

## EVALUATION OF THE PRINCIPLE OF ANALOGY IN SOVIET AND AMERICAN LAW

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A study on Soviet Criminal law is enough to show the influence of socialisme on this branch of law. During the Russian Revolution there was on criminal code, but a general concept that the courts could punish according to their social legal conscience any act which seemed socially dangerous. A study in criminal law must be connected ot the history of the country. Soviet law is also a product of Russian history. Although the analogy clause was introduced as a new idea reflecting the revolutionary character of the new legal order, it had been a former principle of Russian Criminal Law. It is very difficult to say that the analogy is an inseparable principle of socialist law. The criminal code of Czechoslovakia Hungaria and Poland do not have any articles providing for analogy. In the Bulgarian criminal code, the analogy clause was established in 1948. Today in Red China, early revolutionary law is still in force and this law has kept the analogy clause.

The pressure of the Western law tradition, together with the establishment of the system, have caused the liberalisation of Criminal Law in the Soviet Union. The 1958 Legislation was a reform changing the role of due process of law in this country. One may argue that there still exist some exeptional features, some definitions; Certain of the crimes, Parasite law, and article 5/9 of the Comrades'Court are the most notable examples. But we should remember that even in countries where legal tradition is based upon the principle of legality, as in the United States there are similar statutes.

We do not wish to criticize the Russian Law Reform by saying that «Khrushehev has replaced the Stalinist dualisme of law and terror by a new dualism of law and social pressure» (1). Different

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(1) Berman, The Dilemma of Soviet Law Reform, Harw. L. Rev. vol 76 (1963), 929-951.

kinds of social pressure can be found in different societies, such as capitalists socialist etc. The social pressure of the collective comes from the philosophy of socialist system. It is a kind of self-defense of the system.

According to the 1958 legislation, there is no big difference between the conception of the principle of legality in two countries, the USSR and the US. Any difference that may arise would come from the application of the statutes. The United States' Courts with their decisions have approved that the principle «Nullum Crimen, nulla Poena sine Lege» is basic to American legal tradition. Now, we must wait to see what course the Russian courts will take.