

Crimes of the Soviet Regime: Legal Assessment and Punishment of the Guilty Ones

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Political changes that took place in the USSR in August 1991, when the power of the CPSU collapsed, opened access to archives that had been completely secret before. They also made it possible to collect and analyze evidence of the criminal nature of the soviet system. In the first place, these are documents about the “Great Terror” of 1937–1938 and documents that show how Stalin and the top Politburo figures organized mass killings of hundreds of thousands of people. These documents and statistics of repression had been kept secret from the public even during “perestroika” (1987–1991). Stalin’s crimes seemed to be exposed in those years, and a special commission of Politburo studied the history of repression. To date, efforts of Society Memorial and International Foundation “Democracy” have resulted in the publication of many documents about the soviet terror and mass violation of human rights. For example, the “Democracy” Foundation established by Alexander Yakovlev published more than 50 volumes of documentary collections. Society Memorial released a CD “Stalin’s Shooting Lists”. It includes materials about how Stalin and his closest aides issued death sentences as they took up the role of the judiciary bodies. Another CD released by Memorial contains a database about repressions in the USSR. It includes more than 2.6 million names of the repressed. Thus, we now have the documentary basis for making a legal assessment of the soviet crimes. Important documents are published, such as regulations about repressions, implementation reports, and the total statistics of repressions.

But the communist past has never stood trial in my country. However, decrees issued by the Russian President Boris Yeltsin in August 1991 (about a ban on the CPSU and about archives of the CPSU and KGB) created the prerequisites for the Constitutional Court proceedings on the “CPSU case”.

But this process was not targeted specifically at trying the crimes of the soviet regime. The Communist Party of RSFSR filed a lawsuit saying that Yeltsin’s decree which stopped the activity of the CPSU and CPRF was unconstitutional, and representatives of the President filed a counter-lawsuit asking to rule the CPSU as an unconstitutional organization. These lawsuits were bound together, and the trial began in July 1992. Society Memorial had drawn up an expert opinion for the court and attached many documents as evidence of numerous crimes of the communist party that had been ruling in the USSR (from Lenin to Gorbachev) and crimes committed by Stalin himself. It proved that the Communist Party was not a nongovernmental organization but a special power mechanism. It grossly violated the constitutional norms in its work and acted as the substitute of executive, legislative and judiciary branches. Extensive evidence was provided to support each of these arguments.

Regretfully, the Constitutional Court did not set the task of deciding whether the omnipower of the Communist Party had been criminal. Yet, the court decision which was pronounced on November 1992 confirmed Yeltsin’s decree banning the Communist Party, and stated explicitly, “The country had for a long time been ruled by a regime of unlimited violence-based power of a small group of communist

functionaries united as the Politburo of the CPSU Central Committee headed by the General Secretary of the CPSU Central Committee.”

However, we still do not have a court decision about the criminal nature of the communist regime that had been ruling in the USSR. But the list of crimes committed over the years of the soviet regime since 1917 is impressive. It includes many cases and takes up many pages. This is why I will give just the most serious and relevant crimes of the communist regime as examples:

1. Organization of the so-called “Red Terror”: a decree issued by the soviet government on September 5, 1918 introduced the practice of taking hostages and extrajudicial punishment. Concentration camps were organized for the “socially alien” groups and political opponents.
2. Mass-scale repressions against peasants: “de-kulakization,” deportations, arrests and killings by decisions of OGPU troikas in 1930–1931.
3. Stalin and Politburo of AUCP(B) Central Committee organized massive confiscations of grain for the state granaries and for import; as a result, from 7 to 12 million people died of famine in 1932-1933.
4. Mass arrests and killings during the so-called “kulak” operation of NKVD: a series of Politburo decisions and NKVD Executive Order No. 00447 dated July 30, 1937 about killings in accordance with the pre-established quotas, with cases tried by NKVD troikas. July 1937 – November 1938 (767,397 people were arrested and 386,798 of them were shot).
5. Mass arrests and killings on the ground of ethnic origin during the so-called “ethnic operations” of NKVD (German, Polish, Kharbinian, Latvian and other operations). July 1937 – November 1938 (about 350,000 people were arrested and 250,000 of them were shot).
6. Mass arrests and killings of Mongolia’s citizens by the soviet NKVD in 1937–1938 (about 25,000 people were arrested and about 20,000 of them were shot).
7. Repressions against families of people who had been sentenced for “betrayal of Motherland.” The passage of laws and regulations in 1929, 1934 and 1937 about punishment of the soviet people who had left the USSR without permission and who had been sentenced for “betrayal of Motherland.” Over 18,000 women were arrested in 1937-1938 as “traitors of motherland family members,” and 25,000 children were put in NKVD orphanages.
8. Killings and sentencing in accordance with the “shooting lists” when the measure of punishment was set not by the judiciary bodies but by Stalin himself and his closest aides in Politburo. In February 1937 - October 1938 Stalin, Molotov, Voroshilov, Kaganovich, Zhdanov, Mikoyan and others sentenced 44,000 people included in 383 lists; 39,000 of them were sentenced to be shot.
9. Stalin permitted NKVD to use methods of physical pressure on the arrested, i.e. tortures. A telegram signed by Stalin on February 10, 1939 confirmed the “legality”

of this practice that was accepted in 1937. In later years Stalin continued to give instructions about using tortures, e.g. during the “Doctors’ Plot” of 1952–1953.

10. Signing of the “Non-Aggression Pact” with Germany and a secret protocol that delimited the spheres of interests of the USSR and the Third Reich. According to this secret protocol, the USSR began annexing the neighboring territories. As Hitler’s ally, it crushed the sovereignty of Poland, launched a war with Finland, and occupied Lithuania, Latvia, Estonia and Bessarabia. As a result, the USSR was accused by the international community of pursuing an aggressive expansionist policy and expelled from the League of Nations. August 1939 – summer of 1940.

11. Stalin and Politburo of AUCP(B) Central Committee authorized mass deportations of civilians on the ground of “class” (i.e. property) origin and ethnic origin:

- Deportation of Polish citizens from West Ukraine and Byelorussia in 1939–1940.
- Deportations from the Baltic republics and Moldavia in May and June 1941.
- Deportation of ethnic Germans, Kalmyks, Chechens, Ingushes, Karachais, Crimean Tatars and other ethnic groups in 1941–1945.
- Deportation of “kulaks” from the Baltic republics and Moldavia in 1949.

12. Mass killing of the Polish POW officers and civilians by a decision of Politburo of AUCP(B) Central Committee dated March 5, 1940 – the “Katyn case.” NKVD shot 21,857 Polish officers and civilians in the spring of 1940.

13. Stalin authorized killings of prison inmates in the fall of 1941 without court trials – in Orel, Moscow and Kuibyshev prisons.

14. Acts of individual terror authorized by Stalin himself – secret political assassinations by the state security services in the USSR and abroad:

- Murder of the USSR’s ex-plenipotentiary in China Bovkun-Luganets and his wife in Georgia (1939);
- Murder of Trotsky in Mexico (1940);
- Murder of Polish engineer Samet in Ulianovsk (1946);
- Murder of People’s Artist Solomon Mikhoels, director of the State Jewish Theatre in Minsk (1948), and many other similar assassinations.

15. On Stalin’s instructions MGB officers organized show trials in Hungary, Bulgaria and Czechoslovakia in 1949–1952.

If we look at all these repressive campaigns in the context of the USSR Constitution that was in effect since 1936, their anti-constitutional and criminal nature becomes obvious. The Constitution (Article 127) declared that “citizens of the U.S.S.R. are guaranteed inviolability of the person. No person may be placed under arrest except by decision of a court or with the sanction of a procurator.” Article 128: “The inviolability of the homes of citizens and privacy of correspondence are protected by law.” Article 125 guaranteed freedom of speech, freedom of the press, freedom of assembly, including the holding of mass meetings; and freedom of street processions and demonstrations. Several articles dealt with the organization of the state. Article 30 said, “The highest organ of state authority of the U.S.S.R. is the Supreme Soviet of the U.S.S.R.” Article 32 explicitly stated that “the legislative power of the U.S.S.R. is

exercised exclusively by the Supreme Soviet of the U.S.S.R." According to Article 102, "In the U.S.S.R. justice is administered by the Supreme Court of the U.S.S.R., the Supreme Courts of the Union Republics, the Territorial and the Regional courts, the courts of the Autonomous Republics and the Autonomous Regions, the Area courts, the special courts of the U.S.S.R. established by decision of the Supreme Soviet of the U.S.S.R., and the People's Courts." Article 111 said. "In all courts of the U.S.S.R. cases are heard in public, unless otherwise provided for by law, and the accused is guaranteed the right to be defended by Counsel." As Article 112 pointed out, "Judges are independent and subject only to the law." Article 123 guaranteed "equality of citizens of the U.S.S.R., irrespective of their nationality or race" and warned that "any direct or indirect restriction of the rights" or "any establishment of direct or indirect privileges for citizens on account of their race or nationality is punishable by law." It is absolutely obvious that the Communist Party's omnipower violated the constitutional norms. The practice of establishing extrajudiciary bodies that acted on behalf of state security ("special council," "troikas" and others) opposed the Constitution, too. Deportations of the entire ethnic groups at Stalin's order also trampled the Constitution that guaranteed the equality of nations.

Furthermore, the policy of Stalinist terror runs contrary to the accepted international laws. The shooting of Polish POWs in 1940 is direct violation of the 1907 Hague Convention and is treated as a war crime. Post-war repressions on political grounds violate the Universal Declaration of Human Rights adopted on December 10, 1948.

Several of Stalin's criminal laws were invalidated after his death (for example, the law dated December 1, 1934 about simplified judicial procedures). The most odious heads of state security bodies were punished (Lavrenty Beria, Vsevolod Merkulov, Viktor Abakumov and their closest aides). But the process of punishing Stalinist criminals was limited and inconsistent. According to my information, 59 top-level chekists were sentenced in 1953-1959 "for violation of law," and 26 of them were shot. Besides, 3 arrested chekists died during investigation, and several people were arrested but their cases were closed. Administrative punishments (such as deprivation of the rank of general, dismissal from the state security bodies) and expulsion from the communist party were the most common punishments for the "violators of law."

It can be said that those Stalin's crimes that went beyond the Marxist-Leninist doctrine were criticized and condemned in the 1950ies under Khrushchev. But forced labor as a fundamental postulate of this doctrine was not condemned. Furthermore, crimes that ensued from the earlier prevailing practices continued: political assassinations abroad (they demonstrate the gangster methods of the soviet intelligence service); and persecution of all forms of disagreement with the soviet regime. Unconstitutional forms of punishment were used in some cases. For example, Academician Andrei Sakharov was subject to restriction of freedom and exiled to Gorky for an uncertain period in 1980. This was done in violation of law. The practice of coercing people of liberal professions to take up employment and persecuting them remained in force. The most vivid example is the decree issued by the Supreme Soviet of the RSFSR on May 4, 1961 entitled "On Strengthening the Struggle with Persons Avoiding Socially Useful Work and Leading an Anti-Social, Parasitic Way of Life." During its term, from 1961 until 1965, 70,000 people fell victims of this decree: they were deported from large cities and forced to work.

Responsibility of KGB officers for persecuting citizens on political grounds in the 1950-1980ies should be considered. The practice of sentencing people under article 70 and 190 of the criminal code (for "anti-soviet propaganda") was gross violation of rule of law. It ran contrary to the soviet Constitution and international legislation (Universal Declaration of Human Rights). It was also contrary to the criminal code requirements (neither the "intent to undermine" the soviet regime nor the "calumnious" nature of the indictes' activity were proven).

Most of the abovementioned crimes committed by the soviet regime certainly fall in the category of crimes against humanity. According to the international laws, they are not subject to statutory limitations. I mean the UN Resolutions dated July 28, 1965 and August 5, 1966 about punishment of war criminals and people who committed crimes against humanity; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity which was adopted on November 26, 1968 and became effective on November 11, 1970; and Resolution of the UN General Assembly dated December 3, 1973, "Principles of International Co-Operation in the Detention, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity."

However, the position of Russia today is such that it does not admit the possibility of court prosecution of the former functionaries of the USSR [communist] party and state security who were guilty of mass violation of human rights or committed crimes against law in the soviet period. Moreover, efforts are being taken to dampen such trials in the former soviet republics that have regained their sovereignty. The Kremlin initiated several loud propaganda campaigns of protest when Baltic republics began proceedings against one or another soviet functionary who had been a perpetrator of mass repression in Stalin's era.

Conclusion:

We need to make a legal assessment of the soviet past, hold a court trial of criminal cases and punish the guilty ones. It is important not only to pass a ruling about the criminal nature of the soviet system. It is also important that the principle of inevitability of punishment triumphs.