 14 of the Criminal Code the expiration of these crimes depends in every single case on the discretion of the court.

Under the above provisions the elite of the Estonian nation were murdered or sentenced to long-term imprisonment, statesmen who had distinguished themselves when the Republic of Estonia was founded, men who had fought for Estonia's freedom in the War of Liberation or who had been promoted to political leadership or responsible posts in the public life.

All these cases in Estonia were tried by the Military Tribunal of the NKVD Troops in the Baltic Military Area, and in May-June 1940 even by the Supreme Court of the Estonian SSR in Tallinn; at the outbreak of the war these cases were transferred back into the competence of the Military Tribunal under a decree of the Presidium of the All-Union Supreme Soviet, dated June 22, 1941.

The trials of counter-revolutionary crimes were secret in the Military Tribunal as well as the Supreme Court, both as regards the preliminary investigations and the trial itself. A "special department" was created for this purpose at the Supreme Court.

The following data are available on these trials, consisting first of all of what the sentenced persons said to their close relatives: wives, parents, etc., when meeting them in the prison after the sentence had been pronounced.

In the second place, copies of sentences were found on the bodies of the convicted and executed "counter-revolutionaries" in mass graves in the grounds of Mr. Klaus Scheel's villa at Kose near Tallinn, in the Kuressaare castle yard and elsewhere, after the Bolshevik troops had retreated from Estonia in August-September 1941.

These data tell us that the basic principle of publicity of criminal procedure was ignored when counter-revolutionary cases were tried.

All these cases were tried in camera, which is an infringement of Art. 84 of the Soviet Estonian Constitution under which trials were to be public in <u>all</u> the courts of Estonia when the law did not stipulate otherwise.- Even the Code of Criminal Procedure of the Russian SFSR stipulates in its Art. 19 that <u>all</u> trials are public and that the listeners may be removed only <u>by an appropriate decree of the court</u> in cases where it should be necessary in order to guard military, diplomatic or state secrets.

However, it appears from the testimony of the relatives of sentenced persons that all trials had been absolutely

secret while the copies of "sentences" found on the bodies were compiled in a manner as to suggest that the trial had been public.

In this connection it must be pointed out that the Code of Criminal Procedure does not provide for a secret trial (Code of Criminal Procedure, Art. 466-473) even for crimes which are considered most dangerous to the Soviet regime, such as terroristic acts, wrecking, sabotage (Art. 58^8, 587 and 58^9 of the Criminal Code).

On the other hand, Articles 466-473 of the Code of Criminal Procedure of the Russian SFSR stipulate that in cases of terroristic acts, wrecking and sabotage: 1) the trial is conducted in the absence of the accused (Art.468); 2) appeal to a higher court or appeal for mercy are not permitted; and 3) death sentences are executed without delay.

Apart from the fact that the above stipulations are purely terroristic, of a kind not known in the civilized world, they, as a special law, can according to generally recognized principles be applied only to cases to which they refer, i.e., they cannot be extended to other cases.

Nevertheless the said Military Tribunals in Estonia tried even other "counter-revolutionary" offences in the absence of the accused, i.e., without granting the culprit an opportunity to defend himself, and thus ignored Art. 84 of the Constitution of the Estonian SSR stipulating that the right to self-defence of the accused is guaranteed in all the courts of Soviet Estonia.

The possibility to appeal against the verdicts of the Military Tribunal was formally abolished after the outbreak of the German-Soviet war, by a decree of the Presidium of the All-Union Supreme Soviet, dated June 22, 1941.

However the trial of "counter-revolutionary" crimes at the Supreme Court of Soviet Estonia was no improvement for the defendant because under Art. 15 of the All-Union Judicial Code and Art. 448 of the Code of Criminal Procedure the verdicts of the Supreme Courts were final and no appeal was possible.- The sentenced person could only appeal to the Presidium of the Supreme Soviet of the Estonian SSR for mercy (Art. 31 of the Constitution of the Estonian SSR).

In other words this means that with regard to "counter-revolutionary" crimes a court of one single resort remained in Soviet Estonia - the Military Tribunal or the Supreme Court respectively - whose verdicts were not checked upon by any other court, as they were final.

Persons who had served in the political, government and administrative apparatus of independent Estonia, were mainly convicted by the Bosheviks under Art. 58^{13} of the Criminal Code, because they had, at a time when Estonia's independence had been fully recognized by the USSR by an international treaty (the Tartu Peace Treaty) and the USSR maintained normal diplomatic relations with Estonia, - held responsible posts in the parliament, government or local agencies, police, army, etc.

These activities were now qualified by the Soviet authorities as "counter-revolutionary" acts serving the "counter-revolutionary" government of Estonia, i.e., falling under Art. 58^{13} of the Criminal Code.

If we add that the Bolsheviks murdered even people who had been sentenced only to loss of liberty by the Military Tribunal, it ought to be plain how great was the rightlessness suffered by the Estonian people.

For instance, in the mass graves discovered in the Kuressaare castle yard there were found bodies of simple farmers whom the Military Tribunal had sentenced only to a long-term loss of liberty. These facts were ascertained by a police investigation (cf. the newspaper Eesti Sõna of April 23, 1943, No. 94, p. 2).

What is more, among the people sentenced to long-term loss of liberty there were persons who had never been active in politics or even done anything injurious to the Soviet regime; they had only made a few critical remarks on the regime or were supposed to oppose it for one reason or other.

For instance, the Supreme Court of the Estonian SSR in Tallinn, whose sessions were led by its members A. Korotkov, H. Grabe and N. Tikhanova-Veimer in turn, sentenced a schoolboy to ten years of prison because in his pockets there had been found a parody on the International, at that time the official anthem of the Soviet Union. The boy's father was the preacher of a free congregation.

Another defendant was sentenced to a long-term imprisonment because he had sung songs mocking at the Soviet regime and drawn a picture of Stalin with a bottle of vodka.

A worker at the Tartu railway depot was prosecuted because he had said to a co-worker that nothing could be bought in Russia. He was sentenced to 10 years of prison.

A woman was sentenced to five years because she had not informed on her lodger who escaped to Germany and had spoken about his plans to her.

e) Illegal Instructions to Soviet Courts in Estonia and Pressure on Jurisdiction.

Art. 112 of the Constitution of the USSR, Art. 85 of the Constitution of the Estonian SSR and Art. 6 of the Soviet Judicial Code stipulate clearly that the Soviet judges must be independent and subordinated only to the law. Moreover, Art. 2 of the said Soviet Judicial Code stipulates that the main task of jurisdiction is to apply Soviet laws without any deviations.

Prominent Soviet jurists also emphasize the importance of the judges' independence. Thus Prof. M. S. Strogovich says in his book "Criminal Procedure" ("Ugolovnyi Protsess", Moscow 1940, p. 7) that "the independence of Soviet courts is a real and true independence".

Another author, A. Y. Vyshinsky says verbatim on the same matter:"Even if the Soviet judicial policy is a direct manifestation of the general policy of the state, as regards the actual jurisdiction it is nevertheless characterized by an absolute independence, ensuring the greatest liberty of action and the greatest authority of the Soviet court" (A. Y. Vyshinsky, "Ueber die Sowjetjustiz", p. 147).

However, the legal stipulations and the interpretations of Soviet jurists quoted above do not depict Soviet reality, as evidenced by the practice of the Soviet courts in Estonia. In reality the people's commissariat and the Soviet prosecuting magistracy influenced the courts to an exceedingly high degree.

The People's Commissariat for Justice of the Estonian SSR and the Soviet prosecuting magistracy exercised the most rigid control over all court activities, employing various methods for the purpose.

One of these means was to send to the courts circulars and directives in great numbers, viz., far more than a hundred during the short period the Soviet courts were active in Estonia, from January 1, 1941, until August of the same year.

Even influencing by word of mouth was employed, in the first place at the meetings of judicial workers arranged by the People's Commissariat for Justice, which in Tallinn, e.g., were held at least once every week. Attendance was compulsory for the judges and checked upon. Ordinance No. 33 of the people's commissar, dated March 13, 1941, and sent to all courts in the form of a circular, enumerated the judges who had been absent by name, and said that absence from these meetings was equal to unjustified absence from work.

As deputy people's commissar G. Shevchenko and some of the higher judges were Russians who did not know any Estonian, the discussions were frequently held in Russian although many younger judges did not know any Russian.

The object of all these discussions was to elucidate the shortcomings prevailing in the activities of the courts. However, when court activities were criticized, it was not even attempted to solve juridical problems that had made their appearance in jurisdiction; court sentences were not criticized from a juridical viewpoint, but directions were issued to the judges to pass severer sentences for certain kinds of crimes. It was said generally that the sentences were "politically unripe", that the judges were "political idiots" and did not possess the necessary "revolutionary vigilance". The judges were also reproached that they did not know the "primary sources", i.e., the history of the CPSU and Marxist-Leninist theory; without this knowledge it was impossible to pass correct sentences.

The Russian functionaries of the People's Commissariat for Justice were never satisfied with any of the sentences; their behaviour towards the Estonian judges was rude and often even offensive and humiliating. For instance, a judge had accidentally erred when writing the verdict, convicting the defendant to one month of prison instead of one year. On this occasion he was publicly asked at a meeting whether he had been suffering from acute indigestion when writing out the sentence.

In order to make supervision more effective, the courts were directed to send copies of all verdicts and even the court files to the People's Commissariat for Justice. Thus circular No. 27/86 of deputy people's commissar G. Shevchenko, dated April 9, 1941, ordered all courts to send to the People's Commissariat court files referring to all settled cases of infringements of trade regulations, infringements of statutes of co-operative societies and credit agencies, speculation, malversation, and cases of theft from state and communal stores, enterprises and agencies.

Moreover, the activities of the courts were controlled also by checking upon court files on the spot, i.e., in the court offices. This was carried out by special reviewers sent from the people's commissariat, in most cases young men without experience. These reviewers did not only check on the procedure applied but also on the contents of the verdicts.

Jurisdiction was mainly influenced to attain a greater severity when settling criminal cases and a greater proportion of convictions.

Thus ordinance No. 64 of deputy people's commissar G. Shevchenko, dated June 28, 1941, drew the attention of the courts to the unwarrantable lenience of their penal policy, and forbade the courts to apply the minimum rates of punishment or probational convictions.

The ordinance also pointed out which judges had erred in this respect, reported the dismissal of two people's judges and threatened even other judges with discharge and prosecution.

At the same time Art. 48 and 53 of the Soviet Criminal Code entitled the courts at their own discretion to apply lighter sentences or probational convictions under certain circumstances.

Severer punishments had to be applied particularly in cases of hooliganism, speculation, theft of Socialist property and malversation.

It is obvious that under normal conditions the judges could have simply ignored such illegal instructions but this attitude was impossible under Soviet rule.

Unceasing control of jurisdiction, circulars drawn up in a commanding tone, threats of dismissal, political pressure and, last but not least, pure terror as evidenced by arrests of judges - all this frightened the judges to such a degree that the majority of them obeyed all circulars and executed jurisdiction in a manner satisfactory to the Soviet administration.

The results were settling of cases at the speed demanded by the people's commissariat (in 2-5 days as regards cases of speculation, hooliganism, theft of "Socialist property", etc.) and the passing of sentences so severe as to be simply inhumane, e.g., a peasant woman was sentenced to five years of prison on the charge of speculation at a people's court in Tallinn, because she had sold 16 eggs in the market place of Tallinn.

f) Conclusions

On the basis of the above data we can conclude about the activities of Soviet courts in Estonia in 1940/1941 that

1. The activities of the Soviet courts did not meet the requirements applicable to jurisdiction in the contemporary civilized world;

2) The independence of judges and their subordination solely to the law, as proclaimed in the Constitutions of the USSR and the Estonian SSR, as well as the Soviet Judicial Code, did not exist in fact;

3) The Soviet courts were directly subordinated to the government agencies also with regard to court jurisdiction;

4) The Soviet courts were made to serve the CP and subordinated to the policies of the said party;

5) Soviet jurisdiction was unjust and partial and at trials the presence of the parties, defense for the accused and publicity were not guaranteed;

6) In view of the above facts the statements of A. Y. Vyshinsky, the Soviet official representative, and Prof. M. S. Strogovich, a recognized authority on Soviet criminal procedure, are only empty phrases when they say:

a) A. Y. Vyshinsky: "... From the very first days of its existence, the Soviet court was characterized by the deepest democracy. No capitalist country in the world, not even the "most progressive and democratic" one, knows such a democratic court, a people's court in the true sense of the word, as is the Soviet court ... The execution of jurisdiction by all Soviet citizens, the election of judges by the people, public trials, the use at the court of the language of the constituent republic or autonomous oblast, ... equality of the parties, the fact that all cases may be reviewed from a formal point of view at the court of the highest resort - these are the more essential principles of Soviet court-democracy, being a direct consequence of the principles of the Soviet democratic regime." (A. I. Vyshinski, Sudoustroistvo v SSSR, Moscow 1940, pp. 14-15); and

b) M. S. Strogovich: "... A real jurisdiction is possible only by independent judges who are subordinated solely to the law. Even bourgeois constitutions speak of the independence of the judges but this independence of the bourgeois court which only serves the interests of the "moneybag" (Lenin), is unrealistic. Matters are different in the Soviet Socialist state ... The independence of the Soviet judges is true and real. The judges in the Socialist state are elected, supported by the confidence the people grant them, independent of all administrative agencies and in their work subordinated only to the Soviet laws which express the will of the Soviet people ..." (M. S. Strogovich, Ugolovnyi protsess, Moscow 1940, p. 7).

3) Soviet Penal Policy in Estonia since 1944

Generally speaking the courts in Estonia after the second Bolshevik occupation of the country in the second half of 1944, exhibit the same tendencies in their structure and in jurisdiction that had developed by the end of the 1940/1941 occupation.

Although at present the principle that te judges are to be elected by the people is adhered to, the claim is strictly observed that a people's judge must be a CP member, considered by the Party worthy of being a people's judge. Only after he has been nominated by the Party, his candidature is set up at the general meeting of the workers of some factory or enterprise, and only one candidate is set up for every vacant post.

The actual procedure of electing people's judges is typically Soviet: pre-electionary propaganda at workers' meetings which people are driven to attend and where the abilities of the nominated candidate are praised, checking-up that all voters cast their votes and the traditional, not to say stereotyped results of Soviet elections - 98 - 99 per cent of all the votes cast for the candidate.

Even candidates whose names are absolutely unknown to the local population and whom they have/not even seen, are elected with the same majority. For instance, at the end of 1951 the workers of the textile mill "Kreenholmi Manufaktuur" at Narva nominated Julia Volkova candidate to the post of people's judge at the 1st district of Narva; she was born and bred in the interior of Russia where she had lived all her life, got her training and become a CP member. /often

At present there are 66 people's judges in Soviet Estonia, all of them CP members, and of excellent social origin (i.e., originating from the poorer strata of the population); the majority have only an elementary school education and only in the best cases they have finished the 2-year juridical school in Tallinn.

At the same time the competence of the people's courts is very extensive and important; under Art. 21 of the Soviet Judicial Code almost all civil cases fall within their jurisdiction, irrespective of the value of the claim and the gravity of the crime. Only particularly serious crimes, such as high treason and espionage, terroristic acts and some other graver crimes are tried at the higher courts.

The Russian-language paper SOVIETSKAIA ESTONIA, the organ of the local Communist Party, wrote on December 2,

1951, among other things that "... The words of M. I. Kalinin: if a judge is a good Marxist, an experienced worker, cultured and literate, it can boldly be said that 99 per cent of his verdicts possess a political significance."

In other words, with regard to training it isenough to be able to read and write in order to become a judge, the main emphasis being on the knowledge of Marxist theory and the political significance of the verdicts.

The partiality of the Soviet courts in Estonia was emphasized most strikingly in an article by Karl Marks, the present deputy minister for justice of the Estonian SSR, published in SOVIETSKAIA ESTONIA of December 18, 1951, which maintains that "the people's courts are undeviatingly realizing the policy of the Lenin-Stalin party and the Soviet government."

Of late there has been much talk in the Soviet Union, including Soviet Estonia, about "Socialist loyalty" and a strict adherence to it; at the same time the greatest sin a judge can commit is "objectivism." This means that Soviet legislation, and more particularly criminal legislation, are a means to build up Communism. In other words, the "government and party policy" and "penal policy" are one and the same thing under the Soviets.

During the first Soviet occupation in 1940/1941 the main task of the Soviet authorities was to destroy the "bourgeois elements" economically and physically, and this was achieved, as shown above, by an undisguised terror exercised in jurisdiction, more particularly through convictions of people for "counter-revolutionary" crimes, which decimated heavily the elite of the Estonian people.

Now these bourgeois elements have been liquidated in Soviet Estonia, and under these altered circumstances Soviet legislation has found new tasks for the Soviet courts.

On June 4, 1947, the Presidium of the All-Union Supreme Soviet issued two decrees to be enforced in the whole of the USSR: 1) On culpability for the appropriation of state and communal property; 2) On increased protection of the personal property of the citizens (VEDOMOSTI VERKHOVNOGO SOVETA SSSR 1947, No. 19).

The aim of these two legislative acts which are of supreme importance in Soviet life, is purely political, as pointed out in an unmistakable manner by K. Marks, deputy minister for justice in Soviet Estonia, in an article in SOVIETSKAIA ESTONIA of December 18, 1951: "These two decrees deal a blow to those who want to get

rich at the expense of other people ... To this day the bourgeois nationalist remnants in Soviet Estonia try to cultivate capitalist relics in the mind of the people, and we must fight them with every means ... It must be kept in mind that the kulak of yesterday has today slipped into the kolkhoz and secretly undermines the kolkhoz system there. The Soviet court puts a powerful pressure on the people and at the same time educates them to obey Soviet laws without deviations. The Soviet people exerts all its powers to build up Communism. For this purpose Socialist property must be increased day by day and a careful watch kept to prevent thieves and pilferers from diminishing it."

Thus the protection of Socialist property, the struggle against bourgeois nationalist relics, more particularly the kulaks, the passing of severe sentences in order to build up Communism - these are the primary aims of the Soviet courts in Estonia of today.

These aims are plainly political and the appropriate provisions of the law, particularly as regards the provisions regulating the punishments, are not only generally preventive but plainly terroristic. Without any doubt they are based on Lenin's dictum which to this day is continuously brought forward in the USSR, viz., that "... the basic principle is probably clear - to present publicly the theoretically and politically correct (and not juridically narrow) postulate, establishing the character and justification of terror, its necessity and limits. The court must not eliminate terror but has to justify it in principle and give it a legal form, without falsely gilding it" (Lenin's Works, XXVII, p. 296).

Loyal to the above principle and wanting to curtail the discretion of the courts as much as possible, the Soviet legislators with their abovementioned decrees of 1947 have determined by law the limits regulating the punishments for offences concerning the appropriation of government, cooperative, kolkhoz and other communal property.

This aim was reached by stipulating minimum and maximum punishments irrespective of the size or value of the appropriated object, for appropriation of Socialist property detention in correctional labor camps for 7 - 10 and 10 - 25 years respectively; for appropriation of personal property of the citizens - a similar detention for 5 - 10 and 10 - 25 years respectively.

Thereby the courts have been deprived of the possibility to take into consideration the peculiarities of the crime, the personality of the accused and the value of the robbed objects, i.e., the court is compelled to sentence

the culprit to at least 5 years of detention, without taking any extenuating circumstances into account.

As regards penal policy, the kind of the punishment - detention in a correctional labor camp - is explained by the fact that these camps constitute a reserve of unpaid labor employed to complete the "monumental Communist buildings" in Russia.

How this penal policy finds its expression in Estonian jurisdiction, can be concluded from some recent trials in Soviet Estonia.

According to the daily RAHVA HÄÄL of December 4, 1951, there were still a few private farmers within the boundaries of some kolkhozes. In the Pärnu rayon some of them had let their cattle feed in kolkhoz pastures and meadows. They were sued at a court to pay the resulting damage, but over and above that prosecuted under Art. 79 of the Criminal Code on damages to communal property and providing a punishment of 5 years of loss of liberty and the confiscation of their property.

The final goal is evident - to take the land of the private farmer and turn it over to the state, and this on account of an offence (feeding the cattle on another's land) which elsewhere is considered petty and usually punished by a fine (e.g., under Art. 595 of the Criminal Code of independent Estonia, a fine of not over 100 kroons, or roughly 30 dollars according to the 1939 rate of exchange).

According to RAHVA HÄÄL of October 20, 1951, a female worker at the Keila textile factory near Tallinn had stolen a little yarn from the factory. The people's court sentenced her to 7 years of detention in a correctional labor camp - "with all severity of the law", as RAHVA HÄÄL puts it.

Considering that the defendant had no criminal record, that it was her first theft and the value of the stolen object negligible, she would elsewhere have been sentenced to 1 year of prison at the most, probably on probation.

However, according to Soviet penal policy it was necessary to punish her severely in order to frighten and terrorize the other workers to ensure that "Socialist property does not diminish."

The following sentences also characterize the present trends of Soviet jurisdiction:

A kolkhoz chairman - August Erdman - was sentenced

by the Pärnu oblast court to 18 years of detention in a correctional labor camp, for having falsified some signatures and appropriated 5,800 rubles (cf. SOVIETSKAIA ESTONIA of February 17, 1953); Arnold Mendes, manager of the Johvi shop No. 23, was sentenced to 22 years and the confiscation of all his property for having abstracted some of the property of the shop, i.e., Socialist property (RAHVA HÄÄL of June 10, 1953).

It must be said that as a general rule the penal policy concerning certain offences is determined by the local organs of the CP who give appropriate instructions to the local courts via the ministry for justice or the prosecuting magistracy. Apart from that the local Communist press (i.e., all the newspapers) are ordered to engage in "campaigns" to eliminate shortcomings or abuses which have become evident on certain "fronts."

At the moment the Soviet Estonian papers, RAHVA HÄÄL and SOVIETSKAIA ESTONIA are busy explaining to the people how great is the danger threatening Socialist property in Estonia and to how great an extent this property as well as the personal property of the workers, is being robbed. The papers say directly who are the criminals and how they ought to be punished. Elements hostile to the Soviet regime are among others: "remnants of the overthrown capitalist class - kulaks, bourgeois nationalists, former tradesmen and their menials", but also workers who are politically backward and have been drawn into the sphere of influence of the above groups.

What is more - in order to frighten the people by severe punishments, the same papers contain reports of the local prosecuting magistracy, describing the extremely severe punishments of some robbers from the above un-Soviet categories. Such informations come from Ed. Jannus - public prosecutor of the Pärnu rayon, B. Ignatiev - public prosecutor of the Türi rayon, K.S.Filippov - public prosecutor of the Valga rayon, and even from the public prosecutor general of the Estonian SSR Karl Paas and his deputy K. Saburin.

However, there are some social groups in the USSR and consequently also in Soviet Estonia, to whom these severe reprisals do not apply, at least not if the crime is not a political one.

It seems that the CP members are to a certain degree immune. They can be prosecuted only after permission for this has been granted by CP organs. If such a Communist is not expelled from the party or not compromised politically, he may rest assured that his prosecution will not proceed

further than the public prosecutor's office. In the worst case, if he should be tried by a court, he is either acquitted or his sentence is ridiculously low.

For instance, SOVIETSKAIA ESTONIA of January 30, 1953, reported how Tarvis, director of the building-repairs office of the Kingissepa rayon, had in the execution of his duties appropriated various building materials from the state stores, altogether evaluated at 3,500 rubles, 10 wagons of building timber and 11 tons of hay. Thereupon the minister for communal economy of the Estonian SSR, Meigas started to bombard public prosecutor Akulov with letters and wires of roughly the following contents: "A man can err a little, it happens to everybody. I beg you to exercize lenience in the case of Tarvis."

People's judge Janke sentenced Tarvis to two years of loss of liberty on probation, and this for a crime which under the decree of June 4, 1947, (robbing of state and communal property) is punishable with at least seven years of detention in a correctional labor camp.

Another case SOVIETSKAIA ESTONIA (March 1, 1953) reported was that one Yerokhova - typist at the Tallinn plant "Eesti Kaabel" - stole a man's overcoat from the office of the factory, was detained by the militia and confessed that she had stolen the overcoat and sold it at the purchase centre for 322 rubles, receipt No. 4571 for this sum being found on her person.

The people's court of the Mere rayon in Tallinn acquitted Yerokhova because her guilt had not been sufficiently proved (sic!). The Supreme Court of the Estonian SSR, where the case was retried on November 13, 1952, pronounced an analogous verdict - Yerokhova was finally acquitted although under the decree of June 4, 1947 (robbing of personal property of a citizen), she should have been sentenced to at least 5 years.

It is obvious that in both cases we are dealing with persons who seem to have rendered special services to the regime - else they would not have been protected by high government functionaries.

In characterizing Soviet court practice, it is sufficient to observe only their penal policy because criminal law plays the most important role in Soviet political and economic system.

One of the greatest authorities on Soviet law in the free world, Harold I. Berman, says in his book "Justice in Russia, an Interpretation of Soviet Law" (Russian Research

Center, 1950) that Soviet criminal law "is central to the whole Soviet legal system. It receives far more attention in Soviet legal literature than any other branch of law. Its constructs and postulates are basic to every other branch" (p. 270).

It ought only to be added that the decree of June 9, 1947, on the culpability of divulging state secrets and losing documents containing state secrets (VEDOMOSTI VERKHOVNOGO SOVETA SSSR, 1947, No. 20) issued by the All-Union legislative organs, is naturally valid in Soviet Estonia, too.

The decree enumerates a great number of "state secrets", in the first place military and economic information but also information on non-military discoveries, inventions and technical improvements.

Provisions regulating the punishments under this decree are extremely severe, viz. 8 - 10 years, 10 - 12 years and 10 - 20 yers.

The issuing of this decree was said to be necessary on account of the very dangerous nature of the crimes in question which impair Soviet defence. It was regarded erroneous to minimize the danger of these crimes, because international reaction had never abandoned its efforts to start a new world war, for which purpose the imperialistic states send their agents and spies to the USSR (cf. article of Prof. V. Mensiagin in the Soviet monthly SOVIETSKOIE GOSUDARSTVO I PRAVO, 1947, No. 8, p. 8 ff).

By the decree of June 9, 1947, the number and definitions of political crimes has been expanded further, although it was considerable even previously, as apparent from the chapter of Criminal Code dealing with counter-revolutionary crimes (Art. 58^1 - 58^{14} and 59^1 - 59^{14}).

It must also be pointed out that under Art. 7 of the said decree all the above offences are not dealt with by ordinary courts but by the military tribunals the proceedings at which we have described in a previous chapter.

In conclusion it must be stated that the general trends of jurisdiction are now about the same as they were during the first occupation in 1940/1941. However, recent Soviet legislature gives to hand that purely terroristic trends in legislature have grown more drastic and effective still owing to a considerable aggravation of punishments and the creation of new crimes.

The purpose of these trends is to break decisively the resistance of the Estonians and the other enslaved peoples

to the Soviet regime and make them build up Communism without protests.

To this end every means is used, including undisguised terror, because the Soviets are not so much concerned with the life and welfare of the individual citizen than for "salus revolutionis" and their final goal - world conquest - to which everything else is sacrificed.

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