

Legal Developments in theory and practice.

First of all I would like to give you an idea about Communist tenets and principles concerning the operation of socialist legality. According to Communist theory, there is no such ~~xxxx~~ thing as legality in and by itself. In order to speak of legality, you have to make it clear first of all whether you are talking of socialist or bourgeois legality.

In terms of its chronological order, according to the Communists, bourgeois legality comes first. Communism holds that the purpose and objective of bourgeois legality is to bring about and develop a legal order which protects the interests of the minority in society but at the same time suppresses the interests of the majority. On the other hand, under the Communist view, ~~the~~ socialist legality is based on equality and humanitarianism as well as legal ~~xxxx~~ security for the majority, and, at the same time, it is based on the suppression of the minority by the proletarian dictatorship. By the minority, Communists refer to the former ruling class.

However, in practice, the Communists use the ~~x~~ means of socialist legality in order to establish a legal order which suppresses not only the minority of the former ruling class but the majority of the people as well. In practice, the authority of the state turns against the masses: The authority of the state enacts laws, ~~then~~ i.e. passes legislation which is contrary to the interests of the masses, and legislative enactments and the provisions of the law

of the state, under the dictatorship of the proletariat, are used to suppress the interests of the masses by the proletarian dictatorship. By the authority, the state enacts laws, then i.e. passes legislation which is contrary to the interests of the masses, and legislative enactments and the provisions of the law

spring not from the demands of the people and the pressing exigencies of life but from the needs of the Communist clique.

Those who are dissatisfied with the laws of the socialist <sup>or</sup> state ~~are~~ those who violate the provisions of the law are punished by the organs of the socialist state without mercy. To give you an example, in connection with the compulsory delivery quotas in agriculture, the peasant is not allowed to touch a single ~~sheave~~ <sup>sheaves</sup> before the crop has been delivered up to the state. If he removes any sheaves in order to feed his hands, he gets three years in prison.

Coming back to the concept of socialist legality, I would like to emphasize that socialist legality is a legal category which imposes a duty upon all state organs, official persons, or individual citizens to comply with the legal provisions of the socialist state.

Socialist legality ensures positive rights for the organs of state officialdom and individual citizens. Theoretically you can avail yourself of these rights and you can demand that everybody comply with the laws of the socialist state. In practice, however, the state organs as well as the official organs follow the provisions of the law only to the extent that they correspond to their own interests. In general, you may say that the Communists are very careful in regard to ~~the~~ formal procedure. However, if the law does not serve the interests of the ruling clique, they disregard

it. For instance, in 1952, a law was passed providing for the nationalization of dwelling houses containing more than five rooms. In July, 1953, under Imre Nagy you could demand the return of your formally nationalized dwelling house if you were an artisan or handicraftsman. However, ~~in~~ already in December of the same year Rákosi's influence increased again within the government and disregarding the former prime ministerial decree, he gave instructions to the local organs of county administration countermanding the prime ministerial decree for the restitution of artisans' dwelling houses.

Generally speaking, the rigor of the law applied to all citizens with the exception of Party members or good kaders. For instance, a friend of mine became the head of the public prosecutor's office in Rákove. One night there was a row in the local pub and the chief ~~of the~~ of the local price setting board in the ~~the~~ county ~~was~~ <sup>mixed up</sup> in it. My friend had to bring a charge against everybody who participated in the row. However, the next day he received a letter from his superior office in which he was bawled out for bringing a charge against the head of the local price setting board. The letter said inter alia that his charge seriously injured the reputation of the Communist Party and therefore was contrary to the principles of legality within a socialist state. All this was done because the head of the price setting board was a reliable Communist. There were many similar exceptions. In regard to the rank and file



of the citizenry, however, the rigor of the law applied without mercy. Peasants/<sup>who</sup>refused to join the cooperative farms were punished under various pretexts. Sometimes, for instance, on the basis of the fact that the peasant forgot to put the old plow back into the shed, sometimes ~~on the basis of~~ <sup>under the pretext that</sup> the peasant's dog was left at large.

Theoretically legality means that you have rights as well. In practice all state organs exercised all the powers and rights without having any corresponding duties toward the citizens. Nowhere in the world can you find such a privileged aristocracy. As far as the application of the law and the administration of justice was concerned the socialist state could allow the exercise of such rights only which were not directly or indirectly, <sup>contrary</sup> to its own interests. This field was comparatively small, <sup>it</sup> extended only to the field ~~of~~ <sup>of</sup> domestic relations questions of divorce, adoption and affiliation. But even in these situations it happened frequently that the state intervened. In private law there was hardly any legal transaction in which the state did not intervene. As a matter of fact even in the field of domestic relations I know of instances where disciplinary action was taken against a Party member who was 32 of age and had no children and who upon the inquiry of Party officials said that his having no children was a <sup>private</sup> ~~matter~~ <sup>affair</sup>. Furthermore, the Party also intervened in other family matters such as the rearing of children and the conclusion of marriage. If you

wanted to get married, you had to report it at your working place so that the personnel department of your working place could check up on the dossier of your ~~future~~<sup>prospective</sup> bride or groom. Another acquaintance of mine served, for instance, in the Ministry of Foreign Affairs. He was 25 years old and wanted to marry the daughter of a former officer of the army. They wouldn't let him marry the girl.

Another friend of mine worked at a registration office of births and marriages, a section of the Ministry of Interior. He was courting ~~an undergraduate girl~~<sup>the</sup> daughter of a kulak ~~at~~<sup>an undergraduate girl</sup> the law faculty of Budapest. The Ministry of Interior investigated the matter, found out about his courtship ~~of the kulak's daughter~~ and refused to give him permission to marry. Finally the girl was kicked out of the University and he had to leave the Ministry of Interior.

Legal theory at the law faculty of the University of Budapest was taught by two professors. The pure theory was taught by Tibor Vass, whereas the methods of socialist legality were taught by Imre ~~Szabo~~<sup>Szabo</sup>, a former member of the legislative section of the Ministry of Justice. Incidentally, the latter was also the chief ~~of the Gazette~~<sup>Ju</sup> Communist editor of jurisprudence (Jogtudományi Közlemény). One of the tasks of the Communist Party was, of course, to ~~exercise~~<sup>direct the development of</sup> Hungarian jurisprudence.

The ideological and theoretical development of the law and jurisprudence in general was done through the following publications

(1) The <sup>Gazette</sup> ~~Journal~~ of Jurisprudence" which discussed the application of the law (2) "Hungarian Law" (Magyar Jog), dealing mostly with practical legal problems. (3) "State and Administration" (Állam <sup>és</sup> Igazgatás) containing mostly articles dealing with state administration. (4) "Hungarian Gazette" (Magyar Kozlony) containing ministerial decrees and other administrative rulings. (5) Collection of Judicial Decisions (Eirói Hétároésatok Tára) containing the decisions of the Supreme Court in matters of principle.

In this connection I might add that since 1950, the collection of judicial decisions as well as the ministerial decrees in the "Hungarian Gazette" were considered to be state secrets and only the most intimate <sup>communists</sup> ~~users~~ received copies of these journals. At the law faculty of the University of Budapest there were only six professors whose names were included in the receiving list namely, Janos<sub>2</sub> Beér, Imre Szabó, Tibor Vass, Miklós Világi and Andor Weltner and Miklós Kádár. These professors had to keep their copies of these journals in a separate safe.

Being an assistant to the professor I could only get access to these journals if I asked for <sup>a</sup> special permit from the supreme court allowing me to be admitted to the archives of the County Court of Pest. I might mention in this connection that matters (cases and trials) bearing a zero number as their registration number (matters involving political crimes) were not open to inspection even with a ~~xxx~~ special permit of the Supreme Court.

In view ~~of~~ of these secret laws and orders, the question arises how can the judge or the courts administer justice on the basis of secret laws and orders? Undoubtedly, in this respect the task of the judge or of the court is more difficult since they have to explain the reasons for their decision in terms of those laws and ministerial orders which were made public even if the actual decisions were based on secret legislation or ministerial orders. It has not be<sup>en</sup> a coincidence that such people as Erik Molnár, Ferenc Erdei and Ferenc Nezvál were Ministers of Justice.

I would like to mention that the Communists also established an Institute of Jurisprudence which at the outset functioned alongside the Council of Ministers, <sup>A</sup> around 1955, <sup>it became</sup> a branch establishment of the Academy of Science.

Attorneys and lawyers also had a difficult time in finding out the precise provisions of the law. Comparatively few books were written and they were mostly theoretical discussion. These books, as well as the <sup>gazette</sup> ~~Review~~ of Jurisprudence were available in bookstores.

Now I would like to talk about the institution of public prosecutors.

<sup>was criminals ended</sup>  
The prosecution of ~~found~~ <sup>A</sup> a few years after the war. The so-called people's prosecutors were abolished. The first impact of Communism upon the office of the public prosecutor was the fact that



no longer was any legal qualification demanded ~~fx~~ from those who served as public prosecutors.

~~Originally~~ <sup>At first,</sup> the public prosecutors, who had no previous legal ~~has~~ background and ~~no~~ qualifications were only in charge of political matters. These were the first inroads by Communism into the rank-and-file personnel of the public prosecutor's office. Incidentally, the idea was taken from Lenin who wrote in 1922 about socialist legality and <sup>the principle of</sup> double subordination.

State organs were organized on the basis of the principle of democratic centralism. Democracy in this connection means that the state organs are chosen and that they are responsible. Centralism, on the other hand means that the lower organs always have to follow the instructions of the higher organs. The principle of double subordination is nothing but an extension of the principle of <sup>centralism.</sup> ~~of ~~centralism~~~~ For instance, the ~~executive~~ executive committee of the local people's council has various sub-committees in the fields of education, finance, commerce, health and so forth. The sub-committees are responsible to the executive committee, the executive committee ~~is~~ is responsible to the local People's Council, the local People's Council is responsible on the highest level to Parliament and to the Presidium of Parliament. However, the executive <sup>Committee</sup> ~~council~~ of the local People's Council is also subordinated to the various executive organs of state administration, thus the sub-committee of <sup>1</sup> finances ~~is~~ of the executive committee is responsible <sup>on</sup> ~~from~~ the



highest level to the Ministry of Finance. The sub-committee ~~of~~ <sup>of</sup> commerce is responsible to the Ministry of Commerce. The sub-committee on education is responsible to the Ministry of Education as an organ of state administration.

According to Communist doctrine, the public prosecutor's office had to be organized differently. In view of the fact that the supervision of legality, ~~the~~ <sup>the</sup> compliance with the provisions of the law, was considered ~~so~~ <sup>very</sup> important, ~~the~~ the public prosecutor's office had to be organized independently from the aforementioned structure. In other words, the principle of democratic centralism does not apply to the public prosecutor's office. The single and most important task <sup>k</sup> of the socialist public prosecutor's office is to guard and protect the state against any violators of the law and to see to it that everybody complies with the laws of the socialist state.

To enable the public prosecutor's office to fulfill these tasks, three fundamental principles had to be observed, <sup>namely</sup> ~~mainly~~, the complete independence of the public prosecutor's office, its centralization, and responsible leadership in the hands of one man.

As far as the independence of the public prosecutor's office is concerned, this is strictly carried out both in theory and in practice. No state organ can give any instructions to the public prosecutor's office or to any member of the staff. However, I would like to mention that the above restriction applies only to

~~the~~ state organs, it does not apply to the Communist Party. Therefore, the highest organs of the Party can and do give instructions to the public prosecutor's office.

Theoretically and in a subjective sense, the independence of the public prosecutor's office means that it has the right to supervise any and all state organs as well as individual citizens. In any objective sense, the independence of the public prosecutor's office means that it decides itself in what cases there is a violation of the law.

The principle of centralism in regard to the public prosecutor's office means that the lower public prosecutor's office is responsible only to the higher public prosecutor's office. Accordingly, the lower office can only receive instructions from the higher office. No other state organ can give ~~any~~ instructions to the public prosecutor's office. Various public prosecutor's offices of the same rank can get together and discuss matters, however, they can not receive instructions from each other.

Finally, the one man responsibility of the public prosecutor's office means that in each case only one decision is taken and that decision is ~~is~~ always the decision of the head of the public prosecutor's office. As you can see, the one man responsibility of the public prosecutor's office is an exception to the general principle of collectivity ~~and~~ as manifested in the People's Councils and in many other organs.

In regard to the functions of the public prosecutor's office, they are mainly those by the application of which the public prosecutors can fulfill their task of guarding the state's security and enforcing compliance with socialist legality.

Among the functions of the public prosecutor's office must be listed the following: supervisory functions in connection with the enforcing of general legality, supervisory functions in connection with crime investigation, supervisory functions exercised over the court system, and supervision over prison administration.

In connection with the exercise of supervision in regard to general legality, the public prosecutor's office has a duty to see to it that everybody complies with the provisions of the law, therefore, it is the duty of the public prosecutor's office to supervise ex officio the local organs of state authority as well as all the organs of state administration which are subordinated to the Council of Ministers and, of course, it is the task of the public prosecutor's office to pry into individual affairs and personal matters, to see to it that there is general compliance with socialist legality. In practice all manifestations of life are subject to the scrutinizing eyes of the public prosecutor's office. The public prosecutor's office cannot supervise the National Assembly as a legal entity or the Council of Ministers as an entity <sup>(i.e.,</sup> body of people), however, it can supervise anyone

within these bodies individually.

The question arises: what kind of means are at the disposal of the public prosecutor's office for the fulfillment of these tasks?

The public prosecutor is entitled to participate in the meetings of any of the organs of local state authority as well as in the meetings of the organs of state administration. The public prosecutor has the right to appeal any of the decisions of the aforementioned organs if he deems that the decisions are contrary to principles of socialist legality or do not conform to the socialist laws.

The local public prosecutor attends the meetings of the local People's Councils and if he doesn't like their decisions, he will appeal them on the ground that they violate the principles of socialist legality or that they violate the laws of the socialist state. Such an appeal will have to be submitted ~~to~~ for review to the next higher People's Council or to the National Assembly. If his appeal is rejected by the reviewing council or the National Assembly, he still ~~has~~ has <sup>the</sup> right to bring the matter to the attention of his own superiors and submit it for final ~~decision~~ decision to the Chief Public Prosecutor. Since the Chief Public Prosecutor receives his instructions directly from the ~~the~~ Presidium of the Central Committee of the Communist Party, thus, the final decision will be a Party decision.



Another means at the disposal of the public prosecutor in fulfilling his task of enforcing socialist legality is his right to conduct investigations, at his discretion at any time and any place. He has a right to demand all the dossiers and documents concerning factory management or any other aspect of the economy or state administration. He ~~is~~ can, for instance, demand that the ~~the~~ Csepel factory<sup>y</sup> submit its payroll for supervision and he can also demand ~~in the same way~~ the respective documents and dossiers from the Ministry of Heavy Industry ~~industry~~ under whose direction the Csepel factory is operating. The important thing is that complete centralization should obtain.

In regard to the supervisory functions concerning crime investigation, the public prosecutor's office is mainly concerned with crimes which are punishable ~~with~~<sup>by</sup> a five year imprisonment or more in a state prison and which do not effect state security. Matters which ~~effect~~<sup>effect</sup> state security, that is mainly political crimes, are handled by the AVH. Finally, those crimes which are punishable by imprisonment in a state prison for a period of less than five years are under the jurisdiction of the regular police.

From this, however, one should not get the wrong impression that the public prosecutor's office cannot or should not intervene in political matters as well as in ~~the~~ matters which belong to the jurisdiction of the regular police. The public prosecutor's office has the right to supervise the AVH as well as the regular

police and to see to it that they conform in their practices to the principles of socialist legality and that they comply with the provisions of the laws of the socialist state.

Of course, there are certain provisions of the law which are never followed in practice. For instance, under the law no one can be detained or arrested by the police for over a period of 24 hours. Before the expiration of the 24 hours, the arrested person would have to be brought before a magistrate. Only with the special permission of the public prosecutor's office could the arrested person be detained by the police or the AVH for a period of over 24 hours without having been brought before a magistrate. This sounds very nice. However, in practice it was never followed. Also I would like to say in addition that in practice the supervision exercised by the public prosecutor's office over the AVH was nothing but a humbug. Theoretically, under the law the public prosecutor's office itself could take over the investigation at any time, or could intervene in the investigations conducted by the police or the AVH. However, in practice this was not enforced in regard to the AVH. In other words, the relations established by law between the public prosecutor's office and the AVH remained a dead letter.

In regard to the right of supervision over the court system, I would like to mention that this is perhaps one of the greatest, and most important differences between the Western democratic societies

and a Soviet socialist state or a People's Democracy. The socialist state is so anxious to <sup>to</sup> ensure the application of the principles of socialist legality and general compliance with the laws of the socialist state that the public prosecutor's office <sup>HAS</sup> ~~and~~ the <sup>duty</sup> ~~task~~ and the right to supervise the judges and the courts as well.

Of course, primarily the public prosecutor's office has to initiate and maintain the prosecution and to present the charge but at the same time the public prosecutor must see to it that the court or the judge complies with the provision of the law. In other words, he exercises supervision over the judge both in procedural and in substantive matters. First of all the public prosecutor's office has the right to appeal any part of the proceedings both <sup>from</sup> ~~from~~ the procedural and the substantive viewpoint, to a higher court and in the final analysis to the Supreme Court. If his opinion is rejected, he still has the right to bring the matter to the attention of his own superior office. This, then for all practical purposes, does away with the last remnants of judicial independence. The law itself superimposes over the judiciary an organ which has a right to influence the court. The net result of this system was that the judges were scared of the public prosecutor, they respected him more and followed <sup>owed</sup> ~~followed~~ his instructions more than they did those of the Supreme Court. The influence of the public prosecutor's office was even more obvious and even more generally accepted in view of the fact ~~is~~ that its thorough Com-

munist affiliation - Party orientation - was known to everybody.

As far as the supervisory authority of the public prosecutor's office concerning prison administration was concerned, the rights of ~~the~~ public prosecutors ~~was~~ included the privilege of on the spot visits and investigations. The purpose of this was to enable ~~the~~ public prosecutors to see to it that the execution of sentences took place in accordance with the spirit and provisions of the law. For instance, if the director of a prison refused to allow visiting hours for non-political inmates, the public prosecutor could instruct him to comply with the provisions of the law.

The authority of the public prosecutors to supervise the administration of prisons extended to ~~the~~ regular ~~prisons~~ <sup>and</sup> political prisons, to concentration camps and correctional institutions.

In regard to the organization of the public prosecutor's office, I would like to point out that the Chief Public Prosecutor under the provisions of the constitution had to be elected by the National Assembly for a period of six years. All other prosecutors ~~was~~ were appointed by the Chief Public Prosecutor.

Within the Chief Public Prosecutor's office there were seven divisions: 1) the division of general supervision, 2) the investigating division 3) the judicial division 4) the division of prison administration 5) the military division 6) the transport ~~and~~ and communications <sup>division and</sup> 7) <sup>1</sup> the AVH division. I might add in this connection that under the law only six divisions existed and that the seventh division was a secret division. The task of the seventh division



was to supervise<sup>e</sup> the operation of the whole organization.

The chief military public prosecutor was a deputy to the chief public prosecutor.

Subordinated to the chief public prosecutor's office were the various public prosecutors at the seat of each county court. At the head of each public prosecutor's office was the public prosecutor of the county, then there were about six public prosecutors assigned to the office. The jurisdiction of these public prosecutor's offices extended within the area of the county. The assignment of the various public prosecutors according to subject matter and field of work was done by the public prosecutor of the county. Also at this level the general categories and breakdown mentioned above was by and large ~~mentioned~~<sup>followed</sup>. At such office you usually had about four or five investigating prosecutors.

At the head of the public prosecutor's office of the district was the public prosecutor of the district. Usually there were about two or three prosecutors assigned to such office.

Also the public prosecutor's office in the district had by and large the same functions as the public prosecutor's office in the county, with the exception that the public prosecutor's office of the district would not exercise supervision over prison administration in view of the fact<sup>that</sup> the prisons were organized at the seat of the various county courts.

Among the broader jurisdiction & authority of the public

prosecutor's office must be mentioned the right to prosecute or bring a charge against people, also the right to waive the prosecution and drop the charges, and finally the right to extend the period of ~~the~~ commitment. There were frequent agreements between the judge (for the court) and the public prosecutor. This also indicates that there was no real judicial independence.

As far as the investigating phase of the proceedings was concerned, the accused had the right to contact his lawyer if the public prosecutor gave him permission. Under the law, the public prosecutor had to make a study of the environment of the accused - that is he had to conduct investigations concerning the background, especially the social background, the family contacts and the past activities of the accused. In other words, the public prosecutor had to prepare a complete dossier or kader in regard to the accused. If as a result of his investigations, the public prosecutor found that the accused was dangerous because of his social background, for the security of the socialist state, then he was under a duty to prosecute.

By and in large, the particular provisions of the former criminal code remained in effect unchanged, only the general provisions of the former law were changed.

Now I would like to say a few words about socially dangerous activities.

The previous definitions and concepts of the bourgeois law in

regard to the concept of crime were abolished. According to the Communist view, crime is an act or omission which is dangerous to the order of the socialist society and which is punishable by law. Any act or omission is socially dangerous if it violates the economic and political social order of the socialist state and ~~is~~ <sup>if it</sup> is punishable by law. If the act or the omission of the accused does not involve the concept of social danger, the public prosecutor has the discretion to drop the charge. Acts committed in utmost ~~necessity~~ necessity may not be punishable if the danger to the person would otherwise not have been averted. Attempt to commit a crime is punishable except if the perpetrator of the act managed <sup>to</sup> to restore the original situation in every respect.

Finally I would like to mention briefly the organization of the Ministry of Justice which is also a part of the broader administration of justice.

According to legal theory, the Ministry of Justice is the highest organ for the state administration of justice.

The organization of the Ministry of Justice is laid down by law. Within the Ministry of Justice there were several divisions or sections, namely, the law preparatory division headed by Gyula Eörsi, the international law division, the judicial division (including the sub-divisions of private law, criminal law, transport and communications law and the Institute of Biochemistry), the military division and the division exercising supervision over the Bar,

financial division and the secretariat. The task of the secretariat was primarily to exercise supervision over the functions and operations of legal societies (cultural and sport clubs of lawyers and attorneys as well as other legal societies). Also within the secretariat was another sub-division which was concerned with ~~the~~ personnel. Finally there was a teaching division, ~~of which~~ <sup>of which was to channel</sup> the chief task ~~was to channel~~ <sup>good</sup> good and reliable Communist, that is people with a/kader, into the legal profession and train them in short courses and make sure that they have completed the courses. Those who had completed the short courses were obligated to complete their university education in five years. These people usually attended the universities in the evening. They didn't have to take courses in Roman Law, International Law ~~and~~ and in the military subjects.

I have forgotten to mention earlier in connection with the administration of criminal justice that the types of penalties included capital punishment, life imprisonment <sup>in such case</sup> ~~which~~ a criminal <sup>could</sup> be set free after 25 years in case of good behavior, regular imprisonment from one year to 15 years, fines, police surveillance, ~~the~~ deprivation of political and civil rights and <sup>forfeiture</sup>.

Perhaps I should also mention briefly that in a socialist state there is no right to strike, the worker is not allowed to leave his job voluntarily but only with the permission of his employer. If he leaves without permission, he will not receive his



salary for the period of notice. Furthermore, the worker would not receive his labor book, that is, he would not get a leaving certificate and thus no other prospective employer could employ him without the presentation of his workbook.