

SOVIET ADMINISTRATIVE LEGALITY, THE ROLE OF THE ATTORNEY GENERAL'S OFFICE. By Glenn G. Morgan. California: Stanford University Press, 1962. Pp. 281. \$6.00.

MORGAN performs yeoman's service to all students of Soviet law and Soviet affairs by this detailed concentration on the history of the Soviet procuracy since its inception in the early years of the Soviet regime. Procuracy is one of those institutions of Soviet invention which, like the analogy clause in criminal law, were considered typical of the Soviet legal system. Both were highly controversial in terms of their usefulness in any type of legal order and have been inveighed against on both sides of the iron curtain. Though the analogy clause ended its career in the reform of criminal law introduced by the Union legislation enacted in December 1958, the procuracy has emerged with its status enhanced as the sole official guardian of legality. At present, this high government office supervises and controls law enforcement in all branches of government by courts, public administration and economic administration in addition to its basic responsibility for the prosecution of crimes.

The central theme of Mr. Morgan's book is the function of the Soviet procuracy in securing the rule of law by means of the so-called general supervision. According to article 3 of the 1955 Statute on Procuracy Supervision in the USSR, the office includes supervision:

over the strict execution of the laws by all ministries and government departments and their subordinate establishments and enterprises, executive agencies of local soviets of worker's deputies, cooperative and other public organizations, as well as supervision over the strict observance of the laws by officials and citizens.¹

The salient conclusion of Morgan's study is that Soviet procuracy today is highly reminiscent of the procuracy in Imperial Russia in the heyday of its role as the ear and eye of the Tsar. Both Peter the Great, in the beginning of the eighteenth century, and Lenin, in the twentieth, used procuracy primarily as a means of assuring the orderly operation of the governmental machinery in its implementation of central policies. For Peter, procuracy was a device to modernize the government and assure the enforcement of the laws. Two hundred years later the massive operations of modern government in a complex society could not be controlled solely by that technique. The modern state now includes a full system of devices, relying primarily on judicial control, to assure observance of laws in order to protect private rights and to guarantee the necessary standards of social services. And yet the architects of the Soviet state thought it neither possible nor useful to modernize its laws and governmental apparatus according to the pattern of the Western state.

The October revolution expressed itself in the total rejection by the population of governmental institutions and formal legal order. The state and agencies of tsarist Russia were dismantled, and nothing comparable was created to take their place. Revolutionary masses considered government evil and unnecessary. Its functions could be performed by simple organizations, which undertook to protect order and security, administering justice on a purely local

1. 1955, *Velomosti*, no. 9(827) item 222.

basis without reference to a legal system. The Guiding Principles of Criminal Law of the RSFSR of December 12, 1919 summarized the achievements of the revolution and the new order it established in the following terms:

Without special rules, without codes of law, the armed masses have been and still are dealing with their oppressors. In the course of the struggle with their class enemies the proletariat is applying various measures of force, but it has applied these during the early period without any special system as each case required and without organization.²

Although the official position was that revolutionary struggle was the source of the new legal order, in fact no legal order and no orderly administration of justice was possible without action from the center. The action of Soviet authority took two courses. In the first place, as the Central Authority's control over the country increased, tribunals and courts created by various local organizations were abolished and replaced by a uniform system of courts. These possessed a standardized organization and a standardized jurisdiction and operated on the basis of uniform procedural legislation. Second, the regime sought to replace vague ideas about revolutionary justice with statutory enactments, which finally grew into the system of codes.

The revival of procuracy was part and parcel of the process of the reintegration of Russia into one political and legal organism. As the author points out, it was adopted not without opposition. The struggle which produced the Soviet state and governmental system at that time was only the first phase in the battle between the centrifugal and centripetal tendencies in the public life of the Soviet society. Partisans of independence for local government, self-government for national groups, and the right of the factory crews to participation in the management of the economic enterprises invoked the principle of Soviet democracy. They claimed that power belonged to the masses and that it must be exercised by them without participation of bureaucracy. Furthermore, they were convinced that economic planning and decision-making were local concerns. Bureaucracy and the Party sought to preserve the rule of the center in order to achieve the economic reconstruction of the country and the reeducation of the masses.

Under Stalin the tendency to monopolize power at the center reigned supreme. The federal government controlled, among other things, the administration of justice, economic planning, legislation, security, and collective bargaining. Furthermore, it controlled various aspects of governmental activity without distinguishing between national and local affairs, without regard to the principles of jurisdiction and distribution of responsibility.

Stalin's demise initiated a complicated process of transferring some of the accumulated power to lower levels of authority. In order to make decentralization effective Soviet lawyers rediscovered some basic principles of government, determining relations between agencies and authorities in the administrative structure. In 1960 a Soviet lawyer felt compelled to explain to the public the principle of exclusive jurisdiction of local authorities in certain matters, a principle intimately connected with the idea of legality in modern government:

2. 1919 *Sobranie Uzak*. Sec. 590 no. 66.

In our opinion a decision of a lower Soviet may be changed only in the case of the violation of the law. The Constitution of the Union guarantees the rights of the Soviets directly elected by the population as agencies of self-government in their territory, by ruling that Soviets make their decisions within their jurisdiction determined by the law. Socialist legality is based on the principle of expediency, which is correctly interpreted. In other words, a higher Soviet has no right to deal with matters or change decisions which were already made by the lower Soviet within its jurisdiction. A decision of a lower Soviet has legal force if it is within the jurisdiction fixed by the law. . . . In practice higher Soviets, and especially their executive committees, frequently change the decisions of lower organs also for reasons of expediency, which is a violation of the principle of socialist legality and of the rights of the lower organs. . . .³

This passage seems to suggest that during the nearly forty years of its existence Soviet procuracy was little concerned with this basic tenet of orderly government. Control of legality of administrative acts was exercised to give effect to the decision of the center, and secure uniformity in handling local and national affairs.

According to Morgan, the history of procuracy until the death of Stalin may be divided into three periods. During the first years after procuracy was introduced (1922) its leaders and agents in the provinces sought to assure stability of laws, establish normal conditions of life, and curtail local regulations in areas already dealt with in the national legislation. This was the period of the New Economic Policy, of economic reconstruction, and of great concern with the promotion of private economic initiative.

The years 1929-1936 brought about a total reversal of the aims and methods of procuratorial action. Procuracy participated in the process of nationalization of industries and commercial enterprises and in the collectivization drives. One of its main concerns was the organization of the administration of the newly nationalized factories and plants, and the management of the collective and state farms. This meant execution of regulations regarding production drives, organization of work in factories and in agriculture, and the prosecution of economic crimes.

The Constitution of 1936 initiated a period of comparative stability in legal regulations. Procuracy returned to its task of control in the original sense. When World War II intervened, the attention of Soviet procuracy focused again on prosecution of crimes rather than supervision of administrative legality.

The death of Stalin opened a new vista in the general supervisory function of Soviet procuracy. The May 24, 1955 Statute which restated and codified various aspects of its activity and redefined its role in the quest for administrative legality was one of the many legislative measures aiming at the reorganization of the Soviet legal system and orderly law enforcement. One of the important results of this restatement was that Soviet courts and Soviet jurists became conscious of the fact that legal order and the enforcement of laws are

3. Tikhomirov, *Nekotorye voprosy dalneishego razvitiia miestnykh organov gosudarstvennoi vlasti SSSR*, SGP 92 (1960) no. 1.

intimately connected with the protection of individual rights. In 1958 a distinguished Soviet jurist stated that:

Until quite recently such an important function in the activity of the socialist state as the protection of rights and legal interests of the citizens was not considered an independent function. This thesis was based on an incorrect interpretation of the well known statement of V. I. Stalin: "The main task of the revolutionary legality in our time consists concretely in the protection of socialist property—and in nothing else." Without doubt, protection of socialist property is an important function of the Soviet state. However, to confine the tasks of socialist law to the protection of socialist property implies nothing else but neglect of the protection of rights and legal interests of the citizens.⁴

Following the Twentieth Party Congress (1956) a systematic program for the reorganization of the entire legal system was gradually implemented. New criminal legislation was enacted; Soviet courts were reorganized; the system of contracts between government enterprises was remodelled; the powers of local Soviets were increased; and the economic administration of government enterprises was redesigned. As time went on, the general supervision and legality control assumed increasing important proportions in the work of Soviet procuracy.

Legality, as an aim of the systematic control of governmental and social actions, implies a process of integration of these actions into a harmonious pattern according to standards uniformly established by the rule of law. The tenor of the reforms of the post-Stalin period suggested that change would be regulated by proper legislative processes, and that legality would cease to be a political rather than a juristic concept. However, the drive for strict law enforcement was again relegated to second place when the Twenty-first Party Congress (1959) declared that the time was ripe to reform public functions in the Soviet society since the state of the national economy was such that preparatory steps could be made to effect the transition to higher forms of communist social organization.

The meaning of this pronouncement is best understood in connection with the famous collectivization formula Stalin expounded at the Fifteenth Party Congress. According to that formula private property rights in agricultural land were afforded legal protection as long as supplies from privately owned farms played a vital role in the national economy. Once the supplies from the government and collective farms improved, it would be possible to initiate a vigorous drive for collectivization and confiscation of privately owned farms, without regard to the rights of individual owners.

The decisions of the Twentieth Party Congress resulted in a revival of non-judicial criminal prosecutions under the aegis of the so-called antiparasite laws. Control of individual lives by social organizations not subject to the judicial control was increased. Finally, a drive was instituted for the extermination of certain classes of offenders guilty of anti-social behavior particularly repulsive to a society engaged in the construction of Communism. Contrary to the pro-

4. Romashkin, *Razvitiie funktsii sovetskogo gosudarstva v protsesse postroeniia kommunizma*, SGP (1958) no. 10, p. 12.

visions of the newly reformed Criminal Code, a number of decrees authorized the death penalty for a variety of economic transgressions. Thus the struggle for the rule of law has again suffered a serious setback as the criteria of legality have been divorced from the idea that in the supervision of legality, primary protection ought to be afforded to individual interests and personal rights.

Morgan's book is only marginally concerned with these broad issues. His main concern is with the evolution of the general supervisory function, the development of the institution of procuracy, and the forms and types of action historically used to secure effective administration. Indeed, Morgan's study provides a wealth of information for anybody concerned with the study of Soviet government and of the Soviet legal system. The strong point of this book is its detailed analysis of the various reports concerning the activities of the procuratorial officers and their agents in the various areas of Soviet public life. The chief fault Morgan finds with the Soviet system of the control of legality is the fact that procuracy is nothing but a part of the bureaucratic setup in an absolutist state. This was also the shortcoming of the Imperial procuracy:

Only an absolutist government—which does not use the constitutional mechanisms prevailing in the West to challenge the legality of administrative enactments and to watch over the actions of administrative officials . . . finds the general supervision function useful In the absence of freedom, the Party and government prefer to rely on a branch of the governmental apparatus itself to watch over the legality of the operations of the rest of the apparatus. Given the extensive system of checks and controls employed by the regime to ferret out inefficiency, disloyalty, abuses and violations in the government and in the economy, general supervision serves a useful role for the rulers in keeping an eye on infractions of their laws. Unwilling to abandon its central controls in favor of constitutional restraints on administration, the regime cannot abandon general supervision without installing some other method for achieving its purposes.⁵

Finally the author asks himself the question whether some of the functions of legality control could not be assumed by Soviet courts. This is not a purely theoretical question, because as Morgan notes, some important Soviet jurists including Strogovitch and Nedbajlo have advocated an expansion of the judicial control of legality. The author concludes, however, that it is quite unlikely that such proposals would be given recognition.

Furthermore, although it would be an improvement in many respects to allow Soviet courts to adjudicate many matters of an administrative nature, which are not outside their jurisdiction, it would not necessarily achieve results different from Procuracy supervision, because the courts are also completely under the domination of the Communist Party of the Soviet Union.⁶

To this the reviewer desires to add that such a development, which was advocated by the Soviet authors before the new policy of the communist construction was announced by the Twenty-first Party Congress (1959), would be contrary to the latest tendency in the Soviet law to continue subordinating

5. Morgan, at 247.

6. *Id.* at 251.

individual interests to those of the collectivity. It would also be contrary to the program designed to eradicate from the psyche of the Soviet citizen those elements of assertiveness as regards individual rights which constitute the soul of legality control in democratic society. The social reforms on which the future communist society is predicated stress coordination, discipline, and conformity. The message of Soviet social order is that the welfare of the individual is to be achieved through collective action.

Morgan discusses an example of the depersonalization of the Soviet governmental system and of the processes aiming at the legality control when he treats the role of individual complaints against the violation of legal rule. Complaint is not a personal quest for redress. Its general usefulness for the regime consists in the check it provides against the irregularities in the operation of the governmental institutions. The control which a complaint initiates is a matter of internal process and is exercised with reference to general provisions regulating governmental action, rather than in response to a demand for the protection of individual rights. Its general form (the absence of personal involvement) tends to deemphasize the element of individual participation in the action aiming at the preservation of the public order.

As the functions of the modern state proliferate and encompass an ever growing scope of services and public control of various areas of social and economic life expands, techniques to assure legality of administrative acts gain in refinement and significance. It is the Western legal tradition that courts of general jurisdiction, or special tribunals provide the main tool for legality control, and litigation initiated by the interested parties represents the sum total of social interest in the adequacy of law enforcement. It is paralleled by the administrative control of services provided by the large impersonal public utilities, or government departments, again subject to judicial review. In recent times the Swedish institution of the Justitieombudsman, an officer elected by the Parliament to investigate the complaints of the public against the irregularities in the administration of government, has attracted great attention. It has spread to the other Scandinavian countries. Furthermore, a number of the members of the British Commonwealth have considered the creation of similar offices to strengthen their methods of legality control. The articulated functions of the Ombudsman closely resemble the techniques employed by the Soviet procuracy. But this resemblance is mechanical and differs in essential points from the legality controls conducted by the Soviet procuracy. In the first place the Ombudsman is not a member of the administration; he is independent of the government. His acts of control are not internal administrative acts, and they are always taken with reference to a legal rule. Standards of control are firmly established, while the weakness of the Soviet legality control lies in the vagueness of its terms of reference. Mr. Morgan's book contains numerous examples of the procuracy's concern with trivia which have no relevance to the performance of services, to individual rights, or to the maintenance of order.

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