

LEGAL SYSTEM AND ADMINISTRATION OF JUSTICE BEHIND THE
IRON CURTAIN

I. Function of law in the people's democracies.

B. The nature of constitutions (1-3, 5) - Soviet Union

The nature of the constitution, laws and decrees in the Soviet Union. By Vladimir Gsovski.

The Soviet Constitution is in no sense the supreme law of the land. It is, rather, a solemn declaration of general policies and an approximate scheme of government authorities, whose procedure, however, is not necessarily bound by constitutional provisions.

Under the totalitarian concept of government power, the relationships of the executive and legislative branches of government common to free countries, do not apply. Although the terms "constitution," "legislative act," and "administrative decree" are used in Soviet law, the authority attached to each of these sources of law in the Soviet Union is different from that associated with these terms in the democratic countries. A constitutional provision may be set aside by an administrative decree and the newly enacted rule is incorporated into the Constitution only at a later date.

For example, the 7-hour working day was provided for in the 1936 Constitution (Sec. 119). However, on June 26, 1940, the Presidium of the Supreme Soviet, an executive body in terms of the Constitution, decreed the 8-hour normal working day.¹ This edict became operative immediately. It was ratified by the Supreme Soviet in August 1940, but without following the procedure prescribed for constitutional

amendment. Not until seven years later was Section 119, constitutionally amended; i.e., the provisions of the Constitution were adjusted to fit the previously enacted administrative decree.² In October 1945, on the eve of the 1946 convention of the Supreme Soviet, the Soviet quasi-legislature, the age of those eligible to the Supreme Soviet was changed from 18 to 23 years, thus depriving roughly about four million citizens of the right to be elected. The Supreme Soviet convened and ex post facto ratified this change.³

Although Section 121 of the 1936 Constitution provided that "education, including higher education, is free of charge," the Council of People's Commissars, a purely executive body, the Soviet quasi-cabinet, ordered in 1940 a tuition fee to be collected for the higher grades of the secondary school and for higher education.⁴ The order was enforced and only after a lapse of 7 years, in 1947, was the Constitution amended to incorporate this change.⁵

Such practices were quite consistent with constitutional provisions prior to 1936. At that time, four governmental bodies were at the top of the Soviet government machinery and their jurisdiction was defined in very broad terms, enabling each of them to exercise all legislative and executive power. These "supreme agencies of power," as they were designated, were the Congress of Soviets, comprising about 2,000 members, the Central Executive Committee, comprising about 600 members, the Presidium of the Central Executive Committee, a smaller body of about 40 members and a Council of People's Commissars (changed in 1946 to the Council of Ministers). It was stated

that "the supreme agency of Government power shall be the Congress of the Soviets but in the interim between its sessions, the Central Executive Committee" shall have the power (Sec. 8).^{*} Likewise, in the interim between sessions of the Central Executive Committee, "the Presidium shall have the supreme authority to administer, legislate and to make disposition" (Sec.29). The Council of People's Commissars was defined as the "executive and rescriptive agency of the Central Executive Committee" (Sec. 37) which "issues decrees and resolutions binding on the entire territory of the Soviet Union" (Sec. 38). The Soviet theorists recognized that all of these authorities had the power to legislate.⁶ This concentration of legislative and executive powers in the same agencies was considered a matter of principle. In the words of Steklov, who was the spokesman of the government at the discussion of the first Soviet constitution in 1918,

"while the bourgeois constitutions, inspired by the doctrinalism of propertied classes...make an artificial separation between the executive, the legislative and the judicial powers, we, in our Constitution, attempted insofar as possible, to concentrate all these functions in one central organ, such as the All-Russian Congress of Soviets, the Executive Committee elected by this Congress, and the Council of People's Commissars responsible to the Congress." (The Presidium was added later.)

The Program of the Communist Party stated later that the Soviets abolished

"the negative aspect of the parliamentary government, especially the separation of the legislature from the executive..."

^{*}This and following references are to sections of the USSR Constitution of 1924, and the RSFSR Constitution of 1926, Secs. 16 and 27.

The longer the Soviet regime lasted, the less frequently the Congresses of Soviets convened. During the first year they convened five times; since 1919 they have been convoked only once a year and from 1927 to 1931 only every two years. Their sessions lasted from three to seven days. No Congress was convoked during the period from 1931 through 1935, the very period when the Five Year Plan, the industrialization and forcible collectivization of peasants radically changed life in Russia. The Executive Committee convened three to four times a year for a short session of a few days. The legislation was, in fact, promulgated in the form of acts of the Presidium or the Council of People's Commissars or both.

Thus, it is characteristic of the Soviet system that while full power is declared to be vested in the representative bodies, large in membership but convening infrequently and for short sessions, in the interim between these sessions, the full authority of such bodies is by constitutional provision permanently delegated to continuously functioning smaller committees which actually exercise this power. It has been also typical of these committees that they were one hundred per cent communist, while in the larger, the "representative," bodies, only a small per cent of communists was among their members.

In 1936, under a new Constitution, which is still in force with some amendments, the whole scheme of the government authorities was reshaped to resemble more the machinery of a democratic state. Thus, instead of the Congress of Soviets and the Central Executive

Committee, there was one bicameral Supreme Soviet directly elected by the constituency (on the Elections see under this topic). It is stated that "the legislative power shall be exercised exclusively by the Supreme Soviet" (Sec. 32). But its Presidium, a body of 32 members, has, in addition to the regular powers of a president in a republic, the power to proceed in lieu of the Supreme Soviet in the interim between its sessions. The Supreme Soviet convenes only twice a year for short sessions of a few days (Throughout the period of the last war it did not convene at all.) But this power of the Presidium is strictly defined under the present constitution: it refers only to the appointment of ministers and declaration of war in case of attack on the Soviet Union (Sec. 49, Clauses f and n). However, the Presidium has at any time the power "to repeal the acts" of the federal Council of Ministers and of those of individual republics and, what is more important, the power "to issue edicts" and "to interpret the laws in force in the U.S.S.R." (Sec. 49, Clause (B) and (C). Nowhere is the concept and scope of edicts defined. Under these indefinite provisions, the Presidium continues to proceed as under the old Constitution issuing edicts which enact essential changes in legislation (e.g., reform of labor law, criminal law, marriage and divorce, and inheritance law) and even in the Constitution, as explained above. The Council of Ministers proceeds in a like manner. Although its resolutions are supposed to be issued "on the basis and in pursuance of the laws in force" (Sec. 66), they are "binding throughout the territory of the Soviet Union" (Sec. 67). Thus, in

fact, the resolutions of the Council of Ministers frequently change the laws and occasionally the Constitution (supra). Such practice has never been challenged.

Although at first glance the provisions of the Constitution suggest separation of power, such a doctrine is, as before, repudiated by the Soviet theorists. Vyshinsky, in discussing the new Constitution when it was enacted in 1936, stated bluntly: "We do not have separation of powers, but distribution of functions...this has nothing to do with the Montesquieu doctrine" ("The Stalin Constitution" in Sotsialisticheskaia Zakonnost, 1936, No. 8/9, p. 12). In a textbook on Soviet constitutional law edited by him, the doctrine of separation of power is criticized at length and it is asserted that

"In fact, the history of the capitalist world does not know any actual separation of power, separation of powers has never existed." (Vyshinski, General editor, Soviet Constitutional Law (in Russian, 1938)p. 296; English ed., The Law of the Soviet State, N.V. 1938 p.)

With reference to the Soviet government, it is reaffirmed that

"the Soviet regime is permeated from top to bottom by the general spirit of unity of the governmental power of the toilers. The program of the Communist Party repudiates the principle of separation of government powers" (Ibid., Russian ed., p. 390; English ed., p.).

The Soviet jurists are fully aware of such practices. In discussing the sources of Soviet labor law in the treatises on this subject, they seek to blur the distinction between the authority of a constitutional provision, a legislative enactment, and an administrative decree or directive. In a recent (1949) standard treatise, designed for use in university law schools, a doctrine of "normative acts" (rule making) as the source of Soviet labor law is promulgated. (Aleksandrov, ed., Soviet Labor Law (in Russian, 1949), p. 53.)

Normative acts are, in general terms, defined as "acts by which the will of the ruling class is elevated to law."⁷ This rather vague definition is fortunately followed by an enumeration of the specific acts issued by Soviet authorities which, according to the author, fall under the definition. These are "laws" enacted by the Supreme Soviet (Soviet equivalent to legislature), "edicts" by its Presidium (a body of 32 members constituting the Soviet collective president), "normative resolutions" (i.e., rule making resolutions) of the Council of Ministers, joint resolutions of the Council of Ministers and the Central Committee of the Communist Party, regulations issued by individual ministries and by the Central Council of the Trade Unions.