ENCYCLOPEDIA OF SOVIET LAW

edited by
F. J. M. FELDBRUGGE

VOLUME I
A - L

A publication issued by the
Documentation Office for East European Law
University of Leyden

SIJTHOFF | OCEANA

ENCYCLOPEDIA OF SOVIET LAW

edited by

F. J. M. FELDBRUGGE

Professor of Law,
University of Leiden

Vol. I (A-L)

OCEANA PUBLICATIONS, INC., DOBBS FERRY, N.Y.

A. W. SIJTHOFF - LEIDEN

1973

ISBN 0 379 00481 x (Oceana)
ISBN 90 286 0293 3 (Sijthoff)

Library of Congress Catalog Card Number: 73-85236

Printed in the Netherlands

ENCYCLOPEDIA OF SOVIET LAW

Documentation Office for East European Law
University of Leiden

IN MEMORIAM Z. SZIRMAI
1903-1973

Professor Zsolt Szirmai, who founded "Law in Eastern Europe" in 1958 and has been its editor ever since, died on February 24 of this year. A commemorative volume of "Law in Eastern Europe" in his honour is being planned. At this moment the publisher and the editor of this volume would like to pay tribute to the memory of a serious scholar, an inspiring organizer and a good friend.

J. H. Landwehr
F. J. M. Feldbrugge

LIST OF CONTRIBUTORS

Dr. Andreas Ådahl
Slaviska Institutionen
Uppsala Universitet

Donald Barry
Department of Government
Lehigh University, Bethlehem, Pennsylvania

Dr. R. Beermann
Institute of Soviet and East European Studies
University of Glasgow

G. P. van den Berg
Documentation Office for East European Law
University of Leyden

Harold J. Berman
Law School of Harvard University
Cambridge, Massachusetts

S. H. Bloembergen
The Hague

Leon Boim
Faculty of Law
Tel-Aviv University

Dr. Albert Boiter
Director of Research, Radio Liberty
Munich

Georg Brunner
Institut für Politische Wissenschaft, Ostrecht und Vergleichendes Staatsrecht
Universität Würzburg

W. E. Butler
Faculty of Laws
University College London

Gabriele Crespi Reghizzi
Facoltà di Giurisprudenza
Università di Pavia

Dr. M. Csizmas
Schweizerisches Ost-Institut A.G.
Bern

Bernard Dutoit
Institut de Droit Comparé
Université de Lausanne

F. J. M. Feldbrugge
Faculty of Law
University of Leyden

Dr. Martin Fincke
Institut für Strafrecht
Universität München

George P. Fletcher
University of California, Los Angeles
School of Law

George Ginsburgs
New School for Social Research
New York, N.Y.

T. Grygier
Centre of Criminology
University of Ottawa

Dr. A. Hastrich
Opladen

John N. Hazard
Russian Institute
Columbia University
New York, N.Y.

Jeffrey M. Hertzfeld
Law Offices of Samuel Pisar
Paris, France

E. H. de Jong
Documentation Office for East
European Law
University of Leyden

A. K. R. Kiralfy
University of London, King's College
Faculty of Laws

L. Kos-Rabcewicz-Zubkowski
Centre of Criminology
University of Ottawa

Samuel Kucherov †
Washington D.C.

Pierre Lavigne
Université de Paris I - Panthéon - Sorbonne

Serge L. Levitsky
New York, N.Y.

D. Richard Little
Northern Illinois University
De Kalb, Illinois

Dietrich A. Loeber
Institut für Recht, Politik und Gesellschaft
der Sozialistischen Staaten
Christian-Albrechts-Universität Kiel

Peter B. Maggs
College of Law
University of Illinois
Champaign, Illinois

Chris Osakwe
Russian Research Centre
Harvard University
Cambridge, Massachusetts

John B. Quigley Jr.
College of Law
Ohio State University
Columbus, Ohio

Dr. Bernard A. Ramundo
The George Washington University
School of Law
Washington, D.C.

L. Révész
Schweizerisches Ost-Institut A.G.
Bern

Bernard Rudden
Oriel College
Oxford

Lothar Schultz
Universität Göttingen

Z. Szirmai †
Documentation Office for East European
Law
University of Leyden

Alice Erh-Soon Tay
Australian National University
Canberra

Jan F. Triska
Institute of Political Studies
Stanford University, Stanford, California

Th. J. Vondracek
Documentation Office for East European
Law
University of Leyden

Stephen M. Weiner
Boston, Massachusetts

David Winter
Solicitor, London
University of Surrey
University of London

Zigurds L. Zile
Law School
The University of Wisconsin, Madison.
Wisconsin

INDICATIONS FOR USE

How to use the Encyclopedia

The list of subject headings has been compiled on the basis of a corresponding list in the *Index to Foreign Legal Periodicals* and of the lists contained in Soviet legal encyclopedias (*Iuridicheskii Slovar'*, 1956, and *Entsiklopedicheskii Slovar' Pravovykh Znanii*, 1965). A small number of headings deriving from other sources have been added. It is believed that this method provides access to relevant articles both in the case of approach through a Western concept or term (e.g. insurance, appellate procedure) as well as through a Soviet concept or term (e.g. kolkhoz, Presidium of the Supreme Soviet). Gaps in this system have been closed as much as possible by a liberal use of references such as LARCENY, see THEFT).

Cross-references (references to other articles included in the Encyclopedia) are indicated by "(*q.v.*)" placed immediately behind the term to which a special article is devoted, or by "see" or "see also" followed by the term (in capitals).

Example: "The first group comprises such agencies as the Councils of Ministers of the USSR, of the Union and Autonomous Republics (see COUNCILS OF MINISTERS), the individual Ministries (*q.v.*), the State Committees (*q.v.*), ..."

Cross-references are used in the text of articles and at the end of articles. As a rule cross-references incorporated in the text have not been repeated at the end of articles. The Editor is responsible for cross-references placed at the end of articles (below the author's signature).

Another means of access to relevant articles is provided by the *Analytical Table of Contents*, inserted at the end of Volume II. This table is designed to offer an insight into the system and depth of coverage and the conceptual structure of the Encyclopedia.

Citation of legislative materials

The Soviet Union is a federal state in which one of the fifteen constituent republics, the RSFSR (Russian Soviet Federative Socialist Republic), occupies a predominant place in almost every respect. Although most of the fundamental enactments emanate from federal agencies, a large part of current legislation (in particular the codes covering the main branches of law) is of republican origin. Unless otherwise indicated legislative materials of republican origin are quoted in the RSFSR version (the same practice is followed in the Soviet Union). In most cases it can safely be assumed that the law of the other fourteen republics is not significantly different.

In the text of articles, legislative materials have been identified by date only.

For further particulars the reader is referred to the *Selected List of Statutory Materials* (pp. 743-774).

Dates

On February 14, 1918, the Soviet government introduced the Gregorian calendar. All old style dates have been changed into new style dates in this work by adding 13 days.

Indications for use

Legal history
The history of concepts and institutions has, as a rule, not been traced beyond the Revolution of 1917. The history of the pre-revolutionary law of the main constituent parts of the present Soviet Union is discussed in a small number of general articles (see LEGAL HISTORY).

Terminology
For a short discussion of the terminology employed in this work the reader is referred to the article on TERMINOLOGY.

Bibliography
A bibliography of books and articles on Soviet law would exceed the scope of this work. Short bibliographical notes may be found at the end of many articles. For a brief general discussion of the subject, see the article on BIBLIOGRAPHY.

Status iuris: December 31, 1972. The most important developments of the first seven months of 1973 are covered by the *Appendix* (pp. 737-741).

The Editor

ABDUCTION, see KIDNAPPING

ABORTION

Abortion as the intentional procurement of a miscarriage is an interesting topic for the study of changes in Soviet forensic policies.

Pre-revolutionary Russian law regarded abortion as a serious felony and punished the guilty by five or six years' imprisonment with hard labour in convicts' labour gangs (*arestantskie otdeleniia*), together with the loss of all special rights and privileges (partial attainder). Midwives, doctors, etc. had to suffer an even harsher penalty. Lenin in his famous letter to *Pravda* (June 6, 1913) against Malthusianism ("an evil invention of the capitalist to ease his conscience over the enslavement of the working population") demanded the abolition of all laws prohibiting abortions and the publication of medical books on birth control, etc. He argued that not only do such laws reflect a mere hypocrisy of the dominant classes, but they also infringe the elementary freedoms of the citizens (male and female) and the freedom of medical propaganda (Lenin, Works 23, p. 257, fifth edition). A slight change of emphasis can be discerned in the law of November 18, 1920, of the People's Commissariats of Health and Justice permitting clinically performed abortions on demand because "survivals of the past and economic hardships of the present sometimes force women to decide in favour of such operations". The gradual shift towards a more conservative forensic and moral attitude brought about a total reversal of the former policy: the law of June 27, 1936, prohibited abortions on demand and permitted only those properly performed by doctors in hospitals for health reasons. "The socialist October revolution has finally eliminated all forms of class exploitation, the abolition of classes themselves has laid the foundations of the total and final liberation of the woman . . ." Here again Lenin's anti-malthusian letter is quoted to back up the new law—"we are unconditional enemies of neo-malthusianism—that cowardly movement, that warped and egoistic [teaching] for lower middle class couples who anxiously mumble: may God help us to survive in some way ourselves but without children please", *Sovetskoe ugolovnoe pravo, chast' osobennaia,* 1951, pp. 209-216.

The gradual liberalisation that took place after Stalin's death for a second time reversed the policies towards abortions on demand. The law of November 23, 1955, abolished the prohibition; the main reasons in favour of the law were given as: the measures taken by the Soviet state to encourage motherhood and to protect children; the constant growth of consciousness (*soznatel'nost'*) and the cultural level among women; the possibility in the future of reducing the numbers of abortions by means other than prohibition; the abolition of prohibitions which would help to reduce the great harm done to the health of women by abortions improperly performed by quacks and, lastly, the means of giving "the woman the freedom to decide the issue of motherhood for herself". Thus, the present law permits abortions to be performed on demand by doctors in hospital except in those instances when an abortion would be harmful to the health of the woman. Abortions performed elsewhere than in hospitals and by persons without a higher medical degree are prohibited. Art. 116 Criminal Code RSFSR punishes illegal abortions by deprivation of freedom for up to one year or correctional labour for the same term, with the prohibition on the person convicted from continuing in medical practice; people without a medical degree are imprisoned for up to two years, or are sentenced to correctional labour for up to one year. The maximum punishment is increased to eight years' deprivation of freedom in the case of a second offender and/or when the operation

resulted in the death of the woman or in serious consequences to her health.

R. Beermann

ABSENTEES

The regulations on declaring a person an absentee and on declaring him dead are uniform in all the republics of the Soviet Union, art. 10 Principles of Civil Legislation of the Soviet Union, art. 4 Introductory decree of April 10, 1962.

A person may be declared an absentee by a court decision if a) he is absent from his domicile, b) no news of his whereabouts have been received for at least one year, and c) inquiries of his whereabouts by relatives and the court have failed, art. 18 Civil Code RSFSR, art. 254 Code of Civil Procedure RSFSR. The year begins on the day when the last news of him was received. If the day cannot be established, on the first day of the following month; and, if the month cannot be established, on the first day of the following year, art. 18 Civil Code.

On the basis of the court decision declaring a person an absentee, a trusteeship of his property is instituted by the guardianship authority. The maintenance of the persons to whom the absentee is legally liable to pay alimony and his debts to other persons are paid out of the property. Dependants on the absentee who would be entitled to a pension in the event of his death acquire the right to this pension from the moment the court's decision becomes legally valid, art. 60 of the Law on State Pensions. The spouse of the absentee gets the right to a simplified divorce procedure, see CIVIL STATUS REGISTRATION.

Even before the end of the year, interested persons may apply for the institution of a trusteeship over the absentee's property to secure its preservation, art. 19 Civil Code, art. 254 Code of Civil Procedure.

If the absentee reappears or his whereabouts are established, the court and the guardianship authority cancel their decisions, art. 20 Civil Code.

A person may be declared dead by a court decision if no news of his whereabouts have been received at his domicile for at least three years (the term of 3 years is fixed in the same way as explained above for the one year period). In the case of a person who has gone missing in circumstances involving danger to life or justifying the supposition of his death in a particular accident, the period is 6 months, art. 21 Civil Code.

A soldier or any other citizen who has got lost in connection with war operations can be declared dead by court decision not earlier than two years after the end of the war operations art. 21 Civil Code.

The day when the court decision becomes valid counts as the day of death but the court may fix the presumed day of death as the day of death in cases where the person was missed in circumstances involving danger to life or justifying the supposition of death in a particular accident, art. 21 Civil Code.

The declaration of death leads to the dissolution of marriage, the opening of succession and the end of rights and obligations of the person declared dead.

If the person declared dead reappears or his whereabouts are established, the court cancels the declaration of death. He can claim restitution of his property still in existence from other persons to whom it has gone gratuitously after the declaration of death. Property acquired by other persons against payment must be restored to him if it is proved that at the moment of acquisition the acquirer knew that the person declared dead was still alive. If the property was inherited and sold by the state, the proceeds are restored to him, art. 22 Civil Code. Other heirs who knew that the person declared dead was still alive and disposed of the estate are liable to indemnity on general terms, art. 444 Civil Code.

In the case of the reappearance of a person

declared dead and the cancellation of the corresponding court decision, his marriage is deemed to persist unless the other spouse has contracted a new marriage.

In the case of the reappearance of an absentee, cancellation of the corresponding court decision and of the dissolution of his marriage in accordance with the declaration of his being an absentee, his marriage may be reentered in the books of the registry office on the basis of a common declaration of both spouses unless the other spouse has contracted a new marriage, art. 42 Family Code of the RSFSR.

A. Hastrich

ACCIDENT INSURANCE,
see INSURANCE

ACCIDENTS, see TRAFFIC ACCIDENTS; EMPLOYEE PROTECTION

ACCOMPLICES

The questions arising when more than one person takes part in the commission of a crime are discussed in Soviet law under the heading "participation" (*souchastie*). Participation is defined by art. 17 of the RSFSR Criminal Code as the taking part, intentionally and jointly, by two or more persons in the commission of a crime. Art. 17 divides participants into organizers, instigators, accomplices and the perpetrators themselves. The intentional character of participation requires first of all that the participant contributed knowingly and willingly towards the commission of the crime; furthering through negligence the commission by somebody else of a crime does not constitute participation. Secondly it is argued that one can only be a participant in an intentional crime. However, there are cases which seem to indicate that one can also participate (intentionally) in the commission of a negligent offence.

The term "jointly" in connection with "intentionally" implies that the participant must have realized that this activities were promoting the commission of a crime by somebody else.

Participants in a crime are responsible for their activities. This is not expressly stated in the criminal law (as it should have been, because according to art. 3 only persons who have committed an act forbidden by the criminal law may be punished, and the essential feature of participation is that the participant does not fully commit such an act). In fact there is absolutely no doubt about the criminal responsibility of participants; such responsibility is also implied in the last paragraph of art. 17, which provides that the character and degree of the participation of each participant must be taken into consideration by the court in determining the penalty. Penalties for participants are not necessarily lower than for the actual perpetrators; indeed, in exceptional cases they may be higher.

Another question not answered in the Criminal Code, but extensively discussed in criminal law literature concerns the extent of the participant's responsibility. The general answer to this question is that it is determined by the participant's intention. There are no difficulties in the standard case of participation; e.g. A instigates B to organize the theft of a private car, which theft is then carried out by C while D acts as an accomplice. All four would be punishable under art. 144 par. 1 of the Criminal Code (simple theft of personal property). Problems arise in such cases as where B is an "especially dangerous recidivist", C uses violence against the owner of the car, and D is a minor. In such a case C will be punishable under art. 145 par. 2 ("open" theft, accompanied by violence against the victim); B's responsibility is determined by his knowledge of C's intention to use violence; if B knew about this beforehand he will be punishable under art. 145 par. 3 ("open" theft committed by an especially dangerous recidivist) otherwise under art.

144 par. 3 (secret theft committed by an especially dangerous recidivist). In the case of A the question is even more complicated, because his responsibility depends on his previous knowledge of the status of C and B (did A know C would use violence and that B was an exceptionally dangerous recidivist?). The fact that the accomplice D was a minor will, of course, only work to the advantage of D. The situation can be made even more puzzling if the stolen car turned out to be socialist property. All such questions are solved by reference to the principle that a participant will be held responsible, not automatically for the offence committed, but for the offence in which he thought he was participating. If necessary, he will be considered responsible for an attempt to participate in a crime (e.g. if an organizer believes he is organizing theft of socialist property, while in fact personal property is stolen). The entire treatment of participation in Soviet law in illustrative of the central function of the concept of guilt (see MENS REA).

Along with the intentional character of participation a second important aspect is the required causal link between participation and the commission of the offence. This aspect is implied in the definition of the various forms of participation. Only such cooperation with the actual perpetrator as promotes the commission of the offence can constitute participation. This is best illustrated by the treatment allotted to persons who hide the offender, traces of the crime, or goods acquired by means of a crime. A person who promises such help *beforehand* is considered an accomplice (art. 17 par. 6); but if such help has not been promised beforehand, it may constitute an offence *sui generis* in specific cases (art. 18).

A special form of participation is the commission of a crime by an organized group or a criminal organization. Commission of a crime by an organized group is a general aggravating circumstance (art. 39 point 2). Obviously, the presence of an organized group cannot be assumed in every case of participation; it has been argued that the group must have been organized in order to commit more than one crime. A criminal organization seems to require an even higher degree of permanence and organization; the principal examples are the anti-Soviet organization (art. 72) and the armed band of art. 77 (see BANDITRY).

The definition of participants also includes the perpetrator (*ispolnitel'*) himself, the person who commits the crime defined by the criminal law. By general consent "perpetrators" include persons who cause crimes to be committed by another person who is himself not responsible (a lunatic, a young child). Also persons who directly take part in the commission of a crime are all considered to be perpetrators, even if they did not each do everything required for that particular crime (e.g. the man who holds the victim so that another person may kill him is considered a perpetrator of the crime of intentional homicide and not an accomplice).

Organizers are persons who organize or direct the commission of a crime. Instigators are persons who persuade others to commit crimes. An accomplice is defined in art. 17 as a person who aids the commission of a crime by giving advice or instructions, by providing means or removing obstacles, or a person who has promised beforehand to hide the offender, the instruments or means for the commission of the crime, the traces of the crime, or goods acquired by means of the crime.

Two minor forms of complicity are mentioned by arts. 18 and 19 of the Criminal Code. Art. 18 has been touched upon already. Art. 189 of the Criminal Code lists the offences referred to in art. 18; the offence defined by art. 189 is committed by persons who provide help to persons who have committed any of the offences listed in art. 189, provided such

help has not been promised beforehand (in that case the helper would be an accomplice). Art. 19 is devoted to failure to report crimes which are being prepared or which have been committed already. According to art. 190, only failure to report specific offences (as listed in art. 190) is an offence in itself. The duty to report arises only in cases where there is reliable information.

In addition to arts. 189 and 190, a number of crimes against the state receive special treatment in arts. 88-1 and 88-2 (introduced in 1962). Failure to report a number of specifically mentioned crimes against the state is covered by art. 88-1; and help not promised beforehand to the person who has committed a number of specifically mentioned crimes against the state is covered by art. 88-2 (see POLITICAL CRIMES).

F. J. M. Feldbrugge

ACCOUNTING

The accounting system in the Soviet Union has three main functions. First is that of providing data to planning agencies and ministries on which those bodies may base economic decisions. Second is that of providing a check on obedience to orders of superior organizations. Third is that of protecting against the theft, embezzlement or improper use of state property. The function of accounting in the United States or Western Europe which is taking on increasing importance, the provision of accurate information for managerial decision-making at the enterprise level is recognized as important by Soviet theorists and is beginning to be implemented in practice.

The role of accounting as an instrument of economic planning is enhanced by the legal enforcement of a uniform accounting system throughout the Soviet Union. Uniform accounting rules and model accounting forms are promulgated by the Ministry of Finances and the Central Statistical Administration. Where matters important to economic planning are involved the State Planning Committee (*Gosplan*) also participates in the approval of necessary regulations. Details are worked out by the central accounting office of each ministry.

The accounting system is designed to reflect all significant transactions in enterprise property. Since both the production of goods by enterprises and their delivery to other enterprises involve property transactions which are reflected in the enterprise accounts, the accounts form an effective means of checking on enterprise compliance with production and delivery plans.

Thus an enterprise which fails to fulfill its plans will be subject to swift action by superior authorities when this failure is discovered by examination of the accounting documents. The enterprise manager who would be tempted to falsify his accounts to hide such failures faces two legal barriers. First of all, as might be expected, alteration or distortion of such accounting documents is a criminal offense. It is punishable under article 152-1 of the Criminal Code of the Russian Republic and similar articles of the criminal codes of the other republics. Secondly, the legal position of the accountant in the Soviet enterprise is designed to insure against such improper management action. The accountant has a duty under administrative law to correctly reflect the operations of the enterprise in its books, and is under a specific duty to disobey orders of enterprise management involving violations of accounting rules. The position of the accountant is further strengthened by the provision that he may not be discharged or transferred without the approval of a superior organization. (See the Statute on the Basic Rights and Duties of Chief Accountants adopted by the Council of Ministers of the USSR on November 6, 1964.)

The standard Soviet textbook on accounting is M. V. Dmitriev and A. M. Dmitriev, *Bukhgal'terskij ucet i analiz khoziaistvennoi deia-*

tel'nosti promyshlennogo predpriiatiia (Accounting and Analysis of the Economic Activity of the Industrial Enterprise), 1968. The best work in English is Robert W. Campbell, Accounting in Soviet Planning and Management, 1963.

Peter Maggs

See also PLANNING; STATE ENTERPRISES

ACCOUNTS AND PAYMENTS, see NEGOTIABLE INSTRUMENTS; BANKING

ACT OF GOD, see FORCE MAJEURE

ACTIONS

Actions here refer to the remedies provided by Soviet law and form part of the substantive law (as to the procedure to be followed, which is fairly uniform in all cases, see CIVIL PROCEDURE).

Actions may be classified in several ways. In the first place, according to the legal basis on which they rest, e.g. proprietary and personal. Proprietary actions are based on the plaintiff having been owner of property of which he has been wrongfully dispossessed (see OWNERSHIP). Personal actions are based on violations of law of other kinds, such as torts or breaches of contract. However this distinction is not of great practical importance. Property cannot be recovered if it has ceased to exist or, in some cases, if it has come into the hands of an acquirer in good faith (see POSSESSION). On the other hand specific relief is usually obtainable in personal actions, e.g. delivery of goods sold *in specie* or return of property taken by means of a tort. A hire is part of the law of obligations, not property, but the owner can generally recover his property from the hirer.

Actions may also be classified according to the type of relief sought, e.g. into a. positive claims for payment of money or delivery of property; b. negative claims to prevent some act or correct its consequences, e.g. restrain the erection of a fence, or demolish it; c. actions for special steps to be taken, e.g. to partition property among co-owners, increase or reduce the amount of a judgment for periodic payments; d. actions for declarations, e.g. that a marriage is void, that a contract is ineffective, that a person is the true first author of a book or is the lawful tenant of a house.

Each branch of law has characteristic forms of action, e.g. in contract you may often sue for fines and penalties as alternatives to, or in addition to damages. In tort you may sue for recovery of property or damages. In family law you may proceed for divorce, for support, or to partition community property between spouses. In labour law you may sue for restoration to work or to have a misclassification of your job corrected, and so on. Judgments for maintenance of spouses or children and for damages payable to injured persons are for periodic payments, not lump sums, and may be adjusted from time to time as the plaintiff's circumstances change.

A. K. R. Kiralfy

ACTS OF LEGAL SIGNIFICANCE (JURIDICAL ACTS)

Soviet legal science uses the term "juridical act" (*iuridicheskii akt*) to denote an action (*deistvie*) of a person or organization consciously directed toward the establishment, change, or termination of "legal relations" (*pravootnosheniia*). A juridical act is a species of the genus "juridical fact" (*iuridicheskii fakt*); other species of the same genus are, in general, actions or events which establish, change, or terminate legal relations independently of the will of the actor (e.g., the birth or death of a person, the occurrence of a natural catastrophe, etc.). Juridical facts, in turn, are distinguished from "legislation" (*zakonodatel'stvo*), which is another means of affecting legal relations and to which juri-