1968

The Disputes and Arbitration Commissions: Social Organs for the Administration of Justice in the German Democratic Republic

Edith G. Brown

Follow this and additional works at: http://scholarlycommons.law.case.edu/jil

Part of the International Law Commons

Recommended Citation
Available at: http://scholarlycommons.law.case.edu/jil/vol1/iss1/2

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Journal of International Law by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.
The Disputes and Arbitration Commissions: Social Organs for the Administration of Justice in the German Democratic Republic

Edith G. Brown

In communist countries, "social organs" (informal organs operating outside the official court structure and staffed by laymen) are assuming an increasing role in handling disputes, minor violations of law, and anti-social conduct. The Soviet Union has established Comrades' Courts and the People's Patrol; the People's Republic of China uses Mediation Committees, Adjustment Committees, Resident Committees, Security Defense Committees, and possibly Comrades' Courts; Hungary and Poland have instituted Arbitration Commissions. In the past 13 years the German Democratic Republic has been developing two such organs: the Konfliktkommission, or Disputes Commission, and the Schiedskommission, or Arbitration Commission. This article is a description and analysis of the Disputes Commissions and the Arbitration Commissions as "social organs for the administration of justice." It focuses on developments from 1963-1967.

I. Introduction

The Disputes Commissions were established in April 1953 to settle labor disputes.¹ In 1961 a new directive expanded the jurisdiction of the commissions to include minor violations of criminal law by the workers.² Today the Disputes Commissions handle of-

¹ Konfliktkommissionsverordnung vom 30. April 1953 (GBL S. 695).
² Richtlinie für die Wahl und die Arbeitsweise der Konfliktkommissionen vom 26. Mai 1961 (GBL II S. 203), Part II, Article I, DIE KONFLIKTKOMMISSIONEN at 22-23 (1962). Section 144 of the Labor Code of the German Democratic Republic (GBL I S. 27) provides: "The disputes commissions investigate and decide in cases of . . . (e) minor violations by workers of provisions under criminal law not tried in a court of law."
fenses against socialist ethics, minor disputes under civil law and other simple disputes, labor disputes, and minor violations of criminal law.  

The Arbitration Commissions have originated within the last few years. In April 1963, experiments with Arbitration Commissions were begun in urban residential areas, in villages, in production cooperatives, and in private factories. In August 1964, the State Council issued a directive formally establishing the Arbitration Commissions, which called for completing the formation of the commissions by the end of 1966. Like the Disputes Commissions, the Arbitration Commissions handle minor disputes under the civil law, other simple disputes, and minor violations of the criminal law. In addition, they are concerned with cases of citizens who do not engage in "socially useful work" or who violate their duty to have their children regularly attend school.

While the derivation of the Disputes and Arbitration Commissions is not entirely clear, they appear to have been derived in large measure from Soviet experience and learning. Dr. Kurt Görner, a chief instructor in the Ministry of Justice, writes that the establishment of the Disputes Commissions in 1952 and 1953 was suggested and supported by the experiences of Soviet workers and Soviet teachings, particularly the text of Soviet Labor Law. In expanding the scope of the commissions to include minor violations of criminal law, the German Democratic Republic again seems to have followed Soviet initiative. When Krushchev proclaimed, at the Twenty-first Party Congress of the Communist Party of the Soviet Union in 1959, that social organs should assume responsibility for upholding law, order, and security, commentators in Neue Justiz, the leading legal periodical in the German Democratic Republic, suggested that Krushchev's position provided the

---


appropriate perspective for the Disputes Commissions. In the same year, at the Fourth Meeting of the Central Committee of the Socialist Unity Party (SED), Walter Ulbricht proposed further development of the Disputes Commissions, and soon thereafter these commissions were given jurisdiction over minor criminal offenses.

The Arbitration Commissions draw upon the experience of three organs: the Disputes Commissions, the Comrades’ Courts of the Soviet Union, and the Justices of Arbitration (Schiedsmänner) of the German Democratic Republic. In a speech before the State Council, on the same day that the Council issued the directive establishing the commissions, Walter Ulbricht declared that the experience of the Disputes Commissions served as a strong example for the formation of Arbitration Commissions. At the same meeting, a representative of the Minister of Justice indicated that the directive assimilated the experiences of the Comrades’ Courts in the U.S.S.R., about which a committee from the Ministry of Justice had been studying. In addition, several chief instructors and a scientific assistant from the Ministry of Justice noted that the directive built upon experiences of the Justices of Arbitration in the residential areas. Working without remuneration, these Justices try to reconcile parties in slander cases and attempt, upon request by the parties, to settle civil disputes. The Arbitration Commissions are intended to assume these functions and to replace the Justices of Arbitration.

7 M. Benjamin, Die Rolle der Konfliktkommission bei der Bekämpfung geringfügiger Verletzungen der Strafgesetze, NEUE JUSTIZ, NO. 10, May 20, 1961, at 337. Dr. Benjamin is Lecturer at the Penal Law Department of the Deutsche Akademie für Staats und Wissenschaft Walter Ulbricht. All identifications of authors refer to their position as of the time they wrote the article in question.


9 DIE KONFLIKTKOMMISSIONEN, supra note 2, at 22-23.

10 Ulbricht, supra note 4, at 8.


According to the published figures, Disputes and Arbitration Commissions are becoming increasingly widespread. However, statistics indicate that the commissions' actual deliberations on cases are rather infrequent. In 1963 the Disputes Commissions deliberated on 65,765 cases, an average of three and one-half cases annually per commission. This represents a marked increase from the average of one and one-half cases annually during 1952-1954. Figures released by an official in the Ministry of Justice indicate that the Arbitration Commissions handled 13,334 cases in the first half of 1966, or slightly over four cases per commission. From January to September in 1967, the Arbitration Commissions handled about 29,400 cases, which averages to slightly over five cases per commission. While the number of commissions has expanded rapidly, the average number of cases per commission has stayed almost constant.

Despite the sparse number of cases which the Disputes and Arbitration Commissions now handle, reports from the German Democratic Republic portray the commissions as significant and effective organs. With the institution of the Disputes Commissions, the number of labor disputes handled by Labor Courts de-

---

10, May 2, 1963, at 292. Dr. Hilde Benjamin was Minister of Justice until July 1967. Dr. Harry Creuzburg is Assistant Chief Editor of the law journal Neue Justiz. Wolfgang Schmidt is a member of the editorial board of Neue Justiz.

14 Between April 20, 1953, and March 31, 1954, there were 5,682 Disputes Commissions established with a total of 45,456 members. By the second quarter of 1962, the number of commissions had tripled. Kranke, *The Disputes Commissions — Manifestation of Advancing Democracy in the Legislative Field in the German Democratic Republic*, 2 LAW & LEGIS. IN GERMAN DEMOCRATIC REPUBLIC at 13 (1962). Kranke, *Facts and Figures about the GDR*, 1 LAW & LEGIS. IN GERMAN DEMOCRATIC REPUBLIC at 83 (1965). By June 1966, there were 189,767 members sitting on 21,318 commissions. Müller, *Eine neue Qualität an der Arbeit der Konfliktkommissionen*, NEUE JUSTIZ, No. 12, June 2, 1966, at 381.


15 Kirchner, *Die Entwicklung der Konfliktkommissionen nach dem Rechtspflegeerlass*, NEUE JUSTIZ, No. 12, June 2, 1964, at 353. The average is obtained by dividing the number of commissions (18,700) into the number of cases (65,765). The author of the article is a member of the presidium of the central board (Bundesvorstand) of the Free German Trade Union Federation.

16 Kirchner, *supra* note 15; Kranke, *supra* note 14, at 13. The average is obtained by dividing the number of commissions (5,682) into the number of cases deliberated (8,334).


18 Reinwarth, *supra* note 14, at 41.
creased markedly (66.5 percent decrease from 1956 to 1961). As of 1965, the commissions reportedly handled about 90 percent of all labor disputes arising on the factory floor. Only a small percentage of the commissions' decisions are protested to the courts and amended. As of 1962 and 1963, the Disputes Commissions handled about one-third of all cases where criminal acts were committed. For every 100 persons who have appeared before a Disputes Commission since 1961, allegedly only three have committed new crimes. Walter Ulbricht applauds the commissions for doing very successful pioneering work and for conclusively showing that "it is useful, correct and effective to have the working people educate citizens who have committed minor violations of the law."

Although the Arbitration Commissions have only recently been established, early reports indicate they are enjoying similar success. The president of one commission claims that in the short period the commission has been in existence it has handled three times as many disputes as the Justice of Arbitration formerly handled in the same amount of time. The same president reports that there have been no protests lodged with the district courts against any decisions, nor have parties found it necessary to ask the district court to execute a decision. He asserts that the commission has earned the trust of the people and that its decisions have been respected and carried out.

II. DESCRIPTION OF THE COMMISSIONS

Since 1953 two directives have changed the framework of the Disputes Commissions: one in 1961 and one in 1963. The 1963 directive governs the commissions today and forms the basis, both in substance and in style, for the 1964 directive which established the Arbitration Commissions. The following observations are de-

---

19 Kranke, supra note 14, at 13. In 1953 it was declared that labor disputes must go to a Disputes Commission before they can come before the Labor Court.

20 Schmidt, The Hearing of Minor Civil Disputes, 1 LAW & LEGIS. IN GERMAN DEMOCRATIC REPUBLIC at 26 (1965).

21 Id.


23 Creuzburg, supra note 22, at 23.

24 Ulbricht, supra note 4, at 8. Quotation in text translated by author.

rived from a comparison of the two directives governing the com-
misions and from supplementary legal literature.26

The Disputes Commissions and the Arbitration Commissions
cover different sectors of the society. The Disputes Commissions
are established in nationally-owned enterprises, jointly-owned en-
terprises, socialist institutions of public health, cultural organiza-
tions, educational institutions, and public and governmental offices.
The Arbitration Commissions are established in towns and villages,
farming cooperatives, production cooperatives of artisans, market
gardeners, fishermen, and private manufacturing firms. Together
the two sets of commissions appear to cover all sectors of society.

The directives for both the Disputes and Arbitration Commis-
sions outline principles for determining the number of organs to
be formed. For both the minimum requirement is at least one
Disputes Commission in an enterprise employing over 50 persons
and at least one Arbitration Commission for every urban residen-
tial area. The directives provide for amalgamation, when appro-
priate, of several closely related trade union shop committees into
one Disputes Commission and of several villages into one Arbitra-
tion Commission.

The Disputes Commissions have from eight to 12 members,
elected for a 2-year period. At least four of the members must
attend a meeting of the commission. The Arbitration Commis-
sions in the residential areas or in the villages have six to 15 mem-
bers while those in the production cooperatives and in the private
factories have four to eight members. As in the Disputes Com-
misions, the members are elected for 2 years.

The directives provide that candidates for membership on the
commissions must be experienced men and women who, by the
example they set in their work and in their private lives, enjoy the
confidence of the people. However, young persons with outstand-
ing records may also become members. Statistics indicate that in
practice about half of the members of the Arbitration Commissions
are members of the "democratic parties."27 From one-third to one-

---

26 Unless specifically footnoted to the contrary, the characteristics of the two com-
misions are found in their governing directives. See notes 3 and 5 supra. The
Minister of Justice was instructed to review by the end of 1967 the directive of the Ar-
bitation Commissions in light of the experience with the commissions. Beschluss des
cember 20, 1967, the Plenum of the High Court issued a detailed decision elaborating
on the proper relationship of the courts to the Arbitration Commissions. Beschluss des
Plenums des Obersten Gerichts zum Zusammenwirken der Gerichte mit dem Schieds-

27 Görner, supra note 17, at 357.
EAST GERMAN JUDICIARY

half of the members are women, but the percentage of women holding leadership positions on the commissions is less. According to preliminary reports, ages of members range from a minimum of 18 years to a maximum of 65 years. One commission reports an average age of 41 years. Membership selection for the commissions is primarily by an election held at a meeting of all the workers in the constituency. In urban residential areas and in villages, the local People's Council selects the members for the Arbitration Commissions. The directive for the Disputes Commissions stipulates that elections must be by secret ballot. The directives for both the Disputes and Arbitration Commissions provide for presenting candidates to the local workers and residents for any objections they may have against individual candidates. Once elected, members must report periodically on their activities to their constituency and may be recalled if they do not act in accordance with the trust placed in them.

To some extent the Disputes and Arbitration Commissions have competence over the same subject matter. Both handle minor criminal offenses transferred to them by investigating authorities, by the procurator's office, or by the courts. Other subject matter includes libel cases brought by the injured party, minor disputes under the civil law up to 500 MDN ($125), simple disputes between citizens, and disputes over the fulfillment of legally established maintenance duties. When both the Disputes and Arbitration Commissions are competent to a matter, the selection of the proper organ depends on whether the causes and the circumstances surrounding the matter can best be determined in the factory or in the residential area. Nationwide statistics indicate

28 Id.; Görner, Erste Erfahrungen aus der Tätigkeit der Schiedskommissionen, NEUE JUSTIZ, No. 22, Nov. 2, 1963, at 713.
29 Winkler, Jaenchen & Görner, supra note 14, at 443.
30 M. Benjamin, supra note 7, at 713. Heldner, Arbeit der Schiedskommission — gesellschaftliche Rechtspflege im Wohngebiet, DER SCHÖFFE, No. 9, 1964, at 305. Mr. Heldner is deputy president of an Arbitration Commission in Berlin-Friedrichshain.
31 Heldner, supra note 30, at 305.
32 The requirement that minor criminal offenses must be transferred from higher organs may come from the Soviet Union, where the Comrades' Court try minor violations of law only on the recommendation of law-enforcement or judicial officials. See H. BERMAN, JUSTICE IN THE U.S.S.R. (rev. ed. 1963).
33 Simple disputes before the Arbitration Commissions refer particularly to disputes which come from living together in the same flat or block of flats. The disputes are usually concerned with duties such as cleaning the staircase, use of the yard or garden, pets that run away, etc. Krutzsch, supra note 12, at 41-42.
34 Krutzsch, Aufgaben und Stellung der Schiedskommissionen in den städtischen...
that while minor criminal offenses account for a significant number of cases before both commissions, civil and other disputes are significant only for the Arbitration Commissions.\textsuperscript{34}

In addition to the classes of cases in which the Disputes and Arbitration Commissions share jurisdiction, each commission has exclusive jurisdiction in two major categories. The exclusive categories for the Disputes Commissions are labor disputes and "offenses against the commandments of socialist ethics, in particular socialist work morale." For the Arbitration Commissions the two exclusive categories are violations by citizens who from "laziness" do not engage in socially useful work and violations by parents who do not fulfill their educational obligation by having their children regularly attend school.\textsuperscript{35} Nationwide statistics indicate that labor disputes and offenses against the socialist work morale accounted for over half the deliberations before the Disputes Commissions in 1963.\textsuperscript{36} As of late 1967, violations of obligations to work and to send children to school accounted for only a minute percentage of deliberations before the Arbitration Commissions.\textsuperscript{37} Reportedly, these activities are being studied throughout East Germany.\textsuperscript{38}

Even though the commissions are competent to handle the subject matter in a given case, they must have jurisdiction over the parties. As in the United States, the domicile of the defendant governs. The Disputes Commission requires that the worker or the organ involved come from the factory in which it operates; the Arbitration Commission requires that the defendant live or work

\textsuperscript{34} Winkler, Jaenchen & Görner, supra note 14, at 444; Kirchner, supra note 15, at 353. In the first quarter of 1965, civil law and other disputes accounted for one-third of all deliberations before the Arbitration Commissions. The cases were distributed as follows: 110 minor criminal offenses, 301 cases of libel, 14 cases of lazy behavior, 3 cases of violations of the duty to send children to school, 293 civil law and other disputes. In 1965 the 65,765 deliberations before the Disputes Commissions were distributed as follows: 17,348 violations of the socialist work morale, 26,460 labor disputes, 17,398 minor criminal offenses, and 4,559 civil law disputes.

\textsuperscript{35} The German Democratic Republic has compulsory education to the age of 18. The provision making it an offense for one not to engage in socially useful work seems analogous in its concerns to the Soviet Anti-Parasite Laws. See H. BERMAN, supra note 32.

\textsuperscript{36} Kirchner, supra note 15, at 353.

\textsuperscript{37} Reinwarth, supra note 14, at 41. Such cases accounted for less than 3 percent of all cases coming before the commissions from January to September 1967.

\textsuperscript{38} Probst & Winkler, Die Schiedskommissionen brauchen gute Anleitung, DER SCHÖFFE, No. 9, 1966, at 311-12.
in the particular district. There is one exception: the Arbitration Commission can accept a matter if the origin of the conflict is in its district and the complainant lives there. In minor criminal offenses before the commissions, the residence or place of employment of the offender governs absolutely; the place of the act can never confer jurisdiction.

The commissions operate primarily upon the request of workers, factory directors or directors of production cooperatives, procurators, and labor groups. If the offense is against the Code of Socialist Ethics and if it occurs outside the factory but concerns the activities of the factory or has injured the reputation of the factory, then mass organizations, official authorities, and persons not employed in the factory can apply to the local Disputes Commission for redress. If the matter concerns "lazy" behavior, the local People’s Council and its organs or committees of the National Front can bring the complaint. In criminal matters both the Disputes and Arbitration Commissions can deliberate only after receiving a transfer order from the courts, procuracy, or investigatory authorities.

The commissions conduct hearings to settle disputes and to educate the parties in socialist ethics and socialist law. All parties must be present at the hearing. While the directives for both commissions provide that the parties must represent themselves at the hearing, a court decision in 1965 has interpreted this to allow class representation in the Disputes Commissions. The hearings are public and are held after working hours. At least 2 days before the hearing the president of the commission gives public notice of the subject matter, the time, and the place of the hearing. All persons attending the hearing have the right to voice their views on the facts of the case, the character of the parties, the conditions favoring the violations of law, and the measures for overcoming these conditions. In contrast to the practice in American courts, there is no uniformity of procedure in conducting these hearings. The manner of conducting the hearing is determined by such factors as subject matter, the kind and gravity of the offense, circumstances attending the offense, and conditions which work

---

38 If a factory director wrongfully institutes measures against a worker, the members of the Disputes Commission may suggest to him that he reconsider his decision. They have no authority to revoke his decision. Schmidt, supra note 20, at 8.

in favor of its commission. At the conclusion of the hearing, the commission adopts a resolution, which contains measures for settling the dispute and for eliminating its causes. In the resolution the commission can make recommendations to local management, mass organizations, and official authorities.

Resolutions adopted by the Disputes and Arbitration Commissions have legal validity and may be enforced or protested in the district courts. In most cases, either the parties or the procurator have the authority to protest. Parties must lodge their protests with the district court within 2 weeks after the decision is distributed. The protest may be oral or written, and no particular form is required. Reportedly, protests in the courts are rare. In cases of minor criminal offenses, the protests lodged against the resolutions do not even reach 1 percent.

All of the procedures for the two commissions are substantively identical. What emerges is a network of closely related social organs spreading into all sectors of society and assuming responsibility for the administration of justice and the education of the citizenry.

III. THE COMMISSIONS AS SOCIAL ORGANS

The Disputes and Arbitration Commissions are based upon two ideological tenets: (1) state functions should gradually be trans-

---

41 Schmidt, supra note 20, at 27.
43 There are exceptions to this general rule. The Arbitration Commission directive provides that in cases involving violations of the obligation to work or to send your children to school, a party may appeal, but the directive makes no reference to a protest by the procurator. Neither the Disputes or Arbitration Commissions permit an appeal from the settlement of civil disputes involving less than 400 MDN ($100). A party can only appeal to the district court to execute the settlement. Directive for Disputes Commissions, supra note 3, at art. 71; Directive for Arbitration Commissions, supra note 5, at art. 42.

However, the Arbitration Commission directive has a separate article providing for protest by the prosecutor for any dispute, which presumably includes the monetary ones under 500 MDN ($125). Id. at art. 43. For any disputes which the commissions fail to resolve, the complaining party may bring the matter to the district court. Directive for Disputes Commissions, supra note 3, at art. 70; Directive for Arbitration Commissions, supra note 5, at art. 41. The final exception to the general practice of permitting appeals or protests by both the parties and the procurator is an offense against the Code of Socialist Ethics. In this case only the party may appeal. Any appeal goes to the factory or shop committee rather than the district court. If the committee revokes the Disputes Commission’s decision, the matter goes back to the Disputes Commission for final reconsideration and disposition. Directive for Disputes Commissions, supra note 3, at art. 35.

45 Id. at 78.
ferred to social organs; and (2) socialist law should help mould socialist people. In trying to give effect to these two principles, the commissions have assumed forms and adopted practices which distinguish them from the traditional German judicial organs.

As social organs of collective education, the Disputes and Arbitration Commissions are intended to educate the worker so that he voluntarily follows the norms of socialist law.\(^46\) The educational function of the commissions is most clearly seen in cases involving violations of law or ethics. The aim of the commissions in these cases is to discover and to eliminate the causes of the violations and the conditions favoring such violations. In this connection, the members of the commissions consider the personality of the offender and try to uncover the pattern of his behavior. The absence of any prescribed rules for conducting the hearings favors open-ended inquiry into an individual's personality and pattern of behavior. There are no rules of evidence and no restrictions concerning who may testify.

To assist in discovering the causes of the violation and the conditions favoring it, the commissions may invite any persons, however tenuously connected with the offense, to participate in the hearings. One case before a Disputes Commission involved a union which had a tradition of celebrating every birthday or similar occasion by a large drinking fest. After one such celebration, an inebriated member of the union drove his motorcycle and had an accident. To reach the cause of the accident and the conditions contributing to it, the Disputes Commission called in all motorists and passengers in the union to participate in the hearing. All recognized their wrongful behavior.\(^47\) The commissions also urge members of the public who attend the hearings to participate in them. Anyone present is to contribute anything which may be of assistance in handling the case.

Closely connected with the intent to eradicate the cause of the particular offense is the desire to discover and handle all abuses associated either with the offense in question or with the offender. For example, in one case before an Arbitration Commission, the citizen was trying to recover 30 MDN ($8) allegedly owed by K. In preparing for the hearing the commission discovered that K owed about 100 MDN ($25) to other citizens. The commis-

\(^{46}\) See Ulbricht, Neues Deutschland, Oct. 14, 1962, at 7, col. 3.

\(^{47}\) Hoppe, Wie Unterstützen wir die Konfliktkommissionen, Neue Justiz, No. 20, Oct. 2, 1962, at 650.
sion invited the "creditor" citizens to the hearing, and K was ordered to pay all his debts as well as the original one of 30 MDN. In another case before an Arbitration Commission, X took beer from a store without paying for it. The Arbitration Commission found that he did not care for his children, that he borrowed money from elderly citizens in the neighborhood and did not pay it back, and that he had been idle for some time. The commission handled not only the grievance between X and the businessman, but the other problems in X's life.

The authorities transferring cases to the Disputes and Arbitration Commissions recognize the educational function of the commissions. In determining whether to transfer a given offense, they consider the character of the offender and his capacity for education by the commission. If a cashier-bookkeeper embezzles funds and upon discovery lies about it, he is not the kind of person who will benefit from the corrective measures available to the commissions. On the other hand, if a citizen fails to pay a small debt because he drinks excessively, and if his family relationships have deteriorated as a result, the case properly goes to a commission. The rationale for giving the latter case to a commission is that after the members have probed into the personality of the offender during the hearing they will be able to prescribe a successful educative measure for him.

The remedies or educative measures available to the commissions are unlimited, with one exception: the commissions have no authority to adopt coercive measures, which presumably means they have no authority to impose penalties. The measures enumerated in the directives for the Disputes and Arbitration Commissions vary according to the type of case before them. For minor criminal offenses, the commission may reprimand the offender

---


51 Id. at 272.

52 Krutzsch, supra note 12, at 43. While the commissions have no authority to impose coercive measures, there is some evidence they accomplish a similar result by recommendations to factory directors to take disciplinary action, which according to one writer frequently results in punishment in excess of the crime. Creuzberg & Hansel, supra note 22, at 725.
orally or may order him to repair the damage caused, to compensate for the harm (either by his own labor or in money), or to apologize to the injured person, either in private or in public before his fellow workers or a collective. The first three remedies are available under American civil law. In adopting them for criminal offenses the commissions focus on the deterrent (or educational) effects of the remedies. In libel cases the commissions may order the offending party to publicly withdraw the libelous statements. Where violations of the duty to work or to have one's children attend school regularly are involved, the directive prescribes only two measures: confirming the duty of the citizen and reprimanding him. Neither the Arbitration nor the Disputes Commissions can impose punitive measures upon parties to small disputes under civil law. The purpose of the hearing in such cases is to bring the parties into agreement.

Besides the remedies specified in the directives, the commissions may adopt any non-coercive measures directed toward educating the parties. For example, a motorist who violated traffic rules had to help organize and later attend a driving course. Another case concerned a young man who, under the influence of alcohol, put an iron wastepaper basket in the middle of the road. A motorcyclist, approaching in the dark, failed to see the obstacle and narrowly avoided a serious accident. The People's Police transferred the case to the Arbitration Commission. In trying to trace the underlying causes, the commission discovered that the offender had left school prematurely and had much idle time. The Commission reprimanded him and "recommended" that he attend night school to improve his educational level. In a case handled by a Disputes Commission, a worker had taken materials from the factory to build a washing machine. As a result of the hearing, the worker promised not only to compensate for the value of the materials but also promised to finish building the washing machine and give it to the local kindergarten.

Finally, the Disputes and Arbitration Commissions can recommend educative measures to the factory directors, bodies of co-workers, individual citizens, and various collectives. This author-

---


64 Krutzsch, _supra_ note 12, at 40-41.

65 Creuzburg & Hänsel, _supra_ note 22, at 722.

66 In a case involving a young girl, the Arbitration Commission found that the
ity in the commissions enhances their ability to educate the offenders and concomitantly to eliminate conditions favoring violations of law.

It is difficult to assess the success of the commissions in their educational function. One article reports that the Disputes Commissions have become a decisive force in the education of people in socialist factories. Another article asserts that the Arbitration Commissions have brought people into an active, open, and educational relationship with each other. Whatever their success, the commissions seem dedicated to pursuing their educational role. Certainly in this role the commissions could offer powerful vehicles for insuring conformity to social norms of the state.

At the Sixth Party Congress of the Socialist Unity Party in December 1962, the most important point in the Party program was the gradual transfer of state functions to social organs. Law reflects the will of the ruling class. Through such transfer the working people become able to implement the law as created and fashioned by them. The Disputes and Arbitration Commissions are embryos of communist administration by the people, because they allow the people to assume functions which the courts and the procuracies have previously exercised.

To a large extent the commissions do represent social organs or organs of the masses performing state functions. Neither commission belongs to the official court structure, and both are referred to as "commissions" rather than as courts. One writer from the German Democratic Republic expressly notes that the Disputes Commissions are not "petty factory courts." The members of the

mother's diffident behavior contributed to the girl's immoral conduct. The mother had five other children. In this case the commission recommended to the people's education division of the district council that they take the measures necessary to prevent the mother's behavior from endangering the other five children. Dietrich, supra note 25, at 27-28.

57 Creuzburg & Schmidt, supra note 13, at 289.
58 Heldner, supra note 30, at 310.
59 Programm der Sozialistischen Einheitspartei Deutschlands, 4 Protokoll des VI Parteitages der Sozialistischen Einheitspartei Deutschlands at 368 (1963). At the Twenty-first Party Congress of the Communist Party of the Soviet Union, Premier Khrushchev contended that one of the most important questions was how to develop the socialist state into communist administration by the people. In particular, social organs should be responsible for upholding law, order, and security. N.S. Chruschtschow, Referat auf dem XXXI Parteitag der KPdsU at 127 (1959).
60 Kranke, supra note 14, at 12.
61 M. Benjamin, supra note 7, at 337.
62 M. Benjamin, supra note 53, at 6.
commissions are laymen and fellow workers. The commissions do not meet in court rooms: they meet in rooms made available to them by the factory director, by the president of the local People's Council, or by the manager of the production cooperative. All persons are invited to the hearings of the commissions, and all present are urged to participate. Argument and persuasion are the primary tools of the commissions. As noted previously, there are no formal rules, such as rules of evidence, for conducting the hearings. The hearings are allegedly like debates which occur whenever social conflicts arise; they cannot be compared to court trials. Increasingly, citizens are consulting with members of the commissions without bringing any request to the commission for a hearing. According to one report, workers consult the Disputes Commissions almost every day, and the president of one Arbitration Commission reports that he regularly holds a consultation hour in which citizens come and ask for help in their own affairs. In all of the above ways the commissions resemble "social organs."

Similarly, the commissions assume functions formerly allocated to state organs. They handle minor criminal offenses upon transfer from the court, the procuracy, or the investigatory authority. These criminal offenses must be minor, which excludes crimes against the state, manslaughter, and sexual offenses. The most common offenses coming before the Disputes Commissions are petty theft, light bodily injury, insults, minor cases of fraud, and breaches of labor safety provisions. Violations of road safety laws and economic crimes are less frequent. The offenses brought to

63 Schmidt, supra note 20, at 27.
64 The consultation tendency seems analogous to the situation with the Comrades' Courts in the Soviet Union. In a Comrades' Court in a zone of Moscow, 1500 questions were registered one year as opposed to 245 hearings. Buchholz, Weiterentwicklung der gesellschaftlichen Rechtspflege in der Sowjetunion, NEUE JUSTIZ, No. 9, May 1, 1964, at 282; Schulz, über die vorbeugende Tätigkeit der Konfliktkommissionen, NEUE JUSTIZ, No. 23, Dec. 1, 1964, at 717-718. There is some criticism of the practice in the German Democratic Republic. One commentator argues that "prevent" does not mean to try first to settle the dispute outside the Disputes Commission to prevent it from coming to the commission; rather it means that the Disputes Commission should delve in even greater depth into the matters coming before it to enable it to prevent the same conditions from giving rise to similar behavior again. He concludes that attempts to solve the matter before it reaches the Disputes Commission are all too common. Rosenfeld, Vorbeugende Tätigkeit der Konfliktkommissionen, NEUE JUSTIZ, No. 22, Nov. 2, 1963, at 725-726.
65 Schultz, supra note 64, at 718.
66 Krausz, Report, Der Staatsrates der DDR, SCHIEDSKOMMISSIONEN - ORGANE DER ERZIEHUNG UND SELBSTERZIEHUNG DER BÜRGER at 31 (1964).
67 M. Benjamin, supra note 53, at 31.
68 Id. at 5-6.
the Arbitration Commissions include petty theft, embezzlement, forgery of documents, negligent arson, light bodily injury, traffic offenses, and other offenses against property. The commissions also hear civil disputes up to 500 MDN ($125). Primarily, these disputes involve repayment of loans, return of borrowed articles, and claims for damages from unlawful acts. Disputes over liens, servitudes, acquisitions of rights to real estate, and copyright are not included. Since 1953 the Disputes Commissions handle all labor disputes in the first instance.

Writers assert that the number of cases heard by the commissions is increasing, while the number of cases tried before the courts is correspondingly decreasing. In December 1962, Dr. Hilde Benjamin, the Minister of Justice, reported that the Disputes Commissions were deciding 38.5 percent of all criminal matters. Similar evidence has been cited previously for labor disputes. All reports from the German Democratic Republic indicate that the Disputes and Arbitration Commissions are assuming functions which were formerly the prerogative of the state.

IV. THE COMMISSIONS AS JUDICIAL ORGANS

While the above observations suggest that the commissions represent embryos of communist administration by the people; further inquiry into their activities reveals the commissions’ relationship to the court system and the manifestation of judicial characteristics.

Both the Arbitration and Disputes Commissions receive guidance from the courts. The directive for the Arbitration Commissions expressly provides that the district courts are responsible for guiding the activities of the Arbitration Commissions. The judges of the district courts hold regular meetings with the presidents and members of the Arbitration Commissions in their district to share experiences of the commissions and to discuss any questions which may arise. While the directive for the Disputes Commissions does not place the commissions directly under the guidance of the

69 Krausz, supra note 66, at 30; Krutzsch, supra note 33, at 41.
70 Krutzsch, supra note 33, at 41-42; Schmidt, supra note 20, at 24-25.
71 Creuzburg & Schmidt, supra note 13, at 326.
72 M. Benjamin, supra note 53, at 24-25. See notes 19 and 20 supra.
74 See text accompanying notes 19-20 supra.
75 Jaenchen & Winkler, supra note 12, at 519.
district courts, the commissions do enjoy a close working relationship with the courts. The district court supervises the Disputes Commissions on all civil matters. On December 20, 1967, the Plenum of the High Court issued a decision elaborating on the desired working relationship between the courts and the commissions. This decision specifically discussed the transfer of minor criminal offenses to the commissions, the procedure for protesting decisions of the commissions, and the procedure for having decisions executed in the courts.

Both the Disputes and Arbitration Commissions enjoy the fruits of judicial experience and legal knowledge. Many of the lay judges serving in the courts are concomitantly members of the Disputes Commissions. Trade Unions provide legal training for the other members of the Disputes Commissions. Courses are given in which procurators and judges from civil, criminal, and labor courts explain the purpose and content of the different provisions in the directive and describe the most recent developments in the field. There is some evidence that the Arbitration Commissions receive assistance from the law faculties of universities.

In addition to the legal guidance received, the commissions are linked to the court through the system of appeals, protests, and requests for execution of agreements reached before the commissions. As noted previously, both directives explicitly provide for review and for enforcement proceedings in the district court.

The requirement for both the Arbitration and Disputes Com-

76 Probst, supra note 49, at 34.
78 M. Benjamin, supra note 53, at 9-10.
79 Kranke, supra note 14, at 20.
80 The members in jurisprudence of the Law faculty at Martin-Luther University led a lecture for the Arbitration Commissioners on basic questions of socialist rights and duties. Knecht, Mörtl & Winkler, Plenartagung des Bezirksgerichts Halle über die Tätigkeit der Schiedskommissionen, NEUE JUSTIZ, No. 19, Oct. 1, 1965, at 603. Sometimes faculty members serve as consultants for the Arbitration Commissions. Id.
81 This plan accords with Soviet practice, which offers judicial review for decisions of the Comrades' Courts. See H. Berman, supra note 32, at 290. However, it differs from the People's Republic of China, where there is no judicial review from comparable organs. See Provisional Rules Governing Organizations of People's Mediation Committees, March 23, 1954, in SURVEY OF THE CURRENT MAINLAND PRESS, No. 784, Apr. 8, 1954; and Cohen, The Criminal Process in the People's Republic of China 1949-1963, at 124-25 (1968). It seems significant that in the People's Republic of China, with its Chinese tradition of dislike for and distrust of the law courts, the social organs are most clearly divorced from the court system.
missions that jurisdiction in criminal matters is only by transfer from the courts, procuracy, or investigating authorities makes the commissions dependent upon the judicial structure. As the transferring authorities determine whether to transfer an offense to a commission, they increasingly delimit the jurisdiction of both the courts and the commissions. The result is that the commissions become increasingly subject to judicial precedents. For example, a controversy raged several years ago as to which, if any, violations of section 49 of the StrassenVerkehrsOrdnung (Traffic Regulations) could be given to the Disputes Commissions. A pronouncement, concurred in by the Minister of Justice, stated that no violations of this section were minor. The district procurators and academicians disagreed, and several months later the matter was reopened for discussion. In June 1964, a state court (Bundesgericht) drew the following line: the first violation is basically a minor criminal act which can be handled either by the courts or by the Disputes or Arbitration Commissions; but if another person is harmed by the violation, the violation is not minor and must be handled by the courts. The decision delimits the jurisdiction of both the courts and the commissions.

Reports indicate that the transferring authorities get involved with the case before giving it to the commissions. They clarify the facts of the case, discover the causes and motives which led to the act, and evaluate the personality of the offender. It is the duty of these authorities to find out how the offender behaves at the factory and how he views the commissions and the measures adopted by them. Finally, any aggravating or exonerating circumstances should be explored. Only after the transferring organ has acquired and evaluated the above data, can it give the matter to an Arbitration or Disputes Commission. In one case involving bodily injury to a man 55 years old where the injury made him nervous and 95 percent incapacitated for work, a state court (Bundesgericht) found error in transferring the matter to a Disputes Commission. The transferring authority had not determined

the cause of the injury or the extent to which the origins of nervousness could be traced.  

When a case is given to a commission, the transferring document must be thorough and detailed. It must state the facts of the case, the causes of the offense, any relevant conditions discovered during the investigation, the reasons for the transfer, and recommendations as to how to conduct the hearings with greatest success.  

Both the transferring document and the preceding decision-making process suggest the possibility that the commissions rely heavily upon the transferring organs for their enlightenment in cases of minor criminal offenses. It is possible that the courts render extensive guidance to the commissions in these cases, and to the extent this is true, the commissions appear closely tied to the court structure.

In their methods of procedure, the Disputes and Arbitration Commissions have many characteristics of judicial organs. The directives establishing and governing the commissions set forth detailed procedural requirements. They answer such legal questions as when the commissions have jurisdiction over the person, what persons are entitled to protest decisions by the commission and on what grounds, what remedies are available and for which offenses or disputes, and what matters must be specified in the resolutions adopted. Even the terminology of the directives invokes legal terms. In the few articles written about the commissions and appearing in Law and Legislation, the only legal periodical published by the German Democratic Republic in English, the writers refer to "cases," "socialist legality," "parties," "guilt of the offender," "illegal acts," "hearings," etc.  

While the choice of words may only reflect the various authors' attempts to translate what they consider unfamiliar terms into terms which Western readers could understand, it at least seems possible, if not probable, that the choice of words reflects a viewpoint of the authors that the commissions bear characteristics of judicial organs. To justify this continued use of legal terminology, one writer explains that while the legal language of bourgeois law has been discarded,
"a kind of legal language that is understood by the working people" has been adopted. The reference is to a legal language.

The commissions seem to operate as courts of first instance. They are required to keep a written record of the application for a hearing, and the resolution adopted as a result of the hearing. Decisions of the commissions are binding on the parties concerned unless contested, and several writers allege that the decisions are comparable in meaning and effect to court verdicts. The parties, the district procurator, and certain other persons in specified cases have the right to lodge protests with the district court against decisions of the commissions. All decisions can be protested when their conclusions contradict principles of socialist law. In minor criminal offenses, the procurator can protest on the basis of newly discovered evidence. According to a 1965 court directive for Disputes Commissions, the court in reviewing decisions of the commission should inquire whether the commission in making the decision has carefully complied with the procedural requirements. The courts should ask whether the parties were advised of their rights to protest, and whether the period for lodging the protest with the appropriate district court expired before the protest was made. If instead of lodging a protest the party asks the court to execute an agreement, the court must determine whether the agreement is in proper form, whether execution is appropriate, and whether the content is capable of execution. In such cases

89 Kranke, supra note 14, at 20.
90 The resolutions adopted by the Disputes and Arbitration Commissions contain the same items: (a) date and place of the hearing; (b) names of members of the commission who adopted the resolution; (c) a brief summary of facts underlying the dispute; (d) recommendations to the director of the factory, to various authorities, to mass organizations, etc.; and (e) a note drawing attention to the possibilities of appeal against the resolution of the commission. If the resolution is one from an Arbitration Commission, the note also draws attention to the possibilities of executing the decision.

91 See generally Directive for Disputes Commissions, supra note 3; Directive for Arbitration Commissions, supra note 5. If in a civil dispute no agreement is reached, the party can take the matter to court. An application to the Disputes Commission to hear a civil dispute suspends the statute of limitations for the claim. Schmidt, supra note 20, at 26.
the court does not inquire into the factual and legal basis for the agreement. The procedure proscribed for court review of decisions by the commissions seems to support the view of one legal commentator in the German Democratic Republic that the commissions must "conform to strict legal rules" and that all their activities "are based on the principle of constitutionality."95

The commissions focus on conflict, which seems characteristic of traditional German judicial organs. The names of the commissions in themselves emphasize conflict: Konfliktkommissionen (Disputes Commission) and Schiedskommissionen (Arbitration Commission). The procedure of the commissions likewise emphasizes conflict. "The preparation [of the hearing] should have the result that in the hearing the matter lying at the heart of the conflict can on all sides be brought into the open and clarified."

In all cases except simple disputes and civil law disputes under 500 MDN ($125) the commissions arbitrate or make decisions on their own discretion which are binding on the parties unless protested. In contrast with reconciliation or mediation, which require the agreement of both parties, arbitration creates conflict with the desires of at least one party. Even in the classes of civil law and other simple disputes, the conflict element is present. In simple disputes the members of the Arbitration Commissions, in preparing for the hearing, are to be open to reconciliation by the parties, but only when this would lead to a resolution of the conflict.97 In minor civil law disputes, the parties themselves must reach the agreement, but the agreement reached can be brought into the district court for execution and thus does not depend upon voluntary adherence by the parties. In all of the above ways, the Disputes and Arbitration Commissions focus on conflict and enhance a characterization as judicial organs.98

---

95 Creuzburg, Competence of Disputes Commissions for Minor Criminal Matters, 1 LAW & LEGIS. IN GERMAN DEMOCRATIC REPUBLIC 17 (1965).
96 Directive for Arbitration Commissions, supra note 5, at art. 17.
97 Id. at art. 18.
98 The relationship between emphasis on conflict and judicial organs is perhaps tenuous; yet it can be suggested that a correlation between the two exists. Where there is resort to litigation and respect for the courts, a concern with conflict emerges. In traditional China under the Ch'ing where law was degraded and courts were avoided whenever possible, compromise and conciliation flourished. In the People's Republic of China the organs comparable to the Disputes and Arbitration Commissions are called Mediation Committees and Adjustment Committees. In the German Democratic Republic, where the legal system has been emulated, a concern with conflict flourishes. Whatever one may conclude about the relationship between conflict and the legal system, the focus on conflict found in the Disputes and Arbitration Commissions is, at the minimum, compatible with characterization as a judicial organ.
V. Conclusion

Having examined to what extent the Disputes and Arbitration
Commissions are new socialist organs and to what extent they are
judicial organs, the question arises in what framework we should
view these commissions. Perhaps the best formulation is offered
by the East Germans themselves: the commissions are social organs
for the administration of justice.90 Dr. Hilde Benjamin regards
the new Arbitration Commissions as an extension in the organs
for the administration of justice.100 The commissions are an in-
tegral part of one unified legal system containing two classes of
organs for administering justice, namely, the state and the social
organs.101 Functions of the state organs are shifted downward to
the social organs — the Disputes and Arbitration Commissions.
Since, according to this view, the system for administering justice
is unified, it is not surprising that the commissions have close ties
with the state organs and share many judicial characteristics. On
the other hand, since they are intended as social organs, they share
many of the informal characteristics of organs of the masses. As
social organs the commissions are closer to the people and are able
to pursue expansively their educational role. They are intended
to bring the citizens into the administration of justice and into the
formation of socialist law,102 and to serve as binding links between
the social forces and the courts.103 In a speech to the State Council
when the Arbitration Commissions were established, Walter Ul-
bricht summed up the state’s view of the role of the commissions:

With the formation of the Arbitration Commissions it has again

90 Semler & Grof, New Chapter in the Development of the Administration of
Justice in the German Democratic Republic, 1 LAW & LEGIS. IN GERMAN DEMO-
CRATIC REPUBLIC at 7 (1965).
100 H. Benjamin, Aus der Begründung des Entwurfs der Richtlinie über die Bil-
dung und Tätigkeit von Schiedskommissionen, vorgetragen durch Minister der
Justiz. Sitzung des Staatsrates am 10. Februar 1964. Der Staatsrat der DDR,
SCHIEDSKOMMISSIONEN — ORGANE DER ERZIEHUNG UND SELBSTERZIEHUNG DER
BURGER at 11 (1964).
101 Beschluss des Staatsrates der DDR über die Aufgaben der örtlichen Organe
der Staatsmacht bei der Bildung von Schiedskommissionen vom 21. August 1964,
Der Staatsrat der DDR, SCHIEDSKOMMISSIONEN — ORGANE DER ERZIEHUNG UND
SELBSTERZIEHUNG DER BÜRGER at 60 (1964).
102 Aus der ergänzenden Begründung des Entwurfs der Richtlinie über die Bildung
und Tätigkeit von Schiedskommissionen, vorgetragen durch den 1. Stellvertreter des
1964, Der Staatsrat der DDR, SCHIEDSKOMMISSIONEN — ORGANE DER ERZIEHUNG
UND SELBSTERZIEHUNG DER BÜRGER at 16 (1964).
103 Grieger, Zur Arbeit der Schieds- und Konfliktkommissionen auf dem Gebiet
been demonstrated in a significant way how the administration of justice — in all earlier times an instrument of the ruling exploiter class and an inviolable basis for the continuation of their egotistical interests — has become in the socialist state a thing of the working peoples and in the truest sense of the word, "Volksieg." In this stands the most decisive guarantee for the deepest democratic content of our regime in the German Democratic Republic.¹⁰⁴

¹⁰⁴ Ulbricht, supra note 4, at 9.