

## Legal Education in the Soviet Union and Eastern Europe

The following notes are based on interviews with law professors, law students and lawyers during a brief trip in 1970 to Moscow, Budapest and Prague. On previous visits in 1959 and 1965 the writer had visited law schools in Kiev, Baku, Tbilisi, Alma Ata, Leningrad, Prague and Warsaw, and had sat in on lectures, recitation sections, and examinations.<sup>1</sup> In looking this time for changes, the writer was particularly interested in whether there was some reflection there of the general student malaise which the United States has been experiencing, manifested in American law schools in student pressure for "relevant" courses and a voice in administration, and whether changes in admissions policies, teaching methods, practical training programs and placement had occurred (for whatever reason) in the law schools.

The writer was incidentally interested in determining the effect on the legal profession of the tightening of the political climate over the past two years.<sup>2</sup> While a number of people expressed a general concern about this, it was pleasant to find that they went ahead to discuss their own affairs rather freely. Academic informants were cordial, and students were quite willing to engage in informal discussion.

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<sup>1</sup>In preparing for those visits the following articles were found to be particularly helpful: E. L. Johnson, *Some Aspects of Legal Education in USSR*, 3 J. SOC. PUB. T. OF L. 25 (1955); J. Hazard, *Legal Education in the Soviet Union*, 1938 WIS. L. REV. 562 (1938); D. Loeber, *Jura Studium in der Sowjetunion*, 4 OSTEUPARECHT 212 (1958); C. Morris, *Soviet Legal Education*, 15 J. LEGAL ED. 309 (1963); D. Hammer, *Legal Education in the USSR*, 9 SOV. STUDIES 20 (1957); T. Lyon, *Juristische Ausbildungen in der Sowjetunion*, 72 Z. F. DIE GES. STRAFRECHTSWISSENSCHAFT 131 (1961).

An article summarizing these and other published sources is J. Hager, *Soviet Legal Education*, 5 DUQUESNE U.L. REV. 143 (1966). A short note without much detail written by a Soviet judge appeared in 1969, Terebilov, *Studying Law in the Soviet Union*, (February, 1969) STUDENT LAWYER JOURNAL 18. In addition, an excellent recent article on the legal profession, D. Barry and H. Berman, *The Soviet Legal Profession*, 82 HARV. L. REV. 1 (1968) contains a summary of the past course of legal education at pp. 8-11.

<sup>2</sup>For an excellent report on general intellectual trends in the Soviet Union during the past few years, see D. Barry, *Dissident Intellectuals: Views from Moscow*, 70/71 SURVEY 149 (1969).

In Moscow, the law school is housed in the pre-revolutionary section of university buildings in the center of town, along with the other humanities units. (The natural sciences moved into new Stalinesque-modern quarters on a spacious campus in the Lenin Hills in 1953). The quarters are cramped for 800 students in the day division, and 1200 students in the evening division. Just as in many smaller, older European law schools, there is little faculty office space, and there are only limited study and library facilities for the students. The faculty is divided into twelve chairs or departments,<sup>3</sup> and each department has a small reading room which doubles as an office for the department, a place for professors to hold office hours, and a general meeting room for special lectures, etc. The Civil Law department, for example, has about ten teachers, and a reading room about thirty by thirty feet, containing a collection of some 500 volumes.

It was somewhat surprising to find the law school still housed in this building, for five years ago the writer was told that a move to new quarters was imminent. This time, no prediction was forthcoming, and perhaps there has been a change in plans. In fact, a number of comments regarding financing of book purchases and research programs<sup>4</sup> gave the impression that this was a period of some budget stringency. At least one teacher mentioned the budgetary burden of the increased teaching staff necessary to handle the new specialized courses discussed below.

The present pattern in Moscow is a five-year program of legal studies (six years for those who attend the evening division).<sup>5</sup> The student comes directly to law school without any other university preparation, although eighty percent of those entering the day division must have had at least a two-year interval of practical work.

The present balance between day and evening students in Moscow is an entering class of 200 students per year in the day division, and an evening entering group of 250. Present plans call for increasing the day class to 300 and decreasing the evening group to 100-150.

A student suggested that one reason for this shift would be to lessen

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<sup>3</sup>At present these include: Theory of State and Law; History of State and Law; Law of the State and the Soviets; Administrative and Finance Law; International Law; Civil Law; Criminal Law; Civil Procedure; Criminal Procedure; Criminology; Labor Law; and Collective and State Farm Law.

<sup>4</sup>While research is principally a function of research institutes rather than of the faculties, professors at Moscow in particular consider it a major part of their work, and would expect to produce 40-50 pages of published material per year.

<sup>5</sup>This "new" pattern is in fact a return to the pattern in effect for about ten of the past fifteen years, which was temporarily abandoned in favor of an experiment with a four-year curriculum (five years for evening students). There is also in Moscow a separate correspondence school, with highly qualified teachers. That program is for six years, including special lectures and examinations during special time off from work to which such students are entitled.

some of the pressure on day admissions, which has increased considerably in recent years. Admissions to the day division are open on a competitive basis to students from all over the country, and there is in fact a wide geographical distribution in the student body. On the other hand, students in the evening division must be working in Moscow when they enter. This has led to some manipulation of the system, for several students mentioned that people come to Moscow, get a job, and then lose interest in that job after admission to the law school! An increase in the day division would allow for a higher percentage of the total student places to be allocated on a competitive basis to students coming from other areas.

As mentioned above, the present admissions pattern also includes a limitation in favor of those with practical work-experience of some kind before entering law school. Only twenty percent of the entering class are admitted directly from high school studies. In this group there may be as many as twenty applicants for each spot, but at present there seem to be no plans to enlarge the percentage of direct admissions. In the eighty percent admitted after practical work-experience, many of the slots are allocated on the basis of special quotas, e.g., for veterans.<sup>6</sup>

In the future, in addition to the juggling of the day-evening distribution, there may be some kind of additional testing instituted, for a number of questions were asked about the Law School Admission Test in the United States. No one, however, seemed to envisage an expansion of the total number of students at this time. The lack of expansion makes it seem inevitable that the present short supply of lawyers will continue. Figures for the mid-60s show that often the law faculties were able to fill only one-half of the requests for new graduates in initial job placement. A number of attorneys, both in "private" practice in the cooperative law offices as well as in corporate or government legal staff offices, mentioned the continuing shortage, particularly of well-qualified candidates. Some changes in the placement pattern which may make it even more difficult for some offices to get their share of the graduates, are mentioned hereunder.

While it is not possible without extensive class visitation to know what is actually going on in the way of change in classroom instruction, the comments made by both students and faculty were corroborated in the brief classroom exposure during this visit. Both groups mentioned the concerted attempt being made to relate law school instruction more closely to the practice, and, particularly at Moscow, to improve the preparation that

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<sup>6</sup>For the details of the admission process, see D.A. LOEBER, HOCHSCHULE UND STUDENT IN DER SOWJETUNION 94 ff. (1970). This excellent collection of Soviet documents in German translation covers a wide range of topics concerning higher education in the Soviet Union.

students can get work for in the economic sector, both with house counsel offices of enterprises, and in government work. While most students graduating from Moscow continue to enter the "procuracy,"<sup>7</sup> more seem now to be finding placement elsewhere. A new interest in work in the economy, and in organs of local government, was reflected in comments of faculty and students, as well as in the new course offerings described below.

The incorporation of practical material in lecture courses is not new in Soviet legal education. In fact, because of the division of many subjects into a large lecture dealing with general theory, and then further treatment in small recitation sections during which court decisions and statutory material can be examined, the Soviet pattern has been rather more practical than that of many European law schools. In a recitation section on an earlier visit, students went quite carefully, case by case, through an area of landlord-tenant law, using decisions as a basis for their discussion.<sup>8</sup>

The impression given is that this use of practical material has sharply increased in recent years. There has been some indication of this in legal literature,<sup>9</sup> and the students seemed to mention it this time as one of their criteria for a good class. In addition, an increased selection of practical specialized courses and seminars has been made available to students, in such areas as environmental law, housing law, social insurance, governmental administrative liability, the administration of cultural organizations, the hearing of labor disputes, criminal investigation techniques, tax law, etc.

It is significant that a number of new, part-time teachers from various areas of practice have been brought in to teach these specialized offerings in their fields. In addition to the practical experience which they bring to their courses, one student mentioned that one of them had been instrumental in helping him find the job to which he would go after graduation.

This increased range of elective, specialized subjects has not meant any abandonment of the required core curriculum. This curriculum includes some background courses such as economics, for the Soviet law student, like the European, begins law study without any general university

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<sup>7</sup>This is a centralized, hierarchical organization of government attorneys, whose duties include both criminal prosecution and general supervisory review of decisions of the courts and administrative bodies.

<sup>8</sup>The decisions used in such courses, along with the relevant statutory material, are often published in a kind of case book. Unfortunately for those on the outside, however, many of these interesting collections are often available only for internal use in the particular faculty, and are not distributed through the general book stores.

<sup>9</sup>See, e.g., G. A. Levitsky, *Use of Materials from Practice in the Soviet Criminal Law Lecture Course* (in Russian), No. 2 PRAVOVEDENIE 126 (1969).

education. In fact, the course in political economy is one of a group of non-legal political courses common to the programs of all university departments, including History of the Communist Party of the USSR, Marxist-Leninist Philosophy, and Basic Principles of Scientific Communism. Each law student also studies a modern foreign language (English is the most popular, followed by German and French), as well as Latin. All students take Roman Law, Theory of State and Law, History of Political Science, History of State and Law of Foreign Countries, History of State and Law of the USSR, Law of the Soviet State, Administrative Law, Finance Law, Organization of the Court and Procuracy, Civil and Family Law, Civil Procedure, Criminal Procedure, Criminal Investigation, Structure of the Soviets, Collective Farm Law, Land Law and Legal Protection of Nature, Labor Law, Social Insurance Law, International Law, Government and Law of Foreign Socialist Countries, Government and Law of Bourgeois Countries and Countries Liberated from Colonial Dependency, Law in the Economy, Criminology, Corrective Labor Law, Procuratorial Supervision, Logic, Court Statistics, Accounting Principles and Forensic Problems, Court Psychology and Forensic Medicine and Psychiatry.

As a result of this rather formidable array of required courses, the Soviet student spends considerably more time in class than do American students. The Soviet student spends about thirty hours in class per week in the first year, and averages about twenty over the five-year program. Some students spend additional informal academic time in the discussion groups mentioned below, and all students have an individual writing project each year.

Examinations are oral, and are administered by the professors. A small group of students comes to the examination room, and each student draws a particular topic on a slip of paper from those provided by the instructor. He then has a short period sitting in the examination room to prepare himself (students themselves confided that during this time some engage in traditional forms of cheating, such as use of notes written on shirt cuffs, etc.). He then is called up to a small table with the professor, and gives a presentation on the topic, after which the professor asks further questions. There is also a roving professional examiner who visits the various examination rooms, and during one examination which was visited, he participated very effectively in the examination of the student who was being examined when he dropped in. (Incidentally, the student was from Africa, and both professors were especially solicitous in phrasing and rephrasing their questions in order to elicit a satisfactory response). In addition to the oral examinations, each student writes a short paper each year in one of his courses, and receives a grade on this paper in addition to those in each of his regular subjects.

In general, the students seem to have more rapport with their professors than those in Western Europe, though not as much as in some schools in the United States. While there is certainly a gap, there are enough teachers who are approachable by the students to create a good relationship. Casual conversations seem to be normal in the corridors, and students make use of the regularly scheduled office hours.<sup>10</sup>

There appears to be nothing in the Soviet law schools like the student "revolution" that the United States has experienced. The changes discussed above reflect, however, the emphasis on both relevance and public service common to the American scene. Several students expressed their desire to increase student input into decision-making within the established lines of communication. In fact, however, this broadening of the popular base of all institutions is a current theme of Soviet propaganda, and some of these comments may have been more orthodox than revolutionary. There is a tradition of formal student representation at the policy-making level, though it is difficult for an outsider to get any feeling for what this means in practice. The Komsomol (Communist Youth Organization) secretary sits as a member of the law school governing body, which also includes representatives of the faculty and other employees of the school. (Last year the Komsomol secretary was a first-year student). Some students are already Communist Party members, and they participate in the regular Party group meetings, which include all members within the law school—faculty, other employees and students. In these two settings all major decisions affecting the law school would be debated, such as admissions, curriculum, activity programs and placement.

Of particular concern to the students is the placement system, and there has in fact been a significant change in this area in the past few years. Placement following graduation is the function of a special committee, which includes representatives from various law school groups as well as the procuracy and perhaps other outside organizations. The committee does its work within the framework of a plan supplied by the Ministry of Higher Education, which coordinates the requests of various groups, such as the procuracy, for law graduates. In recent years the plan has given the committee more leeway, i.e., it has allowed more unplanned assignment of students. If, for example, in a given year, 200 students were to graduate, perhaps only 150 of them would now go to a variety of assigned posts, whereas 50 could be placed on an *ad-hoc* basis.

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<sup>10</sup>It appears curious to the American observer that the students' general deference is not reflected in at least one way one would expect. It seems common for students to carry on private conversations in the classrooms, in almost conversational tones, and they were not asked to be quiet, either by the professor or by their fellow students.

The opening up of this possibility has in fact created additional work for the faculty, for it is in their interest and the interest of the students to locate desirable situations, and this takes a good deal of development of contacts in the practice. Particular emphasis has apparently been placed on finding openings in the legal departments of regional Soviets and in enterprises, for these are less likely to be incorporated effectively in the plan. In addition to faculty location of practice spots, it seems that an increasing number of students locate desirable practice situations on their own initiative. One student related that he had located through family connections a job in the legal office of a construction firm in Moscow for his practical training during his final year, and that he assumed that his placement with them for permanent work would be approved by the committee.

While it is difficult to get specific figures, and there is certainly some variation from year to year, it seems that perhaps eighty percent of the planned slots for Moscow graduates at present are for the procuracy, with the other twenty percent distributed among the practice offices, government departments and enterprises. This seems quite natural in view of the prestige status of the jobs with the procuracy and the prestige position of Moscow University, and it will no doubt continue to be true that a large number of Moscow graduates go into this work and are happy to do so.

Discussions with students did not give the impression that they resented the general concept of "assignment" to jobs after graduation. Most receive maintenance scholarships during their schooling (25% higher for those with all "excellent" grades), as well as free tuition, and at least two or three years' work at an assigned job seems like a normal pattern to them. Of course, each hopes that his grades will be high enough to give him a good choice of the available slots, and all welcomed the new possibility for some students, of locating employment directly and getting it approved. The committee also seemed to have a good reputation for taking into consideration individual problems, such as a wife's employment, in making assignments. Most important, however (and this was reaffirmed in talks with practicing lawyers), is the student's awareness of the fact that his job mobility will be relatively high after his initial period of employment, so he is able to be a little less anxious regarding his first situation.

A number of Soviet lawyers, on being asked about their views on current Soviet legal education, make comments which reflected many of the same themes one might find in other countries. Practitioners regularly said that the law schools did not do a sufficient job of preparing the students for practical work. They suggested more training in the drafting of contracts, and something like our moot-court programs to train them for

courtroom work. The lawyers who had contact with international problems suggested that a specialized program should be set up to prepare at least a small number of lawyers intensively for work in that area, including additional work in foreign law and conflict of laws, as well as in foreign legal terminology and translation.

It was somewhat disappointing to find that few of the lawyers interviewed had much grasp of the bigger picture, e.g., whether there was an increase or decrease in the number of lawyers involved in the economy as opposed to private practice, or what the trends were in legal "political" areas, such as the present movement to extend the right to counsel during pre-trial investigation of criminal cases. Once again it was apparent that more information is often available outside the Soviet Union in published sources than one can get in first-hand contact.<sup>11</sup>

A number of people in the law schools and in practice were asked about the present position of women in the legal profession. A figure of forty percent is mentioned by some Soviets as the percentage of women law students, but students at Moscow indicated that the figure was about twenty-five to thirty percent, and the sample observed during this visit would indicate a figure there of not more than fifteen to twenty percent. When asked about the present position of women in practice, it was stated that there were now more women entering the procuracy, i.e., the prestige practice situation. On the other hand, practicing lawyers said that they did not particularly like to have women in the office, because of the difficulty in working out the additional problems created by a woman who would stay home with a sick child, etc.

### **Hungary**

A brief visit in Budapest was prefaced by a most interesting contact and point of view on the legal system. On the plane from Moscow to Budapest the writer was seated next to the manager of a Hungarian electronics firm, and had a chance to discuss with him in a leisurely way his impressions of the legal system in operation as it concerned his business. His first comment was that there was a distinct shortage of good lawyers in Hungary, and that his firm had had to recruit aggressively over the past three years to increase the size of its legal staff in order to handle their expanded business. Both salary and status of his lawyers had risen sharply during the years of the recent economic reforms. It was his impression that this was generally true in other offices, and this fact was confirmed in discussion

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<sup>11</sup>See generally the article by Berman and Barry, cited in note 1, *supra*.



with people at the law faculties later. (The larger entering classes at present reflect the needs as recognized by the planners in the Ministry of Education, but the present shortage reflects the lack of ability to anticipate these needs five years in advance with precision.)

The businessman was quite emphatic about the fact that the continued reduction in the degree of central economic planning was increasing significantly the importance of the legal staffs of enterprises.<sup>12</sup> While his firm had always had considerable legal work, due in part to their extensive foreign trade, their activities in the domestic area had expanded even more rapidly. Patent work and "warranty" problems were subjects of substantial current interest.

He pointed out one obvious indicator of the lawyers' present status in industry, namely the bonus category into which they fall. Based on the level of profit a firm makes during the year, employees can receive up to a certain percentage of their base pay in the form of a bonus. This ranges from 100% for a manager down to 30% for a worker on the production line in the bottom category. For this purpose lawyers come in the second category, along with other top supervisory personnel, and can receive up to an 80% bonus. It is particularly because of this position economically, that he felt that industries were able to attract the best current graduates from the law faculties. (This fact was later confirmed in discussions with professors, for they pointed out that a lawyer working for industry, as well as many of those in "private" cooperative practice, might earn two or three times as much as a judge or public procurator.)

There are three law faculties in Hungary, but the one in Budapest is larger than the other two combined. In Budapest there are 800 students in the day division, 800 in the evening division and approximately 800 studying by correspondence. At present the day students have a 4½ year curriculum, and the evening and correspondence students study for 5½ years.

As in the Soviet Union, I found that there was high interest in the admissions procedures of our law schools. The present pattern in Budapest includes a rather sophisticated evaluation of the students who apply, made necessary by the very high demand for the limited number of entering spots. The students apply at eighteen or nineteen, after having finished a high school course which, as in the Soviet Union and in Europe generally, in fact involves work at a somewhat more advanced level than our own.

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<sup>12</sup>He said the same thing was happening in the Soviet Union also, as they followed the lead of economic reform in Eastern Europe. There had been a number of Soviet observers in his plant recently studying their methods of administration, including contract patterns.

Their applications are rated on a twenty-point scale, with ten points allocated to their academic record in high school. The other ten are determined mainly by a special admissions examinations which they take, covering political science, history and literature, in both oral and written tests. Admission at present is generally possible only for those who score seventeen out of a possible twenty points, i.e., only for those who do very well in each category.

Some weight is given to extracurricular activities, such as membership in the youth organization or foreign language ability, but generally this is done only for people who are already in the same bracket on their point scores. Recently many students have responded to the general policy which encourages some practical work before entering law school, and it is possible for them to get up to two points for this work.

Few students are married at the beginning, and even at graduation the number is still very small. This may be connected with the relatively low level of maintenance payments provided for students. These payments are generally based on need, though there are higher payments for those who make better academic records. A small number of students are supported by special fellowships from enterprises, which provide generous maintenance in order to get the student to return to work there after graduation.

Many of the current developments in Budapest reflect the same trends observed in the Soviet Union, as well as in our own law schools. Before the recent curriculum reform, the entire program of legal education was compulsory. Now, beginning with the fifth semester, the student can specialize in one of three large areas: general court and trial work, including those students who wish to become lawyers in private practice, procurators or judges; the economy, including those who wish to work for state enterprises in foreign trade or for the arbitration agencies which can handle commercial disputes; and state administration and government, including those who wish to work on the legal staffs of ministries and local governments. Within each of these special areas new courses are being taught, in many instances by teachers invited in from the practice, i.e., by judges, lawyers and enterprise legal advisers. In addition, small group work has been introduced. Instead of just lectures, students must now participate in small discussion groups, which usually require preparation of case or statute materials, or the reading of articles and legal periodicals as a basis for discussion.

Placement has also undergone some changes. While theoretically each graduate was assigned on the basis of his record to the available openings, there was in the past in fact a good deal of informal adjustment in order to

assure a better match between interest and opening. Now the normal pattern is for each student to look for his own job as he nears his last year of law school. During the last year he is required to engage in practical work for six months, and as he goes out to interviews for the available openings for this kind of work, he is in fact normally securing his permanent position. Lists of openings are communicated to the law school, and selections are then made by the employers on the basis of interviews. While grades play an important role in this selection process, both students and others assured me that personal connections are very much a factor.

When one asks about employment opportunities for women, one is told that while there is theoretically and legally protection against discrimination, it is still very difficult for women to locate good situations. This is a particularly acute problem in Hungary, for the majority of students in the law faculties are women.

### **Czechoslovakia**

It was a sad time to visit Czechoslovakia. It was particularly sad for the writer, since his last visit had been just prior to the Soviet invasion, at a time when optimism as to development of the legal system was running high. This time there was full agreement on all sides, from taxi drivers to waiters, law students and professors, that the immediate future was dark indeed. A number of institutions, including the law schools, were undergoing a purge of sorts. It was necessary for them to re-evaluate the members of their staffs in order to show good-faith compliance with the new hardened doctrinal lines. It was necessary to find a certain number of people whose records were somewhat doubtful on ideological grounds, and either relieve them of certain responsibilities or remove them completely from the staff in order to show this good faith.

While the faculty members appeared to accept this phenomenon with resignation, two students to whom the writer talked were much more vocal in voicing their despair at the turn of events. One mentioned that a former Stalinist hardliner who they thought was just about on the way out before the Soviet invasion, had now been advanced to be head of a department of the law faculty. Other examples were cited of professors who were scrambling to re-establish their ideological orthodoxy, though one student said that all of this was done with a kind of gentleman's understanding that this ritual did not have any fundamental significance. A taxi driver, in true Czech fashion, joked that the immediate future belonged to the "radish people," i.e., those people who could become very red on the outside without giving much indication of their true internal color.

The series of questions which had been discussed with interest, and which had elicited a positive view of reforms in the Soviet Union and Hungary, were very unsatisfactory for use in Czechoslovakia. People regularly said that one just could not tell what was going to happen, and that the immediate concern was simply one of preserving as much as possible of the progress which had been made prior to the return of the Soviets. In fact, this feeling of being in limbo was the most important insight one could get into the Czech tragedy. At least a year, and perhaps much more time, was simply being wasted, as people and ideas were reshuffled to satisfy the new image of orthodoxy.