1923

THE CIVIL CODE OF SOVIET RUSSIA

JACOB KANTOROVITCH

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Recommended Citation
Available at: http://digitalcommons.law.yale.edu/ylj/vol32/iss8/3
I

At the fourth session of the ninth Congress of the All Russian Central Executive Committee of the Soviets, held in October, 1922, the Civil Code was passed, to take effect on the first of January, 1923.

The very fact of the adoption of a code of laws intended to uphold and regulate private property relations in Soviet Russia is a striking indication of the departure of the governing party from the communistic experiment which had been carried on by it during the first three and a half years of its rule. The ideas underlying that experiment justified a system of universal nationalization of all economic relations in the business life of the country, in the domain of production as well as in that of distribution. All forms of extractive and manufacturing industry, all forms of commercial intercourse, the means of production, not only of large scale industry, but even of the small handicrafts, all stocks of raw materials and manufactured products, all real property—not only that intended for industrial purposes but that intended for dwelling purposes as well—in short, all material goods were exempt from private ownership and were subject to nationalization. All things were to be under the full control of the state, which thus appeared as the only subject of property rights vested with the exclusive authority to manage all matters pertaining to the industrial life of the country.

The realization of that system in practice was not confined to nationalization in the scientific sense of the socialist theory, that is, to the socialization of productive forces and relations, but under the influence of revolutionary slogans, was supplemented by confiscation of personal property intended for household needs and personal consumption, such as furniture, wearing apparel, money in Russian and foreign currency, ornaments, pictures, books, and so forth. All that in excess of a fixed amount, and at times regardless of any fixed amount, was subject to be removed from private ownership. Of private property relations there could be no question, since with the abolition of private property even within the household, the citizen being in effect deprived of the power to enter contractual relations, both fundamental elements of private property relations—the subject as well as the object thereof—were destroyed. Private property relations were destroyed even in that field which generally does not lend itself to socialization, namely, in the field of personal labor. This was accomplished by the militarization of labor and by the practice of the labor duty, wherein the relations between the state as employer and the wage earners and salaried employees, that is...
all citizens, were regulated not by the law of contracts, but by the public law, in accordance with the binding provisions of the Labor Code and the wage scales decreed by the proper authorities of the Commissariat of Labor.

In the absence of private property relations there was, of course, no need of a Civil Code, and of civil procedure safeguarding private property rights. Not only was there no need of it, but the theorists and the administrators of communism always emphasized the proposition that in a communist state there can be and ought to be no definite uniform civil laws applicable in all cases, but that the relations between citizens ought to be regulated differently in every individual case, in accordance with the class affiliation of the individuals affected, at the discretion of the People's Judges, who were to be guided solely by their proletarian conscience and their socialist conception of right. On the basis of that philosophy, a communistic experiment was conducted for over three years, whose realization necessitated the creation of an unparalleled system of centralization of all functions and manifestations of the economic life of the country, extending over its enormous territory with its variety of population and economic relations.

The shortcomings of that system soon became manifest to the leaders of the Communist Party itself. As a result, in 1921, the "New Economic Policy" was proclaimed, the substance of which is the recognition of the necessity to return to the foundations of a capitalistic system: private initiative, personal stimuli of labor and energy, free accumulation of private property, and free distribution of values.

Quite naturally, this was done with many reservations in the direction of communist theory, but life proved to be stronger than these reservations. The reality of the "New Economic Policy" overcame all communistic restrictions, and the Communist Party was gradually led to concede many of its former positions. No doubt, ultimately, the capitalistic tendencies of the "New Economic Policy," encouraged by the needs of economic life, will prove stronger than the formulae of abstract theory. The new forms of economic life in Russia have created multifarious needs in the field of private property relations which require definite regulation and stability and can not be satisfied by the variable discretion of judicial conscience, but need the firm directions of law, and definite rules governing the discretion of the court and assuring the litigants of an adequate defense of their property rights.

Thus a necessity arose to enact a code of civil laws for Soviet Russia, following the example of capitalistic nations. The fundamental principles of that code were worked out in the beginning of 1922 and, notwithstanding the opposition of the Left Wing of the Communist Party, were, with some qualifications, adopted at the last session but one of the All Russian Central Executive Committee, which instructed the Commissariat of Justice to draft a Civil Code in accordance with those fundamental principles and to introduce it at the next regular session.
of the Executive Committee. After that, the campaign against the enactment of the Civil Code was continued with greater vigor, not only in private communistic circles, but also in the press, where articles appeared warning against the Civil Code becoming a fetish for the court and the people, which might endanger the communistic system of the Soviet Republic. But nothing could stem the tide, and the All Russian Central Executive Committee deemed it necessary to adopt the draft of the Code, to be sure, with many socialistic departures from the institutions and norms of the capitalistic Civil Code. There is no doubt, however, that under the influence of the necessities of civil intercourse, these departures will gradually have to be abandoned.

With the Civil Code the necessity will be felt of the enactment of a code of civil procedure. The substantive law of property can not be properly realized without a suitable law of procedure with which it is closely bound, and the law of procedure can not be properly realized without a corresponding organization of judicial institutions, that is, of courts and counsel. It is quite evident that the People's Judges, who are today elected from among workmen without a professional training for the performance of judicial duties, can not be entrusted with the complicated problem of interpretation of the law, which must be guided by special methods of legal thinking. It is obvious that with the enactment of the Civil Code those judges will have to be replaced by men with a legal training, and these will, of necessity, have to be chosen from among non-partisan and even "bourgeois" elements, just as today the Soviet authorities are obliged to fill their responsible positions in all industrial and kindred departments by specialists from the same social environment. Similarly, the Bar will have to be restored to its former independence, without which proper administration of civil justice is impossible.

II

The Soviet Civil Code comprises in all 435 sections, with five brief supplements. This is the shortest of all existing civil codes. The small number of sections in the Soviet Code is accounted for in the first place by the absence of certain divisions and topics which hold a very prominent place in all other civil codes, such as family relations, contracts of employment, real property, etc., and in the second place by the fact that the institutions regulated by the Code are incompletely defined, partly because the legislature, not fully conscious of the legal importance of those departments of civil intercourse and of the multiplicity of the phenomena governed by them, has failed to give them proper attention, and partly because it advisedly intended to give those institutions simplicity and an indefinite shape so as to leave greater latitude to the court in the application of the law.

The communistic departures of the Soviet Code from the capitalistic code relate only to two divisions of the law of property: real property
and inheritance. In all the rest, the communist theory has found no objection at all. This is true in particular of the law of contracts, in which modern jurisprudence has introduced numerous innovations based upon the idea of public regulation of economic relations tending to restrict the freedom of contract. It is remarkable that the communist framers of the Soviet Code have, with certain exceptions, taken no notice of these new currents in modern civil law, confining themselves to the simple reproduction of the institutions and norms of the old capitalistic codes, without attempting to introduce any new principles into it.

In general, the Soviet Code follows the line of the antiquated draft of the Russian Civil Code, which had been for some time under advisement prior to the Revolution; but it is quite incomplete, fragmentary, indefinite, and inconsistent. Quite often general principles are confused with specific norms, norms of public law with those of private law, contractual relations with ownership; and in general there are many important gaps which, in practice, must lead to doubt and misunderstanding beyond the power of judicial interpretation.

III

The keynote to the Soviet Code is the division on "Property." This is a small division consisting in all of a few score sections.

Section 21 reads: "Land is the property of the State and cannot be the object of private contract. Tenure of the land shall be permitted only under the title of use. Private property in land having been abolished, the division of property into real and personal is hereby repealed."

Besides land, including, pursuant to Section 53, minerals under ground, forests, and waters, there are likewise exempt from private commercial intercourse, the nationalized and municipalized enterprises, their equipment, railways and their equipment, nationalized vessels as well as nationalized and municipalized buildings. None of these properties may be alienated or mortgaged by those organs of the state by which they are administered, nor are they subject to levy for the satisfaction of creditors. Nationalized and municipalized enterprises, buildings and vessels, may be leased in the manner provided by law. There are likewise exempted from private commercial intercourse, arms, explosives, military equipment, air ships, telegraphic and radio-telegraphic property, stocks and bonds declared void, and spirituous liquor above the grade fixed by law, as well as strong poisons.1

What, then, may be the object of private property? Section 54 provides that the following things may be: Non-municipalized buildings, commercial enterprises, industrial enterprises employing not more than the number of wage earners fixed by special laws, tools and means of production, money, commercial paper and other things of value,

1 Soviet Civil Code, secs. 22, 23.
including gold and silver coins and foreign currency, articles of
domestic and household use, and of personal consumption, merchandise
whose sale is not prohibited by law, and all other property not exempt
from private business intercourse. Coöperative organizations are
granted the privilege, as compared with private individuals, to own
industrial enterprises without restriction of the number of workers
employed therein. The same privilege is likewise granted to those who
have received a government concession: their private property may
extend to enterprises wherein the number of hired workers exceeds that
fixed by general law, as well as the telegraph and radio-telegraph and
other services of public utility.

Like the capitalistic codes, the Soviet Code concedes to the proprietor,
within limits fixed by law, the right of possession, use, and management
of his property and the right to recover the same from persons holding
it contrary to law, as well as the right to redress for all violations of his
right, even though the same may not involve actual seizure of his
property. But there is a very substantial exception to that general
rule: Former owners whose property was expropriated by virtue of
revolutionary law or in general has passed into the possession of the
toilers prior to May 22, 1922, have no right to claim the return of those
properties. Nor may the former owners of articles of domestic use
claim the return of their property from its actual possessors; the decree
of the 16th of March, 1922, whereby that right was granted to them, is
repealed.

In general, by virtue of the resolution of the All Russian General
Executive Committee, relating to the manner in which the Civil Code
is to take effect, all prior civil relations are liquidated: The judicial and
other institutions of the Republic shall assume no jurisdiction of any
private property claims originating prior to November 7, 1917. All
private claims which originated between the 7th of November, 1917 and
the time when the Civil Code of the Russian Socialist Federated Soviet
Republic is to take effect shall be regulated by the laws which were in
effect at the time. The general period of limitation of three years shall
extend to all property relations which originated prior to the date when
the Civil Code is to take effect.

"In order to bring the resolutions and decrees concerning requisitions
and confiscation into harmony with the New Economic Policy," all
former decrees are repealed by the Code, and it is enacted that no
property may henceforth be requisitioned or confiscated except in the
manner prescribed by law. Requisition, under the Code, means
"forcible alienation or temporary appropriation by the State of property
held by private individuals or corporations, taken by reason of public
necessity upon compensation (to the owners); confiscation means forcible alienation of property by the State, without compensation, which may be ordered as punishment by sentence of the People's Courts, Revolutionary Tribunals, and Extraordinary Commissions in cases where the latter are invested with the right of passing sentence, as well as by order of executive authority in cases provided by law."

The property of enterprises to which concessions have been granted may be requisitioned or confiscated exclusively in such cases and in such manner as provided by the terms of the concession. In case of confiscation, or as a punishment, the authorities by which the confiscation is executed must leave with the owner of the property to be confiscated and of the members of his family all articles of household use and the tools of handicraft and domestic industry, if the same are used merely as a means of making a livelihood but not of exploiting the labor of others, as well as all food-stuffs necessary for the personal consumption of the individual sentenced and of his family for a period of not less than six months.⁶

The Code further provides detailed rules to be observed at every requisition or confiscation, and in particular at confiscation made by customs officials, at requisitions made by military and naval authorities, at confiscations and requisitions within territories of the Russian Socialist Federated Soviet Republic which had formerly been occupied by enemy or counter-revolutionary forces, in relation to individuals who voluntarily left with the enemy upon the evacuation of those territories or had been forcibly deported therefrom and subsequently returned. Among other things the Code has reënacted the decree of the Council of People's Commissaries of November 19, 1920, whereby it was enacted:

"That all personal property of whatever kind and wherever found, of citizens who have escaped beyond the boundaries of the Republic or are keeping in hiding up to the present time, shall be declared the property of the Russian Socialist Federated Soviet Republic."

IV

The right of inheritance by law and by will is recognized by the Code, but that right is restricted in two respects: in the first place, in respect of the amount of the property inheritable and, in the second place in respect of the persons entitled to inherit.

Inheritance is permitted only up to the aggregate amount of ten thousand (10,000) gold roubles over and above all the liabilities of the deceased. In case the aggregate value of the property to be inherited exceeds ten thousand (10,000) gold roubles, the property is divided between the private individuals entitled to the inheritance by law or by the will and the state, represented by the People's Commissariat of

Finance. In case the property is of a nature which makes its partition disadvantageous from an economic point of view, it may be turned over into the joint ownership of the heirs and the state, or the property may be redeemed by the state or by the private heirs in case such a disposition is deemed to be in the interest of the state.  

An exception to the general rule in relation to the value of the inheritance is made in cases of property rights arising from contracts made by the state authorities with private individuals, such as leases, concessions, building contracts, etc. Such rights may be inherited by law and by will without their amount being limited to 10,000 gold roubles. A further exemption is made in favor of those heirs-at-law who lived with the intestate—they inherit all household goods, with the exception of articles of luxury, over and above the limit fixed by the law.

The persons entitled to inherit by law and by will are confined to direct descendants (children, grandchildren, and great-grandchildren), and to the surviving husband or wife of the deceased, and also to indigent and incapacitated persons who were fully supported by the deceased for a period not less than one year preceding his death.  

Only such persons as were living at the time of the death of the deceased, and also children conceived during his life but born after his death, may inherit. The testator may name his heirs only from among the persons entitled to inherit by law. But he may, at his discretion, determine the distribution of the estate among those persons. He may also disinherit any one or all of such persons. In such a case, the estate escheats in part or in whole to the state. The testator may impose upon the heir an obligation in favor of one or several or all of the other heirs, who by virtue of that bequest, are entitled to demand the enforcement thereof on the part of the heir designated in the will. The law allows the testator to make provision for a substitute for the heir designated by him in case the latter should have died before the testator's death, or should decline to accept the inheritance, but the substitute must be chosen from among the heirs at law.

The heirs are not notified by publication or otherwise, but the People's Court is required to take steps towards the preservation of the estate immediately upon being notified of the death of the testator or intestate. The administration of the estate continues until the appearance of all the heirs, not longer, however, than for six months. In case no heirs appear within six months after the issuance of the order for the administration of the estate, as well as in case of formal refusal of heirs to accept the same, the property is taken possession of by proper state authorities. The heir who has accepted the inheritance, or the state to which the estate has passed, as the case may be, are liable for

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7 Ibid. secs. 416, 417.
8 Ibid. sec. 418.
9 Ibid. sec. 418.
10 Ibid. secs. 422-424.
the debts of the testator or intestate only up to the value of the estate. The creditors of the testator or intestate must present their claims within six months from the issuance of the order for the administration of the estate, under penalty of forfeiture of their claims.11

No form of will is provided by the law. Section 425 provides only that it must be signed by the testator and presented to the register for recording. A transcript from the book of records has the same legal value as the original will.

No probation of heirship is required. The heirs who are absent from the place where the estate is located may take possession thereof either personally or by attorney within six months from the issuance of the order for the administration of the estate.12 The heirs-at-law or by will may petition the Judge of the People's Court for a decree certifying their right of inheritance.13

V

In the domain of the law of contracts, as stated above, the Soviet Code contains no innovation, as compared with capitalistic codes, but differs from the latter only by the absence of definite provisions in relation to many substantial features of contractual relations. The Code provides for the following divisions of the law of contracts: (1) Lease of building lots; (2) Mortgage; (3) Lease of property; (4) Purchase and sale; (5) Barter; (6) Loan; (7) Building contracts; (8) Surety; (9) Power of attorney; (10) Partnership; (11) Insurance.

Of the provisions relating to those contracts the most important features only will here be summarized.

Lease of building lots means a contract for the leasing of city lots for building purposes which is entered into by the municipality with coöperative associations or other legal persons, as well as with private individuals, for a period not to exceed forty-nine years in relation to brick buildings, or for the period of twenty years in relation to all other structures.14 The building operations must begin not later than within one year from the date of the contract. The rental may be raised not oftener than once in five years, and every time in accordance with the terms specifically provided in the lease. The right to build may be assigned or mortgaged by the lessee. In case of default of payment for more than one year or of other failures by the lessee to comply with the terms of the lease, for which liquidated damages are specified in the lease, the municipality may, by proper judicial proceedings, levy execution upon the right to build, which must be sold at public auction; in case no buyers appear, the right to build reverts to the municipality. In

11 Ibid. secs. 431-434.
12 Ibid. sec. 430.
13 Ibid. sec. 435.
14 Ibid. sec. 71.
such a case, as well as upon the termination of the building contract pursuant to the terms of the lease, all buildings must be surrendered by the builders in good condition to the municipality which must pay to the builders the value of the buildings at the time of the surrender thereof. The value of the buildings is to be fixed by a valuation commission consisting of representatives of the municipality and of the labor-peasant inspection. In case the builder is dissatisfied with the valuation made by the commission, he may appeal from the same to the People's Court.

The contract for the lease of property contains many restrictions. The term of the lease must not exceed twelve (12) years. After the expiration of the contractual term, the lease may be renewed by a new contract. In those cases where the lessees are government institutions and enterprises, hired workers and employees, students of public educational institutions, members of families of Red Army soldiers dependent upon them, labor and war invalids, the contract for the lease of dwelling is automatically renewed upon the same terms for an indefinite time, regardless of the consent of the lessor. In those cases where the lessees are persons of the classes enumerated above the rental for dwellings can not be stipulated above the scale fixed by the local executive committee.

There are highly characteristic restrictions in relation to the contract of purchase and sale. Non-municipalized dwellings may be bought and sold, provided, however, first, that the buyer, his wife or her husband, or their minor children, shall not become possessed of two or more holdings, and secondly, that the vendor, his wife, or her husband, and their minor children, shall not dispose of more than one property within three years. Among other provisions relating to the contract of purchase and sale, the following may be noted: The right of property in material objects which passes from the vendor to the vendee arises in relation to a definite thing from the moment of the making of the contract, and in relation to things described by number, weight or measure, from the moment of their delivery. In the absence of specific provisions to the contrary, the risk of casual destruction of the property sold is assumed by the vendee simultaneously with the right of property. The vendor is liable to the vendee in case the property sold lacks the qualities stipulated in the contract, as well as for other defects which substantially diminish its value or its availability for customary or stipulated use. Claims for such defects may be preferred by the vendee in the absence of a longer term stipulated in the contract only within one year in relation to buildings, or within six months in relation to other property, from the date of the deliveries of the property.

5 Ibid. sec. 182.
6 Ibid. sec. 66.
7 Ibid. sec. 186.
8 Ibid. sec. 195-197.
In relation to loans it is provided that the amount of the same may be expressed in gold roubles, as well as in Soviet currency. In those cases where the amount of the loan is expressed in gold roubles, the amount payable is computed at the official exchange rate of the gold rouble on the day of payment. The state bank is empowered to accept deposits and gold and silver in coins and bars, as well as foreign currency, to be returned in the same metal or currency, but the interest is to be paid in Soviet currency.19

Following the old Imperial Civil Code,20 the Soviet Code contains, in addition to the general rules governing building contracts, a supplement relating to those cases where the contract is granted by the state and providing for many privileges for the benefit of the public treasury.21

In addition to obligations arising from contracts, the Code contains provisions defining the liability of a party benefited without consideration, as well as liability for injuries caused by the obligor.

The general limitation of actions is restricted to three years, unless the law provides for another period of limitation. The period of limitation begins to run from the time when the right of action has arisen and, with regard to obligations to be complied with on demand, from the date of the contract.22

VI

The general part of the Code contains a few provisions of a constitutional nature.

Civil rights are safeguarded by law, except in such cases where their enforcement is contrary to their social-economic purpose. No one may be deprived of his civil rights or restricted in the exercise thereof except in cases and in a manner provided by law.23

Section 4 reads as follows:

"With a view to the development of the productive forces of the country, the Russian Socialist Federated Soviet Republic confers civil capacity (the capacity to exercise civil rights and obligations) to all citizens whose rights are not restricted by a sentence of a Court. Sex, race, nationality, religion, or descent shall have no effect upon the scope of civil capacity."

The capacity of a person to acquire by his acts civil rights and to assume civil obligations arises upon his attaining full age, to wit, 18 years.24

The status of aliens is very indefinite under the Code. There is no

21 Soviet Civil Code, Supplement to sec. 235, entitled, "Statutes of State Contracts for Building and Supplies."
22 Ibid. secs. 44, 45.
23 Ibid. secs. 1, 6.
24 Ibid. sec. 7.
mention of them in the Code itself, but the Order in relation to the taking effect of the Civil Code provides in Section 8 that the rights of citizens of foreign nations with which the Russian Socialist Federated Soviet Republic has entered into previous relations are regulated by the same treaties. In so far as the rights of aliens are not regulated by treaties with their governments, or by special acts, their rights to travel within the territory of the Russian Socialist Federated Soviet Republic, to engage in trades or professions, to establish and acquire commercial enterprises and real property, may be restricted by orders of the executive department of the federal government.

It is worthy of note that the Code has deemed it necessary to fix one very substantial restriction of the scope of civil rights of Russian citizens, which, in view of the present trend of affairs, can be only temporary. Section 17 provides that all physical and legal persons within the territory of the Russian Socialist Federated Soviet Republic may take part in foreign trade only through the state as represented by the People's Commissariat of Foreign Trade. Independent business transactions in the foreign market are permitted only in cases specially provided by the law, and only under the supervision of the People's Commissariat of Foreign Affairs.