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THE Soviet Government has replaced the entire previous legal order by legislation of its own; it is therefore not surprising that even in well informed legal circles outside of Russia very vague and indefinite notions exist regarding the legal situation there. In the last few years moreover, many states have considered it necessary to recognize the Soviet Government. Since this recognition or even before, there have been some economic undertakings within Soviet territory by foreign individuals, but even these persons for the most part were entirely unfamiliar with the Soviet laws.

In the present article a few important features of those laws will be taken up and discussed, in particular the provisions which primarily affect foreigners. To begin with it may be accepted as a general principle that foreigners stand upon the same footing in Soviet Russia as citizens, except where special laws, international treaties or administrative orders otherwise provide.[1]

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[An interesting complimentary discussion of Soviet Criminal Justice by Pitirim Sorokin appeared in 23 Mich. L. Rev. 38.—Ed.]

[1]A general statute of the Federation covering the entire subject of the rights of foreigners has been authorized by the Federal Constitution of the Soviet Republics, but has not as yet been promulgated.

I.

The most striking point about the position of foreigners in the Russian State, which since July 6th, 1923, has gone under the name of the Federation of Socialist Soviet Republics, is, that foreign persons according to the constitutions of the several federated republics are entitled to the very same political rights as citizens, viz; they have both active and passive rights of suffrage in the Russian governmental councils and may be taken into the service of the state.[2] To be sure this does not affect anyone except the so-called workers, in other words laborers and the poorer peasants.[3] The foreign "bourgeoisie" is like the Russian in the sense that neither has any political rights in Soviet Russia. This only in passing; for practically speaking the foreigner who goes to Russia is only concerned with the system of private law which secures the inviolability of his person or perhaps provides rules of inheritance, or with the protection of his rights by the courts.

The Soviet law now in force (Enacting Act of 1922, making operative the Civil Code) furnishes to the foreigner on Russian soil, no guarantee whatever of freedom of movement or of choice of profession, or of commercial or industrial activity or of acquiring proprietary rights in lands or buildings. Restrictions in any or all these particulars may be made by the proper Soviet bodies. The aforementioned statute requires a special treaty between the Soviet state and any particular foreign state as a prerequisite to any legal guarantee to its citizens. (§8 of the above statute).

The treaties which Soviet Russia has made with Italy (March 7, 1924), with Sweden (March 15, 1924) and with Germany (Oct. 12, 1925) attempt to regulate in a measure the matters referred to.

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[2]On the other hand foreigners are entirely exempted from one important political obligation, to wit, that of military service; they may however be accepted in the Soviet army as volunteers.

[3]These classes of foreigners are entitled in the same way as Russian natives to acquire land without charge, land to use and work (Decret of Aug. 13, 1924, for Ukraine). On June 26, 1925, the central executive committee of the S. S. S. R. extended these provisions to the whole territory of the Soviet Federation. We know of no practical application whatsoever of these provisions; they are rather to be regarded as material for agitation and propaganda.

However any foreigner even if he receives permission for his sojourn in Soviet Russia, may, according to the decree of August 29, 1921, be expelled from Russia by the government, if his manner of life be not in accord with the principles of the workers' and peasants' regime.[4] The administrative authorities may arrest foreigners in the same way as the native population and may have searches of their houses made.[5] According to statutes dating from 1922, and now in force, the political police (shortly called the G. P. N.) is also authorized to send away to remotest Siberia for a period up to three years any persons whose activity appears to be in any way harmful, and this may be done by these administrative authorities without any court proceeding. In this regard too, no distinction is made between natives and foreigners. Statutory exceptions are only provided for in the case of specially named classes of persons belonging to the diplomatic corps of foreign countries.

As to crimes committed in Soviet Russia, foreigners are of course subject to all of the provisions of the Soviet Criminal Code. It must however be remembered in this connection, that the principle "Nullum crimen sine lege" is emphatically rejected by the legislation and court decisions of the Soviet state; by the terms of §10 of the criminal code of June 1, 1922, even those acts which are not declared by statute to be contrary to law may be prosecuted and punished on the basis of their similarity to offenses specifically described. For persons who engage in any form of economic activity in Soviet Russia the so-called "economic crimes" are highly significant, as they are punishable by long terms of imprisonment and even by death.[6]

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[4]By the treaty of 1925 with Germany, German citizens may be deported under a judgment of a criminal court or for reasons affecting domestic or foreign safety of the state (§6).

[5]The Russo-German treaty of 1925 provides in the case of arrest of Germans, that the German consul is to be notified thereof (§11).

[6]As an example of an economic crime, I shall quote here §130, of the Criminal Code, "The non-performance of obligations according to contract made with a state bureau or business, is punishable by imprisonment for not less than two years and by partial confiscation of property, provided the non-performance be shown to be intentional and malicious, or provided there appear any other intentional unfair dealings affecting the state, and such unfair dealings may consist in the return to the state, prior to the due-date, of advances re-

As a general rule, crimes committed by foreigners outside of Russia are not punishable in Russia. As long therefore, as there are no extradition treaties (so far there are none),[7] the Soviet State appears at least theoretically to be a very convenient refuge for foreign criminals. The only exception to this rule is in §3 of the Criminal Code and relates to foreigners who have committed while outside Soviet Russia "Crimes against the principles of the Soviet order or the Soviet armed forces". In other words foreigners on Russian soil are subject only to prosecution for political crimes committed abroad against the Soviet state. The scope of this exception to the general immunity for whatever foreigners do, at home or in some other country, is rather important when one considers the elasticity of the Soviet notion of political crime (for instance the development of the idea of "Economic Espionage" in judicial decision, on the basis of analogy—pursuant to §10 of the Criminal Code). By resolution of the Central Executive Committee and of the Council of Peoples Commissaires of the Union of August 14, 1925, economic espionage was made an express statutory offense.

II.

In the absence of any special treaty regarding concessions, the admission of foreign firms to do business on Russian soil takes place at the present time pursuant to the decree of April 12, 1923. To obtain the right to engage in business in Russia, foreign firms need special permission which the Chief Committee on Concessions has authority to grant. Even those firms which were in business in Russia prior to this decree, must in like manner obtain permission for which they must apply within one month. Detailed instructions

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ceived from it, coupled with a repudiation of the further performance of the contract made and a diversion of the money furnished by the state to purposes not connected with the contract. Provided further if the malicious character of these dealings is clearly shown, and they were accompanied by an understanding beforehand between the representatives of the state and the other contracting party, the extreme penalty may be exacted along with total confiscation of property.

[7]On October 23, 1923, a proposed form of extradition treaty, which the Soviet government would be ready to conclude with other countries, was approved by the Council of the People's Commissaires.

as to the activities of foreign concerns in Soviet Russia are set forth in an order of May 12, 1923. Permission may be granted for a period of from one to three years; however a later extension may be obtained by application to the Peoples' Commissariat in charge of foreign commerce. In this connection one must not underestimate the importance of the provision contained in this order (§10) according to which it is made a condition of a foreign firm beginning its operation in Russia that it shall submit to all existing and future laws and orders of the several Soviet Republics.

The licensing of private persons to engage in business in Soviet Russia is at present limited to domestic trade; all export and import trade falls within the government monopoly of foreign commerce. More or less limited exceptions thereto exist in favor of consumers cooperative bodies, of concerns which have received a special concession and in some cases of lessees of nationalized businesses; all these excepted groups are of course subject to supervision by the state. Foreigners and Russians alike are prohibited from carrying on trade independently with foreign countries.

During the first days of the existence of the Soviet State, under the so-called War Commune, almost all industrial concerns and buildings were nationalized by the state. The very limited denationalization of particular sorts of property which has occurred since 1921 affects foreigners as well as Russians. By the Rapallo Treaty of 1922, Germany recognized this expropriation of German private property and expressly waived all claim for compensation therefor, with the reservation however, that this waiver should only hold so long as no other countries received compensation for their losses in Soviet Russia.

The new Civil Code of 1922, restores the possibility of private industrial property (§4). However without special governmental permission, there can be no private ownership of an industrial enterprise in which more than twenty workmen are employed. Furthermore the Peoples' Commissariat for Justice has established the rule that one private person may not possess more than one such enterprise. It is to be noted here too, that the status of workmen whether in government or in private employ is now regulated by the statute of November 9, 1922. Violations by the employer of the labor

statutes or of collective contracts made with his employees, are punishable by heavy fines and imprisonment up to 10 years (§§132 and 133 of the Criminal Code).

As regards property, one must not forget that the foreigner is in perhaps an even weaker position legally than the Russian citizen, unless there is a treaty with the state of his nationality, protecting his rights. (See the above mentioned §8, of the Act Enacting the Civil Code). Dr. Freund, a German Jurist, who is inclined to be friendly to the Soviet Regime, states expressly in his "Civil Law of Soviet Russia" — "Accordingly foreigners who are not protected by treaties, are practically without rights; they must always consider that their property may be taken away by act of the state."

Patent rights and protection of trade patterns are likewise provided for specifically by decrees of September 12, 1924.[8] Citizens of foreign countries may obtain patents for inventions and enjoy protection for trade patterns in the same way as citizens of the Soviet State.[9]

By decree of the Federation of January 30, 1925, copyrights to literary, scientific and artistic works were likewise reestablished. Copyrights to works which have appeared in foreign countries are to be regulated by special treaty. It is to be noted that by the provisions of this decree there is no infringement of the copyright where a foreign work is translated or where a foreign dramatic, musical, kinematographic or other work is presented in the Red Guards Clubs or the Workmens Clubs or in any other place, provided no admission is charged (§4).

Those foreign individuals who engaged in business in Russia by virtue of a special agreement with the state known as a concession contract, occupy a peculiar position. The idea of concessions was

[8]The meager provisions of the Order regarding Inventions of June 30, 1919, could not be considered as a patent law.

Trademark rights were recognized by decrees of November 10, 1922, and July 18, 1923. Criminal protection by prosecution for infringement of the rights of the patentee or of an owner of a trademark, is provided for in §198 and §199 of the Criminal Code.

[9]This principle had already been adopted in the Commercial treaty with Italy (§18). The matter was dealt with more in detail in the Russo-German Commercial Treaty of October 12, 1925.

formulated in the Soviet State as early as 1920 when it became apparent to the communist leaders after their own bourgeoisie had been driven out and domestic capital destroyed, that no economic restoration could be hoped for without resort to foreign capital and organizing abilities. The first official publication on the subject of concessions was the decree of November 23, 1920, which forms so to speak the general basis for the system of concessions. This decree held out to foreigners the possibility of obtaining concessions to timberlands, agricultural land and manufactures; in addition to which the scope of the system of concessions has been extended to other branches of industry as well as to trade, means of transportation and banking. Foreign capitalists are able to obtain by such concessions private rights of engaging in forms of business which otherwise, particularly as early as 1920, were entirely closed to private individuals. In the decree referred to, general principles are expressly set forth according to which concession contracts are to be concluded. Among the most important advantages which these concessionaires enjoy, may be mentioned the following:— Despite the state monopoly of foreign trade, concessionaires are authorized to export the products of their enterprises to foreign countries. Futhermore the government guarantees that the property of the Concessionaire which he has invested in the enterprise cannot be nationalized, confiscated or requisitioned. And finally it is conceded that a concession contract made may not be altered by the unilateral dispositions or decrees of the Soviet Government.

The General Soviet Statutes with the abovementioned exceptions are however binding on concessionaires. As a usual matter these concession contracts contain an arbitration clause (such as will be presently described) which is intended to save the concessionaire, in case of disagreement, from the rather unattractive necessity of a resort to the Soviet Courts.

III.

The possibility of settling private controversies by arbitration was recognized in a limited form by decree of the Soviet Government as early as February 16, 1918. Also in the new Code of Civil Procedure, which became effective on September 1, 1923, in Greater

Russia (R. S. F. S. R.) and on October 1, 1924, in Ukrainia (U. S. S. R.) the principle of arbitration was retained. However an arbitral award is subject to revision by the Peoples' Judge (§§199-203 Code of Civil Procedure of the R. S. F. S. R.)

The Soviet Legislation starts with the premise that a *general* arbitration clause included in any sort of agreement is valid (§2 of the Civil Code; §2 of the Orders of 1924 Relative to Arbitration; and see decision of June 21, 1924, of the Supreme Court of the R. S. F. S. R.) The agreement for the settlement of any particular kind of legal controversy by arbitration is however permissible in any case. By treaties between the Soviet State and other states, it has been frequently provided that in certain situations the adoption of arbitration clauses between the parties is legal. The Russo-German Commercial Treaty of May 6, 1921 as well as the Russo-Austrian Treaty of December 7, 1921, expressly recognize that in all legal transactions entered into on Russian soil, between the Soviet Republics, and German and Austrian citizens or firms respectively, the arbitration clause is in fact compulsory (§13 of the Commercial Treaty). These provisions were, as far as concerns Germany, broadened by the treaty of November 5, 1922, supplemental to the Treaty of Rapallo, so that in the several Soviet Republics an arbitration clause is declared to be allowable not only in those cases in which Germans are contracting with the Soviet State but also where they are entering into business relations with individual Russian merchants. (Article 5, Par. 1 and 2). The arbitration question was dealt with in detail in the Russo-German Commercial Treaty of October 12, 1925, in which also the control of the ordinary courts over arbitral awards was definitely limited. Also the reciprocal power of execution of arbitral awards was guaranteed by this treaty. The Commercial Treaty of 1924 with Italy recognizes, too, the validity of arbitration clauses. (Article 12).

In concession contracts, the arbitration clause takes its place as a usual part of the contract. By the terms of the concession contracts so far concluded the umpire is to be provided either by the Soviet Russian Technical High School or the Moscow Bourse Committee. There are some contracts in which the choice of an umpire from the Russian Academy of Science is provided for, or in which a citizen of

a third state is to perform this function. There are instances in which this office was conferred on Fritjof Nansen. However the question is still an open one, even if we disregard cases where the arbitral award is held invalid by the Soviet Courts, just what means the party would have at his disposal if the Soviet State would not submit to an award rendered, upon one pretext or another.

In what follows we propose to give shortly a few facts about the way in which the ordinary courts are organized in Soviet Russia, that is to say the courts to which a foreigner must have recourse if he has not provided for arbitration as aforesaid.

The Judicial organization has been several times radically changed in the course of the eight years of the existence of the Soviet State. The organization of the courts now existing goes back in all essential particulars to the Judicial Organization Act which has been in force since January 1, 1923. The special courts, which exist for the handling of particular affairs such as land contests and suits between different branches of the state, need not be considered here.

The court of first instance in civil controversies is either the People's Court or the Government court. Each of these consists of a judge and two assessors; in lesser matters the People's Judge acts alone without the assistance of the assessors.

Judges are to be chosen by the Government Executive Committees for a period of one year. Among the qualifications of candidates for judicial office are (1) that they have both active and passive suffrage in the Workers' Councils (in other words do not belong to the politically disfranchised "bourgeoisie")[10] and (2) that they either

[10]According to the provisions of §65 of the Constitution of the R. S. F. S. R. which is adopted in the constitutions of the other Soviet Republics, the following classes of persons are entitled to neither passive nor active suffrage:

a) Persons who avail themselves of the labor of others with the object of gain.

b) Persons who live on unearned income, such as interest or income from business enterprises, from property and similar sources.

c) Persons engaged in trade, and trade and mercantile agents.

d) Monks, priests, servants of churches and religious organizations.

e) Employees and agents of the former police force, of the gendarmerie corps and of the safety police, as well as members of the former Imperial family.

f) Persons who in the prescribed manner have been adjudged mad or insane as well as persons who are under guardianship.

have a two year record of activity in a responsible position in the Workers and Peasants Organizations or else have occupied for three years a position in the Judicial Establishments, not lower than that of Peoples Investigating Magistrate (§11). Here also must be noted the fact that, by the terms of §34 of the Judicial Organization Act, those persons are not eligible to be named Investigating Magistrate "who during the Civil War were observed not to hold loyally with the Soviet side or who adhered to the Anti-Soviet Parties". By law of July 7, 1923, this provision was made to apply also to court bailiffs (§47, par. 4 of the Judicial Organization Act.)

The principle of the irremovability of judges is regarded as "bourgeois prejudice" and absolutely rejected. The court is in the Soviet system a frankly political organ and is intended to be kept dependent on the administrative authorities. The judges may at any time with the assent of the People's Commissaire for Justice be recalled by the Executive committees which have named them. (§§13 and 62). In addition to which they may be removed from office by the Disciplinary Chamber of the Government Court or of the Supreme Court. For this purpose it is enough if a number of the particular judge's judgments and decisions have been upset by the Supreme Court for the reason that they are "not in accord with the general spirit of the laws of the R. S. F. S. R. and the interests of the working masses." (§112, par. 2).

The other element in the judicial arrangement consists of the People's Assessors. The lists of these assessors were according to the regulations of the Peoples Commissaire for Justice of November 6, 1920, expressly placed under the control of the Communist Party. And these regulations were adopted in the 1920 Compilation of Statutes, (No. 100, art. 542). But they were not repeated in so many words in the existing Judicial Organization Act; instead that act requires that the lists of assessors shall be made up of 50%

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g) Persons who have been sentenced for a definite period according to statute or judgment for covetous or dishonorable criminal acts.

This §65 is retained in the new Constitution of the R. S. F. S. R. of May 11, 1925 (§69) with the following additions: To Par. (d) by which all monks and priests are deprived of suffrage the words "for whom this activity is a professional one", and to par. (e) the words: "also persons who played a prominent part in the police, gendarmerie and the punitive expeditions".

workers, 35% peasants and 15% soldiers (§20). No other classes of persons are eligible to be included in these lists at all. The choice of candidates for the office of assessor is to be made on the basis of their "political preparation". The lists are to be posted publicly so as to give every worker an opportunity to object to those persons who are in his opinion unfit for this service (§21). In addition it is required that assessors chosen for the sittings of the Government Court shall have behind them a two year service in public organizations or unions (§64).

The Court of Appeal from this People's Court is the Government Court, which for this purpose consists of three judges without lay assistance. Appeals from the Government Court, when it renders judgment as a court of first instance, go to the Supreme Court. The judges of the Supreme Court are named by the Highest Workmens Councils; nothing is said as to whether these judges are irremovable or not.

The jurisdiction of the particular courts depends in part, even in civil matters, on the orders of the Supreme Court, which is authorized in its discretion to assign to certain Government Courts not only particular proceedings but also whole classes of Civil Proceedings. (Comment on 24 of the Code of Civil Procedure.)

In the official magazine called the "Soviet Justice Weekly" we find a number of enlightening facts given, regarding the judges of the R. S. F. S. R. in the years 1923 and 1924. For 1923 are given data about the judges of 46 governments. Of the 1623 People's Judges 26½% were laborers and artisans, 49½% peasants and 24% so-called intellectuals. Politically 60% of them were Communists. These judges were classified as to degree of education as follows: 10% had received a higher education, 17% an intermediate education and 72½% the lowest degree of education. (In the Soviet statistics of the previous years a category of so-called "Domestically educated" was included. This designation has now been dropped). As regards the Government Courts we find that of 432 Government Judges, 70% were peasants and workers and 30% intellectuals; 77% of the Government Judges were Communists. In the matter of education it is stated that 17% had a higher education, 21% an intermediate education and 62% the lowest degree of education. The

presiding judges and their deputies in the Government Courts, as well as the members of the Supreme Court were 100% Communist. In these statistics of the year 1924 it is stated that the total number of People's Judges consists of 2532 of whom 746 are workmen and 1418 peasants. These classes accordingly constitute 85% of all the People's Judges. Over 75% of the People's Judges belong to the communist party. The number of Government judges is given at 698 of whom 75% are workers and peasants. Of the Government Judges over 80% are said to be Communists. The degree of education is not mentioned.

Quite typical are also the standards of Civil Procedure with which one must reckon when one has recourse to a Soviet Court. Legal authority for active intervention by the state in private controversies is apparent in the very first provisions of the Procedure Code. The States Attorneys are not only authorized to intervene (along with interested parties) in a pending civil proceeding, but also to commence civil proceedings on their own motion, when in their opinion the "protection of the interests of the State or of the working masses so demands". (§2) The court is in fact obligated to inform the States' Attorneys if at any time during a civil proceeding it becomes manifest that a state office or a state enterprise which is not represented in the proceeding, might have an interest in its outcome. (§172)

The court is not to depend solely upon the proof produced by the parties; it has rather the duty to take an active part in the affair and furnish assistance to the working man (§5).

In the absence of statutes the court is to found its decisions "upon the general principles of Soviet Legislation and the general policy of the Workers and Peasants Regime". (§4). This provision replaces the reference of the earlier Soviet Laws to the "revolutionary socialist sense of right." The Procedure Code contains also one provision in the field of Private International Law. By §7 the courts are directed in regard to contracts made in foreign countries to apply the laws of the place where the contract was made so far as their content is in accord with Soviet Russian laws or treaties entered into by Soviet Russia.

Except in suits on bills of exchange, tariffs and contracts, the

court is not limited by the claim of the complainant, but may award him more than he demands (§179).

The right to sue as a poor person is only accorded to working men; other plaintiffs may sue thus only for wages or alimony. However foreigners are in this manner as in other matters affecting procedure, put upon the same footing as natives. A commercial treaty with Italy expressly so provides in relation to Italians. (§§5 and 6); the same is true of the treaty with Germany (1925, §15). This principle of the similarity of legal position of foreigner and native holds only of natural persons. As regards juristic persons, the following provision is made: "Foreign juristic persons, not having permission to carry on business in the R. S. F. S. R., are entitled to call upon the courts to enforce claims which arose beyond Soviet jurisdiction and which are made against defendants who are within said jurisdiction, only on principles of reciprocity" (note 2 to §8 of the Act Enacting the Civil Code).

By the commercial treaty with Italy this matter is provided for in the sense that each state recognizes the right of legal persons created by the other to appear and prosecute suits in its courts. (Art. 9) The same applies to the commercial treaties with Sweden (§2, par. 3) and Germany (1925, §16).

The only provision for revision of a judgment is what is known as cassation. The court of cassation is not limited to the objections raised by the appealing party (§245).

Really judgments may never be regarded as final, for by §254 of the Civil Procedure Code, the States' Attorneys are authorized at any time without limit as to period of time, to attack any judgment before the Supreme Court, "where the protection of the interests of the Workers and Peasants State and the laboring classes so demands".[11] The execution of judgments of foreign states is to be regulated by special treaties with the individual powers (Note to §255).

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[11]The same holds true also in criminal proceedings. The Superior Courts as well as the Prosecuting Authorities are at any time entitled to have any matter whatever brought before the Supreme Court and the sentence either quashed or altered, regardless whether or not a sentence has already been pronounced or is even being carried out. (§441 of the Criminal Procedure Code.)

Even in the Soviet Legal System the rules (1925) of the Moscow Government Court must be regarded as extraordinary in so far as they expressly provided for the recognition of the usual class principle in execution proceedings. The bailiff, as well as the court rendering judgment, may not be indifferent to the station of the parties, but must exercise his authority according to their social position. The most extreme care is prescribed wherever the execution runs against any state enterprise. And too, one must not forget that the trusts and other economic forms in which the Soviet State engages in business undertakings, are for the most part of the sort which according to existing Soviet law, "are put on a basis of independent economic responsibility"; the State Treasury is not answerable for them; only the property turned over to them may be taken to meet claims against them (§19 of the Civil Code of 1923).

Excluded from commerce and from execution are all real property, nationalized enterprises, enterprises taken over by the local authorities together with their equipment, railroads and their rolling stock, nationalized ships, and nationalized and local government buildings (§§21 and 22 of the Civil Code).

The Civil Procedure Code further provides that moneys belonging to state enterprises are not subject to execution, provided they are necessary for the payment of accrued wages or of wages to accrue within the two weeks next following.

Under these conditions there must be many cases where the prospects are none too good that the party will actually obtain anything even if he wins his suit.

IV.

An important question for the foreigner who undertakes at the present time to do business in Russia, is, what will become at his death of his property located there. As is well known, the Soviet Government soon after its establishment, acting in harmony with its entire social, political scheme, abolished the right of inheritance as such (Decree of April 27, 1918). Although the execution of this provision proved to be impossible as regards the peasantry, and in fact it was altered in its application to Rural Workers Unions by the explanatory declaration of the Commissariat for Justice, (May 21,

1919) nevertheless it remained in force with regard to urban population down to the time of the change to the so-called "new economic policy".

In this second period of the communistic regime, a limited right of inheritance was reintroduced, at first by a decree concerning "Private Proprietary Rights to Land" (May 22, 1922), and shortly afterward by the new Civil Code which became operative on January 1, 1923, in the R. S. F. S. R. (Greater Russia), and sometime later in the other Soviet Republics.

It should be noticed that according to par. V. of the decree, (May 22, 1922) its provisions are not to have retroactive effect. From this it follows that the devolution of estates which occurred between April 27, 1918 and May 22, 1922, is not covered by the provisions reestablishing the right of inheritance, and that such estates must be regarded as passing to the state in their entirety.

As already indicated, since May, 1922, intestate as well as testate succession has been reestablished. It is characteristic that the persons competent to take upon intestacy and under a will are exactly the same. In both instances the only eligible persons are the direct heirs of the decedent to wit, the surviving spouse and "persons disabled and without property, who have been actually and wholly supported by the decedent for the period of one year before his death" (§418 of the Civil Code); other persons cannot even receive gifts by will. Intestate estate passes to all of the heirs in equal parts. Testamentary disposition can only affect this result in so far as to divide the estate between legal heirs in other proportions or to cut off some of them entirely. (§422).[12]

The total amount of the estate which may be left, must not exceed the sum of 10,000 gold rubles (less debts). (§416). Any amount over this goes to the Soviet State. (§417). There are, however, a few exceptions to this proposition; one noteworthy exception appears in a note to §416, to wit, that "rights based on contracts between state institutions and private persons (leases, concessions, construction con-

[12]The decedent is only allowed full freedom of choice of legatee in two cases. By a provision of December 26, 1922, §17 (See Journal of Soviet Justice, Charcoff 1925. No. 15-16, page 602) *savings accounts* and by the Supplementary Law of June 1, 1925, *usufructs of life insurance*, may be fully disposed of.

tracts, and so on) may, during the period for which these contracts are operative, pass by way of testate or intestate succession, regardless of limitation as to amount, as provided in the foregoing section."

The Patent Statute of September 12, 1924, also provides in §10, that the owner thereof may dispose of his patent by will, and that in case he does so, this patent is not to be reckoned as part of the estate left. Likewise in the Copyright Statute of January 30, 1925, "The estimated value of the copyright is not to be included in calculating the value of the estate for the purpose of the law limiting rights of succession." (§11, par. 4).

Moreover, it is provided by an order of December 26, 1922, that testamentary dispositions of savings accounts are excepted from the statutory limitations as to amount. The new regulations affecting savings banks (Jan. 1925) also remove these limitations on intestate succession to such accounts.

The Supplementary Law of January 1, 1925, (§375 a of the Civil Code) permits the succession to usufructs of life insurance, without limitation of amount. And from reports in the Soviet Press, we learn that the Soviet Government is at present planning to do away entirely with limitations on the amount of the estate which may pass by succession.

The scale of inheritance taxes now in force in the R. S. F. S. R. is fixed by the decree of January 12, 1925. This scale is graduated so that the maximum tax on surplus sums above 200,000 rubles does not exceed 50%. All the statutory provisions with reference to succession are meant to apply not only to natives but also to foreigners. This was first expressly stated in the Urkrainian and the White Russian provisions as to foreigners, of March 28, 1922, and August 4, 1922, respectively. By decree of the People's Commissaires of the R. S. F. S. R. (May 18, 1923) the same principle was adopted for Greater Russia in relation to taxes on transfers of property at death and in the aforementioned decree of January 12, 1925, was redeclared.

All the existing laws above mentioned, recognize expressly that the devolution of property which at the death of a foreigner happens to be within the Soviet Republics, is to be controlled by the Soviet Statutes, except where other provision is made by special treaties with foreign states. In other words, the principle of territorial jurisdic-

tion is adopted in regard to the devolution of all estates which come into being on Soviet soil, although the possibility of deviations from this principle by special international treaties is recognized.[13]

In several treaties which the Soviet Republics have already concluded, these questions are dealt with on the principle of nationality. In the West, such treaties have been made with Lithuania, Letvia, Esthonia and Italy in 1924, and with Germany in 1925, and in Central Asia, with Bokhara and Khiva.[14]

By the treaties mentioned the estates of nationals of the treaty powers are to be turned over to their consular representatives and the devolution thereof, both testate and intestate, is to be governed by the law of the decedent's nationality. In the treaties with Italy, February 27, 1924, and with Germany, October 12, 1925, it is provided that movables are to be dealt with according to the law of decedent's nationality, while immovables are to be controlled by the law of the state in whose territory they are located.

V.

We have attempted to set out, in the brief compass of this article, the general legal principles with which a foreigner who resides in Soviet Russia, may come into practical contact. But further than this, we cannot ignore the fact that the rights recognized and accorded by Soviet legislation offer no actual guarantees. To make this point clear, we shall, in conclusion, make a few observations upon the conception of law in Soviet Russia,—from which it will be evident that even though the new legislation there does not differ *externally* in marked degree from the codes of other countries, nevertheless the place and the social function of positive law in the Soviet State, is decidedly different. In the first place it is expressly declared by the very persons who are responsible for the present Soviet law, that

[13]The principle of territorial jurisdiction is also made applicable to foreigners who are sojourning in Soviet Russia, as regards matters of marriage and family law.

[14]In fact the last two named republics have now been changed from People's Republics into Socialistic establishments and are affiliated as members with the Soviet Federation, so that the treaties between them and the other Soviet states lose their character as international agreements.

they regard law in general as highly injurious. Relying on Karl Marx, Goichbarg, one of the most influential Soviet lawgivers, develops the notion in his book on the "Fundamentals of Private Law", that the very purpose of law has been to serve the interests of the exploiting class. Goichbarg is of opinion that this has unfortunately been too little appreciated and that the communistic proletariat would regard the problem of law as satisfactorily solved if the socialistic legal consciousness had become the final test in place of the former middle class legislation. But in the estimation of Goichbarg the problem lies even deeper. "Every enlightened proletarian knows * * * that religion is opium for the people. But I believe that not often has anyone appreciated that the law manifests itself as an even more poisonous and benumbing narcotic for that same people". (op. cit. page 7). These questions are also dealt with in the same tone by other Soviet jurists. As to the existing Soviet legislation which has to be considered, as a necessary evil in the present historical period of transition from the proletariat dictatorship to the complete communistic state, the aforementioned Goichbarg expresses the view that it is to be described rather as rules of organization and the unhappy designation of it as law, is to be avoided. This is not however a mere matter of a new name, which is to be adopted by the Soviet legislators; rather the question is one of accepting a fundamentally different meaning for law, Stutschka, the former People's Commissaire for Justice, and now Chief Justice of the Supreme Court at Moscow, defines the Soviet statutes as *"technical instructions"* of which *only the general principles are obligatory.* Whether substantive law or procedure is involved, whether the norms of civil or of criminal law are to be applied, the binding force of these statutes is always qualified in this sense. (Stutschka, "The Revolutionary Role of Law and of the State") Professor Reissner, who also expresses his views regarding the principles of applying statutes, holds the opinion that statutes are not to be interpreted according to the hypocritical "justice" of the middle-class view of life, but rather in such a way as to make them correspond to and express the policy of the Soviet State.

This conception of law is also reiterated frequently enough by the *dei minores* of the Soviet Legal Olympus—it is stressed again and

again that "law and legality are not to serve as an unfortunate note in the proletarian dictatorship". "It is clear that in a state in which exists a dictatorship unfettered by any laws, to make a fetish of law and legality is impossible without perverting the basic principles of that state. (Journal of "Soviet law" 1924, No. 2, page 41).

In harmony with these general theoretical notions of law, are indeed some of the fundamental statutory provisions which have been cited above. The very first section of the Civil Code allows (by its obscure formulation) a fine opportunity for arbitrary interpretation, and the courts make liberal use of their opportunity. Section 1 reads: "Civil rights enjoy legal protection, except in those cases in which their enforcement conflicts with their social-economic purpose". This elastic paragraph of the Civil Code corresponds to the previously mentioned §10 of the Criminal Code, according to which the principle *nullum crimen, nulla poena sine lege,* is rejected. In this clause is manifest the conception of the Criminal Code as a collection of "technical instructions" addressed to the tribunal. Not only as above indicated is "justice" to be disregarded, but also equality before the law is plainly rejected. And this does not mean simply a rejection of democratic equality of all citizens, for, as is known, political rights in the Soviet State belong only to the "workers". But this means that those laws which accord specific definite rights to *all* are to be unevenly applied.

By the terms of §5 of the Act Enacting the Civil Code, which went into effect January 1, 1923, "the extensive interpretation of the Civil Code is only permissible whenever the protection of the interests of the workers and Peasant State and of the laboring classes so demands". The semi-official Soviet press construes this section to mean that there are to be two standards for the courts in performing their functions, depending on whether the court has before it a middle class party or has to deal with a "Worker" or the state itself.

In §2 of the same statute enacting the Code, it is said, "No controversies whatever concerning legal matters of a civil character which arose before November 7, 1917, shall be allowed to be litigated before the courts or other tribunals of the Republic." In other words, we find here the remarkable idea carried out, that anything which happened prior to the day of the Bolshevist Revolution is deprived

of all legal force and significance whatsoever. The Soviet commentators however make, in this connection, the observation that the courts do not have to apply this categorical statutory provision, where, for example, it affects a Worker who happened to be injured in a factory during the Czarist Regime and for some reason or another did not avail himself of the execution order of the Czarist Court. A judicial decision to this effect is in fact referred to by the President of the Supreme Court in a work published by him in 1924.

This principle of class discrimination is likewise constantly emphasized in the field of Criminal law. It is declared in a most unambiguous sense in the "principles of Criminal Legislation", published by the Leaders of the Soviet Federation, on October 31, 1924. Therein it is expressly said, that penalties are to be increased whenever the crime is committed by a person who, either in the past or at present, belongs to that class who exploit the labor of others, (§31, par. 2). On the other hand punishment is to be lessened whenever the crime is committed by a worker or working peasant (§32, par. 2).

Perhaps no more need be said regarding the extent to which the deciding factor in legal proceedings will be, on the one hand, the "proletarian origin" or the "communistic affiliation" of a party, or on the other hand, his status as a member of the middle-class,—and this of course whether the proceeding be civil or criminal.

If we were to try to state shortly what has been hereinbefore set out, we would say that the characteristic principles of Soviet law as it has existed up to the present time have been these two:

1) The very limited binding force of statutes which are regarded primarily as general "technical instructions" and

2) The recognition and enforcement, in construing laws of general application, of legal inequalities based on class differences.

These two general notions which mark the entire legal system of the Soviet State, give rise very naturally to the question whether Soviet statutes are to be considered as legal norms at all—at least in the usual sense in which we think of law. Moreover unless we clearly appreciate these notions, we do not have a correct impression of the condition of affairs in the legal field to which the communists of Russia give the name of "revolutionary justice".