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LAW AND POPULATION IN EASTERN EUROPE

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I. INTRODUCTION

A. Some Demographic Characteristics of the Population

With the exception of Albania, the population situation in Eastern Europe is characterized by low rates of population growth—under 1 percent and still declining.¹ The rate of population growth is typically negative in urban areas, and is negative overall for the German Democratic Republic, the most urbanized and economically developed country in Eastern Europe. Population growth remains high only in a few rural areas and among certain non-European ethnic groups in the U.S.S.R. Summary statistics are given in Table 1.²

TABLE 1

ESTIMATES OF 1975 POPULATION AND 1970-75 RATE OF ANNUAL INCREASE

COUNTRY	POPULATION	ANNUAL INCREASE
Albania	2,482,000	3.0%
Bulgaria	8,722,000	0.5%
Czechoslovakia	14,802,000	0.6%
German Democratic Republic	16,850,000	-0.2%
Hungary	10,540,000	0.4%
Poland	34,020,000	0.9%
Romania	21,178,000	0.9%
U.S.S.R.	254,382,000	0.9%
Yugoslavia	21,352,000	0.9%

1

For the further historical and demographic background, see Jerzy Berent, "Causes of Fertility Decline in Eastern Europe and the Soviet Union," 24 Population Studies 35 (1970); Jerzy Berent, "Causes of Fertility Decline in Eastern Europe and the Soviet Union--II," 24 Population Studies 247 (1970); D.M. Hear, "The Demographic Transition in the Russian Empire and the Soviet Union," Journal of Social History, 1968, pp. 193-240; D.F. Mazur, "Constructing Fertility Tables for Soviet Populations," 13 Demography 19 (1976); D.P. Mazur, "Expectancy of Life at Birth in 36 Nationalities in the Soviet Union: 1958-60," 23 Population Studies 225 (1969); D.P. Mazur, "Fertility Among Ethnic Groups in the U.S.S.R.," 4 Demography 172 (1967); D.P. Mazur, "Reconstruction of Fertility Trends for the Female Population of the U.S.S.R.," 21 Population Studies 33 (1967); Milbank Memorial Fund, Population Trends in Eastern Europe, the U.S.S.R., and Mainland China, (New York, 1960).

2

Source: United Nations Department of Economic and Social Affairs Statistical Office, Demographic Yearbook 1975 (New York: United Nations, 1976), pp. 146-147.

B. Population Policies

The governments of Eastern Europe have viewed law as an active instrument for social change. Many of the social policies which the Communist regimes have implemented have had important direct and indirect effects on the rate of population growth. A study of the experience of these countries not only yields useful information and clues to possible future developments, but also provides important insights into the general dynamics of the role of law in affecting population processes.

While attention has been focused on those East European laws which directly affect population behavior--for instances, the very liberal marriage, divorce and abortion laws which have been in effect at various times--it is important to study also those laws aimed at carrying out major social and economic policies which may have the greatest effect in the long run. In this latter category are included laws affecting such areas as medical care, education, job assignment, migration, status of women and housing. Housing law will receive particular attention in this paper because its effects on fertility have been little studied despite the author's view that in the long run the measures taken with respect to housing have had, and will have, significant influence on the birth rate. Indeed, in a number of instances, housing factors have completely defeated the purpose of laws designed to affect the birth rate directly.

More and more information is becoming available on the actual social effects of law upon population in Eastern Europe. It is hoped that this paper will outline a number of key areas deserving of further research by lawyers in collaboration with other social scientists--research that can draw upon the wealth of data that has recently become available.

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With the possible exception of Romania and Albania, there appears to be emerging a consensus among East European specialists in population law and policy on what the population policy for the immediate future in Eastern Europe should be.⁴ The basic thrust of this policy would be

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I. Ceterchi and V.D. Zlătescu, "Dreptul și populația," 19 Studii și cercetări juridice 349 (1974); V.D. Zlătescu, "Preocupări actuale privind aspectele juridice ale problemelor creșterii populației," Revista romana de drept, 1974, No. 3, p. 20.

4

J.W. Brackett and J. Depauw, "Population Policy and Demographic Trends in the Soviet Union," in New Directions in the Soviet Economy (Studies prepared for the Joint Economic Committee, 89th Congress, Second Session, Washington, D.C., 1966); J.W. Brackett, "The Evolution of Marxist Theories of Population: Marxism Recognizes the Population Problem," 5 Demography 158 (1968); A. Grandhe and J. Gysi, "Familien und Bevölkerungsentwicklung

aimed at reversing the present decline in the rate of population growth by increasing the number of families with two and three children, particularly in urban areas. Means of doing so would include increasing maternity benefits, prolonging paid maternity leaves, raising family allowances, changing housing allocation rules and improving the availability of consumer services. Family planning education would be extended and contraceptives would be made readily available. Abortions are being made more difficult, not as an attempt to directly force an increase in the birth rate, but to encourage reliance upon other means of contraception.

It remains to be seen to what extent and how fast the political authorities will be willing to make the major financial reallocations that these policies entail.

II. LAWS AFFECTING THE USE OF FAMILY PLANNING METHODS

A. Abortion

While most East European governments actively encourage the use of alternative means of family planning, the existence of liberal abortion policies has been one of the primary factors leading to the present low rate of population growth. A number of the countries tried restrictive abortion policies, but the resulting increase in illegal abortions, the attendant health problems and popular demand for free abortions led most of the countries back to a regime close to abortion on request.⁵ The legislation of the 1960's required abortions to be performed in hospitals by licensed physicians. Abortions were typically forbidden only in cases

4 (cont'd.)

als Sache der ganzen Gesellschaft," 22 Staat und Recht 55 (1973); Milos Macura, "Population Policies in Socialist Countries of Europe," 28 Population Studies 396 (1974); E.A. Pavlovskii, "Sistemnyi podkhod k poniatiiu demograficheskogo zakonodatel'stva" (A Systems Approach to the Concept of Demographic Legislation), Sovetskoe gosudarstvo i pravo (Soviet State and Law), 1976, No. 6, p. 131; "Pravovye aspekty demograficheskoi politiki" (Legal Aspects of Demographic Policy), Sovetskoe gosudarstvo i pravo (Soviet State and Law), 1975, No. 1, p. 28; Resolution No. 1040 of October 18, 1973, of the Council of Ministers on the Tasks to Be Fulfilled in the Field of Population Policy, Magyar Közlöny, October 18, 1973, No. 71, p. 774; 25 International Digest of Health Legislation 331 (1974); V.S. Tadevosian, "Demograficheskaiia politika i pravo" (Demographic Policy and Law), Sovetskoe gosudarstvo i pravo (Soviet State and Law), 1975, No. 8, p. 22; E.B. Uralnis and S.A. Iani, "Pravo kak instrument demograficheskoi politiki sotsialisticheskoi Checoslovakii" (Law as an Instrument of the Demographic Policy of Socialist Czechoslovakia), Sovetskoe gosudarstvo i pravo, 1974, No. 2, p. 96; Dmitri I. Valentei, "Soviet Union," in Population Policy in Developed Countries (Bernard Berelson, ed., New York: McGraw Hill, 1974).

of advanced pregnancy or certain medical contra-indications. More recently, abortion has once again been somewhat restricted in a number of East European countries as a means of encouraging use of other means of family planning. Policies of individual countries are discussed below in order of the size of the population of the countries involved.

The history of Russian and Soviet laws on abortions may be divided into four periods. Abortions were banned in Imperial Russia, and this ban continued in effect until it was repealed by a decree of November 18, 1920. While this decree called on physicians to attempt to dissuade women seeking abortions without good reason, in fact it allowed a regime of abortion on request within the first two and one-half months of pregnancy. A sharp turn in policy came with a decree of June 27, 1936, which banned abortions except on strictly defined medical grounds. A liberal abortion regime was reinstated by an edict of November 23, 1955,⁶ and has remained in force until the present.

The 1955 edict repealed the 1936 decree and provided that abortions would be allowed only in hospitals and other medical institutions, in accordance with an Instruction to be issued by the Minister of Health. The Instruction provided for abortion on request during the first twelve weeks of pregnancy, absent certain medical counterindications (acute or chronic gonorrhoea, acute or chronic inflammatory conditions of the sexual organs, purulent foci irrespective of localization, acute infectious diseases, and a previous abortion within the preceding six months).⁷ Counseling is required before the abortion. Elective abortions are not completely covered under the socialized medicine scheme; a nominal fee of 5 rubles is charged. Disability pay for time lost from work for simple, non-therapeutic abortions is not provided.

Abortions not authorized by the Ministry of Health are punishable under Article 116 of the Criminal Code of the Russian Republic and similar articles of the criminal codes of the other republics. A doctor

5

General surveys of policy through the 1960's include: "Abortion Laws: Eastern Europe," 21 International Digest of Health Legislation 481 (1970); Henry P. David, Family Planning and Abortion in the Socialist Countries of Central and Eastern Europe: A Compendium of Observations and Readings (New York: The Population Council, 1970); M. Potts, "Legal Abortion in Eastern Europe," 59 Eugenics Review 232 (1967).

6

On the Repeal of the Prohibition of Abortions, Edict of November 23, 1955, Vedomosti Verkhovnogo Soveta SSSR, 1955, No. 22, item 425.

7

"Abortion Laws," supra note 5, at 491.

who performs an illegal abortion may be sentenced to deprivation of freedom for up to one year, to a heavy fine deducted from his salary in installments, or to loss of the right to practice medicine. A non-physician may be sentenced to up to two years or be heavily fined. In case of repeated offenses or serious consequences to the woman upon whom the abortion is performed, the abortionist may be sentenced to up to eight years of deprivation of freedom.

Like the Soviet Union, and apparently for similar reasons, Poland liberalized its abortion law in 1956. Previous legislation had limited abortions to those necessary to protect the health of the pregnant woman and cases where the pregnancy was the result of a criminal act. The law of April 27, 1956,⁸ provided for abortion on social grounds, and the implementing decree of the Minister of Health of December 19, 1959, gave broad discretion to the individual physician to give permission for an abortion.⁹ Negative decisions of a physician could be appealed to a local medical board. In practice, however, it seems likely that most women would be well aware of which physicians were and which were not inclined to give the necessary permission, and would choose a physician accordingly. Approval of a parent or guardian is required if the woman is under 18. Abortions may be performed in hospitals or out-patient clinics and are free in public medical facilities. However, a large number of women prefer to pay for a more discrete abortion by private doctors.

The Polish Criminal Code which went into effect in 1970 provided for deprivation of freedom for up to three years for performance of or assistance in an illegal abortion.¹⁰

Romania has the most restrictive legislation on abortion in Eastern Europe.¹¹ Like the other East European countries, it liberalized

8

Law No. 61 of April 27, 1956. Dziennik Ustaw, May 8, 1958, No. 12, p. 71.

9

Janusz A. Ziolkowski, "Poland," in Population Policy in Developed Countries 445 (Bernard Berelson, ed., New York: McGraw Hill, 1974).

10

Law of April 19, 1969, Embodying the Penal Code, Dziennik Ustaw, May 14, 1969, No. 13, Item 94; 22 International Digest of Health Legislation 971 (1971); Igor Andrejew, Witold Swida, and Wadisaw Wolter, Kodeks karny z komentarzem (Penal Code with Commentary) (Warsaw: Wydawnictwo Prawnicze, 1973).

11

Ioan Ceterchi, Victor Dan Zlătescu, Ioan M. Copil, and Petre Anca, Le droit et la croissance de la population en Roumanie (Bucharest, 1974).

its abortion legislation in the mid-1950's.¹² Decree No. 463, adopted on September 30, 1957, allowed any pregnant woman, during the first 12 weeks of pregnancy, to have an abortion in the public medical facility of her choice, for the insignificant charge of 30 lei. Apparently concerned with the prospect of a declining population, the authorities abruptly changed the policy without warning by a decree of September 20, 1966.¹³ This decree prohibited abortions except in cases of danger to the life of the woman; hereditary diseases of one of the parents; serious physical, mental or sensory disorder of the pregnant woman; women over 45 years of age; mothers caring for four or more of their own children; rape and incest. A list of the diseases for which abortion was authorized was published in the Instruction No. 819 of October 19, 1966, by the Minister of Health and Social Welfare. This legislation was liberalized in 1971, with abortion being allowed for women over 40, girls under 14 and in some cases from 14 to 16, and for women caring for four or more children even if they were not all their own. The list of diseases that were grounds for abortion was also extended. Except in cases of extreme medical emergency, all abortions must be authorized by a district or municipal medical board. The decree led to a dramatic, but temporary increase in the birth rate.¹⁴ It did not eliminate abortions entirely--330,000 abortions were performed in 1971, so the Romanian legislation can be considered restrictive only in comparison with other East European abortion laws.

At the same time as the new rules on abortion were passed, the Romanian Criminal Code was amended to make any abortion not permitted under the decree a criminal offense. These provisions were carried over into the new 1968 Romanian Criminal Code, where they appear in Articles 185-188.

Czechoslovakia also followed the pattern of liberalization of abortion legislation in the mid-1950's.¹⁵ However, prior Czechoslovak

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Petre Muresan and Ioan M. Copil, "Romania," in Population Policy in Developed Countries 355 (Bernard Berelson, ed., New York: McGraw Hill, 1974).

13

Decree No. 779 of September 29, 1966. Buletinul Oficial, Pt. I, October 1966, No. 60, p. 416; V. Galaction "Das Neue Abtreibungsverbot und die Krise in der Bevölkerungsentwicklung Rumaniens," 7 Jahrbuch für Ostrecht 221 (1966).

14

H.P. David and N.H. Wright, "Abortion Legislation: The Romanian Experience," 2 Studies in Family Planning 205 (1971).

15

Zdenek Pavlik and Vladimir Wynnyczuk, "Czechoslovakia," in Population Policy in Developed Countries 319 (Bernard Berelson, ed., New York: McGraw Hill, 1974).

law was not as restrictive as that in some other East European countries and the liberalization did not go as far as that in the Soviet Union, for instance. Under Section 218 of the criminal law of 1950, abortions were forbidden except where there was a serious danger to health or a parent was suffering from a serious hereditary disease. The new law, which was passed in December 19, 1957, and amended several times during the 1960's, provides for abortions in cases where the woman has not had an abortion in the past six months and is less than three months pregnant, provided that certain medical grounds or other reasons deserving special consideration are present. Reasons listed in the legislation are (1) advanced age, (2) having at least three living children, (3) loss or disability of husband, (4) marriage failure, (5) inability to provide normal living standards in cases where maintenance of the family or the child depends mainly on the woman, (6) hardship caused by the pregnancy of an unmarried woman, and (7) circumstances indicating that pregnancy is due to rape or criminal assault.¹⁶ Abortions reported are also allowed in case of failure of a prescribed contraceptive. Each legal abortion must be approved by a three-member local abortion commission; the pregnant woman may appeal an adverse decision to the regional abortion commission. Abortions are performed in hospitals with a substantial fee for elective abortions; therapeutic abortions are free.

Persons performing an illegal abortion are subject to punishment under the Criminal Code. Section 227 provides up to one year of deprivation of liberty for helping a woman terminate her only pregnancy or helping her obtain the services of an illegal abortionist. If severe injury to health or death results, the punishment is one to five years of imprisonment.

Under Section 228, persons performing an illegal abortion with the consent of the pregnant woman may be sentenced to from one to five years. If the abortionist has acted for gain or if death or serious injury to health results, the abortionist may receive two to eight years.

Section 229 frees the pregnant woman herself from punishment where she causes or procures an illegal abortion.

Hungary also follows the pattern of liberalization in the mid-1950's. Medical boards were established in 1953 and were given limited powers to allow abortions on social as well as medical grounds. Legislation in 1956 shifted to a system of abortion on request until the thirteenth week of pregnancy (the eighteenth week for single girls

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Law 68 of December 19, 1957, Sbirka zákonu, December 30, 1957, No. 33, p. 289.

under 20).¹⁷ Applicants for an abortion had to apply to a board which could authorize an abortion for medical or social reasons and which must counsel the applicant. Regardless of the grounds, the board was required by law to approve all applications if the applicant insists on an abortion. Neither hospital costs for the first three days of hospitalization nor disability benefits for the first three days lost from work were covered by social insurance; full social insurance benefits were available in case of therapeutic abortions.

Availability of abortions was substantially restricted by 1973 legislation¹⁸ to a limited list of cases including medical indication, pregnancy as a result of a criminal act, three living children, and imperative social grounds. A multilevel network of hearing and appeal boards handle all applications for abortion. Criminal legislation provides for imprisonment for up to three years for causing an illegal abortion.¹⁹ In cases of recidivism, abortion for profit, or gross physical injury, the term is six months to five years. If the abortion causes death, the punishment is imprisonment for two to eight years. A woman who aborts herself or procures an abortion for herself may be imprisoned for six months.

17

Order No. 1047/1956 of June 3, 1956; 9 International Digest of Health Legislation 536-40 (1958); Andras Klinger, "Hungary," in Population Policy in Developed Countries 225 (Bernard Berelson, ed., New York: McGraw-Hill, 1974).

18

Ordinance No. 4 of December 1, 1973, of the Minister of Health on the Examination of Applications for the Termination of Pregnancy, Magyar Közlöny, December 1, 1973, No. 80, p. 836; 25 International Digest of Health Legislation 332 (1974); Instructions No. 33 of the Minister of Health for the Implementation of Ordinance No. 4 of December 1, 1973, of the Minister of Health on the Examination of Applications for the Termination of Pregnancy, Egészségügyi Közlöny, December 10, 1973, Special issue, p. 11; 25 International Digest of Health Legislation 339 (1974); Directive Drawn up for the Benefit of Commissions Established to Examine Applications for the Termination of Pregnancy (Medical Indications), Egészségügyi Közlöny, December 10, 1973, Special issue, p. 25; Extract in 25 International Digest of Health Legislation 340 (1974); E. Nizhalovski, "Gesetzgebungsmittel der Familienpolitik" (Legislative Measures in the Area of Family Policy), 16 Acta Juridica 295 (1974); M. Radványis and F. Foldvay, "Reform der Rechtsvorschriften über die Schwangerschaftsunterbrechung in Ungarn," 15 Jahrbuch für Ostrecht 231 (1974).

19

Unified text of the Law Embodying the Penal Code of the Hungarian People's Republic and of the Ordinance Having the Force of Law which Have Amended and Supplemented the Law, Magyar Közlöny, December 22, 1971, No. 96, p. 1093; 24 International Digest of Health Legislation 507 (1973).

The recent history of abortion legislation in Bulgaria is complicated.²⁰ Bulgaria first followed the general pattern of liberalization of abortion legislation in the mid-1950's, but then in the late 1960's passed legislation which on its face was similar to the Romanian laws limiting abortions. This legislation, however, was never enforced as strictly as the Romanian legislation. It was tightened by new regulations issued in 1973, but liberalized by regulations issued in 1974. Bulgaria, however, has not fully returned to the abortion on request system that prevailed from 1956 through 1967.

Instructions issued on April 27, 1956, provided an abortion on request system very similar to that in the U.S.S.R. Abortions were allowed on request during the first 12 weeks of pregnancy absent (1) acute or sub-acute inflammation of the genital organs, (2) a purulent focus regardless of its location, (3) an acute communicable disease, (4) an abortion during the preceding six months. Abortions beyond 12 weeks were allowed in case of danger to life or health. Legislation in 1967 and 1968 shifted to a system of prohibition of abortions except in specific situations.²¹ The 1968 regulations provided that abortions would be available to women who had one or two children but required the woman to appear before a medical board for counseling. Abortion on request was available for women over 45 or who had had three or more children. Unmarried women could obtain abortions in cases of the presence of certain medical or social indications. A list of diseases were established, some of which were considered grounds for abortion, others contra-indications to abortion.

Bulgarian practice developed along lines more liberal than the legislation would indicate. In fact, there were in the early 1970's few obstacles to abortion for unmarried women or married women with at least one child. One reason for this was the fact that medical boards in different cities interpreted the law differently, and women took advantage of this fact to procure abortions in cities with liberal interpretations of the law.

The regulations were substantially tightened in 1973.²² Women

20

Ivan Stefanov and Nicola Naoumov, "Bulgaria," in Population Policy in Developed Countries 149 (Bernard Berelson, ed., New York: McGraw-Hill, 1974); P. Maggs, "Law and Sociology in Bulgaria: The Experiment in Pronatalist Legislation," 1 Review of Socialist Law 253 (1975).

21

Dŭrzhaven Vestnik, February 16, 1968, No. 13, p. 1.

22

Instruction No. 0-27 of the Ministry of Public Health to Regulate the Artificial Interruption of Pregnancy, Dŭrzhaven Vestnik, April 20, 1973, No. 32, p. 2; 24 International Digest of Health Legislation 730 (1973).

with no or only one living child were permitted to have abortions only in the following specified cases: (a) diseases endangering the life of the woman or the viability of her offspring, (b) rape, (c) incest, (d) unmarried women having no children who were under 18, (e) women over 45 having one living child. Migratory abortions were restricted. Women with less than two children had to go through complex procedural steps to obtain an abortion. Women with two children could obtain an abortion somewhat more easily. There were no procedural formalities for abortions for women with more than 3 children.

This legislation was somewhat liberalized in 1974.²³ The 1974 amendments allowed abortions for widows, divorced or unmarried women, as well as for married women who have one living child and are over 40.

Abortions violating Ministry of Health instructions are punished under Article 126 of the Criminal Code. The abortionist may receive up to three years of imprisonment, or up to five years in case he lacks a medical education or is a repeated offender. The pregnant woman is not criminally liable.

The German Democratic Republic has followed a relatively restrictive regime with respect to abortions.²⁴ Instructions of March 15, 1965, provided for permission for abortions in case (a) of danger to life or serious threat to the mental or physical health of the pregnant woman, (b) the pregnant woman is 40 or older, (c) the pregnant woman is under 16, (d) the pregnant woman has already had four children with an average interval of less than 15 months between deliveries and her current pregnancy began less than six months after the last delivery, (e) the pregnant woman already has legal responsibility for five or more children living in the household, or (g) it is highly probable that the child will be affected by a mental disease or serious abnormality. Procedure requires approval of a district commission, with the possibility of appeal to a regional commission. Abortions are provided free of charge by gynecologists in hospitals. Because of the restrictive nature of the legislation, the number of legal abortions is relatively low. However, the widespread use of modern means of family planning in the GDR means that the number of unwanted births is also low.

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Amendments and Additions to Instruction No. 0-27 Regulating the Artificial Interruption of Pregnancy, Dürzhaven Vestnik, February 22, 1974, No. 15, p. 7; 25 International Digest of Health Legislation 541 (1974).

24

S. Mampel, "Zum Gesetz der DDR über die Unterbrechung der Schwangerschaft," 16 Recht in Ost und West 205 (1972); L. Mechlinger, "GDR Parliament Passed New Abortion Law," Law and Legislation in the GDR, 1972, No. 2, p. 23.

Section 153 of the Criminal Code provides imprisonment for up to three years for one who illegally aborts a pregnant woman; a sentence of two to ten years in case of serious injury to health or death is provided by Section 155.²⁵

A 1969 Yugoslav decree provides for abortion only on a list of restricted grounds: (1) danger to life or health of the mother, (2) hereditary defects, (3) rape or incest, and (4) social or economic indications.²⁶ Abortion for reasons other than the health of the mother must be performed within the first three months of pregnancy. The woman must apply to a commission at a medical establishment and has the right to appeal an adverse decision. Illegal abortions have been reported to be widespread.

The criminal law provides a relatively mild punishment of three months' imprisonment for one who commits an illegal abortion, with higher penalties in more aggravated cases.

B. Sterilization

Sterilization does not appear to be widespread as a means of birth control in Eastern Europe; hence there is a dearth of published legal instructions on the subject. While it would be possible to speculate on the various criminal code provisions prohibiting maiming and intentional bodily harm, the really effective legal provisions are found in Ministry of Health instructions in each country.

An example of such a regulation is that of Czechoslovakia which essentially limits sterilization to medical or eugenic grounds only.²⁷ Romanian legislation authorizes sterilization only with the permission of a special medical commission.²⁸ Given the pronatalist attitude of the Romanian government, presumably this permission is given only in cases of real threat to the health of life of the woman.

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Penal Code of the German Democratic Republic of January 12, 1968; Gesetzblatt der Deutschen Demokratischen Republik, Part I, January 12, 1968, No. 1, p. 1; 24 International Digest of Health Legislation 157 (1973).

26

"Abortion Laws," supra note 5, at 492.

27

Instruction No. 29 of September 15, 1966, of the Ministry of Health as to the Carrying out of Sterilization, Věstník Ministerstva Zdravotnictví, November 15, 1966, No. 18, pp. 109-112, 19 International Digest of Health Legislation 175 (1968); Instruction No. 1 of December 17, 1971, of the Ministry of Health of the Czech Socialist Republic as to the Carrying Out of Sterilization, Věstník Ministerstva Zdravotnictví České socialistické republiky, February 29, 1972, No. 1-2, p. 1; 23 International Digest of Health Legislation 683 (1972).

28

Ceterchi, supra note 11, at 58.

C. Contraception

Because the countries of Eastern Europe have, with the exception of Yugoslavia, economies subject to detailed central planning, availability of contraceptives depends primarily on decisions of economic planners. Legal regulations involve such considerations as prescription versus non-prescription sales, sales in pharmacies versus sales through other outlets, advertising, and education.

The centrally planned economies mean also that the decision to manufacture or import contraceptives is essentially a governmental rather than a private decision. In order to provide married couples with freedom of choice as to number of children and to reduce the number of abortions, all East European countries except Romania²⁹ have adopted a policy of planned manufacture or importation of contraceptives. Hungarian legislation, for instance, provides that "contraceptive medicines and devices should be made available for the population in appropriate quantity, quality, and assortment."³⁰

All East European countries have legislation restricting the pill and loop to medical prescription sales in pharmacies. There is considerable variation, however, in the various Ministry of Health instructions as to contraindications for the use of these modern methods of birth control, and as to length of prescriptions.³¹ Because of the comprehensive systems of free health care and the high percentage of physicians in the population, the requirements of medical prescription for these contraceptives and in certain countries also for contraceptive jellies, do not present a major barrier for women wishing to practice contraception.

More important are the restrictive conditions imposed by government regulations on the prescription of these contraceptives. Oral contraceptives are not widely prescribed in some East European countries, for instance, the Soviet Union. Even where they are widely prescribed, as for instance in Hungary, typically prescriptions are only good for a relatively short period of time, forcing the woman to return to the gynecological clinic.³²

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"Pravoye aspekty," supra note 4, at 31.

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Klinger, supra note 17, at 266.

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E.g., Instructions No. 22 of 1973 of the Minister of Health on the Utilization of Intrauterine Devices, Egészségügyi Közlöny, September 1, 1973, No. 17, p. 408; 25 International Digest of Health Legislation 329 (1974).

32

Instructions No. 23 of 1973 of the Minister of Health on the Prescribing and Supply of Hormonal Contraceptives, Egészségügyi Közlöny, September 1, 1973, No. 17, p. 410, 25 International Digest of Health Legislation 330 (1974).

As part of the general public health scheme, a large number of pharmaceutical outlets are available in Eastern Europe, and prices in pharmacies are maintained at a very inexpensive level, so that the restriction of contraceptive sales to pharmacies does not result in a significant denial of access to contraceptives. Much more significant is the fact that the supply of contraceptives to pharmacies suffers from the same problems that plague the whole consumer goods sector of the planned economies, namely, a high percentage of poor quality products and irregular distribution. Thus, a customer might have to visit half a dozen pharmacies to find the needed contraceptive. Legislation of the German Democratic Republic in 1968 authorized the sale of non-prescription pharmaceutical products for birth control in stores other than pharmacies.³³ But this legislation is an exception to the general pattern in Eastern Europe.

An example of the type of detailed instructions issued for the regulation of contraceptives is that of Hungary concerning the insertion of intrauterine devices: such insertion is allowed only in specialized obstetrical, gynecological, or maternity clinics; only for women who had been pregnant or who are over 18 years of age and for whom pregnancy is undesirable for health reasons; and only after a gynecological examination.

No instances either of the advertising of contraceptives or of the prohibition of the advertising of contraceptives in Eastern Europe have been encountered. Partly this is because of the relatively small role played by advertising in the socialist economies of these countries. The countries differ to some extent in the amount of counseling and instruction on contraception they offer. In all of the countries counseling on contraception is available at public health facilities. In a number of the countries, counseling is required for women having abortions. In addition, certain countries have incorporated family planning instructions to some extent in their overall public education programs.

That greater availability of contraceptives has the effect of reducing the number of abortions is indicated by an estimate that, following increased availability of modern contraceptives in Hungary since 1967, the proportion of women using abortion as a sole means of birth control dropped from 14 per cent in 1966 to 4 per cent in 1969.^{33a}

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Fourth Regulations of February 22, 1968, for the Implementation of the Pharmaceutical Products Law, Gesetzblatt der Deutschen Demokratischen Republik, Part II, March 11, 1968, No. 25, p. 109; 22 International Digest of Health Legislation 242 (1971).

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Andras Klinger, "Fertility and Family Planning in Hungary," 8 Studies in Family Planning 165, 174 (July 1977).

III. FAMILY LAW

A. Minimum Age of Marriage

The minimum age for marriage varies from country to country, but is most often set at 18 for both men and women. Only Poland has a higher minimum--21 for men.³⁴ Most countries allow exceptions to be made to the minimum age by local authorities, usually for cases where the prospective bride is pregnant.³⁵ A minimum age of 18 or higher appears to have the support of both the official leadership and the public opinion in the U.S.S.R.³⁶ The only place where an 18-year minimum significantly cuts

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The minimum ages are: Bulgaria--men 18, women 18; Czechoslovakia--men 18, women 18; German Democratic Republic--men 18, women 18; Hungary--men 18, women 18; Poland--men 21, women 18; Romania--men 18, women 16; Yugoslavia--men 18, women 18; U.S.S.R.: Russian Republic--men 18, women 18; Ukrainian Republic--men 18, women 16.

Sources:

Bulgaria--Semeien kodeks (Family Code), Dŭzhaven vestnik, March 22, 1968, No. 23, Art. 8;

Czechoslovakia--Zákon o rodině (Family Law), December 4, 1968, Sb. No. 94; Občanský zákoník (Civil Code), February 26, 1964, Sb. No. 40, Art. 8 (2);

German Democratic Republic--Familien Gesetzbuch, December 20, 1965, Art. 5 (4);

Hungary--Law on Marriage, the Family and Guardianship, Art. 10 (German Translation in A. Bergmann, Internationales Ehe-und Kindschaftrecht [Fourth edition, 1969]);

Poland--Kodeks rodzinny i opiekuńcy (Code of the Family and Guardianship), March 25, 1964, Dz. U. Nr. 9, Pos. 59, Art. 10;

Romania--Codul familiei (Family Code), December 29, 1953, Buletinul Oficial, 1954, No. 1, as amended October 8, 1966, Buletinul Oficial, 1966, No. 64;

Yugoslavia--Osnovi zakon o braku (Basic Law on Marriage), April 3, 1946, as amended through April 28, 1965, Službeni list, 1965, No. 28;

U.S.S.R. (Russian Republic)--Kodeks o brake i sem'e (Code on Marriage and the Family), Vedomosti Verkhovnogo Soveta RSFSR, 1969, No. 20, item 700; No. 32, item 1086.

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M.V. Materova, "Pravovoe regulirovanie snizhenia vozrasta vstupaiushchikh v brak" (Legal Regulation of the Reduction of the Age of Persons Entering into Marriage), Sovetskoe gosudarstvo i pravo (Soviet State and Law), 1976, No. 1, p. 125.

36

N. Iurkevich, "Motivy Zakliuchenia i stabilnost' braka," (Motives for Marriage and Stability of Marriage), in N. Solov'ev et. al. (Vilnius: Minits, 1970), pp. 99-110.

across popular customs is among some of the non-Western populations, particularly in various regions of the Soviet Union which had a considerable number of early marriages until this custom was banned. In view of the acceptance of the idea that a substantial period of education is needed for all young people, it seems unlikely that the marriage age will be reduced below 18. On the other hand, clearly there is little pressure to raise the marriage age significantly above 18, though if one can judge from some public opinion polls in the U.S.S.R., there is some public opinion supporting an increase in the age to as high as 21. Interestingly, this change is resisted by Soviet sociologists, who suggest it would not have any beneficial effect but would rather increase the number of unmarried couples living together.³⁷

B. Marriage Customs

A number of the East European countries have legislation designed to regulate marriage customs so as to bring them in line with what might be called the "modern Western" idea of marriage. This means a marriage not involving either purchase of a bride or a dowry, with the choice of marriage partners made by the persons being married, not by their families, and with both parties entering the marriage with full free will. This ideal conflicts with the traditional marriage patterns of a number of ethnic groups, so criminal legislation has been used in a not always successful effort to change the marriage customs.

Typical are the special provisions of Chapter 11 of the Russian Republic Criminal Code, which apply only in those localities where "the social dangerous activities listed in the present chapter are survivals of local customs." These crimes include payment and acceptance of a price for a bride (Art. 232), forcing a woman to enter into marriage or hindering her entrance into marriage (Art. 233), conclusion according to local customs of an agreement on marriage with a person who has not reached marriagable age (Art. 234).

Despite the fact that several East European countries (Albania, Bulgaria, the U.S.S.R., and Yugoslavia) have substantial ethnic minorities whose traditional Muslim religious law would allow polygamy, all of them forbid polygamous marriages both in their marriage laws and in their criminal codes. The result is a major difference in family patterns from that of other countries with large traditionally Muslim populations.

In Muslim areas of the Russian Republic, bigamy or polygamy, i.e., cohabitation with two or several wives in a common household, is punished by Art. 235 of the Criminal Code as a socially dangerous survival of a local custom. In ethnically Russian areas, registration of multiple

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Id. at 105.

marriages is a relatively minor offense against the legislation on registration of changes in civil status because bigamy is not considered to be a social problem in those areas.

C. Parents' Obligations Toward Children

Typically, in the Soviet Union and Eastern Europe, parents do have a legal obligation to support their children. This obligation is made less burdensome by the fact that the socialist state subsidizes many aspects of child raising. Examples which are discussed elsewhere in this paper include housing, food, medical care, and education. In addition, a more specific exemption from the duty to support has been made in Soviet law.

In the U.S.S.R., unwed mothers have the right to turn their child over to a state agency for rearing and thereby to be freed from all financial obligation for child support. This rule was established concurrently with the abolition of abortions. However, it has survived the restoration of an abortion on request system.

Children born out of wedlock have varying rights against their fathers in different East European countries. In the U.S.S.R., for instance, they may claim support only if the father has acknowledged paternity or was living with the mother at the time of birth.

D. Children's Obligations Toward Parents

Children in the U.S.S.R. and other East European countries do have a legal obligation to support parents in cases of old age or disability. This obligation, like that of parents to support children, is tempered by the existence of extensive social benefit systems, particularly in the area of medical care, pensions, and of state subsidies for food and housing.

Given the relatively extensive role of the state in support of the elderly, there is probably less of a motive for the individual couple to have children as a form of old age insurance. However, in view of the heavy commitment of the various governments to provide adequate pension and medical care support for the elderly, any major aging of the population structure as a whole must necessarily produce severe budgetary problems and generate pressure for a long-term pronatalist policy to restore the balance between the active and the elderly population.

E. Divorce and Remarriage

Divorce legislation has varied in Eastern Europe from one of very easy to rather difficult divorce, though on the whole divorce has been easier in most East European countries than in West European countries. There has been a general shift in Eastern Europe from the use of specific grounds of divorce and a concept of fault to the adoption of a single

principle of permanent breakdown of the marriage as the sole basis for divorce.³⁸ However, actual difficulty of divorce has depended more on the existence or absence of technical procedural barriers and on the level of fees charged for court costs and lawyers' services.³⁹

The effect of the difficulty of divorce upon population growth rates is again a subject requiring further research. It would seem likely that easy divorce procedures would encourage divorce and remarriage and that a couple whose marriage existed only because they were unable to get a divorce would be much less likely to have more children than a newly wed couple. Accordingly, easy divorce probably would lead to an increase in the population growth--unless it might create such marital instability that couples would be reluctant to have children. During the period when Soviet divorce laws were strict, Soviet commentators reported that a large number of couples were living together unmarried because they feared the difficulty of obtaining a divorce.⁴⁰ Here a change in the law, allowing or encouraging the formalization of these relationships, might well lead to an increase in the number of births.

IV. LAWS GOVERNING PUBLIC WELFARE, HEALTH AND EDUCATION

A. Housing

A number of features of the law of East European countries, though not aimed directly at marriage, have had substantial effects upon the timing of marriage. The most important of these would appear to be the housing legislation.⁴¹

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J.N. Hazard, Communists and Their Law (Chicago, 1969), pp. 281-309; P. Juviler, "Marriage and Divorce," Survey, July 1963, pp. 104-112.

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See for instance the discussion of practical obstacle to divorce in Romania in "Pravoye aspekty," supra note 4 at 31.

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G.M. Sverdlov, "Zakon o razvode i statistika" (The Law on Divorce and the Statistics), Sovetskoe gosudarstvo i pravo (Soviet State and Law), 1964, No. 10, p. 31.

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N.A. Tauber, "Vlianie nekrtoorykh uslovii zhizni na uroven' brachnoi plodovitnosti" (The Influence of Certain Living Conditions on the Level of Marital Fertility), in Problemy demograficheskoi statistiki (Problems of Demographic Statistics) (Moscow, 1966); Ziolkowski, supra note 9, at 475.

Most of the countries in Eastern Europe have gone through a number of stages in housing law. Immediately after taking power, the new governments generally confiscated property of large-scale landlords and housing belonging to persons who appeared to have much more than their personal needs. The immediate result was to make available extra urban housing space at low rents and to encourage migration to the cities (migration will be discussed in a separate section). As a result of this migration to the cities, which was necessary for industrialization, a high degree of overcrowding appeared in housing. The Communist planners were faced with competing demands for industrialization, for better housing, for better medical care, for better education. In general, they chose to invest in industry, education and medical care rather than housing. No doubt they believed that industrialization would be impossible without a healthy and educated labor force, and that the housing problem could be only solved effectively once a reasonable degree of industrial development had been achieved. While these may have been the motives for their decision, the housing policy and legislation which resulted tended to strongly discourage early marriages and large families.

The housing laws of the U.S.S.R. and a number of other East European countries provide for three types of housing ownership: by the state, by cooperatives and by individuals. New housing construction is predominantly in the state and cooperative sectors; private housing construction is discouraged by restrictive legislation and limitations imposed by state planning authorities on building materials.⁴²

Rules governing allocation of space in state housing are complex. The Soviet Union can serve as a typical example. State housing there is of two types: that under control of local governments, and that under the control of economic enterprises. The first step to obtain housing is to be admitted to the housing waiting list. Preference for such admission is given to persons without housing space or whose present housing space is below a certain minimum per family member. Once on the list, a family must wait a substantial period of time, often years, until housing is actually assigned. When the housing finally is assigned, rents are subsidized so that rental payments are very low.

On the one hand, this system may be considered as an encouragement to childbearing, since a couple with several children will, in the long run, be allocated substantially more housing than a couple with no children or only one child. On the other hand, the slowness with which the system works means that a couple who have a child or more may expect

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Andreas Bilinsky, "Das Wohnungsmietrecht in der Sowjetunion," 16 Jahrbuch für Ostrecht 103 (1975); Aloys Hastrich, "Sowjetisches Wohnraumrecht," 21 Osteuropa-Recht 119 (1975); Iu. K. Tolstoi, Sovetskoe zhilishchnoe zakonodatel'stvo (Soviet Housing Legislation) (Leningrad: Izdatel'stvo Leningradskogo universiteta, 1974).

to live in overcrowded housing for years before their situation can be improved. Furthermore, if a couple have too much housing to be qualified for a waiting list for improved housing, but not so much housing as to be threatened with compulsory reallocation of some of their space, having a child may substantially reduce the amount of housing space per person without giving the couple any possibility of moving to better housing.

Similar priority schemes operate in housing belonging to enterprises, though there is more emphasis on the achievements of the applicant as a worker and less on the factor of housing per member of the family. This means that it may be particularly difficult for a young couple who have just begun working to obtain enterprise housing.

The right to buy a cooperative apartment is conditioned on rules similar to those involving the right to occupy municipal apartments. However, waiting lists are shorter and the size and quality of housing available is better for cooperatives than for state apartments. Many young couples starting a family, however, may lack the substantial cash down payments needed for cooperative apartments.

Another path to obtaining housing is through barter. Kind parents may trade their two-room apartment for two one-room apartments, taking one of the smaller apartments for themselves, and the other for their newly married son or daughter.

East European observers fully realize that the difficulties of obtaining housing are one of the major causes of the low birth rates, particularly the extremely low birth rates in urban areas. Many have urged greater efforts to provide housing for young married couples and to provide prompt increases in housing allowances for couples who have a second or third child. So far, however, much remains to be done in this regard. A notable exception is a 1973 reform in the German Democratic Republic designed to help young couples obtain adequate housing for starting a family.⁴³

B. Food

Particularly in the U.S.S.R., but also to some extent in other East European countries, use of government subsidies to ensure low prices for bread and some other basic foodstuffs is a central part of the philosophy of the Socialist state. While this policy is clearly adopted not as a pronatalist policy but as part of a basic human and constitutional rights policy, it may indirectly have a pronatalist effect by reducing the cost of bringing up children.

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"Pravovye Aspekty," supra note 4, at 31.

The actual mechanism of subsidies varies from country to country. It is typically embodied in a complex system of government agricultural procurement regulations and of rules setting prices for the sale of various foodstuffs in state stores.

C. Education

Provision of day or after-school care facilities, like many aspects of labor legislation, allows the mother to remain a career worker rather than becoming a career mother. The Soviet Union and other East European countries have long had a number of model day care facilities which they have proudly shown to visitors, and have long had legislation indicating a public commitment to the provision of such facilities. Financial stringency and labor shortages have until recently prevented a widespread implementation of such legislation, so that most children had to be cared for by relatives rather than by the state. Economic growth in the 1960's, however, has enabled a relatively rapid expansion of such facilities, which may in due course form a more significant part of the East European scene.⁴⁴

An area of undoubtedly great importance is the use by the state of its power to control the content of school textbooks and of publications in general to affect the image of women presented to young people and the general public. While it is clear even to a casual reader of Soviet publications that this power has been used to encourage the image of women as workers over that of women as homemakers, a detailed study might well show significant differences over time and between countries.

The education laws likewise encourage the postponement of marriage. In most East European countries they are designed on the understanding that undergraduate students in higher educational institutions will not be married. Provisions generally are not made for any housing for married students. Scholarship funds are totally inadequate to support children; university regulations generally do not attempt to restrict sexual relations of unmarried students, thus perhaps reducing the pressure for marriage. Furthermore, since laws restricting abortions often make exceptions on economic or social grounds, and the need to pursue one's studies is usually regarded as falling within these areas of exceptions, the pressure to marry so as to legitimize children is minimized for students. Again, these laws reflect not so much a particular policy favoring late marriages but rather a lack of affluence which would allow young people to combine studying and raising families. Should the Communist governments reach their goals of affluence, the present situation again might change.

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E.g., Regulations Concerning Crechas, Dürzhaven Vestnik, March 17, 1973, No. 22, p. 2; 24 International Digest of Health Legislation 266 (1973).

Education and counseling on family planning are expanding in Eastern Europe, with much of the emphasis being on encouraging the use of modern means of contraception rather than abortion.⁴⁵

D. Medical Care

The initial period of Communist rule was marked in many countries by civil or class war with a resultant temporarily heightened mortality rate for many segments of the population. The long-range effect of Communist rule, however, has been the introduction of comprehensive socialized medical schemes which have led in each country to dramatic decreases in mortality rates for all segments of the population. In recent years, most of the East European countries have approached, or surpassed, the developed countries of Western Europe and North America in the rate of decrease in mortality rates. However, it would appear that, as these countries have now taken advantage of known medical methods, future progress in this area would be slower, and will depend more on general world-wide medical advances, rather than on specific government policies. Indeed, when the promised era of Communist affluence is reached, many groups may be able to discard their traditional ways and adopt the sedentary life and over-rich diet prevalent in the United States, so that there may even be an increase in the mortality rate.

In achieving their modern system of health care, Communist authorities have not hesitated to use the law to force vaccination and inoculation of massive segments of the population, to move more people from unhealthy slums to modern housing projects, to bring medical treatment to children despite the religious beliefs of their parents, etc. Clearly, little compulsion has been necessary. Most people in Eastern Europe, as elsewhere, are only too glad to have a good health care system. The system of compulsory assignment of medical school graduates to substantial periods of initial practice in rural areas, has helped solve the problem of rural health care--a problem for which countries such as the United States, which lack such possibilities for legal compulsion, have found no answer.

Another way in which law has affected mortality in the East European countries has been legislation designed to eliminate labor hazards and impure food and drugs. Despite contrary factors, such as the tradition of fatalism among many of the peasantry, lack of refrigeration facilities, and the desire for production at all costs by state planning authorities, there appears to have been fairly steady progress. It seems likely that in this respect, also, the standard of the more advanced Western countries will be reached. In the same category, reference should be made to the

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E.g., Ordinance No. 5 of December 5, 1973, of the Ministry of Health Concerning the Provision of Counseling on the Protection of Families and Women, Magyar Közlöny, December 5, 1973, No. 81, p. 848; 25 International Digest of Health Legislation 341 (1974).

regulation of drugs, liquor, tobacco and other substances thought to be harmful to health. Enforcement has generally been quite strict. Most of these countries forbid advertising of cigarettes and hard liquor. Laws regulating drunken driving tend to be severe and effectively enforced in many of the countries. Gun control laws are strict. Increased attention is being paid to industrial and automobile safety.

A second aspect of the public health and medical care system has been the reduction of infant mortality toward the levels commonly found in advanced industrial societies. It has sometimes been suggested that in countries with poor health systems, couples deliberately choose to have more than their target number of children, in the expectation that at least some of their children are likely to die in infancy or childhood. The health systems in Eastern Europe, though the statistics are not quite as good as those of such countries as Sweden, still are quite good enough to avoid creating a climate for this type of conduct.

In all of the countries of Eastern Europe, actual medical expenses of childbirth are covered for all or the vast majority of women by the socialized medicine scheme. In some countries, such as Hungary, there is a comprehensive medical insurance scheme for workers and their families, while in others, such as the Soviet Union, medical institutions are supported from the state budget so that there is no charge for any services, including those for childbirth. Thus, whatever financial disincentive exists in those countries where expenses of childbirth must be borne by the parents does not exist in the U.S.S.R. and the other East European countries.

E. Labor Law, Women's Rights and Social Security

Leninist ideology has always emphasized heavily women's rights, and this ideology is extensively implemented in the constitutions and legislation of the East European states, though, as elsewhere, actual practice often falls short of legislative promise due to the strong effects of the traditional image of women's role. The laws on the status of women have an economic as well as a humanistic thrust, in that they are designed to facilitate full participation by women in employment, thus speeding the rate of national economic development. It seems clear that the package of women's rights as a whole has acted to reduce family size by making an employment career a realistic alternative to motherhood for most women.⁴⁶

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G. Sergeeva, "Vzaimosv'яз' zaniatosti zhenshchin i demograficheskikh protsessov" (The Interrelation of the Employment Rate of Women and Demographic Processes), in Demograficheskie aspekty zaniatosti (Demographic Aspects of Employment) (D.I. Valentei editor-in-chief, Moscow: Statistika, 1975), p. 24.

Each of the East European countries has a constitutional provision forbidding all types of discrimination against women. This provision is typically implemented by legislation in various areas—electoral law, labor law, family law, etc.

The guarantee of full civil rights to women, particularly the right to hold public offices, coupled with the actual selection of women for important symbolic and functional government positions, may have an important psychological effect in destroying the homemaker stereotype of a woman. This effect, however, is limited in many East European countries by the virtual exclusion of women from positions of real power—posts in the higher levels of the Communist Party hierarchy.

It is in labor legislation, however, that women's rights are most closely related to childbearing. All types of employment discrimination, including refusal to hire pregnant women, are typically prohibited.⁴⁷ (Actual studies, however, have shown that while women are able to enter almost all occupations, the percentage of women is small in high managerial positions in most of the East European countries.) Payment of equal wages to men and women for the same work is generally required.

A second important aspect of labor law (taken in the broad rather than the narrow technical sense as defined in some East European legal systems) is the existence of guaranteed pensions through a social insurance

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German Democratic Republic:

Gesetzbuch der Arbeit und eine Auswahl anderer Bestimmungen arbeitsrechtlichen Inhalts 146, 414 (Berlin, 1965);

Stefan Otte, Rudi Kranke and Gerhard Reeck, Kennst du das Gesetzbuch der Arbeit?, 309 (fourth rev. ed., Berlin 1965);

U.S.S.R.:

Principles of Labor Legislation of the U.S.S.R., and the Union Republics (Pravda and Izvestia, July 17, 1970, pp. 2-4, English translation in Current Digest of the Soviet Press, September 22, 1970, pp. 1-11), Articles 68-73.

A.A. Kliuev and A.V. Mavrin, Rukovoditel'iu predpriatiia o trudovom zakonodatel'stve (About Labor Legislation for the Manager of the Enterprise), 180 (Moscow, 1970);

Moscow State University, Trudovoe Pravo (labor law), (N.G. Aleksandrov, ed., Moscow, 1966), pp. 338-340.

F.N. Tolkunova, "K voprosu o ravenstve zhenshchin v trude i byti pri sotsializme" (On the Question of the Equality of Women in Labor and Housekeeping under Socialism), Sovetskoe gosudarstvo i pravo (Soviet State and Law), 1969, No. 10, pp. 127-236.

Yugoslavia:

A. Baltić and M. Despotović, Osnovi radnog pravo Jugoslavijesistem radnih odnosa Jugoslavije - i osnovni problemi sociologije rada (Fundamentals of Yugoslav Labor Law - the System of Yugoslav Labor Relations - and the Basic Problems of the Sociology of Labor), 244 (Second rev. and enl. ed., Belgrade, 1968).

scheme (typically funded entirely by employer payments) in cases of disability or retirement for old age. In recent years such schemes which originally applied only to the urban worker population have been extended to cover the population engaged in farming as well.

Pensions are typically a substantial percentage of salary, and are set on a graduated scale so that even a worker who has earned the minimum wage will receive enough pension to survive. On the other hand, pensions are not so generous as to completely discourage the attractiveness of having children and grandchildren to help out in one's old age.

F. Maternity Benefits

Maternity benefits are typically of three types: lump sum payments upon the birth of a child; paid leave from work during pregnancy and after childbirth; and the right to an unpaid leave of absence with retention of or actual increase in job seniority. In addition, there may be special rights for parents to take leaves for care of sick children.

There are a number of provisions in the laws of each East European country dealing with the rights of women to paid maternity leaves (typically eight weeks before and eight weeks after delivery), and to additional optional unpaid leaves of absence (typically six months to one year after the birth of the child). Some countries also provide for the transfer of the mother to less physically demanding work during and after pregnancy. A number of countries allow special privileges to parents of small children to work part-time or to take paid leave when their children are sick. The overall effect of this legislation would appear to be the encouragement of re-entry into the labor market after the birth of a child. One common labor regulation is the right of mothers to have time off from work to nurse their children. To the extent that breastfeeding inhibits pregnancy, legislation encouraging nursing may have a fairly direct effect upon the birth rate.

G. Family Allowances

Like housing law, the tax and welfare law often affects family size. To take a concrete, if statistically insignificant, example, to be a Mother-Heroine of the Soviet Union, one must have ten children. Since in this case the law only offers an incentive to those who see some prospect of reaching the magic number of 10, it affects only a very small percentage of the population. More typical are the family allowance and taxation schemes of the various East European countries, which typically differentiate sharply among women with no, one, two, three and four children.

Family allowances are playing an increasingly important role in East European population policy. If originally the purpose of some of the family allowance schemes was one of redistribution of wealth for

social justice, the more recent legislation has had clearly pronatalist overtones.

For decades, the Soviet Union has had a scheme which pays benefits to mothers without a husband starting with the first child and to married mothers starting with the fourth. However, the amounts have not been large, and have not affected the really important decision from a family point of view--the decision as to whether to have a second or third child.⁴⁸ A major change has come with legislation adopted in 1974 which provides for the payment of allowances of 12 rubles per month for each child below the age of eight in families in which the average total income per family member does not exceed 50 rubles a month.⁴⁹ This Soviet legislation followed earlier attempts by Romania and Bulgaria to raise their birth rates through family allowances.

The Bulgarian scheme involved sharply graduated payments designed to encourage the birth of second and particularly of third children. Starting on January 1, 1968, benefits were paid both as one-time bonuses and monthly for each child. The one-time payment on the birth of a child first, fourth or higher in birth order amounted to approximately one-sixth of an average monthly salary; for the second child one and one-half monthly salaries; for the third child, approximately four monthly salaries. Monthly payments were also graduated, with a family with a single child receiving payments were also graduated, with a family with a single child receiving payments of approximately 4% of a monthly salary; two-child families of approximately 16%; three-child families, approximately 44%; and four-child families approximately 48% of a monthly salary.

Romania also has a series of graduated payments, but unlike the Bulgarian payments, which are narrowly aimed at the birth of a third child, the Romanian payments are based upon the idea that the larger the family, the better. A childbirth payment of 1,000 lei (US \$181) is made under 1966 legislation to the mother upon the birth of the third and each succeeding child. The allowance for children is graduated, running from a minimum of 150 lei for the first child to a maximum of 230 lei for the ninth and succeeding children for families in low income groups; families with higher incomes and families in rural areas receive somewhat smaller allowances. To give a concrete example, an urban family with 4 children and an income of 2,000 lei a month would receive an allowance of 550 lei a month.

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Bernice Q. Madison, Social Welfare in the Soviet Union (Stanford, 1968), pp. 208-209.

49

Edict of the Presidium of the Supreme Soviet of the U.S.S.R. on the Introduction of Allowances for Children for Families of Limited Means. September 25, 1974, Vedomosti Verkhovnogo Soveta SSR, 1974, No. 40, item 663.

Poland raised its family allowances by 40 percent in December 1970. Allowances increase for each child up to the fourth. However, they have remained so low in relation to average income that Polish sociologists doubt that they have a significant effect on the birth rate.

H. Taxation and Compulsory Public Service

A number of countries, including the U.S.S.R., have at various times had special taxes upon persons with small families.⁵⁰ Such taxes generally have a different effect, both economically and psychologically, from that of the family allowance schemes. While family allowances are generally largest for the families with the lowest incomes, the tax differentials are generally the largest for the families with the highest incomes. While family allowances are popular with the recipients, special taxes are highly unpopular with those upon whom they are imposed.

Legislation on compulsory military service is another area where the law is now highly effective in delaying marriage, even though this is not its main purpose. All of the East European countries require compulsory military service, though many exempt students in higher educational institutions or allow them to serve shorter terms. Pay to draftees is generally very low and no provisions are made for housing for families of draftees near the army bases. Thus, even though a prospective wife worked, extraordinary practical and financial difficulties are put in the way of one who is about to be drafted or who is serving out his term of military service. The degree of delay varies from country to country, ranging from 1-1/2 years in Yugoslavia to 3 or 4 years in the Soviet Union.⁵¹ Again, since this delay is merely an incidental result of law designed to fulfill certain military policy needs, a change in that law due to a lessening of international tensions or a disarmament agreement could have a relatively quick effect in lowering the age of marriage.

I. Migration

With the exception of Yugoslavia, which has allowed large numbers of young men to emigrate temporarily to Western Europe to work, the countries of Eastern Europe have not had really significant recent international migration flows in either direction. Those countries which do allow emigration have granted exit visas mainly to persons past child-bearing age.

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Moscow University, Finansovoe pravo (Finance Law) (Moscow, 1967), pp. 218-220.

51

D.I. Ol'khov, "Novyi Zakon o vseobshchei voinskoj obiazannosti" (The New Law on Universal Military Obligation), Sovetskoe gosudarstvo i pravo (Soviet State and Law), 1968, No. 6, pp. 138-143.

Internal migration is heavily regulated in East European countries. Typically, residence permits are required for persons living in or seeking to move to major urban areas.⁵² Such permits usually can be obtained only upon a showing that the person has adequate housing. The actual result of this legislation is to greatly limit family migration from rural to urban areas. Except for the cases in which an employed adult in the family has a skill so valuable that an employer is willing to allot the family one of the limited apartments at its disposal, and those of moving in with relatives, there is no practical way for families with children to move to urban areas. Workers without children may move to the city either by being offered dormitory space by their urban employer (obviously much cheaper for the employer than family housing), or by moving to the city illegally (since the legislation typically does not require the employer to check for a valid residence permit) and renting a room or bed from a black-market landlady. However, while a single worker, or perhaps a married couple, may be able to evade the residence permit legislation, evasion by a whole family becomes difficult, particularly given the fact that school authorities will want documentation of children's residences.

J. Property and Inheritance

Private property ownership is limited in socialist countries. Some countries prohibit essentially all private business activities except a certain amount of private farming. Others allow private ownership of small shops and restaurants. All allow the ownership of houses, apartments, consumer goods, bank accounts, and state bonds. To the extent that private property is allowed, inheritance laws are typically rather liberal, in terms of allowing broad freedom of disposition of property by will, and in terms of relatively low tax rates on inheritance. What is more difficult to transmit from generation to generation is a privileged status position earned by service to the party or the state, though children of high status parents enjoy major advantages in securing admission to good educational institutions.⁵³

The question of the influence of the inheritability of family wealth and status on population is complex and insufficiently investigated.

52

E.g., Decree No. 112 of November 25, 1974, On the Temporary Limitation of Residence in Cities, Dŭrzhaven Vestnik, 1974, No. 94, p. 1. Amended, Dŭrzhaven Vestnik, 1975, No. 45; 1976, Nos. 1, 8, 15, 29, 32, 66.

53

E. Samoilova, "Vliianie obrazovaniia i professional'noi zaniatosti roditel'ei na sotsial'nye peremeshcheniia molodezhi." (The Impact of Educational Level and the Professional Occupation of Parents on Social Mobility of Youth), in Demograficheskie aspekty zaniatosti (D.I. Valentei, Editor-in-Chief, Moscow: Statistika, 1975).

V. CRIMINAL LAW REGULATION OF CONSENSUAL SEXUAL RELATIONS

A. Fornication

Casual heterosexual relations between consenting adults are generally not regulated by law in Eastern Europe. Suggestions for the regulation of such relations are not encountered in the published literature and there is no particular social stigma against such relations unless carried out on a promiscuous basis. Inevitably a percentage of the women involved will become pregnant, given the limited use of contraceptives and the problems of their quality in Eastern Europe. In such cases, they will, under the laws on abortion cited above, have a chance of obtaining an abortion as good as or better than that of married women. In addition, they will be able, should they decide not to have an abortion, to receive full childbirth and maternity benefits, or in some countries, such as the U.S.S.R., preferential maternity benefits.

B. Cohabitation

Cohabitation by consenting heterosexual unmarried adult couples is not prohibited by law in such countries as the U.S.S.R. Indeed, in the 1920's and 1930's, such couples were recognized as having a de facto marriage relationship, with the same rights and duties as couples with an officially registered marriage. Until the 1960's such arrangements were of indifference to the law; since then in the U.S.S.R., the man in such a situation was exposed to a paternity suit while the man in a casual relationship was not.

While there is no problem with the criminal law, the lack of a place in the housing allocation scheme for unmarried couples may make it quite difficult in fact for such an arrangement to be carried on.

C. Adultery

The law of East European countries varies with respect to adultery. In some, such as the U.S.S.R., adultery is not a criminal offense, while in others, such as Bulgaria, it is, but is prosecutable only on the complaint of the other spouse. During the period when divorce was relatively difficult to obtain in the U.S.S.R., millions of couples began living together in adulterous relationships because of the difficulty of normalizing their relationships. The numbers involved were so large that any enforcement of criminal restrictions on the subject would have been impossible.

It is unclear exactly what effect the existence of adultery as a criminal offense has upon population. Perhaps it creates pressure for divorce and remarriage, and thereby encourages formation of new families with children.

D. Prostitution

Prostitution is not regarded as acceptable in the Soviet Union or other East European countries, yet the criminal codes of most of these countries lack articles specifically prohibiting and punishing those who engage in prostitution, or their clients, though related practices such as pimping are often punished. In practice there is some prostitution, and the prostitutes are at times tolerated and at times subjected to prosecution or police pressure.

Possible avenues for prosecution include, for instance in the U.S.S.R., criminal liability for "parasitism," a crime committed by not having a socially approved job for support, or de facto deportation by revocation of a residence permit. Prostitutes with foreign clients may fall afoul of laws involving foreign exchange.

In no East European country is prostitution practiced on a scale large enough to have any possible effect on population statistics.

E. Homosexuality

Homosexual behavior by men, even between consenting adults, is typically subject to criminal punishment in East European countries. Some countries, such as the U.S.S.R., punish even acts in private, while others, such as Bulgaria, punish only open and notorious homosexual behavior.

Clearly, the severity of the criminal law and social sanctions are enough to deter a great deal of homosexual behavior or to drive it underground. The overall result may be a slight increase in the population growth rate if the homosexual life style is removed as a realistic alternative.

VI. POPULATION LAW, CONSTITUTIONAL RIGHTS AND HUMAN RIGHTS

The East European countries are committed to meeting the educational, economic and legal conditions that would enable couples to determine freely and responsibly the number and spacing of their children. This may be seen by considering in turn the 14 conditions for the existence of an effective family planning right suggested in a recent paper.⁵⁴

54

Luke T. Lee, "Law, Human Rights and Population: A Strategy for Action," in Human Rights and Population: From the Perspectives of Law, Policy and Organization 81 (Medford, Mass.: Law and Population Programme of the Fletcher School of Law and Diplomacy, 1973).

The right to adequate education and information on family planning is being implemented both in the public school curriculum and through the public health systems. While full coverage of the population by such education will take some time, the countries of the area appear to be committed to the continued expansion of family planning education, particularly with a view to educating couples in the use of modern contraceptive methods as an alternative to abortion.

The East European countries are committed to providing access to means of family planning. Typically, this access includes free medical services in the prescription of the pill and insertion of the IUD, and the widespread sale of non-prescription contraceptives at subsidized low prices. The actual availability and quality of contraceptives vary, depending upon the level of economic development of the individual countries, but are improving as part of the steady overall rise in the quality and quantity of consumer goods. Abortion remains available as a fall-back means of family planning with various degrees of restriction.

The right to equality of men and women is guaranteed by the constitutions of all the East European countries, and is extensively implemented by legislation against employment discrimination and by special provisions for pregnant women and working mothers. However, much remains to be done in terms of overcoming social tradition which places a heavily disproportionate share of the work of homemaking and childrearing upon women, and thus limits their opportunity to effectively exercise their legal rights.

The right of children to equal status, whether born in or out of wedlock, and to support from their parents has been only partially achieved because of the limited scope of the paternity laws of some of the East European countries. On the other hand, the imperfect possibility of support by parents is to some extent remedied by the improved possibility of support by the state.

It is with respect to the social and economic rights, such as the right to a job, to social security, health care, and old-age pensions that the socialist countries have gone furthest in their legal systems and which are their proudest boast. The greatest remaining problem is in the area of housing, and the existing shortcomings in the housing situation are undoubtedly major factors in the decline of birth rates.

In order to avoid urban overpopulation, movement from countryside to city is typically limited in East European countries. In addition, emigration is difficult from all East European countries except Yugoslavia.

Because of the anti-religious nature of Marxism, the influence of religious doctrine on law pertaining to population is limited or non-existent in East European countries.

Overall, then, with the exception of the area of internal and international migration, the East European countries are in principle committed to a broad spectrum of human rights in the area of population policy and they have implemented many of these rights in a very satisfactory manner in practice.

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- 12/ *Law and Population Growth in France*, by Jacques Doublet and Hubert de Villedary (1973).
- 13/ *Medical Considerations for Legalizing Voluntary Sterilization*, by F. I. D. Konotey-Ahulu, M.D. (1973).
- 14/ *Brief Survey of Abortion Laws of Five Largest Countries*, by Luke T. Lee (1973).
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- 16/ *International Status of Abortion Legalization*, by Luke T. Lee (1973).
- 17/ *The World's Laws on Contraceptives*, by Jan Stepan and Edmund H. Kellogg (1973).
- 18/ *Population and the Role of Law in the Americas*, Proceedings of a Seminar of the Human Rights Committee at the 18th Conference of the Inter-American Bar Association (1974).
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- 24/ *The Impact of Law on Family Planning in Australia*, by H. A. Finlay (1975).
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- 26/ *Pregnancy and Abortion in Adolescence: Legal Aspects*, by Luke T. Lee and John M. Paxman (1975).
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- 28/ *Legal Implications of the World Population Plan of Action*, by Luke T. Lee (1975).
- 29/ *Law and Population in Lebanon*, by George M. Dib (1975).
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- 32/ *Law and the Status of Colombian Women*, by Josefina Amezquita de Almeyda (1975) (Also in Spanish)
- 33/ *Law and Population Growth in Ghana*, by Richard B. Turkson (1975).
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- 37/ *North African Migrants Under West European Law*, by Peter B. Maggs and Luke T. Lee (1976).
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- 45/ *Law and Population in Malaysia*, by Ahmad Ibrahim (1977).

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