

## ECONOMIC CRIMES UNDER SOVIET LAW.

*By a Russian Lawyer.*

Malitsky, the official commentator of the Civil Code of the R.S.F.S.R., says in his introduction to the Code : " The law of a state is the expression of the economic structure of the state at any given period." In accordance with Marxist theory which considers the economy of a state as the basis of the state, and law, science, art, morals and ethics as super-structure only, Soviet law makes the protection of the economic-political structure created by Communism in the Soviet Union its main task. Since all factories and plants, all wholesale and retail trade, all means of transport, and almost the whole of the land belong to the State, any act or omission damaging Soviet economy immediately assumes the character of a crime against the Soviet State. Because Soviet economy is judged to be the vital basis of the whole Soviet system, such a crime is classed among the most serious crimes under Soviet law.

There is another unique aspect of economic crimes under Soviet law, an aspect which concerns the manner in which many of the penal provisions regarding economic offences are applied in practice. Since Communist doctrine is based on the infallibility of its teaching, any breakdown or shortcoming in the Soviet economic sphere can logically never be attributed to a fault of the system. An individual, or a group of them, has been found and brought to trial. The allegation of defects in a plan, or other measure taken by the Soviet government, may in itself be considered counter-revolutionary, and to expound such an idea would expose the persons concerned to arrest and punishment for counter-revolutionary agitation and propaganda under Article 58 (10) of the Criminal Code. In case of major shortcomings in the Soviet economic planning, trials of individuals for their alleged deliberate wrecking of the economy have been well-known features of Soviet history. These trials have generally a twofold aim—firstly, to show the Soviet people, and possibly the outside world, that the measures contemplated under the official plan were sensible and could have been put into operation had it not been for the counter-revolutionary, corrupt or criminally negligent acts of the accused, and secondly, to hold up the accused to the people generally as a warning example, thus driving them on to an even more energetic execution of government measures.

Economic crimes strictly speaking are dealt with in a separate chapter, Chapter V (Articles 128-135), of the Criminal Code of 1926<sup>1</sup>. However, the offence may also fall under Chapter III which concerns crimes committed while " on duty " ; or it may be one against provisions of special laws, such as that for labour discipline of 20th June 1940. If the accused has the misfortune that his offence is considered serious in its ramifications or results, he may have to face the charge of counter-revolutionary activities under one of the sub-sections of Article 58 of Chapter I of the Criminal Code, with all its dreaded consequences for the victim and his family. If the Soviet authorities choose to proceed under this Article, the procedure may be the normal Soviet criminal

1. The Code quoted in this study is that of the R.S.F.S.R. (the Russian Republic). The other member republics of the Soviet Union have practically identical criminal codes.

procedure in open court, with the accused represented by counsel, and the judgment open to a limited form of appeal. It may, however, be left to the administrative organs of the Ministry for State Security, the M.G.B. (the present-day successors of the Cheka, the G.P.U. and the N.K.V.D.) to take procedure under Article 58. The M.G.B. may arrest, charge and sentence the victim at an informal, secret trial before one of its three-man commissions; and there is no representation by counsel before these commissions, no right of appeal from their verdicts. By law these commissions are entitled only to sentence to a maximum of 5 years' banishment. Yet in practice, this has been extended to 25 years, and instead of banishment the penalty is the usual loss of freedom.

A sub-section of Article 58 frequently applied in prosecutions for alleged economic crimes is sub-section 7 which provides a penalty of 10 to 25 years of "loss of freedom" for "undermining the state's industry, transport, trade, monetary circulation and credit system, committed with counter-revolutionary intent, by making use of government departments and enterprises or by taking actions contrary to their normal functions." The penalty under this as well as other sub-sections of Article 58 was increased in 1937, and apart from a brief, peaceful period after World War II when the death penalty was abolished in the Soviet Union, death by shooting has been the normal form of punishment for persons found guilty of a crime under Article 58.

The Criminal Code does not specify what "loss of freedom," which is the normal form of punishment, implies. Nor does the Code of Criminal Procedure. In practice, it is for the M.V.D., the Ministry for the Interior, to decide what to do with the person once he has been convicted. There are gaols, especially in the cities. However, the vast majority of the people sentenced to loss of freedom are assigned to the vast "corrective labour camps," "camps for special purposes," and agricultural and other camps. The allocation to the place considered most suitable for the individual in question is made mainly in accordance with his economic usefulness. The number of people employed in these places of forced labour is estimated reliably at between 15 and 20 million.

Chapter III of the Criminal Code deals with crimes committed while "on duty" or "on service." Since all economic organisations are now state-owned, the range of persons covered by this special chapter is very wide. According to Note 1 to Article 109 of the Code, any person entrusted with a definite duty is considered a person "on duty." Only ordinary workers are not included in this category; however, this does not exclude the possibility of their being called to account for "economic counter-revolution," a special breach of labour discipline referred to later on. Soviet trade union officials are included among the persons with a definite duty within the meaning of Chapter III of the Code.

Chapter V of the Criminal Code is the part of the code dealing with economic crimes generally:

Article 128 (a) provides a penalty of 5 to 8 years' loss of freedom for anybody manufacturing goods of inferior quality or incomplete goods, or marketing industrial articles finished below fixed standards. This is a section very frequently

applied. In cases where inferior quality goods are brought to the notice of the police, the Red bureaucracy would track down all persons connected with its manufacture and distribution, such as the store supervisor in the cooperative shop where the article was bought, the technical supervisor in the factory where the article was made, the foreman, and finally the workman, who made the article. In the case of the first Russian typewriters manufactured at Leningrad, which proved of poor quality, one after the other of the works' directors were prosecuted and convicted under Article 128 (a).

Another provision of great practical importance is Article 128 (b) which imposes a penalty of up to 10 years' loss of freedom for anyone giving short weight or short measure to a customer. Article 129 makes the conclusion of an agreement detrimental to the State a crime punishable by up to 10 years' loss of freedom, while Article 131 makes failure to comply with the terms of an agreement with the state a criminal offence punishable by not less than 6 months' loss of freedom.

A provision which can be understood only if it is realised that the state is the only landlord in Russia is Article 130 which makes the causing of damage to dwellings by tenants a criminal offence.

A not uncommon economic offence is contained in Article 107 of Chapter II of the Criminal Code which deals with Offences against Public Order. This article provides a penalty of 5 to 10 years' loss of freedom for the purchase and sale by private individuals, with the intention to make a profit, of agricultural products or essential industrial consumer goods; in addition the article provides for total or partial confiscation of the property of the accused.

The protection of the state's interest is also the governing factor in such crimes as theft. Under Article 162 of the Criminal Code theft of an article owned by a private individual is punishable with loss of freedom up to three months, whereas ownership of the article by the State immediately raises the penalty to 12 months' loss of freedom. Even thefts of articles of very minor value are punished in this hard way, such as for instance thefts involving a reel of cotton. The author remembers a case in his practice when a waitress was sentenced to 12 months' loss of freedom for having consumed a beefsteak in a state kitchen without permission.

With regard to major thefts involving state or collective property a special law was passed on 7th August 1932 providing much harsher punishment than the Criminal Code. This law, which was passed during the period of inner unrest following the collectivisation of agriculture, provides penalties of not less than 10 years' loss of freedom.

A law which has become of great influence to the daily lives of the ordinary Soviet workers is the law of 26th June 1940 on labour discipline. Under the provisions of this law any worker who is 20 or more minutes late for work without valid excuse is liable to be punished for idleness, the penalty in such case being either the reduction of the worker to the

status of collective-labouring for a period up to 6 months, or a 25% cut in wages. Another provision of this most important law makes any worker who leaves his place of employment without due authorisation liable to 2 to 4 months' loss of freedom, at the expiration of which the worker has to return to his former place of employment. Workers who leave their job in a war factory or a factory supplying a war factory without authority are liable, under the same law, to loss of freedom for a period of not less than 5 years and not more than 10 years. According to the official text of this law, the Soviet trade union administration had asked the government to pass this law for the preservation of labour discipline. The practical result of the law of 26th June 1940 is that every Soviet worker and employee is permanently attached to his place of employment. He can change his employment only with the approval of the central administration of his place of employment. This may be obtained only on extremely rare occasions.

Students of technical and trade schools are covered by a special decree of the Presidium of the Supreme Soviet of the U.S.S.R. Under the terms of this decree a student absenting himself from a technical or trade school without authority is liable to be sent by the court into a labour colony for a period up to 12 months. Collective farm workers are dealt with in a law of 15th April 1942 which, *inter alia*, makes any worker who fails to work a fixed minimum of days on the collective farm liable to be sent to a corrective labour camp for a period of 6 months.

Economic offences "benefit" from the general analogy provision of Soviet law. This means that any criminal action not covered by a provision of the Criminal Code or any other law or decree will be punished by applying to the action—in conformity with Article 16 of the Code—the provisions of the article most analogous to the action under consideration.

All judges and public prosecutors in the Soviet Union are members of the Communist Party, and the author has found in his experience that, in order to avoid being branded as soft and spineless, the judges tend to be extremely severe in their judgments. Cruelty has proved to be a means of promotion in the Soviet judicial service. Generally, judges give the widest possible interpretation to legal provisions and like to impose maximum penalties.

The scope for any successful work for a defence lawyer under the Soviet criminal law system is necessarily limited. A few instances of cases of economic crimes with the defence of which the author was connected during his many years' practice in the Crimea and in Leningrad may give some idea of Soviet economic criminal law in practice. There was the case in 1940 of Anna Ossovskaya, tram conductress in Leningrad, accused of an offence under Article 107 of the Code. When, following a denunciation by her own son-in-law, the police searched her one-room flat, they discovered several new shirts, pieces of underwear and a total of eleven sheets; it may be added here that Ossovskaya had a husband and two unmarried children living with her. Although there was not the slightest evidence that the accused had bought the linen for resale, the court held that the total exceeded the normal needs of a Soviet family and that therefore resale could have been the only plausible

intention of the holding these large stocks. Ossovskaya was sentenced to 5 years' loss of freedom, a sentence which was not reduced on appeal although it could be shown that the underwear and shirts were in the sizes suitable for the husband and the children of the accused.

The author was more successful in the case in 1933 of the Administrative Camp Officer of the Black Sea Fleet. A number of suit lengths were found in his possession, and the local court in the Crimea sentenced him to death for theft of state property. (During 1933 the death penalty could be imposed under the law of 7th August 1932.) After thorough investigation the author was able to show that the accused had accumulated the suit lengths by giving the officers short measure for their suit lengths which were made up at the camp. The Administrative Officer had not committed a theft of anything owned by the state, but a whole series of thefts of goods belonging to naval officers: it was this argument which convinced the President of the Supreme Court of the Soviet Union at the final appeal, and the client's life was saved.

A stratagem which frequently proved most useful was sudden illness of the client. Sudden illness was the only hope for leading officials caught in a public campaign which was looking for scapegoats for, let us say, a bad harvest and which was crying out for hard punishment of the "guilty." The time of my client's recovery from his illness would usually coincide with the dying down of the campaign. And, in accordance with Article 8 of the Criminal Code, a change in the social political circumstances could be relied upon to cleanse my clients' action of "criminal" character, once the danger to the public in general had passed. Usually, there had been enough convictions in the meantime to satisfy the earlier propaganda outcry, and it was now no longer considered expedient to take up cases against those accused who had fallen sick, and criminal proceedings against them were then usually discontinued.