Chapter III

FORMS OF ADJUDICATION IN SOCIALIST ECONOMY

FORMAL AND SUBSTANTIVE JUSTICE [1]

In the course of the debates at the Third Congress of Workers of the Administration of Justice (1920), a proposal was made for the abolition of lay judges on the bench of the People's Court. The representative of the Commissariat of Justice, however, came out strongly in defense of the lay element. Lay judges, he maintained, were necessary "so that the court would always be the most living, the most authentic echo of that concept of law which had currency among the population, so that in the decision and sentence of a court there would be made apparent that concept of the people, and that the court, and so-called 'public opinion' would not present two points of view having nothing in common as has been the case in the former court." [2]

The attitudes of those members of the Congress who were critical of the lay element stemmed from the increasing momentum of a tendency toward greater stability and expertise in the administration of justice. The question was raised of the codification of the procedural and substantive laws of the Soviet Republic. In addition, it was insisted that greater stability and uniformity of judicial practice were desirable. Consequently, lay judges, whose role on the bench had been useful in the revolutionary period, were now thought to be an obstacle in the orderly pursuit of justice. Thus, professionalism constituted the preeminent goal of the critics.

However, in the eyes of the Soviet leadership, other values were

1 For the full discussion of these two terms see Weber, On Law in Economy and Society, ch. 8, at 224–55 (1954).

2 Hazard, Settling Disputes in Soviet Society 104 (1960).

of greater importance. In the Soviet society, courts were to reflect popular convictions as to what was right and wrong. It was also obvious that judicial effectiveness would suffer if its action demonstrated differences of views on problems of law and order. The solutions adopted showed a clear preference for the idea that, in the administration of justice, political orientation should predominate. The people's courts, although guided by recognized rules of procedure, were still to be bound by revolutionary concepts rather than by formal rules of law.[8]

In contrast with the past, the presence of the lay judges on the bench indicated that Soviet courts had broken away from the tradition of formal justice administered by the imperial courts of Russia.

The debates at the Third Congress cast a good deal of light on the intentions of the architects of the Soviet court system. Integration of lay and professional judges on one bench, according to the pattern of the German *Schoeffengerichte,* was intended to assure that Soviet courts would always act in public as a source of one official attitude.[4]

In a sense, the Soviet judicial reforms undid the transmission to Russia of the achievements of the French Revolution, which had reformed the courts of France. French reformers had been dissatisfied with the courts of the ancient regime, which had been staffed mostly by lay judges and governed by antiquated laws. Drafters of the French Civil and Criminal Codes saw the cause of the unsatisfactory performance of the old court system in the bad laws and the absence of professional legal education on the bench. They were convinced that

3 *Cf. supra* at 44.

4 Debates at the Third Congress of Workers of the Administration of Justice explain why Soviet leaders preferred the German court pattern to the French for the organization of the judiciary in the revolutionary state. In the German Schoeffengerichte lay judges are organized with their professional colleagues in one bench, which renders its decisions by the majority vote in all stages of the proceedings. The French jury system (at that time) accorded distinct roles to the professional and lay judges in the court. This permitted distinguishing between their respective pronouncements and, generally, their functions. The jury was thought to represent a concept of justice more closely reflecting the current public opinion than professional judges. For obvious reasons Soviet leaders aiming at the great ideological cohesion of the society thought this was to be avoided. *Cf.* Kucherov, Court, Lawyers and Trials Under the Last Three Tsars 214 ff. (1953).

injustice could be avoided if laws were good and just, and were interpreted in a scholarly manner. Portalis, who fought for greater respect for the courts of the new order, claimed that their role would be beneficial if the level of judicial interpretation were raised:

> Jurisprudential construction (*par voie de la doctrine*) means to grasp the proper meaning of the laws, to apply them with discernment, to supplement them in cases where there is no specific rule. Without this kind of interpretation, how can one imagine the fulfillment of the office of the judge? [5]

The chief object of Portalis' argumentation was to demonstrate that the administration of justice might be conceived as a separate department of government. He was opposed to the ideas that French courts were unable to fill the gaps in the law and that cases where no rule applied should be referred to the legislature for proper legislative action. Formality in the administration of justice in conjunction with scholarly legal method would, he believed, assure independence of the courts and thus expand the field of their activity. At that time, the defender of judicial independence could not foresee that formal justice meant also a serious restriction of judicial activity. It guaranteed to the parties maximum control over the proceedings and the greatest opportunity to present their interests. But it was also conservative; and a formal interpretation of the law made it difficult for the courts, as was later discovered, to adjust the rule of law to the process of social change.

Because of its characteristics, formal justice, although able to provide a main channel for the administration of justice in the modern state, has been subject to attack from many quarters. It was consistently supported only by those who wielded economic power and were interested in freedom from public control. Formal justice was opposed by authoritarian and totalitarian tendencies because it less-

5 Portalis, Discours préliminaire, Projet de Code Civil présenté par la Commission nommée par le Gouvernement, le 24 Thermidor an 8, at xi; "Les parties qui traitent entre elles sur une matière que la loi positive n'a pas définie, se soumettent aux usages reçus, ou à l'équité universelle, à défaut de tout usage.... Les lois intervenues sur des affaires privées, seroient donc souvent suspectes de partialité, et toujours elles seroient rétroactives & injustes pour ceux dont le litige auroit précédé l'intervention de ces lois." *Id.* at xi–xii.

ened individual dependence on the state and public authority, thus limiting the power of the state. It was attacked by conservative tendencies because of its rationalistic, antiemotional attitude to social processes. At the same time, it was opposed by radical and democratic movements which sought to promote social change in the interest of higher standards of social and political justice.[6] Finally, formal justice was subject to attack on the purely practical ground that, in some situations, reference to legal standards alone was not able to provide an efficient basis for the solution of minor criminal cases and private law conflicts.

The usual policy in modern states has been to reserve room for both types of administration of justice and to accommodate within the system of courts dispensing formal justice a method permitting a more flexible approach to settling disputes and even to administering criminal justice. A historical perusal of the jury trial in criminal cases in Europe discloses that its *ratio existendi* consisted in its ability to provide an opening for substantive justice.[7] Another reason for departing,

6 Weber, *supra* note 1, at 228–29. "[T]he development of the trial into a peaceful contest of conflicting interests can contribute to the further concentration of economic and social power. In all these cases formal justice, due to the necessarily abstract character, infringes upon the ideals of substantive justice. It is precisely this abstract character which constitutes the decisive merit of formal justice to those who wield the economic power at any given time and who are therefore interested in its unhampered operation, and also to those who on ideological grounds attempt to break down authoritarian control or to restrain irrational mass emotions for the purpose of opening individual opportunities and liberating capacities. To all these groups nonformal justice simply represents the likelihood of absolute arbitrariness and subjectivistic instability. Among those groups who favor formal justice we must include all those political and economic interest groups to whom the stability and predictability of legal procedure are of very great importance, i.e., particularly rational, economic, and political organizations intended to have a permanent character. Above all, those in possession of economic power look upon a formal national administration of justice as a guarantee of 'freedom,' a value which is repudiated not only by theocratic or patriarchial authoritarian groups but, under certain conditions, also by democratic groups."

7 "When, for example, French jurors, contrary to formal law, regularly acquit a husband who has killed his wife's paramour caught in the act, they are doing exactly what Frederick the Great did when he dispensed 'royal justice' for the benefit of Arnold, the miller." Weber, *supra* note 1, at 229.

in the settlement of civil and criminal cases, from strict law enforcement was that sometimes the interest of the parties and of the society was better served by the process of composition and official conciliation. Thus, justices of the peace in the French and Anglo-Saxon traditions have played a useful role. Those judicial administrations which provide a level at which simple justice is handled by laymen take account of the fact that strict observance of the legal rule would be of little importance in the settlement of disputes where minor infringements of the law or those of small value are involved. The function of justices of the peace is primarily, and particularly in regard to civil law litigation, to arrive at the composition of cases to the satisfaction of everybody concerned, or to a decision which follows rules which tend to reflect substantive rather than formal justice.[8]

In spite of serious doubts as to the usefulness of the institution of the jury in the American court system, it is admitted that in the conflict of formal and substantive justice an important step forward in the evolution of legal ideas has been achieved in many cases.[9]

Social change, by producing a new attitude in the courts and among the professional lawyers to the problem of law enforcement, delivered the most serious blow to the idea of formal justice. It was

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In monarchial regimes of the nineteenth century, jury trial of political crimes, or offenses committed by the means of press, served to protect political tendencies and movements which though contrary to those protected by the legal order and political regime found support in the popular sentiment.

8 Mendelssohn-Bartholdy, Das Imperium des Richters 167 ff. (1908).

9 Tort law was one of the important fields of litigation which was strongly influenced by the common sense of justice or prejudice evinced by juries. Dean Green's description of the method by which juries influenced the progress of law provides a classic example of a conflict between formal and substantive justice and the contribution of the lay judges to the formulation of the new legal standards: "Seemingly juries saw only parties before them, and placed the risk where they thought it could be best borne. The judges had been interested in principles; juries were interested in doing justice between the parties. The judges evolved a nice scheme for determining responsibility, the juries gave verdicts which wrecked the scheme. Juries held their ground here until legal theory could catch up with the new order of things which had emerged under the very eyes of the judges without most of them noticing it." Green, Judge and Jury 122–23 (1930). *Cf.* also 2 Harper & James, The Law of Torts 890–92 (1956); Holmes, Common Law 110–11 (1881).

claimed that in the new conditions, the judicial function could not be confined to the formal construction of statutes and to strict adherence to the "stare decisis" where the courts had reigned in the past.[10] Furthermore, the very concept of the judiciary as a symmetrical system of courts was shattered. In order to meet new situations in the areas of new legal regulation, special courts and tribunals were established with an organization indicating that their role was something more than the administration of formal justice. They had to take into consideration community interests, ethical and political interests, and the demands of social justice. Other semijudicial bodies were charged with functions which combined adjudication with conciliation and mediation.[11]

In the general movement of modern societies from the principle of formal toward substantive justice, the concept of the judicial interpretation of statutes was greatly modified. In the wave of reform, civil procedures in a number of countries were amended to give the courts greater powers to act as arbitrator and mediator. In this way, it was sought to promote the amicable composition of differences between the parties. In addition, the courts were awarded greater powers in the discovery of material truth, thereby facilitating the discovery of the essence of litigations.

Further, the courts reinterpreted old laws and were given new directives in order to redistribute the hazards of modern life according

10 *Cf. supra* at 39; also Pound, "The Need of a Sociological Jurisprudence," 19 The Green Bag 607 (1907).

11 E.g., French provisions for arbitration and conciliation of labor industrial conflicts under the law of Feb. 11, 1950, as amended by the law of July 26, 1957 (J.O. of July 28, 1957, 7459); *cf.* West German Law of Sept. 3, 1953, on Labor Courts.

Tsarist Russia had only the beginnings of the modern social legislation. In the period between the wars in all countries of Eastern Europe, which at present belong in the Soviet sphere of influence, various forms of adjudication of disputes in the field of industrial relations, whether individual or collective, were adopted. As a rule labor courts were concerned with conflicts regarding individual contracts of work, while various arbitration and conciliation boards dealt with collective aspects of industrial relations. *Cf.* Grzybowski, "Evolution of the Polish Labor Law 1945–1955," in Legal Problems Under Soviet Domination 90 (1956); Gruenbaum-Ballin & Petit, "Les conflicts collectifs du travail et leur réglement dans le monde contemporain (grêves, procédures de conciliation et d'arbitrage)," Travaux et récherches de L'Institute de droit comparé de L'Université de Paris, ix (1954).

to a new pattern. The old liability doctrine was abandoned as the courts were enjoined to take account of the economic inequalities of the parties. Finally, the role of the court as social arbitrator within the limits of the legal order was recognized.[12]

While this new orientation toward problems of modern life was taking place within the framework of the traditional mechanism of the administration of justice, new courts, tribunals, and conciliation boards came into existence. Responsible for maintaining social peace and balance within new areas of social action, they reflected in their organization the fact that their function was not the scholarly interpretation of the statutes but was rather the combination of judicial with administrative action. In organization they resemble the Soviet people's courts, with the representatives of conflicting industrial and social interest seated together with the professional judge as umpire. Thus, formal justice received a function within a structure serving primarily as an instrument of substantive justice.

This complicated mechanism of social adjustment stands in a singular relation to social and economic reality. In a sense, its function is to preserve the conditions which make possible the existence and the function of the public organization and of the state itself. On the other hand, its role is to serve social and economic interests. It is no longer feasible for the courts and the judiciary to live in another age.[13]

CONTRACTS IN PLANNED ECONOMY

The system of judicial and quasi-judicial institutions in charge of adjudicating and adjusting disputes in the Socialist polities of the Soviet type is highly reminiscent of judicial institutions in the free world of the civil law tradition. A special quasi-judicial branch, roughly corresponding to the commercial courts of Europe, handles

12 *Cf.* Frank, Law and Modern Mind 126–27, 157 (1936).

13 With reference to the judge-made law in the course of the nineteenth century Dicey was convinced that: "However this may be, we may, at any rate as regards the nineteenth century, lay down that as a rule judge-made law has, owing to the training and age of our judges, tended at any given moment to represent the convictions of an earlier era than the ideas represented by the parliamentary legislation." Dicey, Relation Between Law and Public Opinion in England During the Nineteenth Century 390 (1952).

litigation arising out of business transactions. Litigation between individuals is assigned to courts of general jurisdiction, while labor disputes take special channels.

The jurisdictional competence of judicial institutions in the Soviet polity is determined by the relationship of the cause at issue to the central piece of economic legislation—in a socialist state, the economic plan. In the broadest sense, the plan sets out all those conditions which in an open society are left to the free interplay of economic forces. While in the free societies a transaction translates the conditions of the market into business relations, in the socialist economic order it translates into similar relations the provisions of the plan.

Litigation, which is the responsibility of the Government Arbitration Boards, stands in the most proximate relationship to the economic plan. Labor disputes are also intrinsically related to the provisions of the plan. In this latter instance, however, the provisions of the plan are translated into more concrete terms by the intervening method of collective agreements concluded between the trade unions and industrial branches. However, not all the issues arising in the course of labor-management disputes may be decided exclusively with reference to the terms of the plan. Private litigation before the people's courts is of such nature that it can be decided in a manner which only sporadically will require intervention of the agent representing the over-all interests of the community.

This gradation is also reflected in the procedural characteristics of each of these three types of causes alluded to above. Conflicts of interest arising from business transactions within the socialist sector of the economy are handled according to the rules of nonadversary procedure. Another field where nonlitigious methods have wide application is the field of industrial relations. The prevalence of nonadversary techniques and the resort to arbitration and conciliation are influenced by the fact that the nationalization of the means of production has made the state and its various organizations the principal business partners, as well as the only industrial and commercial employer.

A Soviet textbook on civil law, a collective work of a group of leading jurists, characterized the function of contractual engagements between the enterprises which belong to that circle of business institu-

tions which correspond in most general terms to the business work in the free societies as follows: "The question of concluding a contract is not a private business of the two managers of the socialist enterprises; concluding such a contract is the function of government." [14]

Business transactions in the socialist system are, in consequence, official acts which implement in detail the directives of governmental policy as formulated in the plan which occupies a central place in the entire system of rules regulating this activity. The Czechoslovak Civil Code of 1954 thus determines the place of various pieces of legislation within a special order of precedence regarding their force for the determination of mutual rights and duties between the parties (sec. 212):

(1) The uniform economic plan shall be enforced through contracts specifically adapted to the needs of economic planning (economic contracts). Competent organs shall create specific obligations according to the requirements of economic planning.
(2) To the thus created legal relationships, the provisions of this law shall have application, in the absence of provisions to the contrary.[15]

14 1 Genkin, Bratus, Lunts, & Novitskii, Sovetskoe grazhdanskoe pravo 397 (1956).

15 E.g., Article 2 of the Draft of the Principles of Civil Legislation of the USSR and of the Union Republics. Hungarian Civil Code of 1959 (Law No. IV) Sec. 199: "In order to realize the obligations arising from the people's economic plan, contracts shall be made, unless statute expressly provides otherwise. The basis for such contracts shall be the approved Plan." Sec. 297: "Socialist organizations—if statute does not provide otherwise, shall enter into contracts with each other for the detailed determination and performance of all of their mutually existing obligations regarding product delivery, construction and other performances coming within the scope of their enterprises, for the realization of the people's economic plan (plan contracts)." East German Gesetz über die Vetragssystem in der sozialistischen Wirtschaft (Vertragsgesetz) of Dec. 11, 1957, provided as follows, Sec. 23 (1): "The purchaser is obliged to submit to purveyor an offer for a contract or, if such is impossible for him, to request the purveyor to make a contract or, if such is impossible for him, to request the purveyor to make an offer for a contract. This shall be done ... within a month from the day on which the temporary or final government assignment was delivered." Sec. 1: "Socialist enterprises are under obligation to make contracts regarding those of their mutual relations which, on grounds of and in concurrence with the goals of the people's economic plan, concern the purveyance and sale of products or production and sale of work or other performance."

The special position of contractual engagements between the units of the economic order of the socialist state is further strengthened by the general provisions of the civil codes of the socialist countries. These emphasize the fact that the over-all purpose of planned economic activity applies to all aspects of legal commerce under the rules of the civil law. Article I of the Draft of the Priniciples of the Soviet Civil Legislation (1960) defines the purpose of its provisions as follows:

Soviet civil legislation regulates property and related non-property relations for the purpose of strengthening and developing the socialist system of economy and socialist ownership, creating the material and technical base of communism and satisfying the material and spiritual needs of citizens more and more fully.

The Hungarian Civil Code of 1959 states that:

(1) This Act regulates the property relations involving material value and certain personal relations of the citizens, as well as of the state, economic and social organizations, with the object of meeting systematically and to an ever increasing extent the material and cultural demands of society and of building socialism.
(2) The provisions of this Act shall be construed in full conformity with the economic and social order of the Hungarian People's Republic.

Article 343 of the Polish draft of the Civil Code (1960) states in its provisions on the law of contracts:

[S]ocialist organizations are obligated to cooperate both in concluding contracts as well as in their execution, taking into account the influence of their action on the execution of the contract by the other party, on the meeting the needs of economic life, efficiency of production processes and commerce, and on safeguarding the national economy from losses.

Thus, while maintaining the fiction that the general provisions of the civil law apply also to the contractual relations between the socialist economic units, economic contracts, in fact, constitute a separate category of legal transactions. This is due not only to the application of special legal provisions not included in the civil codes, but, in addition, to the fact that civil codes themselves provide separately for the interpretation and enforcement of such contracts. These special regimes, either within or without the civil codes of socialist countries, follow from the fact that public authorities, responsible for performance of public duties, are partners in socialist economic and legal

commerce. This is reflected in three institutions which constitute the heart of the law of contracts of the socialist economic sector: (1) the duty to contract, (2) the effect of administrative action on the terms of the contract, and (3) the consequences of nonperformance and default of the parties.

The institution of the duty to enter into the contractual relations, which is imposed upon the socialist enterprises, endeavors to combine two opposite principles of action. These are: a contract which is an expression of individual calculation, and the central direction of the national economy according to the plan. "Planned contracts" between socialist enterprises, states a Soviet civil law treatise, "represent a formulation of planned assignments received by the parties of the contract."

> Soviet Contract is a form of liaison between the individual socialist enterprises directed towards the best accomplishment of the general socialist plan. This task is equally in the interests of both parties. The fact that both parties have this task in common results in the equality of socialist organizations as parties to contracts. The equality of parties is secured by the national economic plan itself and is reflected in all normative acts (laws and decrees) relating to contracts between the government agencies engaged in commerce and industry. . . .[16]

Originally, the assignments of the plan were distributed by two types of contracts. General contracts were entered into between the central government agencies in charge of the industrial branches which determined the distribution of the national product according to the plan of the distribution: consumption, production, investment, reserves, etc. Within this basic breakdown of production and distribution assignments, enterprises, factories, and distribution chains determined concrete obligations, fixing dates of delivery within the general terms of the accounting and financing system. In order to assure an orderly conduct of business according to the plan, these types of contracts were to be entered into promptly, and a special system of precontract disputes was devised.[17]

In this system of strict military-like discipline, direct dealings

16 1 Sovetskoe grazhdanskoe pravo 369 (1950–51).

17 Gsovski & Grzybowski, Government, Law, and Courts in the Soviet Union and Eastern Europe 1150 ff. (1959).

between individual units of the Soviet economy were frowned upon and were permitted only when expressly provided for by the regulations issued by the higher administrative authorities. By the end of 1935, the policy was changed and the government began to favor direct dealings between the individual enterprises.[18] On January 15, 1936, this practice was sanctioned as a regular form of business relations.[19]

In 1949, however, the Council of Ministers reversed this practice and ordered that the method of contracts general and local be tried again.[20]

The resolution of the Council of Ministers of May 22, 1959, again changed the method of business transactions between the units of socialist economy. The practice seems to demonstrate that the system of contracts general and local was a failure. Since 1952, the prevailing tendency has been to rely on direct contracts for business transactions between government enterprises. Critics of the previous system have pointed out that contracts general, although conceived as an institution of civil law, have in fact acquired the character and the function of an administrative act. This, of course, was inconsistent with its form of a contract. Fine points of law notwithstanding, what was more important, the system of two-staged contracts was cumbersome and took a long time to take shape. In addition, the necessity of waiting for the yearly elaboration of an intricate system of contractual obligations between the parties, so as to provide a basis for economic cooperation between Soviet enterprises, contributed to a yearly lag in business transactions. Contracts general were concluded late, and without them all transactions were fundamentally illegal. Enterprises which proceeded with their usual deliveries without adequate contractual engagements were exposed to the danger of financial loss. The practice of legalized *ex post* deliveries made prior to concluding contracts general undermined the sense of the system and reduced it to a purely superfluous formality. The final blow to the system of two-

18 Resolution of the Council of People's Commissars of Dec. 14, 1934, Concerning the Making of Contracts for 1935, Sob. zak. SSSR sec. 45 (1934).

19 Sob. zak. SSSR sec. 27 (1936).

20 Resolution of the Council of Ministers of April 21, 1949, Sob. zak. SSSR sec. 68 (1949).

staged contracts was delivered by the administrative reform of 1957. This reform abolished the centralized economic management of the country from the federal and republican level, and replaced it by economic districts under councils of national economy. Thus, the idea of contracts general, as based upon the idea of the central management of national economy, was rendered completely out of tune with the real situation.[21]

The 1959 Resolution of the Council of Ministers on Deliveries simplified the system. It provided for one type of contract to be concluded in the execution of instructions concerning the distribution and supply of technical equipment and materials for production purposes directly between the interested enterprises. In regard to articles of general consumption, direct business relations were to be established between the producing enterprises and distribution centers, which then were to enter into contractual arrangements with their units of the distribution network.[22]

While undoubtedly simplification of the system of contractual relations might contribute to a more efficient handling of the distribution of goods, the essential nature of contractual relations between the units of the socialist economy was not affected. The validity and tenor of their mutual obligations are primarily determined by the dispositions of the economic plan, and their authority is based on the instruction of the administrative act.

In Poland, where a system of planned contracts, similar to that introduced in the Soviet Union by the Resolution of 1949, has been in existence since 1950, a decree of May 16, 1956, on Contracts of Delivery [23] introduced a method of direct contractual engagements between the enterprises. Although it simplified the method of business transactions, it failed to convert them into the civil law institutions. This is apparent from the provisions of the decree that in case the directly interested parties should fail to reach an agreement, the mutual obligations of the parties are to be determined by a joint

21 Bratus, "O nekotorykh chertakh istorii sovetskogo grazhdanskogo prava," SGP 97 (No. 11, 1957).

22 Lys, Lesnik, & Borzova, "Struktura dogovornikh sviazei i nekotorye voprosy ulutshenia organizatsii materialno-teknicheskogo snabzhenia," SGP 85–92 (No. 2, 1960).

23 DU 16/87.

decision of higher economic agencies to whom the interested enterprises are subordinated.[24]

Thus, the core of the system is in the intimate relationship between the contractual agreements, the plan, and the decisions of the higher government authorities.[25] The logical consequence of this fact is that should a change occur in the policy decisions as they are formulated in the plan, the contracts between trading partners are directly affected. A typical provision, in this respect, is the Bulgarian Statute on Obligations and Contracts of November 2, 1950, which runs as follows:

> Sec. 6. . . . If a contract is concluded in connection with the fulfillment of the planned task, the repeal, lapse or change in this task has retroactive effect on the provisions of the contract, its repeal, its validity in the future, or the change in its provisions.[26]

The Hungarian Civil Code, which contains a full treatment of all aspects of contractual relations under the economic plan, provides in Section 403 that in case the plan or some specific task included in it be cancelled, all contracts concluded with reference to the assignment are accordingly modified or cancelled. Similarly, the arbitration board might "within the limits of the plan and their statutory authority modify, terminate or dissolve any planned contract."

Administrative control extends also in other directions. In countries which, as in Poland, still allow some degree of private enterprise, administrative directives limit the choice of partners for socialist trading in order to restrict private economic initiative.[27] According to the

24 Gsovski & Grzybowski, *supra* note 17, at 1335.

25 Sec. 400 (1) of the Hungarian Civil Code of 1959 states: "The enterprise approved plan and instruction issued by mutual consent of the directing organs shall determine the content of the plan contract. In case of construction contracts, the state may provide that technical plans and budgets shall be basis of the contract." The Code further provides that (sec. 409 (3)) a statute may provide that the rules on plan contracts shall apply to contracts between socialist enterprises even if such are not intended for product delivery, construction, or other undertaking.

26 D.V. No. 275/1950.

27 Polish Decree on Delivery Contracts of Dec. 28, 1957 (DU 3/7/1958) provided that: "Delivery contracts, construction contracts and general service contracts over certain value may not be given to private entre-

Draft of the Polish Civil Code, "Separate provisions determine in what cases state organizations may not make contracts with other persons, or may take them only under specific conditions." Thus, contractual activity is another channel for the implementation of government policy. It may require that needs of economic enterprises be satisfied according to a scheme of distribution worked out centrally in order to promote newly opened sources of supply of raw materials and semi-finished products. Quite frequently, new sources offer products inferior in quality or on a noncompetitive basis. However, the support for the new production is a matter of policy.

The direct relationship among business deals, the economic plans, and the instructions of governmental agencies is further illustrated by various regulations concerning substitute methods for creating quasi-contractual obligations. These tend to emphasize the fact that the complex system of agreements between socialist business partners represents the mechanism of the socialist economic system. Consequently, remedial and corrective provisions for meeting the default of one of the parties has had to be designed in a manner differing fundamentally from similar institutions of the civil law. Under the traditional legal system, the purpose of such provision was to indemnify the innocent party. Under the socialist legal system, on the other hand, it is to assure greater discipline in the legal commerce between the business partners.

According to the Soviet draft of the Principles of civil legislation of the USSR and the Union Republics (1950), Article 35:

In the case of obligations between state organizations, collective farms and other cooperative and public organizations, the payment of a forfeit (fine, penalty) for non-fulfillment or improper fulfillment of an obligation and the recovery of damages do not constitute a release from fulfillment of an obligation in kind except in cases where a plan assignment on which the obligation is based has lost its force. In the case of obligations between the above-mentioned organizations, agreement of the parties concerning limitation of their responsibility, as established by

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preneurs on the basis of public bidding." The purpose of this provision is on one hand to restrict the economic significance and, in general, the expansion of private enterprise and on the other to aim at the elimination of competition between the government and private economic initiative.

USSR and Union-Republic legislation is not permitted. The release may be effected only by the decision of the higher authority.

Consequently, in addition to the system of planned contracts, the higher authority may, in the process of adjustment of the plan to the realities of the economic conditions of the moment, act to establish mutual obligations in organizing economic or commercial activity. The Polish Draft of the Civil Code (1960), provides (Article 364) that an administrative instruction may obligate a socialist organization in favor of another party in the same manner as a contract. Further, the Code provides (Article 365):

Provisions of the foregoing article apply accordingly if a socialist organization was instructed to modify or dissolve a contract, or refrain from performance of a contract.[28]

Another aspect in which the economic conditions of the country, influenced by the governmental policies, determine the nature of the contractual obligation is that of the contract of work. In a planned economy, the terms of employment constitute one of the basic conditions determining the cost of production and the share of the national product which remains to implement governmental policies of industrial expansion. Viewed from the central position of the economic plan, labor conditions are not a matter of individual accommodation, but of basic decisions concerning the size of the workers' share in the gross national product. Looked at from the center, wages and marginal benefits, representing an individual entitlement under a contract of work and the terms of the labor law, represent planned participation of an individual worker in the general framework of labor conditions in the productive processes managed by the state. As the interest of the state is determined by the terms of the plan, fluctuations in the fulfillment of its tasks occurring in the course of the period of its operation are adjusted by proper management of the wage fund. From this

28 Polish Decree of Dec. 28, 1957, *supra* note 27, stated (art. 7): "In exceptional cases... the Council of Ministers may authorize supreme governmental agencies to issue decisions instructing subordinate units of the socialized economy to make deliveries to other units of the socialized economy without entering into contracts. These instructions create rights and obligations for the recipient and purveyor in lieu of contracts."

vantage point, it is also difficult to see the conflict of interests between the two sides in industrial relations. Indeed, the interests of the state and of the workers are considered identical. A Soviet scholar describing changes which have occurred in labor legislation in the people's democracies, stated that:

> In countries of people's democracy, labor organization and wages are put on a scientific basis after the example of the Soviet Union.... (A scientific basis is provided by the fact that social-labor relations are in fact) material relations independent on human will.... People cannot exist without producing the means of their existence... the material character of social-labor relations consists in their dependence on the level of development of the productive forces; qualitative changes in the level of their development unavoidably result in changes in social-labor conditions.[29]

Thus, the contract of work as a method of a personal coming to terms is only a formula for the statement that a set of predetermined conditions applies with regard to a concrete individual, provided that some terms of the contract are related to the calculations of the plan.

In this doctrine of the function of the contract of work in the general setup determining industrial relations, the axiom that economic management is a public function of the worker's state is of central importance:

> In the popular state the function and the tasks of state administration are basically different. Its basic function is a creative and planned influence on the formation of the economic foundations for the construction of a new social order. In this perspective restriction of administrative activity to the forms typical for the bourgeois state of the liberal period ... would serve no purpose ... administrative acts in the fields of relations between the state and the individual in the new type of economy have acquired a different nature; now their purpose is not only the protection of individual rights, but primarily, through the regulation of rights and duties of the individual, his integration in the planned socialist construction.[30]

Thus, the function of the collective agreement is to translate the provisions of the plan into concrete conditions of individual enterprises

29 Aleksandrov, Sovetskoe trudovoe pravo 7 (1954).

30 Jaroszynski, Zimmerman, & Brzezinski, Polskie prawo administracyjne, część ogólna 324 (1956).

and work establishments. Wages and working conditions are thus worked out as a result of the successful accomplishment of planned assignments. The very procedure for fixing various elements of the working conditions by government decree and in consultation with the central trade union authorities reflects the change in industrial relations from the contest of human wills into the creative influence of the socialist worker on the industrial environment.[31]

Thus, in final analysis, the nature of the legal transactions out of which litigious causes arise have little in common with transactions under the rules of the civil law. In open societies, the intervention of the administrative authority into economic and social life, when it assumes the forms of private law activity, has caused a good deal of doubt as to the nature of such action.[32] In the socialist society, economic management is always a matter of public policy.[33] The process of expanding the activities of the socialist state means gradual restriction of the provinces of life subject to the rule of civil law in its tradi-

31 *Cf.* Gsovski & Grzybowski, *supra* note 17, at 1446–47, 1465–66, 1542–43; Aleksandrov, *supra* note 29, at 198–200.

32 *Cf. supra* at 17–19. "The distinction between 'administration' and 'private law' becomes fluid where the official actions of the organs of official bodies assume the same form as agreements between individuals. This is the case when officials in the course of their official duties make contractual arrangements for exchange of goods or services either with members of the organization or with other individuals. Frequently such relationships are withdrawn from the norms of private law, are arranged in some way different from the general legal norms as to substance or as to the mode of enforcement, and are thus declared to belong to the sphere of 'administration.' As long as claims treated in this way are guaranteed by some possibility of enforcement, they do not cease to be 'rights,' and the distinction is no more than a technical one. However, even as such, the distinction may be of considerable practical significance." Weber, *supra* note 1, at 48.

33 "In People's Poland one of the functions of the state is to direct national economy." Decision of the Polish Supreme Court of May 5, 1949, ZOIC 13 (1950). Art. 18 of the General Principles of the Civil Law of the Soviet Union and of the Union Republics stated: "The state is the sole owner of all state property, regardless of what it is or who manages or uses it." *Cf.* Venediktov, Gosudarstvnennaia sotsialisticheskaia sobstvennost 4 (1948): "All government property, whoever controls it, forms a single fund of state socialist property; the right of property of that fund is vested in the Soviet people as represented by the socialist state."

tional sense. Recent socialist codes leave little doubt that truly private law transactions, particularly those between individuals, are reduced to insignificant proportions, and although in all probability they will continue to be present until the final millennium, their social function is quite unimportant.

ADJUSTMENT AND CONCILIATION

When the Soviet government embarked upon the experiment of providing a separate channel for the adjustment of conflicts arising within the socialist sector of economy, there was little awareness of the impact which the method of planned contract would have upon the techniques of adjudication and upon civil law institutions in the future. In 1932, Commissar of Justice Krylenko wrote:

> I believe that in our society there can be no difference between the nature of cases coming up for arbitration and those coming before courts of justice, no difference in the methods of passing of them and no difference in the principles of substantive or procedural law applied.[34]

Writing in 1943, Ginsburg, a Soviet scholar of note, stated:

> The state arbitration system is the economic tribunal for the period when the foundations of the socialist economy and of the second five-year plan are laid. It is a tribunal, since its method consists of the use of state compulsion for the enforcement of economic and contract discipline. It uses compulsion to accustom economic agencies to discipline. However, methods of its work, its organization, and the principle on which its rulings are based contain a number of new elements; these elements reflect a new climate of economic development and the full victory of socialism and transform the state arbitration system into one of the agencies of economic administration which use the methods of struggle for economic accounting and contract discipline.[35]

The state arbitration system was established in the Soviet Union in 1931. And after World War II, with proper modification, it was

34 Krylenko, "Sudebnaia sistema i Gosarbitrazh," SGP 39 (No. 7–8, 1932).

35 Ginsburg, "Voprosy sovetskogo khoziaistvennogo prava na dannom etape," in Voprosy sovetskogo khoziaistvennogo prava, Part I, p. 14 (1943); *cf.* Shkundin, "Gosudarstvennyi arbitrazh i arbitrazhnyi protsess," in Arbitrazh v sovetskom khoziaistve 20 (1938); Berman, "Commercial Contracts in Soviet Law," 35 Cal. L. Rev. 205 (1947).

adopted in the socialist countries in Eastern Europe as an indispensable appendage of economic planning.[36]

The 1960 regulation defining the duties of the State Arbitration Board under the USSR Council of Ministers [37] leaves little doubt as to the nature of the Board's functions. In addition to protecting property rights of disputing parties, it also enforces a policy which aims at promoting the efficiency of the economic mechanism of the state. Its decision must foster the cooperation of governmental enterprises, facilitate the fulfillment of economic plans and prevent a narrow and self-centered approach to business transactions. The Board is called upon to "assist in the fulfillment of plans and assignments for deliveries of products and other obligations and also in the elimination of shortcomings in the economic activity of enterprises, organizations and institutions which came to light . . . in the course of hearings. . . ."

The most important function, however, follows from the arbitral activity itself. The Board is enjoined to cooperate with the federal government of the Soviet state in determining the terms of trade in individual types of goods. It is also authorized to issue instructions concerning the procedure for "receiving products and goods in terms of quantity and quality."

The State Arbitration Board representing the apex in the hierarchy of such institutions in the Soviet Union, has special duties in the area of foreign trade. It is authorized to adjust or annul the terms of contracts between the parties for the purpose of achieving conformance to the regulations and governmental directives in force. In addition, it negotiates proper changes in contract terms, and codifies and arranges systematically the laws and regulations governing Soviet foreign trade.

According to Article 5 (point d):

> In order to assure the necessary uniformity in the settlement of disputes, (the Board) studies and generalizes the experience of state arbitration boards, or economic councils, ministries and agencies, instructs them on question of the application of the regulations on deliveries of products

36 Gsovski & Grzybowski, *supra* note 17, at 585–87, 719–29, 820–21, 893, 1147–51, 1199, 1220–23, 1259–61, 1288–93, 1376–80, 1449–51; Hazard, Law and Social Change in the USSR 50 ff. (1953); Berman, *supra* note 35.

37 Sov. iust. 30–32 (No. 12, 1960).

and all other All-Union normative acts regulating economic regulations, and instructs state arbitration boards on questions of statistical accounting. It also reports to the government on the most flagrant violations of "state discipline and of legislation regarding the quality and completeness of products, as well as on manifestation of local tendencies and on other violations of socialist legality in the economic work of enterprises, organizations and institutions."

The importance of these functions to the operation of the planned economy was enhanced by the 1957 reform of economic management in the Soviet Union. The reform's main achievement was in removing the bulk of administrative functions from the level of the federal government. In fact, it substituted for the economic ministries at the center a system of territorial councils of national economy. At the same time, however, the over-all direction of the planned economy in terms of national goals and targets remained in Moscow. In this situation, the federal echelon of the arbitration mechanism serves primarily as an analyst of the progress of business operations in the entire Soviet empire. In this manner it permitted intervention from the center for the purpose of maintaining the unity of the national economy and the assurance of the soundness of its business activity.

In this vast array of responsibilities, arbitral functions serve only as a means of achieving other more important results. The Board acts as an economic and social organizer, advisor as to sound business practices with reference to Soviet legal regulations, legislator in the field of the actual conduct of business activities, and as a source of information for the federal government in the proper enforcement of the economic policies of the state, leading eventually to the modification of tasks and assignments.

The characteristic feature of the Board's activities, particularly regarding the function of adjusting conflicting interests, is that it pays no attention to the principle of the sanctity of contracts, which elsewhere constitutes the core of judicial functions. The issues in each case before the board are defined not so much in terms of contractual performance as by conformance to the economic plan, which provides the rationale and content of the contractual activity in the first place. Obviously, the role of the plan is basically different from the role of the Civil Code with regard to contracts between private parties. Con-

tracts in the former instance are truly only a form of "liaison" which could as well be established by the decision of a higher economic authority. Thus, decisions of the economic arbitrator can be made exclusively in terms of economic policy and without reference to abstract rules of law.[88]

This type of judicial action has but limited application in labor disputes, which constitute another category of litigious issues arising out of economic planning in the socialist polities of the Soviet type. Labor disputes involve personal interest. In the final analysis these are expressed in concrete claims based variously on the provisions of governmental decrees, on the collective agreements, or on the labor code. And the decrees, agreements, and code are couched in the form of abstract commands addressed to a multitude of legal relationships in the area of industrial relations.

Thus, the presence of personal interests influenced the techniques devised in the Soviet Union for the settlement of labor disputes. In so doing, conciliation was combined with an opportunity for a judicial review of the disputed issues.

Litigations arising in the area of industrial relations fall into three broad categories. (1) Some disputes arise from the struggle of labor organizations for improvement in labor conditions and a larger share in industrial profits. These are hardly disputes in the legal sense of the word, representing rather a form of social struggle. Nevertheless, the modern state seeks to regulate the process of adjustment of conflicting interests in order to assure the welfare of the entire society. (2) Some disputes arise from the enforcement of the provisions of the law governing labor conditions and are handled by public agencies exercising supervisory and punitive powers to maintain certain standards. These include the hygiene and safety of work, employment of certain categories of workers, hours of work, conditions of work, etc. (3) Other disputes result from individual contracts of work and concern individual claims for minimum pay, leave, terms of contracts, etc., which are handled by the regular courts of justice. Such courts are normally specially organized for that type of dispute, and proceed according to the normal rules of judicial procedure.[89]

38 See note 16 *supra.*
39 See *supra* at 84.

Originally, all types of disputes under the Labor Code of 1922 and the Law of August 1928 were handled by the piece rate and conflict boards, which applied conciliation and arbitration to cases within their jurisdiction. Gradually, however, many of their functions, e.g., determination of the standards of output and piece rating, were taken over by the administrative agencies of the Central Boards of the Trade Unions, which assumed the functions of the Commissariat of Labor. The only jurisdiction left to the boards was, in consequence, the settlement of individual disputes, preliminary to transferring the case to the court.[40]

The edict of January 31, 1957,[41] abolished the old boards. In their stead, labor dispute boards were established, whose only functions have been to deal exclusively with labor disputes concerning claims arising out of the contract of work and to enforce the labor regulations in force. In no case have labor dispute boards the right to intervene in order to improve either labor conditions or to raise the rates of pay. The board consists of an equal number of representatives of management and of the factory committee, and its decisions are taken unanimously. If either party is dissatisfied with the ruling of the board, it may file a suit in the competent court.[42]

According to the draft of the Basic Principles of Labor Legislation of the USSR and of the Union Republics, which was published in 1959, the 1957 regime is to continue without change.[43]

From the decisions of labor boards, appeal lies to the local trade union committees. These also have jurisdiction to deal with controversies not settled in proceedings before labor dispute boards, i.e., where the necessary unanimity was not reached. Courts have exclusive jurisdiction only in cases involving dismissals, or where either of the parties is dissatisfied with the decision of the trade union committee.

Labor dispute boards have been introduced into all Eastern European countries of popular democracy,[44] thus replacing methods of settling labor disputes which were modeled after patterns evolved

40 1 Gsovski, Soviet Civil Law 803–4 (1948).
41 Vedomosti, item 58 (1957).
42 Gsovski & Grzybowski, *supra* note 17, at 1449–51.
43 Sots. zak. I–XIV (No. 10, 1959).
44 Gsovski & Grzybowski, *supra* note 17, at 1470–72, 1494–95, 1520–22, 1546–47, 1565–67.

in the industrial societies of the West. Polish developments in this connection are highly instructive.

In pre-World War II Poland, labor disputes were handled by labor courts in which lay judges represented the interests of both worker and employer.[45] Conciliation was used in order to settle collective grievances and to establish future conditions of work, and was obligatory only in disputes which "could endanger national economic interests." In making their decisions, conciliation boards had to take into consideration the "interests of employers, and those of labor, and also the economic and social welfare of the nation."[46]

After the war, labor courts were reconstituted in their old form, and shop committees were given jurisdiction to conciliate disputes between the workers and management of individual factories. All cases which could not be settled amicably within the factory were sent to the District Inspectors of Labor, a government agency which enforced the laws concerning general labor conditions. In 1950, pursuant to the reorganization of the Polish judiciary along Soviet lines, labor courts were abolished and labor cases were transferred to ordinary courts. In 1951, labor arbitration boards were introduced in all Polish industries, and in 1954, in all government enterprises and institutions as well.[47]

Labor arbitration boards have jurisdiction in all labor disputes except those involving the use of dwellings allotted to employees. These disputes concerning financial responsibility for damage attributable to the employees and those disputes involving personnel in higher managerial positions in the excepted areas are the responsibility of the administrative authorities.

An arbitration board is a replica of the Soviet model, and its decision requires unanimous agreement of labor and management representatives. In contrast with Soviet legislation, however, the Polish decree contains a directive regarding the nature of awards made by the arbitration boards. Thus, a board makes its decisions "having the interests of the working masses and the welfare of the

45 Decree of March 22, 1928, DU 37/350, and 95/354 of 1934.
46 Decree of Oct. 27, 1933, DU 37/313.
47 Decree of Feb. 24, 1954, DU 10/35.

national economy in view, and taking into consideration the law in force, provisions of the work contract, and shop rules."

In other words, its function is not limited to discovering the rights of the parties involved in the litigation. Rather, it is directed to seek the achievement of a compromise which would safeguard the interests of production, and of the larger interests of the society as a whole, although the issue is the alleged violation of a contractual stipulation or of the legal provision in force.[48] In the final analysis, it contains elements of administrative action aimed at the correlation and integration of individual claims into the general pattern of economic policy.

In the period which followed the 1956 upheaval in Poland against the harshness of Stalinist rule, doubts were expressed as to the possibility of achieving a greater respect for the individual rights of workers without a basic reorganization of the economic management of the country and the replacement of the administrative rule by forms of economic initiative shaped by the institutions of the civil law. Insisting that respect for individual rights was incompatible with a high degree of centralization, one of the partisans of economic self-government in the factories exercised by elective organs known as workers' councils, suggested that:

> [T]he scope of the decision making of the administrative authorities should be seriously restricted. Relations between enterprises and central authorities should assume the form of a system of contracts in which central authorities would act as representatives of the national interests, while workers' councils would act in the interests of the enterprises and of the crews. This arrangement would make possible a full participation of the crews in the factory management, . . . leading to the separation of responsibility for the state of the national economy.

In this pattern of economic management, administrative regulation would no longer be the only source of mutual rights and obligations. Indeed, the revival of civil law to govern relations between the various units of the national economy either representing local or national interests would appear to be a logical consequence.[49]

48 Grzybowski, *supra* note 11, at 90–91.

49 Grzybowski, "Polish Workers' Councils," 17 J. Central European Affairs 284–85 (1957).

CIVIL CAUSES AND PUBLIC INTEREST

The forms of judicial procedure followed by Soviet courts of general jurisdiction result from the fact that only occasionally will the public interest of the socialist society claim recognition. Article 2 of the Draft of Principles of Civil Procedure of the USSR and of the Union Republics limited the jurisdiction of Soviet courts to cases involving disputes arising from civil, family, labor, and collective farm legal relations. These, as a rule, cannot be expected to affect the economic and social policies of the state.

In such circumstances, the forms of civil procedure appear to the lawyer's eye to be an external form not directly related to the social or economic order of the polity:

> Civil procedure in each state, irrespective of its type . . . serves to uphold civil law relations and claims arising therefrom. The qualitative difference of the social state and legal order as compared with the state and law of the exploiters, different class nature of the administration of justice in the states of a socialist type have not affected the nature of this function of the civil procedure, which, as long as the state and law shall continue—is and will be to afford to individual claims protection through state power.[50]

At the same time, the protection of private rights cannot but be affected by the fact that the legal protection of private rights is extended by the public authority. Such is inspired by the policy aiming primarily at the realization of general welfare. The Soviet draft of the Principles of Civil Procedure makes it clear that collective interests take precedence over individual claims (Article 1):

> The aim of Soviet civil procedure is to ensure correct administration of justice in civil cases in order to safeguard the socialist system of economy and socialist property and the defense of political, labor, housing and other personal and property rights and interests of citizens protected by the law, and also the rights and interests protected by the law of state institutions, enterprises, collective farms and other cooperative and public organizations.
>
> Civil procedure should help to strengthen socialist legality and ensure precise and undeviating execution of laws by all institutions, enterprises,

50 Decision of the Polish Supreme Court, Full Civil Bench, of Feb. 12, 1955, PiP 120 (No. 7–8, 1955).

organizations, officials and citizens, and also educate citizens in a spirit of solicitous attitude towards socialist property, observance of labor discipline and respect for the rules of socialist society.

From the most general point of view, these reservations as to the degree of legal protection afforded by the socialist courts to private rights and claims resemble similar reservations in the civil codes of the Western World which limit the enforcement of rights by the commands of public order and good morals.[51] However, it is easily discernible that the reservations set out by the socialist codes refer to situations which represent concrete obligations of the socialist society vis-à-vis its individual members. The socialist judicial process seeks to meet higher and more concrete standards of individual behavior by more precise and powerful methods of intervention by public authority in individual litigations in order to protect those collective demands.

In this respect, socialist judicial procedure represents only an aspect of similar solutions in the judicial procedures of open societies. Modern codes have given effect to the principle that on some occasions the court, in response to broader interests, has the power to go beyond the wishes of the parties to the case and proceed ex officio. This is particularly true of proof adduced by either of the parties, which the court may consider as insufficient. It may then demand the submission of additional evidence if it appears to be in the public interest to probe deeper into the real nature of the issues at stake. However, this power of the court may be limited by agreement of the litigants, and settlement between them always constitutes a barrier to its action.

In the socialist legal order, the criterion of interest which authorizes the demand for legal protection exceeds the persons of the litigants or those who are under legal duty to represent them. Article 6 of the Draft of the Principles of Civil Procedure provides that:

A court begins examination of a case upon the application of the interested person, or upon the application of a prosecutor, and also upon the application of a governmental, trade union, or other public organization or individual citizen if under the law the case may be instituted independently of the demand of the interested person.

51 E.g., art. 6 of the French Civil Code.

In other words, a claimant may find himself involved in legal proceedings without making a move himself, a situation which is highly reminiscent of proceedings before the *volost* courts in Imperial Russia, where the interested party was merged in a collective action of the village community of which he was a member. Elsewhere, where more traditional criteria of legal interest prevail, thus giving the right to resort to judicial protection, this possibility has been almost exclusively limited to matrimonial causes.[52]

Of the third parties entitled to take part in the civil suit, the most important is the public prosecutor. His participation in the trial is mandatory whenever the law so provides, and where the court calls for it. Otherwise, he may always institute civil proceedings, practically without restriction or limitation. Article 23 of the Draft of Principles of Civil Procedure states the limitation: "if the safeguarding of state or public interest or of the rights and legally protected interests of citizens demand this." In contrast, other agencies of government and public organizations may enter a case or be called upon to participate only in cases where the law expressly provides for it (Article 24 of the Draft).

The Soviet court has full control of proceedings and is not restricted to the evidence offered by the parties. In Soviet civil procedure, the inquisitorial principle has found its full expression; the usual reservation that court action would be barred by the joint opposition of the parties to the litigation is not the law in the Soviet judicial procedure. Furthermore, amicable settlement, the withdrawal of the claimant from the case, and the agreement to submit disputed issues to settlement by arbitration require approval by the court.

Finally, appellate proceedings favor public interest. Here also Soviet procedure followed the well-beaten path of similar institutions in the civil procedures of Western Europe. The appeal by the public authority in the defense of the law, known to some European civil procedures, is based on the fact that only at that final stage of the proceedings may the importance of the judicial decision for the public order be properly appraised. Thus, the representative of the state is permitted to step in and intervene to uphold the principle of legal order. This right is reserved exclusively to the attorney general

52 See *supra* at 105.

(*procureur général*), and proceedings in the case have no effect on the case itself.[53]

In the Soviet Union, the institution of the Supreme Court has been devised to serve exclusively that type of action, and private parties have no access to it. In addition to various other methods of Supreme Court supervision of lower courts, public prosecutors, presidents of the courts (therefore courts higher than people's courts), and their assistants have the right to move for the reopening of finally decided cases. Under the draft of the principles of civil procedure, it proposed that this right be exercised only within a period of three years from the moment of the final determination of the case.[54]

The Polish Supreme Court, in a decision of the full civil bench, explained the meaning of the reform of Polish civil procedure introduced after the Soviet pattern as follows:

> The quest for the determination of material truth is one of the principles of the socialist order, and is expressed in a number of positive rules of the Code of Civil Procedure.... These provisions were enacted still by the bourgeois legislator, but only now they are fully enforced.... In particular, article 218 section 1 of the Code of Civil Procedure should be construed... that it instructs the court... to adopt an active attitude in the course of the proceedings and to bring to light true circumstances of the case.[55]

At the same time, Polish courts have distinguished between various categories of cases, depending upon the nature of the interests involved:

> The inquisitorial principle... is not equally applicable to all cases.... It should have full application, when the interest of the People's state is at stake.

The Court supported this position by pointing out that similar practice is followed by the Soviet courts.[56]

The difference in the degree of legal protection offered to the public interests, as compared to the private causes, extends also to

53 Morel, Traité élémentaire de procédure civile 515 (1949); *cf.* Dalloz, 1 Nouveau répertoire de droit 436 (1957).

54 Gsovski & Grzybowski, *supra* note 17, at 531–34.

55 Civil Bench CPrez 195/52, PiP 536 (No. 10, 1953).

56 Decision of July 5, 1952, C. 1285/52 ZOIC 81/53; *cf.* also the Decision of the Polish Supreme Court of Oct. 3, 1951, C. 223/50, ZOIC 72/51.

other fields of legal regulation. In a case involving shortages, the Polish Supreme Court stated that the one-year statute of limitation under Article 473 of the Polish Code of Obligations for the recovery of the shortages did not apply to the socialist employer. The court reasoned that:

> The statute of limitation provided in the Code concerns claims arising exclusively from the contract of work. However, the present claim arose not from a contract of work, but from the fundamental principles of the popular legal order (which calls for a special care for the socialist property).[57]

Another example of this type of reasoning was evidenced in a case in which the Polish Supreme Court stated that the mere breach of a contractual obligation constituted a criminal offense only when it affected the interests of the state. Otherwise, it gave grounds to a claim for damages under the general rules of civil law. When a private party was involved, the breach resulted in liability *ex delicto*.[58]

The presence of dual standards within the same order of legal procedure is due to the basic change which occurred with the transition of the national economy from private enterprise to socialist planning. The concept of the state as the subject of proprietary rights, and therefore as assimilated in their exercise to all other subjects of the private legal relationships, has disappeared.[59]

In all its forms—acting through the medium of government enterprises, socialist organizations, governmental agencies, and elective institutions—the state exercises public power and enforces public policy. The Polish draft of the Civil Code of 1955 stated, in the attached report of the codification commission, that it objected to the concept of the treasury as a party to legal transactions or as a subject of rights and duties in its own capacity as apart from the state conceived as a public power:

> This recalls the bourgeois theory which makes a distinction between two fields of state activity: one in the province of public law and the other

57 Decision of Dec. 4, 1951, C. 1539/51, PiP 372–73 (No. 8–9, 1952); *cf.* Shargorodskii, "Tolkovanie ugolovnogo zakona," Uchonye zapiski Leningradskogo Gosudarstvennogo Universiteta 306 (No. 1, 1948).

58 Decision of Jan. 1, 1955, ZOIK 29/55, PiP 510 (No. 3, 1955).

59 *Cf. supra* at 16, 86 ff.

in the province of private law.... The state as the owner of national property unifies indivisibly the quality of authority with that of ownership.[60]

This development reflects, in an interesting manner, on the meaning and function of procedural institutions. In its traditional form, the state, in its autonomous function as guide for the conduct of all members of the society, had a concrete interest in upholding the legal rule. Socialist legal order is identified with the policy of the socialist state.[61] And, therefore, the institution of appeal in the interest of the law has assumed a new meaning. The intervention of public authority in civil trials in the form of a motion for the ex officio reopening of the case simply cannot be limited to the reconsideration of the legal issues involved without materially affecting the substantive interests involved.

60 Nagorski, "Draft of the New Civil Code for Poland," in Studies of the Polish Lawyers in Exile in the U.S. 69 (1956). In the case of the Soviet telegraphic agency *Tass*, sued for libel in Britain, the defendant claimed diplomatic immunity and submitted a certificate from the Soviet Ambassador to the United Kingdom which stated that *Tass* "constitutes a department of the Soviet state... exercising the rights of a legal entity." 77 Journal du droit international 892 (1950).

61 Jaroszynski, Zimmerman, & Brzezinski, Polskie prawo administracyjne, część ogólna, 343 (1956): "In the absolute state bureaucracy was not bounded by its own acts... in the capitalist legal order... individual rights were a limit to the revocability of the administrative acts. In the socialist state all these moments are no longer valid, as public administration is a part of the social order.... Those aspects of life which demand some stability will call for a degree of stability of the administrative act.... Acts of the administration of creative nature..., the legislator permits to change as the conditions change...."