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The Organs of Soviet Administration of Justice: Their History and Operation, by Samuel Kucherov

Jurij Fedynskyj

Indiana University School of Law

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BOOK REVIEWS

THE ORGANS OF SOVIET ADMINISTRATION OF JUSTICE: THEIR HISTORY AND OPERATION. By Samuel Kucherov. With a foreword by John N. Hazard. Leiden, The Netherlands, E. J. Brill, 1970. Pp. xxiii, 754. (Studies in East European History, 13).

This book can be viewed as a sequel to the history published by the same author in 1953,¹ of Russian judicial institutions under the last three tsars, during the period between the introduction of the judicial reform of 1864 and the overthrow of the tsarist regime in 1917. There are striking similarities between the two books—the arrangement of material, the reproduction of the minutes of famous criminal trials (Vera Zasulich, Beilis and others under the tsars and Joseph Brodsky under the Soviets) and the detailed analysis of the statutes and of the lawyer's role before and after the Revolution. The book under review not only exceeds its predecessor in sheer volume; but in addition to legal history, it also deals with the substantive law in force between 1917 and 1969.

Kucherov's book is divided into three parts: institutions of justice, men of law and justice in operation. The first part begins with a detailed history of the Soviet court system, commencing with the destruction of tsarist courts. Discussed also are the first revolutionary courts, established by a rapid succession of decrees and designed to handle almost exclusively criminal cases. These courts were to be guided by the "revolutionary conscience" only. A special chapter is devoted to extraordinary courts in the form of revolutionary tribunals, extraordinary commissions (*VeCheKa*), state political administrations (GPU) and special boards of the NKVD. With the introduction of legal codes in 1922 the structure of the courts changed both in the period of the New Economic Policy and again in the period of industrialization and collectivization. Remarkably well-written is the section on present-day court organization, including people's courts, provincial and territorial courts, the supreme courts at the republic level, the military courts and the Supreme Court of the USSR at the federal level. The reestablishment of a Ministry of Justice of the USSR occurred too late to be included in the book.² Part One also includes a chapter on

1. S. KUCHEROV, COURTS, LAWYERS AND TRIALS UNDER THE LAST THREE TSARS (1953).

2. Decree of Aug. 31, 1970, [1970] Ved. Verkh. Sov. S.S.S.R. Item 36, art. 361 (Supreme Soviet U.S.S.R.).

state arbitration (*arbitrazh*), a system which resolves disputes concerning property between state, civic and cooperative institutions, enterprises and organizations. A discussion of comrades' courts and the whole problem of antiparasite laws and practices conclude the first part of the book. The second Part contains a wealth of information about Soviet legal education and the legal profession. American readers will be surprised to learn how relatively few young people are admitted to the Soviet law schools, which are deprived of any autonomy and ruled by rigid governmental regulations. The chapter on judges contains information on their lack of judicial independence, the nonexistence of judicial review of statutes and the application of published and unpublished laws which sometimes are applied retroactively. In the Soviet Union investigative organs and prosecuting bodies seem to play more important roles in the administration of justice than do the courts themselves. The best law graduates are assigned to prosecutors' offices, and all prosecutors are under the orders of the USSR prosecutor in Moscow. The very long chapter on lawyers gives not only the history of the legal profession in the Soviet Union, but also the present-day status of a lawyer, his duties and privileges, as well as his membership in a system of collective legal consultation. Also included in this chapter is a discussion on legal ethics, a subject rarely covered in books on the Soviet Union.

The third Part, entitled "Justice in Operation," contains valuable chapters on the Soviet law of evidence and on procedural aspects of the law of remedies, with special emphasis on the review of sentences, decisions and rulings already in force. This unique feature of Soviet procedural law in the past kept innumerable Soviet prisoners in jails and labor camps far beyond the time imposed by their original sentences. The author points out, however, and with fairness, that the supervision procedure leading to the review of a great number of cases (including posthumous cases) after Stalin's death effected the full rehabilitation of many inmates. Soviet legal texts are generally silent on this point.

A synthetic chapter on revolutionary and socialist legality concludes Kucherov's *magnum opus*. The bibliography fills thirty pages. The titles are mostly in Russian, but some are in West European languages. It is not easy to find any important legal writings which have escaped Kucherov's notice. This reviewer did, however, succeed in locating a few writings of this kind. In discussing the use of analogy in criminal law, a principle prevailing until 1956, the author does not cite Starosolskyj's

monograph, the best on this subject ever published.³ The heavy preponderance of Russian sources over non-Russian is to be noted. Legal publications of the non-Russian Soviet republics are nearly untapped by the author. A cursory check in the *Problemy Pravoznaustva* (Legal Problems) published in Kiev in the Ukrainian language (with Russian summaries) shows that its single issue of 1967 contained not less than three articles on the history of the administration of justice in the Ukrainian Republic.

Kucherov is one of the last survivors of the lawyers who were educated in tsarist times and practiced before the Revolution. His background, his numerous previous publications and his access to the rich resources of the Library of Congress facilitated the completion of his book, a magnificent treatise very competently written. If the picture of the Soviet administration of justice, as presented, seems to be far from exemplary according to Western standards, it is not the author's fault that incredible abuses of justice in the era of militant Communism and in Stalin's time have made the face of Soviet justice an ugly one. The author's background helps him to understand correctly and to evaluate properly many Soviet legal and extralegal institutions. He avoids the erroneous approach of some Western legal writers who accept uncritically Soviet legal provisions and the statements of Soviet writers. Reading this book can be a kind of revelation for a beginner in the study of Soviet law. For an advanced reader it contains much information which is not new, but which was until recently scattered in hundreds of places. Some chapters contain material not easily found even by specialists in the field (*e.g.*, material on lawyers' ethics and lawyers' professional secrets). It is the first full account of Soviet legal institutions attempted in any language (including Russian). The book is not based on personal research in the files of Soviet courts, for this kind of research is not open to Western scholars. But the book takes into consideration virtually every bit of information available in the West. It analyzes mostly original Soviet publications, with only minimum information from exiled Soviet lawyers. Taking into account the notorious scarcity of published Soviet judicial statistics, one must admire the presentation of such a detailed monograph on the administration of Soviet justice.

A few points raised in the book could be elaborated upon a bit more thoroughly. Criminal law and procedure are given a clear preference over

3. J. STAROSOLSKYJ, *THE PRINCIPLE OF ANALOGY IN CRIMINAL LAW: AN ASPECT OF SOVIET LEGAL THINKING* (1956).

civil law. Even so, the petty larceny decree of 1940⁴ deserved at least a few lines more. Moreover, the federal structure of the Soviet Union is not obvious for a nonspecialist who may wonder why the history of the Soviet administration of justice before 1923 is limited to the Russian Socialist Federated Soviet Republic only. The use of local languages in court proceedings⁵ is merely mentioned, not explained. The same may be said of the retroactive application of Soviet criminal law to former *Okhrana* agents.⁶ The problem of the extension of the Soviet legal system and the introduction of Soviet courts to territories annexed in the years 1939-1945⁷ is not discussed either. The number of misprints is large. The statements that the prosecuting body in Russia was created by Peter the Great is correct, but the statement that this happened in 1794⁸ is inexcusable.

However, the points of omission and mistake do not diminish the value and significance of this great book. It will remain the best of its kind for decades.

JURIJ FEDYNSKYJ†

4. Decree of Aug. 10, 1940, [1940] Ved. Verk. Sov. S.S.S.R. Item 28 (Supreme Soviet U.S.S.R.).

5. R.S.F.S.R. 1960 UGOL. PROC. KOD. (Code of Criminal Procedure) art. 17.

6. R.S.F.S.R. 1922 UGOL. KOD. (Criminal Code) art. 67.

7. See, e.g., Fedynskyj, *Sovitization of an Occupied Area through the Medium of the Courts (Northern Bukovina)*, 12 AM. SLAVIC & E. EUR. REV. 44 (1953).

8. S. KUCHEROV, *THE ORGANS OF SOVIET ADMINISTRATION OF JUSTICE: THEIR HISTORY AND OPERATION* 404 (1970).

† Associate Law Librarian and Associate Professor of Law, Indiana University.