SOVIET CIVIL LEGISLATION AND PROCEDURE

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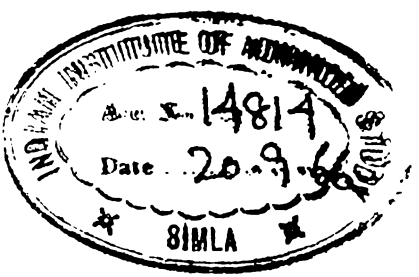
Official Texts and Commentaries

FOREIGN LANGUAGES PUBLISHING HOUSE
Moscow

TRANSLATED FROM THE RUSSIAN BY YURI SDOBNIKOV

ОСНОВЫ СОВЕТСКОГО ГРАЖДАНСКОГО ЗАКОНОДАТЕЛЬСТВА И ГРАЖДАНСКОГО СУДОПРОИЗВОДСТВА

На английском языке



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Anyone who wants to have a correct understanding of how Soviet civil legislation and procedure operate should familiarise himself with the relevant Fundamentals.

The Fundamentals of Civil Legislation of the U.S.S.R. and Union Republics (FCivL) are an act of primary political, economic and cultural importance. They establish the general principles of Soviet civil legislation and the basic rules governing the most important types of property relations in the U.S.S.R. They serve as a basis for the civil codes of Union Republics. In other words, the Fundamentals are the uniform legal foundation of civil legislation in the U.S.S.R. in the period of full-scale building of communism. They sum up civil legislation, judicial and arbitral practice, and the writings of Soviet civilians over a period of many years, and are a basis for the further development of the civil law of the society building communism.

Soviet civil legislation, says the Preamble, is designed to be a major instrument in implementing the Programme of the Communist Party of the Soviet Union. Civil legislation has a most important part to play in building the material and technical basis for communism, for it helps to consolidate socialist property and the socialist system of economy, to develop the various forms of socialist property into an integrated communist property, improve the system of cost accounting and make enterprises more profitable.

Civil legislation is also an important means of educating the new generation of men, for it gives consistent expression to the principle of harmonising individual and public interests, assures citizens of an ever wider range of property and non-property personal rights, which are inseparable from their duties to society, and further strengthens the socialist rule of law.

It follows that a study of the FCivL is essential to any understanding of current economic and cultural development in Soviet society.

The Fundamentals of Civil Procedure of the U.S.S.R. and Union Republics (FCivP) are closely connected with the FCivL. This legislative act establishes the democratic general principles and general rules governing the examination of civil suits at law.

The rules of the FCivP are a clear expression of the ever wider participation of the public in the administration of justice in civil litigation, the increasing protection of the interests of the individual harmonised with those of society and the undeviating struggle to strengthen socialist legality.

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ON THE FUNDAMENTALS OF CIVIL LEGISLATION OF THE U.S.S.R. AND UNION REPUBLICS

I

1. The Fundamentals of Civil Legislation of the U.S.S.R. and Union Republics (FCivL) were adopted by the Supreme Soviet of the U.S.S.R. on December 8, 1961, and came into force on May 1, 1962. On the basis of the FCivL new civil codes are to be enacted by the 15 constituent Republics of the U.S.S.R.

The need to codify Soviet civil legislation anew has been felt for some time. The Civil Code of the R.S.F.S.R., adopted in 1922, and the Civil Codes of the other Soviet Republics, adopted after it, sanctioned legally the property relations which had taken shape since the Revolution. These relations are based on the state ownership of the basic means of production, namely, land, forests, waters, minerals, big industrial plants, railways, sea, river and air transport, etc. But in the twenties, small-scale commodity farming prevailed in the countryside, private enterprise being permitted on a limited scale and under state control. Eventually socialism in the U.S.S.R. scored a complete and final victory. Agriculture is now organised on socialist lines, and private operators have long since been ousted from the economy.

That Soviet civil legislation in the more than 40 years has kept in touch with realities goes without saying. But no fundamental revision of the codes has been undertaken. With the FCivL as a basis, reflecting the new stage of Soviet society and the Soviet state—the stage of full-scale

construction of communism—the Union Republics will enact new codes in line with present-day demands and the actual state of property relations.

2. The Preamble and Articles 1 and 2 of the FCivL define the subject-matter of civil legislation and its purpose and role in Soviet society.

Soviet civil legislation in the main regulates property relations. It does not, however, regulate all property relations, but only those which owe their origin to the use of commodity-money relations in communist construction.

All property relations in Soviet society are based on the socialist system of economy, which rests on the social ownership of the means and instruments of production and planned economic development. It also makes use of commodity relations, money, credit, cost accounting, and of other categories relating to commodity production. They are used for planned economic development: to accelerate the rate of socialist accumulation, expand production, and raise living standards. Accordingly, state enterprises in the economic turnover are juridical persons of the civil law. Certain portions of state property are designated as charter funds and are assigned to enterprises for administration; they have the possession, use and disposal of this property on the basis of cost accounting, within the statutory limits and in accordance with their aims and planned targets, and the designated purposes of the property.

Collective farms and other co-operative organisations, and also mass organisations not pursuing economic but social, cultural, scientific and similar aims, and state establishments financed from the state budget but having their own estimates are likewise juridical persons.

Economic organisations (state enterprises, collective farms and other co-operatives) may be parties to various civil legal transactions which they conclude with each other, such as contracts for sale, delivery, carriage, con-

tractor's agreements, especially agreements on capital construction, safe-keeping, lease, etc. State establishments and mass organisations enter into civil legal transactions which are necessary to achieve the aims specified in their charters. Non-contractual obligations, such as reparation of injury inflicted by the fault of their functionaries in the performance of their duty, receipt of property without sufficient ground thereto, etc., also arise between the said socialist organisations; their property is liable for their obligations, and their assets, mainly circulating assets, may be attached for their debts, in the manner and within the limits established by law.

Articles of consumption may be the personal property of citizens, who are free to dispose of their earned income, enter into various civil legal relations with socialist organisations with the aim of satisfying their material and cultural requirements as in the sale of goods by various state and co-operative stores, lease of dwelling premises, lending and making of everyday things, cultural services, etc.

Citizens may also enter into civil legal relations when personal property is disposed of or inherited, when injury is caused by one citizen to the property of another, etc.

3. Consequently, socialist organisations and citizens, who enjoy equal rights, are subjects of property relations, which are regulated by Soviet civil legislation. The law (Art. 2) ranks relations between state, co-operative and mass organisations, first; relations between citizens and these organisations, second; and relations between citizens, third; for the simple reason that material wealth is created primarily in the sphere of socialist production, whose objective is to satisfy the interests of society and its citizens. Socialist organisations cater for the material and cultural needs of citizens, which gives rise to the second, derivative, group of relations, regulated by civil legislation. Relations between citizens constitute the third group.

All three groups are interconnected, and the law-maker's point of departure is the uniform civil legal regulation of property relations in the U.S.S.R. This regulation is uniform because property relations arising from the monolith of the Soviet economy are also uniform.

However, other (i.e., non-socialist) organisations may also be the subjects of civil legal relations in cases provided by the legislation of the U.S.S.R. (Art. 2). Thus, for example, church organisations may be parties to some types of civil legal transactions necessary for church activity and performance of religious rites.

4. Inasmuch as Soviet civil legislation regulates only property relations connected with the use of commodity-money relations, i.e., relations between equal subjects, each with his separate property, it does not extend to property relations based on the administrative subordination of one party to another, or to tax and budget relations (Art. 2).

Relations arising between a state organ exercising planned direction of the economic activity of a state enterprise (such as, for instance, the council of an economic administration area) and that enterprise, are not regulated by civil but by administrative law, even where such relations are meant to involve property (such as the assignment of circulating assets to the enterprise; issue of a warrant, i.e., sanction to receive from another enterprise a specified product distributed under a plan, and covered by a contract concluded with the latter, etc.).

Nor does civil legislation regulate family relations, because in the Soviet family primary importance attaches to personal and not to property relations. The family law in the U.S.S.R. is an independent branch of law, and family relations are regulated by special Marriage and Family Codes of Union Republics. Labour relations are also an independent type of social relations and are the subject-matter of the labour law. Land in the U.S.S.R. is the property of the whole people, the state being its sole

owner to the exclusion of all others. Since land has no monetary value, relations arising from the gratuitous allotment of land for use by socialist organisations and citizens are beyond the scope of civil legislation and are regulated by the rules of the land law. The kolkhoz law is likewise an independent branch of law and regulates relations between collective farms and their members on the basis of their Rules. In this sphere, where membership is the deciding factor, labour relations are an organic part of property relations and cannot therefore be included either in the civil or the labour law.

5. Property relations involving the use of commodity-money relations are the principal object of civil legislation, but the FCivL also regulate non-property personal relations connected with property relations, as they are in the copyright law and the patent law, which deal with such non-property personal rights as the author's right to the name, integrity of the work, etc. Claim of authorship or integrity of a scientific, literary, or artistic work or invention is ordinarily a prerequisite for recognition of the author's property rights, as, for instance, the right to receive a fee. But independent value may attach to non-property personal rights both under copyright and patent law.

A novel contained in Art. 1 is that, in cases provided by law, other relations, i.e., personal relations not connected with property relations, are also regulated by civil legislation.

Accordingly, Art. 7 provides judicial remedies in the civil law against defamation of character, where the person making statements derogatory to the honour and dignity of another person or organisation fails to prove that his statements are true. Thus, in addition to the judicial protection provided by the criminal law against defamation, i.e., false statements injuring the said personal rights, the civil law now provides remedies against those who spread defamatory statements honestly believing them to be true.

Libels, defamatory statements published in the press,

must, if untrue, be also retracted in the press (the right to a retraction). But Soviet law makes no provision for the payment of damages for moral injury. If the offender fails to fulfil the court judgement binding him to make amends, he may be ordered to pay a fine, which is collected for the benefit of the state, but this, however, does not absolve him from the obligation to fulfil the court judgement.

The novel in Art. 7 shows that in Soviet society increasing importance attaches to the assessment of the moral qualities of individuals and collectives (organisations) from the standpoint of their social value.

6. The FCivL re-enact the time-tested rules of the civil legislation in force which have grown out of the many years of judicial and arbitral practice; and certain new provisions worked out in accordance with the demands of practice and the economic policy of the U.S.S.R., and theoretically substantiated by the science of Soviet civil law. These rules are designed to extend Soviet democracy and strengthen the rule of law in the sphere of property and non-property personal relations.

The FCivL state the purpose of the civil legal regulation of these relations, namely, to contribute to the creation of the material and technical basis for communism and to the provision of ever fuller satisfaction of the material and spiritual requirements of citizens.

7. Civil legal relations, the FCivL say, do not arise only on grounds expressly stated by law (transactions, planning acts, authorship of the products of brain work, infliction of injury, etc.). They also arise from the acts of persons or organisations which, while not provided by law, produce civil rights and duties in virtue of the general principles and meaning of civil legislation (Art. 4).

Even before the adoption of the FCivL, the courts, in accordance with the code of civil procedure, applied the analogy of law and provided protection to relations not covered by the rules of civil legislation. This rule now

becomes a part of substantive law although the FCivP allow for the use of analogy (Art. 12). Consequently, there is no exhaustive statutory enumeration of the grounds from which obligations and other civil legal relations arise.

8. The FCivL give the first exhaustive description of the remedies through which civil rights may be enforced by the courts, arbitration boards (deciding property disputes between socialist organisations), mediation boards, and, in the cases stated by law, comrades' courts, trade union or other mass organisations (Art. 6).

In the last few years, mass organisations have been playing an ever greater part in government and the administration of justice, which is why they may examine some types of civil cases. Thus, trade union organisations examine workers' claims for compensation of injuries in industrial accidents. When the injured person does not agree with the trade union's decision he may apply to a court of law. Comrades' courts are entitled to settle minor disputes involving property.

9. The FCivL, while providing protection to civil rights, require that they should be exercised in accordance with their designated purpose in socialist society in the period of full-scale communist construction, and that persons and organisations should respect the rules of socialist community life and Soviet ethics (Art. 5).

This rule of the FCivL elaborates, in the new conditions, the rule contained in Art. 1 of the 1922 Civil Code of the R.S.F.S.R., which stated that civil rights were protected by law except as they were exercised in contradiction to their social and economic purpose. A right may not be exercised in a manner prejudicial to the interests of society. Thus, the Supreme Court of the U.S.S.R., within whose competence it is to generalise judicial practices and give instructions to the lower courts, pointed out in 1940 that if the lessee of dwelling premises in a state-owned building made a practice of sub-letting a separate room

with the object of deriving unearned income, the said room could be taken away from the lessee by the court in action brought by the procurator or the housing agency in charge of the dwelling house (Clause 9 of the Ruling of the Plenary Session of the Supreme Court of the U.S.S.R. of December 12, 1940, concerning judicial practices in applying the housing law of October 17, 1937, see Гражданский кодекс РСФСР, Госюриздат, М.,1957, стр. 183).

10. The FCivL re-enact the earlier rules that all citizens enjoy equal legal capacity and that full legal ability to enter into legal transactions is attained at the age of 18; they restate the rule that no one may be limited in legal capacity or legal ability, except in cases and in proceedings established by law (Art. 8). Art. 9 of the FCivL enumerates civil rights which may vest in Soviet citizens, including the right in personal property and the right to inherit it, the right to choose any occupation, and place of residence, copyright, etc.

An important amendment has been made to the procedure governing the declaration of a person as absent or dead. Prior to the enactment of the FCivL such facts were established in some Union Republics, notably the R.S.F.S.R., by a notary public and not by a court of law. Henceforth the declaration of a person as absent, like the declaration of an absentee as dead, requires a judicial proceeding. In addition, the FCivL considerably extend the period upon the expiration of which a serviceman or other citizen missing in action in connection with military operations may be declared as dead. The original period was six months from the date of his being declared missing by a competent military authority, but the experience of the Second World War has shown that this period is much too short. Accordingly, the running of the period now begins from the day of the termination of military operations and runs on for two years (Art. 10).

11. The FCivL specify the circle of juridical persons—

socialist organisations—entitled to take part in civil commerce. They are: all state enterprises operating on the principle of *khozraschyot** and having their own fixed and circulating assets and a separate balance sheet; and state-budgeted establishments operating on special estimates (organs of state power and state administration, social and cultural establishments, schools, institutions of higher learning, hospitals, etc.). The status of juridical persons is also recognised for other state organisations, not operating on *khozraschyot* or on the state budget, but financed from other sources, and having their own balance sheet. Collective farms and other co-operative organisations, and associations and unions not pursuing economic purposes (usually called mass organisations) are likewise deemed to be juridical persons.

Many inter-kolkhoz enterprises have emerged in recent years. They are organisations set up by two or more collective farms to cater for their economic needs, such as building and transport agencies, electric power stations, etc. State-kolkhoz organisations, formed jointly by the state and collective farms, have also been set up. Inter-kolkhoz and state-kolkhoz organisations are likewise juridical persons (Art. 11).

All state organisations and other juridical persons take part in civil commerce on their own behalf: the state is not liable for the obligations incurred by state organisations enjoying the status of juridical persons, nor are the latter liable for the obligations of the state. This rule applies both to enterprises operating on *khozraschyot*, and state organisations (establishments) on the state budget. Where the debts incurred by a state-budgeted organisation (establishment), duly established by a court or arbitration

* *Khozraschyot* is a principle of socialist economic activity requiring that the results of planned economic operations should be commensurate with the costs, that expenditures should be covered from incomes, and that production should produce a profit. It implies the material responsibility of, and material incentive for, workers in the efficient economic employment of all resources.

board, are in excess of the resources placed at its disposal by its estimates, the state appropriates the necessary amounts from the budget to pay off its debts (Art. 13).

Juridical persons have special legal capacity, i.e., they may enter only into legal transactions which correspond to the purposes of their activity (Art. 12).

12. Before the adoption of the FCivL, the consequences of invalidity of legal transactions (made for a purpose contrary to law; non-compliance with the statutory form; concluded with incompetents, under the influence of fraud, as a result of a mistake which has material significance, or other defects of will) depended on the grounds and the nature of the invalid transaction. Thus, where the legal transaction was invalid due to non-compliance with the form as expressly prescribed by law each party had to restore to the other party whatever was received in the transaction; in a legal transaction made for a purpose contrary to law, whatever the parties may have delivered to each other was collected for the benefit of the state; in the event a legal transaction was declared invalid by reason of fraud, only that part which was performed by the party at fault, i.e., the party aware of the illegal nature of the transaction, was collected for the benefit of the state.

The FCivL lay down the general rule that where a transaction is invalid each party must restore to the other party everything received under the transaction, provided no other consequences of invalidity are prescribed by law. However, if the transaction was made to the obvious prejudice of the state and society, with intent on the part of both parties, not only all that has been received under the transaction but all that each party was to have performed is collected for the benefit of the state. In the event of intent on the part of only one party, the said consequences apply to that party alone (Art. 14).

13. Judicial practice has established the rule whereby the right to sue accrues from the day on which the party

has learned or should have learned about the infringement of his right. That this moment often coincides with the moment of infringement goes without saying, but there may be and often is a discrepancy, as in the case of the owner returning to his domicile after a long absence and discovering that someone has taken illegal possession of his things. To meet the interests of the plaintiff the FCivL have made a law of this rule. Exceptions may be made only by the legislation of the U.S.S.R. and Union Republics. Thus, in actions brought by socialist organisations against each other arising from delivery of goods of improper quality the running of the period of limitation does not commence from the date of shipment or from the date of receipt of the goods by the buyer, but from the date of the making of an instrument testifying to the improper quality of the goods.

The statute of limitation does not ordinarily apply to claims arising from infringement of non-property personal rights, and this rule has been incorporated in the FCivL. It was established by judicial practice as early as the 1920s that the statute of limitations does not apply to the claims of state organisations for recovery of state property from the unlawful possession of another. This rule has now become law (Art. 17). The statute of limitations does not apply to certain other claims, and the FCivL allow the extension of this list by the legislation of the U.S.S.R.

II

14. Part Two, which deals with the law of property, also contains a number of rules developed by the practice and theory of Soviet civil law.

This applies above all to Art. 20 of the FCivL, which says that the property of mass organisations, apart from state property, kolkhoz property, and the property of other co-operative organisations and their associations, is also socialist property. The 1936 Constitution of the U.S.S.R.

distinguishes two forms of socialist property: state, and kolkhoz and other co-operative property. But the fact is that another type of property is now gaining ground: it is the property of the trade unions and other mass organisations whose purposes are artistic, scientific, technical, athletic, etc. Their importance and role has been steadily growing in view of their ever wider participation in government and the administration of social affairs. Art. 24 deals with the objects of the property of trade unions and other mass organisations.

15. Art. 21 describes the powers conferred upon state organisations in respect of state property assigned to them for management, which is specified as *operative* and consists of the powers of possession, use, and disposal of the said property in accordance with their aims, planned assignments and the designated purposes of the property. Thus, the category of operative management is filled with a civil legal content. But state organisations, in spite of the said powers vested in them, are not the owners of the property assigned to them: the state is the sole owner of all state property (Art. 21). However, these powers are distinct from the powers of *administrative* management exercised by planning, control and other administrative agencies in respect of the economic operations conducted by state enterprises and organisations: these powers constitute the content of administrative law.

16. There are important provisions concerning the law of personal property. Property which may be in personal ownership is of the consumer type; Art. 25 lists the objects which may be in personal ownership and lays down the rule that personal property may not be used to derive unearned income.

Personal property in the U.S.S.R. is based on the citizens' participation in social production. In socialist society the exploitation of man by man is forbidden. Speculation is prohibited by criminal legislation. Articles 5 and 25 of the FCivL provide the civil legal means of combating th

private property urge which is still strong in some citizens who try to enrich themselves by deriving unearned income from their property (for example, the lease at exorbitant rents of dwelling premises in houses belonging to lessors by right of personal ownership).

The law-maker, with the consumer purpose of personal property in mind, has established that cohabiting spouses and their minor children may own only one dwelling house, as the personal property of one of them or as their common property. That a dwelling house may be the personal property of a single person goes without saying.

The FCivL reproduce the basic provisions regulating the ownership of a kolkhoz household, i e., a collective farmer's family. The property of a kolkhoz household is held in undivided joint ownership* by its members (Arts. 26 and 27).

17. More ground is being gained in the U.S.S.R. by property owned in common by kolkhozes, mass organisations, and by the state and kolkhozes. The emergence of this type of common property is connected with the task set out in the programme of communist construction, namely, the task of bringing the various forms of socialist property closer together and their eventual merger in a single communist property of the people.

18. The FCivL have accordingly extended to the property of kolkhozes, and other co-operative and mass organisations the rules of unlimited vindication (recovery by legal process of property in the unlawful possession of another), which previously applied only to state property. This means that the said organisations may recover their property from any unlawful holder, whether in good faith

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* There are two types of common ownership: joint ownership by shares; and undivided joint ownership. The shares in undivided joint ownership are determined only when it ceases, either by the separation of the share of an owner, or by partition. Property earned during a marriage by the spouses (except property acquired as a gift or by inheritance) is marital community property.

or bad faith (but within the period of limitation). In all other instances, the owner has the right to recover his property from a holder in good faith only when it was lost by or stolen from him or a person into whose possession it was conveyed by him (Art. 28).

Before the adoption of the FCivL, protection of the power to possess was vested only in the owner of the lessee of the property: the latter had the right to invoke the court for protection against everyone who encroached upon his possession, including the owner. Considering the demands of practice, the law-maker (Art. 29) has extended this rule to all others who are not owners but are entitled to possession of the property by operation of law or contract (carriers, contractors, persons accepting the property for safe-keeping, etc.).

19. It had earlier been the rule that the acquiring party's right of ownership in an individually defined thing arose from the moment when the contract was concluded, but with respect to things defined by generic characteristics, it arose from the moment of their delivery. Arbitration practice has shown, however, that a single criterion of accrual of the right of ownership for the acquiring party under a contract (and for state organisations—the right of operative management of property) is much more in line with the interests of the economic turnover. It has been enacted, therefore, that the moment of accrual is the moment of delivery of the property, unless otherwise provided for by law or contract (Art. 30).

III

20. Part Three—the Law of Obligations—regulates a very wide range of property relations in Soviet society. Relations of obligation between enterprises and organisations are the legal form of economic ties involving delivery of goods, construction, assembly and other operations, transport, credit, etc. Obligations between socialist organisations and citizens are the principal legal form of public services offered by these organisations, such as state and

co-operative retail trade, lease of dwellings in state-owned buildings, all manner of every-day services, etc. Obligations between citizens are those pertaining to the disposal of personal property, whose main purpose, as has been said, is to satisfy the material and cultural requirements of the owner. That is why legal relations of obligation involving the disposal of personal property occupy an insignificant place in the Soviet property turnover, and include the sale by citizens of the products of their subsidiary husbandry; lease of premises in houses in personal ownership; and sale of things no longer used or needed.

21. Contract is the most common ground from which obligations arise, for in the overwhelming majority of instances obligations arise in accordance with the will of the parties. Art. 33 says that obligations arise from contract or other grounds, as enumerated in Art. 4 of the FCivL, and the wording here emphasises the significance of contract as a most important ground from which obligations arise. Not all of the juridical facts enumerated in Art. 4 serve as grounds from which obligations arise: discoveries, inventions, technical improvements, and scientific, literary and artistic works do not serve as an immediate ground from which obligations arise. Relations produced by these juridical facts are regulated respectively by the rules of the right to discovery, copyright and the law of invention.

22. Art. 4 does not set contract apart as ground from which civil rights and duties arise but applies the wider concept of legal transaction. Contract is a type of legal transaction, its main characteristic being that it is an agreement between the parties, i.e., the legally relevant concurrence of their wills, and this determines the significance of contract as the most common ground from which obligations arise. But obligations may also arise from a unilateral legal transaction, i.e., a transaction made by one party, such as the announcement of a contest for the best performance of some work.

23. Administrative acts, including planning acts for state, co-operative and mass organisations, may, in cases established by law, immediately produce civil legal obligations. Thus, an approved goods haulage plan gives rise to an obligation for the carrier to make available means of conveyance and an obligation for the consignor to make due use of them (for example, to load cars, sea going or river vessels, etc., without delay). Most frequently, however, an administrative act does not directly produce a civil legal obligation, but an obligation to enter into a contract in accordance with the instructions of the administrative (as a rule, planning) act, which are elaborated in the contract made by the parties in accordance with the planning act.

24. The FCivL emphasise that obligations must be performed in the proper manner and within the specified time, as stated by law, planning act, or contract, and, in the absence of any such indications, in accordance with the usual requirements (Art. 33). Art. 34 sums up and enacts the provisions of earlier civil codes, separate normative acts and practice. It lays down the rule that the content of a contract concluded on the basis of a planned assignment must correspond to that assignment. Thus, the FCivL point up the need to observe the requirements of planning acts in establishing relations of obligation (in particular, contractual relations). This is a legal means of ensuring that the guidance of the planning authority is combined with the initiatives and independence of enterprises and organisations.

25. The planned assignment determines only some of the basic terms of the contract, the details being established by the parties.

In the event of a dispute arising between the parties about to conclude a contract on the basis of a planned assignment, which is mandatory for both, it is settled by an arbitration or mediation board in a pre-contractual proceeding. The decision of the board is binding on the parties.

Where the contract about to be concluded by socialist organisations is not based on a mandatory planned assignment, any dispute concerning the terms of the contract under consideration may be settled by an arbitration board only in cases expressly prescribed by law, or when both parties agree to such a proceeding.

26. The law provides the means of performance of obligations, their very existence being designed to induce the parties to perform in the proper manner (Art. 35). A penalty (otherwise known in practice as a fine, penal interest, etc.), is the most common means of securing performance of obligations. A penalty is defined as a sum of money which one contracting party undertakes to transfer to the other party, in the event of non-performance or improper performance of his obligation. It is used mainly in relations between socialist organisations. Other means of securing performance of obligations are pledge, surety and earnest (in relations between citizens, or with their participation), and guarantee (in relations between socialist organisations). Earnest is sometimes used in relations between socialist organisations and citizens and also between citizens. A pledge has limited use, namely, when money is lent to citizens by municipal pawnshops, and in some types of credit granted to socialist organisations by the State Bank. Relations of suretyship are extremely rare in internal civil commerce.

27. The FCivL also provide that in the event of nonperformance or imporper performance of an obligation the debtor must pay the creditor damages expressed both in the actual loss (*damnum emergens*) and in the loss of prospective profits (*lucrum cessans*).

Damages are usually paid with a deduction for the penalty but there are cases in which only the penalty is recoverable and not the damages; in which damages are recoverable to the full amount, regardless of the recovery of the penalty; and in which the creditor may elect to recover either the penalty or the damages. This may be stipulat-

ed at the making of the contract or prescribed by law regulating a definite type of relation.

28. In view of the specific conditions in which transport, the State Bank and certain other organisations operate, their liability for non-performance or improper performance of obligations is limited by law. This means that only a statutory penalty is paid, even when the damages caused by non-performance or improper performance are over and above that amount. Thus, statutory fine is paid by a railway for failure to provide cars for the planned transportation of goods by socialist organisations, even when the amount does not cover the damages sustained by the consignor owing to the tardy dispatch of goods by the fault of the railway. This limitation of liability is a statutory exemption in respect of organisations operating in specific conditions.

29. Soviet law lays down the principle of specific performance of obligations, which means that regardless of the payment of the penalty specified for delay or other improper performance of obligation, and the payment of damages caused by improper performance, the debtor is not absolved from the obligation of specific performance. This is determined by the conditions of a planned economy, in which the payment of an amount of money cannot serve as an equivalent of proper performance of the required acts. The debtor may be absolved from specific performance if the planned assignment on which the obligation is based (this refers to relations between socialist organisations) expires. Planning acts on the basis of which contracts are concluded and immediate obligations arise ordinarily remain in force for the duration of the year in which they were issued. Accordingly, the debtor's duty of specific performance ceases upon the expiration of this period, but this does not in any way relieve the debtor from liability to pay penalty and damages.

30. The FCivL lay down the rule that the fault of the party which has failed to perform the obligation or has

performed it improperly is ground for liability. Before the adoption of the FCivL, this rule was construed from Art. 118 of the Civil Code of the R.S.F.S.R. (and the relevant articles of the Civil Codes of other Union Republics).

The enactment of the principle of fault as ground for liability for breach of obligation is highly important from the educational standpoint. Exceptions to this rule may be made only by law or contract. But the FCivL in establishing liability for fault as the main principle prescribe that the onus of proof is on the party violating the obligation. This rule should induce proper performance of obligations. Proceeding from the principle of fault as ground for liability, the law-giver enacts the concept of "mixed liability", which has taken shape in practice and means that in the event of fault on the part of both parties, the court, or the arbitration or mediation board, may reduce the debtor's liability accordingly.

31. Obligations are, as a rule, performed by the parties, but in practice actual performance is sometimes by third parties. A contract, administrative subordination of the actual performer in respect of one of the parties to the obligation, and relevant rules may be ground giving rise to relations of this kind. Thus, a supplier—a supply and marketing agency—having a contract with a consumer—a machine-tool plant—for delivery of metal, may also have a contract with a metallurgical mill for the purchase of its goods. The agency instructs the mill, in performance of its contract with the consumer, to transport the required quantity of metal to the machine-tool plant. Thus, the agency is a party to the contract, the mill being the actual performer. The law says that in such cases liability for improper performance of obligations falls on the contracting party. But the legislation of the U.S.S.R. and Union Republics may provide for cases when such liability falls on the actual performer. In the case described above it is the actual performer who is, as a rule, held liable for delivery of goods of improper quality. This rule is designed

to make enterprises take a more responsible attitude to the quality of their goods.

32. Articles 33-38 of the FCivL establish the most important general provisions concerning obligations. Part Three also deals with separate types of obligations. The FCivL do not regulate all types of obligations but only those in respect of which it was considered necessary to establish uniform general principles through all-Union legislation. The regulation of such contracts, as contracts of exchange, loan, gift, safe-keeping, agency, commission agency, and expedition of goods, has been referred entirely to the jurisdiction of the Union Republics. The obligations and contracts included in the FCivL are regulated in the most general and fundamental features, their detailed regulation being left to the Civil Codes of Union Republics and the relevant all-Union legislation on matters which Art. 3 of the FCivL places within the jurisdiction of the U.S.S.R.

33. Contracts of sale, contracts of delivery, and contracts for delivery of agricultural products are the legal form of relations involving the transfer of property for value from the ownership (or operative management, in relations between state organisations) of one party to the ownership (operative management) of another, but because of important distinctions in content and legal form these relations are regulated by different types of contract.

34. Contract of sale is used mainly in retail trade, and also when enterprises and organisations conclude contracts for purchase of property which are not based on planned assignments and which are performed on conclusion; as in the case of an enterprise buying its materials or tools from a wholesale depot, or a retail store buying consumer goods from wholesalers at special fairs or directly from the manufacturers. However, the use of contract for sale in relations between socialist organisations cannot be widespread because under a planned economy the bulk of sales are covered by contracts based on

planned assignments. Contract of sale is also used in kolkhoz trade, the sale by citizens of vegetables, fruit, milk, etc., raised on their house-and-garden plots, and also the sale by citizens of personal property they no longer need.

35. Contract for sale will be regulated in detail by the Civil Codes of Union Republics, the FCivL providing only some of the answers to questions which must be given uniform solution in all Union Republics. The FCivL define contract for sale, and prescribe that state, co-operative and mass organisations must sell their goods at fixed state prices; kolkhozes may sell their surplus farm products which the state does not buy, and citizens their personal property, at prices agreed upon by the parties. In order to improve the various services offered to consumers the FCivL emphasise the responsibility of the seller for the quality of the goods sold and express guarantee of quality.

The law-maker was motivated by a similar concern for the consumer in wording Art. 43, which deals with payment by instalments. The regulation of the sale of goods on an instalment plan is referred to the jurisdiction of Union Republics, but the article in question lays down the general rule for the whole country that property in goods sold on an instalment plan passes to the buyer from the moment of delivery of the goods, which ordinarily coincides with the moment of making of the contract. Consequently, if the buyer fails to pay the price of the thing within the specified time, the seller merely has a claim against him for the payment of the amounts due, but is not entitled to repossession of the goods sold. It should be noted that goods are sold on an instalment plan at the same price as for cash.

36. Contract for delivery is the principal legal form of economic relations in industry, and in wholesale and wholesale-retail trade. It is of the essence of contract for delivery, in contrast to contract for sale, that 1) only socialist organisations may be parties to it; 2) it is conclud-

ed on the basis of a planning act covering distribution of goods which is mandatory for both parties; and 3) performance is not as a rule coincident with the making of the contract. These three elements may not coincide, only the first being necessary in every case. The mandatory planning act covering the distribution of goods qualifies the contract as a contract for delivery in all cases, regardless of when the contract is made or performed. Thus, for example, when an enterprise buys the necessary standard parts from a small wholesaler on the basis of the relevant planning act, the contract is one for delivery, regardless of whether or not it is performed at the moment of making. But a contract concluded without a planned assignment is also deemed to be a contract for delivery in the presence of the third element, namely, when the delivery date does not coincide with the moment of making. Thus, where an enterprise makes a contract with the seller for delivery, in the course of a year, of toys made from waste, such a contract because its performance is postdated, is deemed to be a contract for delivery, although there is no planned assignment which is mandatory for both parties.

37. The FCivL contain only some of the more important characteristics of contract for delivery, with special emphasis on securing delivery at the proper time, assortment, quality and completeness of sets. The FCivL enact the basic principles, which are stable, leaving the detailed regulation of these relations—intrinsically dynamic and requiring great flexibility and mobility of legal regulation —within the purview of the executive organs of the U.S.S.R. The Council of Ministers of the U.S.S.R. approves the Regulations for Delivery and establishes the procedure for approval of Special Terms of Delivery for some products. The Regulations for Delivery set out mandatory rules for delivery of all types of goods. Many rules are not mandatory, that is, are subsidiary, and are applied by the parties of every specific contract, provided the contract does not stipulate otherwise. The Regulations for Delivery serve

as a basis of the Special Terms of Delivery for separate types of goods, which cover any specific conditions involved in the delivery of each type. The Special Terms of Delivery are approved in the manner established by the Council of Ministers of the U.S.S.R. (at present by the State Arbitration Board under the Council of Ministers of the U.S.S.R.), and in cases provided for by law, by the Councils of Ministers of Union Republics.

38. Contract for delivery of agricultural products is the third type of contract serving as the legal form for the transfer of property for value, and is now used in state purchases of farm produce from collective and state farms. Contracts for delivery of agricultural products are concluded on the basis of state plans for the purchase of farm products and plans for the development of agricultural production in the collective and state farms. The FCivL establish the general content of these contracts, the immediate regulation of relations in contracting being done on the basis of standard contracts which are approved in the manner established by the Council of Ministers of the U.S.S.R. Standard contracts for delivery of agricultural products are now approved by Union Republics.

39. Contract of lease is regulated by the FCivL in the most general form, the detailed regulation once again being left to Union Republics. The FCivL define this type of contract, enumerating the principal rights and duties of lessor and lessee, and the general provisions covering the letting to hire of everyday things. Under the latter, musical instruments, sports goods, passenger cars and other things are lent to citizens, for a reward, by state organisations, co-operatives and mass organisations. This is an important social form of providing ever fuller satisfaction of the requirements of citizens, and has a number of marked advantages, for it gives them greater opportunity of using all the things they need. The regulation of relations involving the hire of everyday things is within the competence of Union Republics. In order to ensure proper protec-

tion for the interests of users, the FCivL stipulate that standard contracts are to be approved by the Councils of Ministers of Union Republics for the various types of hire, with the proviso that any departures from the terms of the standard contracts limiting the rights of users are void. It follows that the only departures allowed from the standard contracts are those which benefit the users.

40. Lease of housing, which is a special type of lease of property, is of great importance to citizens, and is accordingly dealt with in detail by the FCivL.

The present scale of housing construction, which is being extended from year to year, does not as yet satisfy growing requirements. The Programme of the C.P.S.U. has set the task of fully satisfying requirements in housing within the current 20-year period, and the FCivL aim to induce the most rational use of available housing facilities with an eye to the interests of tenants. The main housing facilities in towns and workers' estates are state property; in the rural areas, and in some small towns and workers' estates a considerable part of the housing facilities belongs to citizens by right of personal ownership. Accordingly, a distinct line is drawn between relations involving lease of housing which is part of the state housing facilities, and relations involving lease of dwellings in houses belonging to individuals. In the first instance, the law aims at the maximum protection of the rights of tenants having the use of state housing facilities, and in the second, at a fair balance in protecting the interests of house owner and tenant.

41. The FCivL emphasise that in order to ensure its fair distribution, housing in state-owned buildings is made available by decisions of the local Soviets which are taken with the participation of representatives of the public. Lease contracts are concluded on the strength of these decisions. Contracts for lease of flats or rooms in houses belonging to citizens by right of personal ownership

are concluded between the tenant and the house owner. No one, except the owner, has the right to dispose of the living space in his house.

42. Citizens living in houses owned by the state or co-operative or mass organisations have the right to renew contracts made for a definite period. Thus, the expiration of the term of the contract cannot serve as ground for rescission of the housing lease contract and eviction of the tenant. Only in houses belonging to citizens by right of personal ownership can the tenant be evicted upon the expiration of the contract term, provided a court finds that the owner and members of his family need the premises for their own use. This is designed to ensure the interests of the owner who needs the premises himself, but it also gives protection to the tenant where the owner wishes to evict him and lease the premises to another. The owner's interests are likewise protected by the provision that a tenant in a house belonging to a citizen by right of personal ownership may be evicted by an order of the court upon the expiration of the term of the contract, where the contract has been concluded for a period of not more than a year and contains a clause stipulating that the premises are to be vacated at the end of that period (Art. 58).

43. The precise definition of cases in which a tenant may be evicted by an order of the court without provision of other dwelling space is also designed to protect the interests of tenants (Art. 61). This occurs in the following two cases: where the tenant or members of his family make it a practice of destroying or damaging the dwelling premises, or by their systematic violation of the rules of socialist community life make it impossible for others to continue joint habitation in the same flat or house. Only in these circumstances can the tenant be evicted without the provision of dwelling space. The old Civil Codes of Union Republics also prescribed eviction for systematic non-payment of rent. The FCivL have abolished this rule in respect of tenants in buildings belonging to local Soviets, and state,

co-operative and mass organisations. In these buildings rent, which is not as a rule higher than 3-5 per cent of a monthly wage, is being regularly paid by all tenants, and there have been no cases of eviction on that ground over a period of many years. But to protect the interests of house owners, the FCivL do not extend this rule to contracts for lease of dwelling space in houses belonging to citizens by right of personal property.

44. The FCivL enumerate the grounds for eviction which may be prescribed by the legislation of Union Republics. These grounds are three: 1) the tenant and his family are absent for a long time; 2) the tenant is the owner of a house in the same populated locality which is fit for permanent habitation and which the owner can occupy; 3) the tenant systematically fails to pay rent in a house belonging to a citizen by right of personal ownership. Only in these cases can the legislation of Union Republics prescribe eviction of tenant by a court at the instance of the lessor. This is designed to protect the housing rights of citizens and substantially limit cases of eviction. Upon the other hand, the tenant has the right to rescind the contract at any time.

45. A novel point in housing legislation is that tenants may not be evicted by administrative procedure, except in the following two cases: 1) occupation of living quarters without due authorisation; and 2) eviction from houses threatened with collapse. The former gives protection to tenants whose premises are occupied by others without due authorisation; the latter, to the tenants themselves. It should be noted that tenants evicted from houses threatened with collapse must be supplied with other premises. The legislation of Union Republics may establish an administrative procedure for eviction from official buildings, hostels and hotels to help these establishments to provide normal services to the public.

46. Among the contracts regulated by the FCivL in the most general terms is contractor's agreement, which is to

be spelled out in detail by the Civil Codes of Union Republics. The FCivL define contractor's agreement and establish the rights of the customer in the event of a breach of contract by the contractor. The rules governing contractor's agreements between citizens and various workshops, dress-making establishments, etc., for everyday services are to be laid down by the legislation of Union Republics. The law states that standard contractor's agreements for the various types of everyday services are to be approved by the Councils of Ministers of Union Republics, any departures from the terms of the standard contractor's agreements limiting the rights of customers being void. This provision is designed to give maximum protection to the rights of customers.

47. Contractor's agreement on capital construction is set apart by the FCivL because of the distinction in the content and legal form of relations involving capital construction. It is of very great economic importance, for it clothes in legal form relations connected with the large-scale construction work in progress in the Soviet Union. Only socialist organisations can be parties to a contractor's agreement on capital construction, the enterprise or organisation ordering the construction job being the customer and a special building organisation, the contractor. The latter performs the work with his own resources and at his own expense, and delivers the finished job to the customer. Contractor's agreements on capital construction are concluded in accordance with the plan for capital construction, relations between the parties being regulated in detail by rules approved by the Council of Ministers of the U.S.S.R. Contractor's agreements on capital construction in kolkhozes are concluded in accordance with the legislation of Union Republics. The FCivL define the principal rights and duties of the customer and the contractor, and liability of the parties for breach of contract; they allow the conclusion of sub-contractor's agreements on the basis of which the contractor (known as the general con-

tractor) may assign the performance of parts of the work to specialised organisations (sub-contractors).

48. Chapter Nine of the FCivL deals with contract for carriage and lays down the rules common to all types of carriage. The detailed regulation of contract for carriage and relations connected with carriage are to be found in the statutes and codes of the various types of transport: the Railway Statute of the U.S.S.R.; the Inland Water Transport Statute of the U.S.S.R.; the Commercial Shipping Code; and the Air Code. The FCivL lay down some of the basic principles in this sphere concerning such matters as the planned nature of goods haulage, the carrier's liability for damage, shortage or loss, delivery dates, etc. The FCivL establish a uniform procedure for claims against carriers. Before action arising from the carriage is brought against the carrier, the claim must be presented to the carrier. If it is rejected or is not answered within the stipulated time the claimant is entitled to sue or apply to an arbitration or mediation board. The FCivL set uniform periods of limitation for all types of transport for making claims; examining and replying to claims; and bringing suits.

It should be noted that the FCivL prescribe liability of the carrier for infliction of death on, or injury to the health of, passengers, in accordance with the general rules governing compensation of damage connected with such wrongful acts (see Paragraph 52 below). The law-giver allows for the possibility of establishing increased liability for some types of transport for infliction of death on, or injury to the health of, passengers (Art. 77). It follows that liability for injury inflicted on the person of a passenger may not be reduced either by statute, code, or contract. This provision is of great importance for the protection of citizens' interests and induces transport agencies to take every possible precaution for the safety of passengers.

49. The FCivL also fix the basic principles of state insurance. A distinction is made between voluntary and man-

datory insurance, which is statutory and embraces the following: insurance of kolkhoz property against fire and other natural disasters; insurance of farm crops against hail, storms, frost and flood; insurance of cattle against murrain; insurance of state housing facilities; kolkhoz fishing boats; insurance of passengers travelling over long distances, etc. Insurance in the U.S.S.R. is underwritten only by Gosstrakh, a special state agency. The rules governing insurance are approved in the manner established by the Council of Ministers of the U.S.S.R.

50. The FCivL also state the general rules governing payment and credit operations. Accounts outstanding between state organisations, kolkhozes and other co-operative and mass organisations are made (except in cases specified in all-Union legislation) through clearing operations by the credit agencies with whom these organisations keep their cash resources. These organisations have the disposal of the funds on their accounts. In some cases, provided for by all-Union legislation, funds may be written off an organisation's account without its consent. These cases are few and mainly relate to the payment of incontestable claims, such as bills for electricity, water and gas. The FCivL stipulate that the money necessary to pay wages and equivalent items (fees, scholarships, pensions) are paid from the organisation's account regardless of any other outstanding claims against it. This provision secures timely payment of amounts due to industrial, office and professional workers, and persons having other relations with the payer based on labour.

Another novel provision in the FCivL (Art. 87) allows attachment of savings bank deposits on the strength of court judgements in suits for alimony or for separation of a deposit which is marital community property. In accordance with Soviet legislation on marriage and the family, the property of the spouses earned during the continuance of their marriage is their marital community property, but before the adoption of the FCivL, a deposit made by either

spouse in his or her name, in view of the secrecy of deposits, was not included in the marital community property when such was partitioned. The FCivL make such a deposit a part of the marital community property, and this is taken into account in partition. A court judgement on partition of property may also contain an order for partition of the deposit, which is mandatory for the savings bank.

51. Chapter Twelve of Part Three entitled "Obligations Arising from Injury Caused to Another", re-enacts a number of fundamental principles in operation before the FCivL came into effect, and several important new principles.

The basic principle of Soviet civil law in the sphere of liability for injury caused to another is expressed in Art. 88, as follows: "Injury caused to the person or property of a citizen, and also injury caused to an organisation, shall be subject to indemnisation in full by the person causing the injury.

"The person causing the injury shall be absolved from indemnisation, if he proves that the injury was not caused by his fault."

Thus, the FCivL prescribe indemnisation both for injury caused to citizens and injury caused to organisations, it being a question in both cases of special damage, i.e., an injury which can be assessed in money and for which the injured person may obtain pecuniary compensation. Soviet civil law does not provide for any pecuniary compensation for "damage in law" *(injuria absque damno)*, and the judicial remedies for infringed non-property personal rights in Soviet civil law are action for redress of infringed right and action to obtain recognition of a right (see Paragraph 5 above). Where infringement of a non-property right of a citizen or organisation, or a personal bonum of a citizen involves actual damage, such damage is subject to compensation. This is expressed in the following words of Art. 88: "Injury caused to the person or property of a citizen" and "injury caused to an organisation". Articles 91, 92 and 94, which are dealt with in detail below, contain

special rules governing compensation for actual damage connected with the infringement of such non-property personal bona of a citizen as health, and with the infliction of death.

According to the general rule laid down by Art. 88, fault on the part of the person inflicting the injury which, according to Art. 37, is taken to mean either intent or negligence, is ground for liability for actual damage. The fault of the person causing the injury is presumed but he is naturally entitled to prove that the injury was not caused by his fault. Since fault on the part of the person causing the injury is, according to the general rule, ground for liability, acts which cause an injury entailing the duty of reparation are presumed to be wrongful. Injury caused by lawful acts is subject to compensation only in cases specifically provided by law, e.g., injury caused by the organs of veterinary supervision when animals afflicted with contagious diseases (epizooty) are destroyed.

Art. 88 establishes the important concept of injury caused by the faultful acts of an organisation (juridical person). Every organisation carries on its activity through its functionaries, which includes not only its executives, but all its workers. Accordingly, acts performed by any of its functionaries in the exercise of his labour (official) duties which cause actual damage are deemed to be the faultful acts of the organisation. Liability for the injury caused falls on the organisation, which, after paying compensation as determined by labour legislation, naturally has the right to fall back on the worker at fault.

The novel points in Art. 89 are of great political and practical significance. They say that state establishments are liable, in accordance with the general rules, for injury caused to citizens by the wrongful official acts of their functionaries in the performance of their duty in the sphere of administrative management. They are also liable for injury caused by such acts to organisations, in the manner prescribed by special laws. These rules will further strength-

en socialist legality and serve as an inducement to the careful selection of personnel by state establishments.

Special rules are to be laid down in the Civil Codes of Union Republics governing the conditions and limits of liability of organs of inquiry, and preliminary investigation, the procurator's office and the courts for injury caused by their wrongful official acts.

A special rule in Art. 90 deals with the liability of organisations and citizens whose activity involves the use of so-called sources of increased hazard (transport agencies, industrial plants, building sites, motorcars, etc.) for injury caused by the latter. The owner of a source of increased hazard is absolved from liability for the said injury only when he proves that the injury was due to *vis major* or to intent on the part of the injured person. Here, then, is a case of liability which is an exception to the general rule.

52. Because all industrial, office and professional workers in the U.S.S.R. are subject to state social insurance at the expense of the state, any injury sustained by a worker in the performance of his labour duties is covered primarily by an allowance (in the event of temporary disability) or a pension (in the event of permanent disability), which are paid by social insurance agencies. However, if the amount of the allowance or pension does not cover the worker's injury caused by the fault of the organisation employing him, i.e., as said above, by the fault of any other functionary of the organisation, it is obligated to compensate the injured person for the part of the injury over and above the amount of his allowance or pension (Art. 91).

If injury is sustained by a person subject to social insurance quite apart from the performance of his official duties, the part of the injury not covered by payments of social insurance agencies is compensated, in the event of fault on the part of the person causing the injury, in accordance with the general rules; in the event of injury

caused by sources of increased hazard, this is done regardless of the fault of its owner (Art. 92).

Th FCivL also stipulate that gross negligence on the part of the injured person which may have helped to cause or increase his injury must be taken into account. Depending on the degree of fault of the injured person and the degree of fault of the person causing the injury, where he is at fault, the amount of compensation for the injury may be reduced or denied altogether. Intent on the part of the injured person rules out any reparation of his injury.

53. Art. 95 re-enacts the judicial practice of compensation for injury sustained by a citizen in the act of saving socialist property from imminent danger. Reparation for such injury must be made, in the manner prescribed by the legislation of Union Republics, by the organisation whose property the injured person was in the act of saving.

IV

54. Part Four of the FCivL contains the general rules of copyright.

It extends to all scientific, literary and artistic works, whether published or unpublished, regardless of their form, purpose, value or manner of reproduction. It is of the essence of copyright that the author's work must be in some presentable form allowing representation of the result of the author's creative activity (manuscript, drawing, public performance, film, mechanical or magnetic recording, etc.).

Copyright to works first published on the territory of the U.S.S.R., or unpublished but located on its territory in some presentable form, is recognised as belonging to the author and his heirs, regardless of their citizenship (Art. 97).

Copyright also belongs to citizens of the U.S.S.R., and also their heirs, if their works are first published or are located on the territory of a foreign country in some pre-

sentable form. Copyright to works first published or located in some presentable form on the territory of a foreign country is recognised for other persons only if the U.S.S.R. has international agreements to that effect and within the limits of such agreements (Art. 97).

55. The author acquires both non-property personal rights—the right to reproduce and circulate his work in every possible way permitted by law; the right to the name and integrity of the work—and property rights—the right to receive royalties for the use of his work by other persons, with the exception of cases expressly provided by law. The rates of remuneration are set, in accordance with the general rule, by the legislation of the U.S.S.R. and Union Republics, and where such are non-existent, by agreement between the parties (Art. 98), i.e., between the author and the organisation using his work.

56. The FCivL provide for co-authorship under which co-authors have joint copyright in the work created by their joint efforts, each retaining the copyright to his part of the collective work which is of independent value. The author retains the copyright in a work produced in the performance of his duties in a scientific or other organisation. The manner of using such a work by the organisation where it was produced, and also the cases in which the author is paid royalties regardless of his wages are determined by the legislation of the U.S.S.R. and Union Republics. At present, for example, royalties are paid for textbooks written as an official assignment.

57. Copyright resides in juridical persons only in cases and within the limits established by law. Thus, copyright belongs to publishers putting out periodicals or encyclopaedic dictionaries, with the author of each item in such a publication retaining his right in it. Film studios have copyright in the motion-pictures they produce. Authors of scripts, artists and composers all have copyright in their work which is part of the motion-picture.

58. The author's work may be used by another person

only under a contract with the author or his heirs, with the exception of cases specified in law. Standard contracts—publishing, production, script, etc.—are issued in the manner established by the legislation of the U.S.S.R. and Union Republics.

Any terms of a contract concluded with the author which place him in a position less advantageous than that accorded by law or standard contract are void, and the latter are substituted for them.

Translations are the most important instance of the law allowing the use of an author's work without his consent; he must, however, be notified and paid the royalties where such are provided by the legislation of the Union Republic concerned. Freedom of translation, which allows the peoples of the multi-national Soviet Union to exchange their cultural achievements, is an important factor promoting the steady rise of culture in the country as a whole. The proviso that the author must be notified of the translation of his work prevents the publication of unsatisfactory translations distorting the original.

Other instances of an author's work being used without his consent fall into two main groups. The first group comprises cases when the author's name must be indicated and royalties paid, as in the public performance of published works; recordings of published works for the purpose of public reproduction or circulation on film, records, magnetic tape, or other device, with the exception of their use on the screen, radio and television; and use by composers of published literary works to create musical works with text. The use of artistic works or photographs on manufactured goods does not require the author's consent, or indication of name, but only the payment of royalties.

The second group embraces instances when the use of an author's work by another person does not require either the author's consent or payment of royalties, but only indication of his name; these are above all instances when the work of another is used in any form to produce a new

work of independent creative value, with the exception of the re-writing of a story into dramatic form or script, and vice versa, as well as the re-writing of a play into a script, and vice versa. This group also includes reproduction in scientific and critical works, textbooks, and politico-educational publications of scientific, literary or artistic writings or excerpts therefrom within the limits established by law; information in periodicals, on the screen, radio and television about the publication of works of science, literature and art; reproduction in newspapers, on the screen, radio and television of public speeches, reports and published works, etc.

59. The FCivL vest copyright in the author for life, but Union Republics are entitled to establish reduced periods of operation of copyright for works of some types. Copyright passes to the author's heirs within the limits and for periods established by the legislation of the U.S.S.R. and Union Republics.

Under the law of copyright in force in the U.S.S.R. before the adoption of the present FCivL this period ran for 15 years beginning from January 1 of the year of the author's death, and the same period is still effective.

Copyright to a publication, public performance or other use of a work may be compulsorily purchased by the state from the author or his heirs in the manner established by the legislation of Union Republics, but such cases are extremely rare.

60. Part Five of the FCivL, consisting of only three articles (107-109), deals with the right to discovery. Protection of the rights and interests of discoverers was first introduced in Soviet law by the Ordinance on Discoveries, Inventions and Technical Improvements, which was approved by a decision of the Council of Ministers of the U.S.S.R. on April 24, 1959. Its §2 defines a discovery as the establishment of objective laws, properties and phenomena of the material world not previously known. Discoveries are major scientific achievements.

The author of a discovery may demand recognition of his authorship and priority of discovery certified by a diploma, which is issued by the Committee for Discoveries and Inventions under the Council of Ministers of the U.S.S.R., in the manner established by the said Ordinance.

The author of a discovery is also entitled to remuneration payable by the Committee when he receives the diploma, and to certain privileges stated in the Ordinance, namely, income-tax-free remuneration, not exceeding 10,000 rubles; all other conditions being equal, the authors of discoveries have a preferred right to fill research posts in scientific institutions in their line, etc.

The right to receive a diploma in the name of a deceased author of a discovery, as well as the right to remuneration for the discovery, descends by inheritance in the usual manner.

In accordance with Art. 109, disputes over the authorship or co-authorship of discoveries are decided in a court of law. Any dispute over the priority of a discovery arising between two persons who make identical discoveries independently of each other would obviously not be decided by a court of law but by the Committee for Discoveries and Inventions.

61. Part Six of the FCivL is entitled "Law of Invention" (Arts. 110-116). It fixes the basic principles governing the legal status of authors of technical innovations. In the U.S.S.R. protection is given to two types of technical proposals: inventions and technical improvements. An invention, according to §3 of the Ordinance on Discoveries, Inventions and Technical Improvements, is deemed to be the solution of a technical problem in any field of the economy, culture, public health, or defence, which is novel in essence and produces a positive effect. A technical improvement, according to §7, is a proposal for the improvement of equipment in use (machinery, instruments, tools, devices, apparatuses, units, etc.), manufactured goods, technology, methods of control, supervision and research, safety meas-

ures and labour protection, and any proposals which help to raise labour productivity, and make more effective the use of power resources, equipment and materials.

Thus, an invention, like a technical improvement, is a proposal which when applied results in technical progress, but there is an essential distinction between the two: an invention must be "novel in essence", while a technical improvement is only "locally" novel. This means that an invention is a technical proposal for which no certificate of authorship or patent has been issued in the U.S.S.R. or abroad before application for it is filed with the Committee for Discoveries and Inventions, and which until that moment has not been described either in Soviet or foreign writings, and has not been used in the economy. In other words, the essential novelty of an invention is its novelty in respect of the world level of technology (§§30-36 of the Ordinance). In contrast, a technical improvement is only locally novel, i.e., it may be an innovation in the industry in question, or within the limits of a given department or enterprise (§§54 *et seq.* of the Ordinance).

62. Under Soviet law, the author of a technical proposal, who considers it to be an invention, has the choice of two methods of protecting his invention: he may request the Committee for Discoveries and Inventions to issue him a certificate of authorship, or a patent, each of which gives him a dfferent legal status. The certificate certifies the authorship of the invention, and its issue gives rise to a right for the state to use the invention, which may be applied by any state enterprise, and equally by any co-operative. The author of the invention is entitled to remuneration, which is paid according to the rules laid down by a special Instruction and, like the author of a discovery, enjoys tax and certain other privileges (see §60).

The certificate of authorship is issued for an indefinite period. The author alone, in his lifetime, has the right to receive a certificate of authorship, but this right, like the

right to remuneration for the use of his invention, descends by inheritance in the usual manner.

63. A patent must state the full name of the author of the invention, and, consequently, like a certificate of authorship, certifies authorship of the invention, but it also vests in its owner the exclusive right to use the invention. The patent may be owned either by the inventor himself or by a person to whom he assigns the right to receive the patent. Patents are issued for 15 years from the date of filing of the application, the rights of the applicants being protected from the same date. No one may use the invention without the consent of the patent owner (the person to whom the patent belongs). The patent owner may issue licences for the use of the invention or may transfer the patent to another.

Where an invention is of vital importane to the state, but no agreement is reached with the patent owner concerning the transfer of the patent or the issue of a licence, the Council of Ministers of the U.S.S.R. may decree a mandatory alienation of the patent or the issue of a permit to the agency concerned, and establish the amount of remuneration to the patent owner.

64. Recognition of a technical proposal as a technical improvement is bound up with its adoption for utilisation. The enterprise or organ of economic administration with which the proposal has been filed issues a certificate to the author of the proposal—accepted and applied—establishing his authorship. The author is entitled to remuneration for the use of his proposal, which is paid according to the rules set out by the above-mentioned Instruction. The right to receive a certificate of authorship of an efficiency proposal, like the right to remuneration, descends by inheritance, in accordance with the general rules.

65. It is the duty of inventors and rationalisers to assist in the application and further development of their proposals; they have the right to participate in their application, in accordance with the rules laid down by the

Ordinance. This is an important right which stimulates the inventiveness of innovators and which is ensured by the rule that authors promoting the realisation of inventions are paid bonuses, and that the posts of innovators promoting the realisation of their proposal in another place are reserved for them at their place of work.

66. Disputes concerning authorship of inventions and technical improvements are decided in a court of law. Disputes concerning the essential novelty of inventions are decided by the Committee for Discoveries and Inventions, while disputes concerning priority of technical improvements which have not been settled at the place of their realisation, are decided by a court.

Disputes concerning the amount, method of calculation and date of payment of remuneration for inventions and technical improvements are decided by the executive of the enterprise realising the invention or technical improvement in conjunction with the trade union committee. Inventors and rationalisers may file complaints against decisions handed down in such a procedure with the executive of the superior organisation, and if the complainants are dissatisfied with the decisions handed down on their complaints they have the right to go to court.

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67. The FCivL also introduce some substantial changes into the law of succession.

Inheritance by heirs-at-law and by heirs of provision is permitted as before. Inheritance by heirs-at-law takes place where, and insofar as, it is not modified by will.

Where there are neither heirs-at-law nor testamentary beneficiaries, or where they refuse to accept the inheritance, or where all the heirs are disinherited by the testator, the estate of the decedent passes by the right of succession to the state (Art. 117).

The place of the last permanent domicile of the decedent, and if that is not known, the place where the estate

or the principal part of the estate of the decedent is located, is deemed to be the place of opening of the succession (Art. 121).

68. Heirs-at-law take in the order of priority: each statutory class of heirs takes in the absence of heirs of the preceding class or in the event none of the heirs in that class accept the inheritance. Heirs in the same class inherit in equal shares.

However, the FCivL enumerate only heirs of the first class, i.e., the circle of persons who in each Union Republic inherit first. Legislation of Union Republics will establish the subsequent classes of heirs. The first class, according to the FCivL, consists of the spouse of the decedent, his children, including adopted children, and his parents (or adoptive parents), as well as the posthumous child of the decedent.

The grandchildren and great-grandchildren of the decedent take by "right of representation", which means that they stand in the place of their deceased parent, inheriting in equal shares that portion of the estate which would have been his by right of succession, if he had been alive at the opening of the succession.

Persons who had been the decedent's dependents for not less than one year prior to his death also inherit by law. These persons are not referred to any class of heirs, but inherit together with heirs of the class upon whom the estate devolves, and take equal shares of the estate with each of these persons (except grandchildren) (Art. 118). Thus, if the children of the decedent inherit, a dependent satisfying the said conditions inherits on a par with them. If the grandchildren inherit, he takes a share equal to that of their deceased parent. If in the absence of heirs of the first class the inheritance passes to persons referred by the legislation of a Union Republic to heirs of the second class, the dependent takes together and equally with these persons.

A special procedure is established for succession by law

to the usual household effects and furnishings, which pass to the heirs-at-law who lived with the decedent, even where they do not take any part of the rest of his estate in view of the presence of heirs of the preceding class (Art. 118). Thus, where the legislation of a Union Republic should refer the brothers and sisters of the decedent to the second class, a brother who lived with the decedent would inherit the household effects and furnishings, although the rest of the decedent's estate—his house, savings, etc., would pass to heirs of the first class, e.g., his children or grandchildren, who did not live with him (Art. 118).

69. The testator may bequeath his property to any citizen, who may or may not be an heir-at-law, or to the state, or to any state, co-operative or mass organisation. The only limitation on free testamentary disposition is the rule determining the *portio legitima* of certain heirs-at-law. The testator's minor children and children unable to earn, including his adopted children, as well as his spouse, parents (adoptive parents) and dependents who are unable to earn, each inherit, regardless of the testamentary disposition, no less than two-thirds of the share which would have been theirs under intestate succession (Art. 119). This is the so-called *portio legitima*, the statutory share secured to the immediate descendants.

The procedure governing disposal *causa mortis* of deposits in savings banks and the State Bank of the U.S.S.R. by an assignment of the depositor is determined by the charters of these credit institutions and the rules published on their basis. In accordance with these rules, a depositor may address an assignment to his savings bank or the State Bank concerning disposal of his deposit after his death, without observing the rule of *portio legitima*.

70. An heir who accepts the inheritance is liable for the debts of the decedent within the limits of the actual value of the estate which has descended to him. When an estate passes to the state it incurs liability on the same principle (Art. 120).

71. Part Eight (Arts. 122-129) concludes the FCivL. It deals with the legal capacity of aliens and stateless persons, and the application in the U.S.S.R. of the civil laws of other countries, international treaties and agreements.

In accordance with the general rule stated in Art. 122, aliens in the U.S.S.R. enjoy legal capacity equally with Soviet citizens. Certain exceptions, such as those, for instance, which limit the right of aliens to engage in certain occupations, and to hold posts in certain state establishments or enterprises, may be established by Union law. Thus, only Soviet citizens may be masters of sea-going vessels, chief officers, wireless operators, navigators or engineers, as well as members of airliner crews.

In the event of a state imposing any special limitation on the civil legal capacity of Soviet citizens on its territory, similar disabilities may be imposed on its citizens by the Council of Ministers of the U.S.S.R. by way of retorsion (Art. 122).

In the U.S.S.R., stateless persons are given equal treatment with Soviet citizens, although certain limitations may be imposed on their civil legal capacity by Union law (Art. 123).

Foreign enterprises and organisations require no special permits to conclude on the territory of the U.S.S.R. foreign trade transactions and related operations in settlement of accounts, insurance, etc., with Soviet foreign trade associations and other Soviet organisations empowered to conclude such transactions.

72. Art. 125 describes the form into which civil legal transactions abroad must be clothed if they are to have juridical force in the U.S.S.R.

The form of transaction concluded abroad is governed by the law of the place of making. However, non-observance of the form required by the law of the place of making is not ground for its invalidity, provided it complies

with the formalities required for transactions of this type by the legislation of the U.S.S.R. and the Union Republic on whose territory the validity of the transaction in question is being decided. Thus, where a transaction requiring notarisation in a foreign country under the penalty of invalidity is concluded in a simple written form it will be valid in the U.S.S.R. if a simple written form is allowed by the legislation of the U.S.S.R. or the Union Republic whose court decides the validity of the transaction

The form of transaction concluded abroad relating to structures in the U.S.S.R. must comply with the requirements of the legislation of the U.S.S.R. and the Union Republic on whose territory the structure is situated. Thus, if a contract concluded abroad for the sale of a house in the R.S.F.S.R. is to be valid, it must be notarised and registered with the Executive Committee of the Soviet of Working People's Deputies of the place where the house is located.

A special rule is laid down by Art. 125 for the conclusion of foreign trade transactions by Soviet organisations. The form and procedure governing signature of such transactions, regardless of the place of their conclusion, are determined by the legislation of the U.S.S.R.

All such transactions must be made in writing. No oral expression of will relating to the foreign trade of the U.S.S.R. has any juridical force, even where such is recognised by the law of the place of making. The essential point in the signing of foreign trade transactions is that this is done by two persons. Lists of persons authorised to sign are published in the established manner, and, in addition, the government of the country of stay is notified of the names of persons authorised to sign transactions concluded by the trade mission of the U.S.S.R. or its branches. These rules determine the powers vested in trade delegates or representatives of Soviet foreign trade associations to perform certain acts giving rise to juridi

cal consequences, and are extraterritorial, i.e., are mandatory for foreign courts as well.

Another rule governs obligations arising from foreign trade transactions (Art. 126).

The parties may by agreement subject the rights and obligations arising from their transaction to the operation of the law of a definite country. In the event the parties have not expressed the relevant concurrent wills, the rights and obligations arising from their foreign trade transaction are determined by the law at the place of making. The place of making is determined by Soviet law. Thus, because under the relevant general rules of the Civil Codes of Union Republics, a contract between parties absent is deemed concluded from the moment the offerer receives the answer accepting his offer to conclude the contract, the place where such answer is received by the offerer must be regarded as the place of the making of the contract. Consequently, when an offer to conclude a foreign trade transaction is made by a foreign firm, and the Soviet foreign trade association notifies the offerer of its acceptance by mail, the transaction is deemed concluded at the place of the offerer, and in the event of a dispute will be examined by a Soviet court in accordance with the laws of the country where the firm is located.

73. Art. 127 deals with collisive matters of inheritance. Relations involving inheritance, above all the circle of heirs-at-law, are regulated by the law of the country where the decedent had his last permanent domicile. Thus, succession to a foreigner whose last permanent domicile was in the U.S.S.R. is regulated by the legislation of the U.S.S.R. Succession to a citizen of the U.S.S.R. whose last permanent domicile was in a foreign country is determined pursuant to the laws of that country.

The capacity of a person to draw up and revoke a testament, and also the form of bequest (and deed of revocation) are determined pursuant to the law of the country where the testator had his permanent domicile at the

moment of performance of the testament or the deed o revocation.

However, the testament or its revocation cannot be deemed invalid because of non-compliance with the form provided the latter meets the formalities required by the law of the country where the act was performed, or the requirements of Soviet law. Thus, a testament drawn up in the U.S.S.R. by a person whose permanent domicile at the moment of bequest was in a foreign country is subject in the U.S.S.R. to the laws of that foreign country. However, even where it does not satisfy the latter as regards form it cannot be deemed invalid in the U.S.S.R., if its form satisfies the requirements of Soviet law.

The inheritance of structures located in the U.S.S.R. is in all cases subject to Soviet law. The same law applies to the capacity to make a testamentary disposition and to its form where the bequeathed structure is located in the U.S.S.R.

74. While establishing the rule for a number of cases in which foreign laws apply to civil legal relations, the FCivL, however, lay down one general limitation: foreign law does not apply where its application would contradict the principles of the Soviet system, such as the sole right of the state to own land, waters, minerals and forests; the state monopoly of foreign trade; and the foreign exchange monopoly of the State Bank of the U.S.S.R.

The concluding Art. 129 defines the relation between the rules of international treaties or agreements to which the U.S.S.R. and a Union Republic are parties and the rules of internal civil legislation of the U.S.S.R. or the Union Republic in question.

Where the rules laid down by the said international treaties or agreements differ from the rules contained in Soviet civil legislation, the former apply. This rule also applies on the territory of a Union Republic in the event an international treaty or agreement to which the Republic is party contains rules other than those provided by its legislation.

FUNDAMENTALS OF CIVIL LEGISLATION OF THE U.S.S.R. AND UNION REPUBLICS

Approved by the Supreme Soviet of the U.S.S.R., December 8, 1961

The Soviet Union, having secured the complete and final victory of socialism, has entered the period of full-scale construction of communist society.

The tasks of this period are to create the material and technical basis for communism, ensuring an abundance of material and cultural goods and the ever fuller satisfaction of the requirements of society and all its citizens; gradually to transform socialist social relations into communist relations; to educate citizens in a spirit of lofty communist ideals, and the communist attitude to labour and social property.

The economy of the period of full-scale communist construction is based on the socialist ownership of the means of production in the form of state property (property of the whole people) and kolkhoz and co-operative property, the latter gradually drawing closer to the property of the whole people until the two are integrated in a single communist ownership of the means of production.

Personal property is a derivative of socialist property, and is one of the means of satisfying the requirements of citizens. With the advance to communism, the personal

requirements of citizens will to an ever greater extent be satisfied from social funds.

Full use in communist construction is being made of commodity-money relations in keeping with their new content under the planned socialist economy, and use is also made of such important instruments of economic development as *khozraschyot*,* money, price, cost, profit, trade, credit, and finance. Communist construction is based on the principle of material incentives for citizens, enterprises, kolkhozes, and other economic organisations.

The Soviet state guides the planned economic development of the U.S.S.R. in accordance with the Leninist principle of democratic centralism, which gives ever freer play to the initiative of enterprises and other organisations in their economic operations and management of property, and extends their powers within the framework of a single national economic plan.

Soviet civil legislation regulates property relations, implying the use of commodity-money relations in communist construction, and the non-property personal relations connected with them.

Soviet civil legislation is an important means of further strengthening the rule of law in the sphere of property relations and safeguarding the rights of socialist organisations and citizens.

It is the task of Soviet civil legislation actively to promote the solution of the tasks of communist construction. It helps to consolidate the socialist system of economy, and socialist property and to develop its forms into one communist property; to enhance planning and contractual discipline, and *khozraschyot;* to ensure timely and proper completion of deliveries, steady improvement of quality, fulfilment of capital construction schemes and greater effectiveness of capital investments; to carry out state purchases of agricultural products; to develop Soviet

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* See note on p. 17.—*Ed.*

trade; to safeguard the material and cultural interests of citizens and balance them with those of society as a whole; and to stimulate inventiveness in science and technology, and creativity in literature and the arts.

PART ONE

GENERAL PROVISIONS

ARTICLE 1. The Tasks of Soviet Civil Legislation

Soviet civil legislation regulates property relations and related non-property personal relations for the purpose of creating the material and technical basis for communism and providing ever fuller satisfaction of the material and spiritual requirements of citizens. In cases provided for by law, civil legislation likewise regulates other non-property personal relations.

Property relations in Soviet society are based on the socialist system of economy and socialist ownership of the means and instruments of production. The economic development of the U.S.S.R. is determined and guided by the state national-economic plan.

ARTICLE 2. Relations Regulated by Soviet Civil Legislation

Soviet civil legislation regulates the relations stated in Article 1 of the present Fundamentals:

between state, co-operative and mass organisations;

between citizens and state, co-operative and mass organisations;

between citizens.

Other organisations may also be parties to the relations regulated by Soviet civil legislation, in cases provided for by the legislation of the U.S.S.R.

The civil legislation of the U.S.S.R. and Union Republics does not apply to property relations based on the ad-

ministrative subordination of one party to another, or to tax and budget relations.

Family, labour, and land relations, and also relations within kolkhozes arising from their rules, are regulated respectively by family, labour, land and kolkhoz legislation.

ARTICLE 3. Civil Legislation of the U.S.S.R. and Union Republics

In accordance with the present Fundamentals, the Civil Codes and other acts of civil legislation of Union Republics shall regulate property and non-property personal relations, both provided and not provided for by the Fundamentals.

In conformity with the present Fundamentals, the civil legislation of the U.S.S.R. shall regulate relations between socialist organisations in delivery of products, and capital construction; relations involving state purchases of agricultural produce from collective and state farms; relations between organisations in railway, sea, river, air and pipeline transport, and communications and credit establishments, and their clients, and between themselves; relations in state insurance; relations arising from discoveries, inventions and technical improvements; and also other relations whose regulation is referred by the Constitution of the U.S.S.R. and the present Fundamentals to the jurisdiction of the U.S.S.R. Within the sphere of these relations, the legislation of Union Republics may decide matters referred to their jurisdiction by the legislation of the U.S.S.R.

Relations in foreign trade shall be determined by special legislation of the U.S.S.R. regulating foreign trade, and by the general civil legislation of the U.S.S.R. and Union Republics.

ARTICLE 4. Grounds From Which Civil Rights and Duties Arise

Civil rights and duties arise from grounds provided by the legislation of the U.S.S.R. and Union Republics, and also from the acts of citizens and organisations which, while not provided by law, give rise to civil rights and duties in virtue of the general principles and meaning of civil legislation.

Accordingly, civil rights and duties arise:

from transactions provided by law, and also from transactions which, while not provided by law, do not contradict it;

from administrative acts, including—for state, co-operative, and mass organisations—planning acts;

from discoveries, inventions, technical improvements, and production of scientific, literary and artistic works;

from injury caused to another, and likewise from acquisition or saving of property at the expense of another without sufficient grounds thereto;

from other acts of citizens and organisations;

from events to which the law attaches civil legal consequences.

ARTICLE 5. Exercise of Civil Rights and Performance of Duties

Civil rights shall be protected by law, except as they are exercised in contradiction to their purpose in socialist society in the period of communist construction.

In exercising their rights and performing their duties, citizens and organisations must observe the laws, and respect the rules of socialist community life and the ethical principles of the society building communism.

ARTICLE 6. Protection of Civil Rights

Civil rights shall be protected in the established manner by the court or arbitration or mediation board by means

of: recognition of these rights; restoration of the condition existing prior to the infringement of the right, and arrestment of the acts infringing the right; adjudication of specific performance; termination or modification of legal relation; recovery, from the person infringing the right, of damages caused, and, in cases provided by law or contract, of penalty (fine, penal interest), and also by other means provided by law.

Civil rights shall also be protected, in cases and in the manner established by the legislation of the U.S.S.R. and Union Republics, by comrades' courts, and trade union and other mass organisations.

In cases, specifically prescribed by law, civil rights shall be protected administratively.

ARTICLE 7. Protection of Honour and Dignity

Citizens and organisations shall have the right to sue at law for retraction of statements defamatory to their honour and dignity, where the person circulating such statements fails to prove that they are true.

Where such statements are circulated through the press, they must, if found untrue, be retracted also in the press. The manner of retraction in other cases shall be established by the court.

Where the court judgement has not been carried out, the court may impose a fine on the wrongdoer which shall be collected for the benefit of the state. Payment of fine does not relieve the wrongdoer from the duty to perform the act prescribed by the court judgement.

ARTICLE 8. Legal Capacity and Legal Ability of Citizens

The capacity of having civil rights and duties (civil legal capacity) equally belongs to all citizens of the U.S.S.R. The legal capacity of a citizen begins with his birth and ceases with his death.

The full capacity of a citizen to acquire by his acts civil rights and to create for himself civil duties (civil legal ability) arises at majority, i.e., upon the attainment of the age of eighteen years. The limited legal ability of minors, and also the cases and manner of imposition of restrictions on the legal ability of adults, shall be determined by the legislation of the U.S.S.R. and Union Republics.

No one may be restricted in legal capacity or legal ability, except in cases and in the manner established by law. Legal transactions seeking to limit legal capacity or legal ability shall be void.

ARTICLE 9. Content of the Legal Capacity of Citizens

Citizens may, in conformity with the law, have property in personal ownership; use dwelling premises and other property; inherit and bequeath property; choose their occupation and place of residence; have the rights of the author of a work of science, literature and art, discovery, invention and technical improvement, and also have other property and non-property personal rights.

ARTICLE 10. Declaring a Citizen Absent or Dead

A citizen may be declared absent, in a judicial proceeding, where no information concerning his whereabouts is received at the place of his permanent domicile for a period of one year.

A citizen may be declared dead, in a judicial proceeding, where no information concerning his whereabouts is received at the place of his permanent domicile for a period of three years; where he was missing in circumstances of mortal danger or circumstances justifying the presumption of his death in a definite accident, the period shall be six months.

A member of the armed forces or any citizen missing in connection with hostilities may be declared dead, in a

judicial proceeding, not before the expiration of a period of two years from the day of termination of hostilities.

Where a citizen declared absent or dead reappears or his whereabouts are discovered, the pertinent declaration shall be annulled by the court. The citizen's property rights shall be restored, in accordance with the legislation of Union Republics.

ARTICLE 11. Juridical Persons

Juridical persons are such organisations as possess separate property, and may in their own name acquire property and non-property rights and assume duties, and appear as plaintiffs and defendants in a court of law, or before an arbitration or mediation board.

Juridical persons are:

state enterprises and other state organisations operating on *khozraschyot*, having fixed and circulating assets assigned to them and a separate balance sheet; establishments and other state organisations financed from the state budget and having separate estimates, and whose executives are authorised to dispose of credits (except as provided by law); state organisations financed from other sources and having separate estimates and a separate balance sheet:

kolkhozes, inter-kolkhoz and other co-operative and mass organisations and their associations, and, in cases provided by the legislation of the U.S.S.R. and Union Republics, enterprises and establishments of these organisations and their associations with separate property and a separate balance sheet;

state-kolkhoz and other state-co-operative organisations.

Juridical persons operate on the basis of their charter (statute). Establishments and other state organisations on the state budget, and, in cases provided by the legislation of the U.S.S.R and Union Republics, other organisations as well may operate on the basis of a general statute for organisations of this type.

The establishments and other state organisations on the state budget, enumerated in the present Article, shall, in cases provided by the legislation of the U.S.S.R. and Union Republics, operate either on behalf of the U.S.S.R. or a Union Republic.

ARTICLE 12. Legal Capacity of Juridical Persons

Juridical persons shall have civil legal capacity in accordance with the established purposes of their activity.

The rights and duties of economic organisations connected with the use of firm names, trade marks and trade signs shall be determined by the legislation of the U.S.S.R.

ARTICLE 13. Liability of Juridical Persons for Their Obligations

Juridical persons shall be liable for their obligations in the property they own (and state organisations, in the property assigned to them) which, in accordance with the legislation of the U.S.S.R. and Union Republics, is subject to attachment.

The state shall not be liable for the obligations of state organisations which are juridical persons, nor shall these organisations be liable for the obligations of the state.

The terms and procedure governing appropriation of funds to discharge the debts of establishments and other state organisations on the state budget, where such debts cannot be paid from their estimates, shall be established by the legislation of the U.S.S.R. and Union Republics.

ARTICLE 14. Legal Transactions

Acts of citizens and organisations intended to establish, modify or terminate civil legal rights or duties are deemed to be legal transactions.

Legal transactions may be unilateral, bilateral or multilateral (contracts).

Legal transactions not complying with the requirements of the law shall be invalid.

Failure to comply with the form prescribed by law shall entail invalidation of the legal transaction only if such consequence is expressly provided by law. Non-compliance with the form of foreign trade transactions and the procedure governing their signature (Article 125 of the present Fundamentals) shall entail invalidation of the transaction.

Where a transaction is invalid each of the parties shall restore to the other everything received under the transaction, and where it is impossible to restore the things received in kind, their value shall be compensated in cash, unless the law prescribes other consequences of invalidation of the transaction.

Where the legal transaction is made for a purpose known to be contrary to the interests of the socialist state and society and there is intent on the part of both parties —in the event both parties performing the transaction— all that was received by them under the transaction shall be collected for the benefit of the state, and in the event of performance of the transaction by one party, all that was received by the other party and that which was due from the other party to the first party in compensation for that which was received shall be collected for the benefit of the state; where there is intent on the part of only one party, all that was received by that party under the transaction shall be returned to the other party, and that which was received by the latter party or that which was due to that party in compensation of that which was performed shall be collected for the benefit of the state.

ARTICLE 15. Agency

A transaction performed by one party (the agent) in the name of another party (the principal) in virtue of powers based on a power-of-attorney, law or administrative act, immediately establishes, modifies and terminates the civil rights and duties of the principal.

ARTICLE 16. Statute of Limitations

The general period for bringing an action to enforce the right of the party aggrieved (statute of limitations) shall be three years; for action brought by state organisations, kolkhozes and other co-operative and mass organisations against each other, the period shall be one year.

For some types of claims arising from relations whose regulation is referred to the jurisdiction of the U.S.S.R. shorter periods of limitation may be established by the legislation of the U.S.S.R., and for other claims, by the legislation of Union Republics.

The running of the period of limitation shall commence with the accrual of the right to bring an action; the right to bring an action shall accrue from the day the person learns, or should have learned, of the infringement of his right. Exceptions to this rule, and also grounds for interruption and suspension of the running of periods of limitation, shall be established by the legislation of the U.S.S.R. and Union Republics.

The court, and arbitration or mediation boards shall take cognisance of claims for the protection of infringed rights regardless of the expiration of the period of limitation. The court, and arbitration or mediation boards shall apply the statute of limitations irrespective of the complaints of the parties. Where the court, or arbitration, or mediation board finds that the delay in bringing an action before the expiration of the period of limitation was caused by sound reasons, the infringed right shall be subject to protection.

ARTICLE 17. Claims to Which the Statute of Limitations Does Not Apply

The statute of limitations shall not apply to:

claims arising from infringement of non-property personal rights, except in cases provided by law;

claims of state organisations for the recovery of state

property from the unlawful possession of kolkhozes and other co-operative and mass organisations or citizens;

claims of depositors for payment of deposits made in state labour savings banks and in the State Bank of the U.S.S.R.;

cases provided by the legislation of the U.S.S.R., and other claims.

ARTICLE 18. Application of the Civil Legislation of One Union Republic in Another Union Republic

The civil legislation of one Union Republic shall apply in another Union Republic in accordance with the following rules:

1) relations arising from the right of ownership shall be subject to the law of the place where the property is located;

2) legal capacity and legal ability in the conclusion of transactions shall be determined by the law of the place where the transaction is concluded;

3) the form of transaction shall be determined by the law of the place where the transaction is concluded; the obligations arising from a transaction shall be subject to the law of the place where the transaction is concluded, unless otherwise is provided by law or agreement of the parties;

4) obligations arising from injury caused to another shall be subject to the law of the place where the dispute is decided; at the request of the party aggrieved, the law of the place where the injury was caused shall apply;

5) relations arising from succession shall be subject to the law of the place of the opening of succession;

6) questions of the statute of limitations shall be decided in accordance with the law of the Union Republic whose legislation regulates the given relation.

LAW OF PROPERTY

ARTICLE 19. The Powers of the Owner

The owner shall have the powers of possession, use and disposal of property within the limits established by law.

ARTICLE 20. Socialist Property

State property (property of the whole people); the property of kolkhozes, and other co-operative organisations and their associations; and the property of mass organisations is socialist property.

ARTICLE 21. State Property

The state is the sole owner of all state property.

State property assigned to state organisations shall be in the operative management of these organisations which shall exercise, within the limits established by law, and in accordance with the aims of their activity, planned assignments and the designated purpose of the property, the powers of possession, use and disposal of the property.

Land, minerals, waters, forests, industrial plants, mines, electric power stations; railway, water, air and motor transport; banks, means of communication, state-organised agricultural, commercial, public utility and other enterprises; and also the basic housing facilities in the towns and in urban-type estates shall be in the ownership of the state. Any other property may also be in the ownership of the state.

Land, minerals, waters and forests, being the exclusive property of the state, may be granted only for use.

ARTICLE 22. The Disposal and Attachment of State Property

The procedure governing the transfer of state enterprises, buildings, structures, plant and other property, con-

stituting the fixed assets of state organisations, to other state organisations and also kolkhozes and other co-operative and mass organisations shall be determined by the legislation of the U.S.S.R. and Union Republics.

State enterprises, buildings and structures shall be transferred from one state organisation to another gratuitously.

The state property indicated in the present Article shall not be subject to alienation to citizens, with the exception of some types of property the sale of which to citizens is permitted by the legislation of the U.S.S.R. and Union Republics.

Enterprises, buildings, structures, plant and other property, constituting the fixed assets of state organisations may not be the object of mortgage nor may they be attached to answer the claims of creditors. Attachment may be applied to other assets, except as exempted by the legislation of Union Republics, and in respect of cash resources, by the legislation of the U.S.S.R. The procedure governing attachment to satisfy the claims of credit institutions for repayment of loans granted by them shall be determined by the legislation of the U.S.S.R.

ARTICLE 23. The Property of Kolkhozes, Other Co-operative Organisations and Their Associations

The enterprises of kolkhozes, other co-operative organisations and their associations, their welfare and cultural establishments, buildings, structures, tractors, harvester combines, and other machinery, means of transport, draught animals and productive stock, the goods produced by these organisations and other assets corresponding to the aims of their activity shall be the property of these organisations.

The enterprises, welfare and cultural establishments, buildings, structures, tractors, harvester combines, and other machines, means of transport and other property owned by kolkhozes, other co-operative organisations and their associations, and constituting their fixed assets, and

also their seed and feed stocks, may not be attached to answer the claims of creditors. Attachment may be applied to other assets, except as exempted by the legislation of Union Republics, and, in respect of cash resources, by the legislation of the U.S.S.R. The procedure governing attachment to satisfy the claims of credit institutions for repayment of loans granted by them shall be determined by the legislation of the U.S.S.R.

ARTICLE 24. The Property of Trade Union and Other Mass Organisations

The enterprises of trade union and other mass organisations, their buildings, structures, sanatoriums, rest homes, palaces of culture, clubs, stadiums and Young Pioneer camps and their equipment, and cultural and educational funds, and other assets in keeping with the aims of the activity of these organisations shall be their property.

The enterprises, buildings, structures, equipment and other property constituting the fixed assets of enterprises, sanatoriums, rest homes, palaces of culture, clubs, stadiums and Young Pioneer camps owned by trade union and other mass organisations, and also their cultural and educational funds may not be attached to answer the claims of creditors. Attachment may be applied to other assets, except as exempted by the legislation of Union Republics, and in respect of cash resources, by the legislation of the U.S.S.R. The procedure governing attachment to satisfy claims of credit institutions for repayment of loans granted by them shall be determined by the legislation of the U.S.S.R.

ARTICLE 25. Personal Property

Property intended to satisfy the material and cultural requirements of citizens may be in their personal ownership. Every citizen may have in his personal ownership income and savings derived from his labour, a dwelling

house (or part thereof) and a supplementary husbandry, household effects and furnishings, and articles of personal use and convenience. The personal property of citizens may not be used to derive unearned income.

Every citizen may have one dwelling house in his personal ownership. Cohabiting spouses and their minor children may have only one dwelling house which is owned by right of personal ownership by one of them, or which is owned as common property. The maximum size of dwelling house which may be in the personal ownership of a citizen, the terms and manner of lease of premises in such a house shall be established by the legislation of Union Republics.

The legislation of Union Republics shall establish the maximum number of livestock which may be in the personal ownership of a citizen.

A citizen who is a member of a kolkhoz household may not have in his personal ownership any property which, in keeping with the rules of the kolkhoz, may be owned only by a kolkhoz household.

ARTICLE 26. Common Property

Property may belong by right of common ownership to two or more kolkhozes, or other co-operative and mass organisations, or to the state and one or more kolkhozes, or other co-operative and mass organisations, or to two or more citizens.

A distinction is made between common ownership by shares (share ownership) and without demarcation of shares (joint ownership).

ARTICLE 27. The Property of the Kolkhoz Household

The property of the kolkhoz household shall belong to its members by right of joint ownership (Article 26 of the present Fundamentals).

The kolkhoz household may own a supplementary hus-

bandry on the house-and-garden plot in its use, a dwelling house, productive stock, poultry and minor farm implements, in keeping with the rules of the kolkhoz.

In addition, the kolkhoz household shall own the income conveyed into its ownership by members of the household which they derive from working in the collective economy of the kolkhoz, or any other property conveyed into the ownership of the household, and also any articles of domestic utility and personal use paid for out of common funds.

The procedure governing possession, use and disposal of the property of the kolkhoz household, and also the separation of the shares of members and the partition of the household shall be established by the legislation of Union Republics.

ARTICLE 28. Protection of the Right of Ownership

The owner shall have the right to recover his property from the unlawful possession of another.

Where the property has been acquired for value from a person not entitled to alienate it, of which the buyer did not know and was not required to know (holder in good faith), the owner shall have the right to recover his property from the holder only where the property was lost by the owner, or by a person into whose possession the property was conveyed by the owner, or was stolen from either, or in any other way withdrawn from their possession without their knowledge.

Where the property has been acquired gratuitously from a person not entitled to alienate it, the owner has the right to recover the property in any case.

State property, and also the property of kolkhozes and other co-operative and mass organisations unlawfully alienated by any means whatsoever may be recovered by the organisations concerned from any holder.

Money and also bearer securities may not be recovered from a holder in good faith.

The owner shall have the right to demand that all breaches of his right be remedied, even where such breaches do not involve dispossession.

ARTICLE 29. Protection of the Rights of Holders Other Than Owners

The rights provided by Article 28 of the present Fundamentals shall also belong to persons who, while not owners, are in possession of the property in virtue of law or contract.

ARTICLE 30. Accrual of the Right of Ownership for the Party Acquiring Property Under Contract

The right of ownership for the party acquiring property under contract (and for state organisations—the right of operative management of property) shall arise from the moment the thing is delivered, unless the law or contract provide otherwise.

Delivery is deemed accomplished by handing over the things to the acquiring party, or by handing over the things to a carrier for dispatch to the acquiring party, or by deposit with the post office for dispatch to the acquiring party of things alienated without obligation to deliver. Delivery of the bill of lading or other warrant shall be deemed equivalent to delivery of the things.

ARTICLE 31. Requisition and Confiscation

Dispossession of the owner of his property by the state in the state or public interest with payment to him of the value of the property (requisition), and also the seizure of property by the state without compensation, as a penalty for an offence (confiscation), shall be permitted only in the cases and manner established by the legislation of the U.S.S.R. and Union Republics.

ARTICLE 32. Ownerless Property

Property which has no owner or whose owner is unknown (ownerless property) shall revert to the ownership of the state. Ownerless property which had belonged to a kolkhoz household shall revert to the ownership of the kolkhoz. The procedure governing transfer of ownerless property to the ownership of the state or the kolkhoz shall be established by the legislation of Union Republics.

PART THREE

LAW OF OBLIGATIONS

CHAPTER ONE

General Provisions on Obligations

ARTICLE 33. Obligations and Their Performance

By virtue of an obligation, one person (the debtor) must perform for the benefit of another (the creditor) a specific act, such as, deliver property, do work, pay money, etc., or to abstain from a specific act, and the creditor has the right to claim from the debtor the performance of his duty.

Obligations arise from contract or other grounds specified in Article 4 of the present Fundamentals.

Obligations must be performed in the proper manner and at the specified time, as stated by law, planning act, or contract, and in the absence of such indications, in accordance with the usual requirements.

Unilateral refusal to perform an obligation and unilateral alteration of the terms of the contract shall not be permitted, except in cases provided by law.

ARTICLE 34. Conclusion of Contracts

A contract shall be deemed concluded when the parties have reached agreement, in the form required by law for

the various cases, on all the essential points thereof. The essential points are those which are so specified by law or are necessary to the given type of contract, and also all other particulars with respect to which, according to the declaration of either party, agreement is to be reached.

The content of a contract concluded on the basis of a planned assignment must correspond to that assignment.

Disputes between state, co-operative (with the exception of kolkhozes) and other mass organisations arising at the making of a contract based on a planned assignment which is mandatory for either party shall be decided by the appropriate arbitration (mediation) board, unless the law provides otherwise.

Disputes between the said organisations arising at the making of a contract not based on a planned assignment which is mandatory for either party may be decided by an arbitration board, where this is specifically provided by law or agreement between the parties.

ARTICLE 35. Securing Performance of Obligations

Performance of obligations may be secured in accordance with law or contract by means of a penalty (fine, penal interest), pledge and surety. In addition, obligations between citizens or with their participation may be secured by means of an earnest, and obligations between socialist organisations, by means of a guarantee.

ARTICLE 36. Liability for Breach of Obligations

In the event of non-performance or improper performance of the obligation by the debtor he must compensate the creditor for the damages caused thereby. Damages are deemed to be the expenses incurred by the creditor, the damage to, or loss of, his property, and also the income which the creditor did not receive but which he would have received if the obligation had been performed by the debtor.

Where a penalty (fine, penal interest) is stipulated for non-performance or improper performance of the obligation, damages shall be paid in the amount not covered by the penalty (fine, penal interest).

The law or contract may provide cases in which only penalty (fine, penal interest) but not damages may be collected; in which damages may be collected in the full amount over and above the penalty (fine, penal interest); in which the creditor may elect to collect either the penalty (fine, penal interest) or damages.

The legislation of the U.S.S.R. and Union Republics may establish limited liability for non-performance or improper performance of some types of obligations.

Socialist organisations shall make no agreement limiting their liability where the extent of liability for obligations of the given type is specifically stated by law.

Payment of penalty (fine, penal interest) fixed for delay or other improper performance of obligations and payment of damages caused by improper performance shall not relieve the debtor from specific performance of the obligation, except in cases where the planned assignment on which the obligation between socialist organisations is based, has become inoperative.

ARTICLE 37. Fault as the Condition of Liability for Breach of Obligations

A person who fails to perform an obligation or performs it improperly incurs material liability for damages (Article 36 of the present Fundamentals) only in the presence of fault (intent or negligence), except in cases provided by law or contract. Absence of fault shall be proved by the person violating the obligation.

Where non-performance or improper performance of an obligation occurs by the fault of both parties, the court, or arbitration or mediation board shall reduce the amount of the debtor's liability accordingly.

ARTICLE 38. Assignment of Performance of an Obligation to a Third Party

Performance of an obligation arising from contract may be assigned in whole or in part to a third party, where this is provided by established rules or where the third party is connected with one of the parties through administrative subordination or relevant contract.

In that event, liability for non-performance or improper performance of the obligation shall fall on the party to the contract from which it has arisen, provided the legislation of the U.S.S.R. and Union Republics does not impose liability on the actual performer.

CHAPTER TWO

Sale

ARTICLE 39. Contract for Sale

By contract for sale the seller undertakes to transfer goods to the ownership of the buyer, and the buyer undertakes to accept the goods and to pay a definite sum of money for them.

Where the buyer is a state organisation it shall acquire the right of operative management of the property (Article 21 of the present Fundamentals).

ARTICLE 40. Price

State, co-operative and mass organisations shall sell goods at the established state prices, except in cases provided by the legislation of the U.S.S.R. and, within the limits prescribed by it, by the legislation of Union Republics.

The sale by kolkhozes of their surplus agricultural produce, which is not bought by the state, and also the sale by citizens of their property, shall be effected at prices fixed by agreement of the parties.

ARTICLE 41. Liability of the Seller for Improper Quality of the Things Sold

The quality of the thing sold must be in keeping with the terms of the contract, and in the absence of any stipulation in the contract, with the usual requirements. The thing sold by a trading organisation must correspond to the state standard, technical specifications or samples established for things of this type, unless the contrary follows from the nature of the given sale.

The buyer who has been sold a thing of improper quality, where its defects had not been specified by the seller, may elect to demand either substitution of a thing of proper quality for the thing determined in the contract by generic characteristics, or proportionate decrease of the purchase price, or gratuitous removal of the defects of the thing by the seller, or compensation for the expenses incurred by the buyer in repairing them, or rescission of the contract and compensation of the buyer for damages.

The manner in which these rights are exercised by a person buying a thing in a retail trading enterprise shall be determined by the legislation of Union Republics.

ARTICLE 42. Periods for the Filing of Claims and Periods of Limitation for Actions in Connection with Defects of Things Sold

The periods within which claims may be filed on account of defects of a thing sold, and also the periods of limitation for action on claims connected with such defects shall be established by the legislation of Union Republics.

Where, in accordance with Article 48 of the present Fundamentals, guarantee periods are established for things sold through retail trading organisations, such periods shall run from the day of the retail sale. The buyer may file within the guarantee period a claim with the seller on account of defects of the thing sold hindering its normal use. The seller must ensure gratuitous removal of the de-

fects of the thing, or substitute for it a thing of proper quality, or accept it back with repayment to the buyer of the amount paid for it, if he fails to prove that the defects are due to the buyer's breach of the rules governing the use or safe-keeping of the thing.

ARTICLE 43. Sale of Goods on an Instalment Plan

Durable goods may be sold to citizens by retail trading enterprises on credit (with payment by instalments) in cases and in the order established by the legislation of Union Republics.

The right of ownership of the goods sold on an instalment plan arises for the buyer in accordance with the rules of Article 30 of the present Fundamentals.

CHAPTER THREE

Delivery

ARTICLE 44. Contract for Delivery

By contract for delivery the supplier organisation undertakes to transfer by a definite date or dates to the ownership of the buyer organisation (customer) or, in conformity with Articles 21 and 30 of the present Fundamentals, into its operative management, specified goods in accordance with the planning act of distribution of goods which is mandatory for both organisations; the customer undertakes to accept the goods and to pay for them at the established prices. A contract concluded between the organisations at their discretion by which the supplier undertakes to transfer to the buyer goods which are not subject to planned distribution within a period not coincident with the moment of the making of the contract is also deemed to be a contract for delivery.

Delivery of goods without the making of a contract shall be effected only in cases established by the Council of

Ministers of the U.S.S.R. or the Council of Ministers of a Union Republic.

ARTICLE 45. Short Delivery or Short Collection

The quantity of goods short delivered by the supplier or short collected by the customer within the stipulated time must be delivered (collected) in the manner and within the periods specified in the Regulations for Delivery, Special Terms of Delivery of separate types of goods (Article 50 of the present Fundamentals) or contract.

The customer, after notifying the supplier, shall have the right to refuse to accept the goods whose delivery has been delayed, except as the contract provides otherwise. Goods dispatched by the supplier before the receipt of notification from the customer must be accepted and paid for by the latter.

ARTICLE 46. Assortment of Goods Delivered

Goods must be delivered in accordance with the assortment specified in the contract.

Delivery of some types of goods listed in the assortment in excess of the quantity specified in the contract shall not be included to cover short delivery of other types of goods except where such delivery is made with the customer's consent.

For short delivery of some types of goods listed in the assortment, the supplier shall pay the fixed penalty, even where delivery of the goods in total value has been completed within the period specified by the contract.

ARTICLE 47. Quality of Goods Delivered

The quality of goods delivered must correspond to state standards, technical specifications or samples. Contract may provide for delivery of goods of higher quality than specified by state standards, approved technical specifications or samples.

In the event of delivery of goods of lower quality than that required by state standards, approved technical specifications or samples, the buyer must refuse to receive or pay for the goods, and where the goods have been paid for by the buyer, the amount paid shall be subject to refund.

However, if the defects of the delivered goods can be removed without returning them to the supplier, the buyer shall have the right to demand of the supplier correction of the defects in the place where the goods are located, or to correct the defects by his own means, for the supplier's account.

Where the delivered goods correspond to state standards or technical specifications, but prove to be of a lower grade than has been specified, the buyer shall have the right to accept the goods with payment at the price established for goods of corresponding grade, or to refuse acceptance of, and payment for, the goods.

For actions arising from delivery of goods of improper quality, a six-month period of limitation shall be established to run from the day the buyer discovers in the proper manner the existence of defects in the goods delivered to him.

ARTICLE 48. Periods for Presentation of Claims Relating to Defects of Delivered Goods

The periods and procedure for disclosure by the buyer of defects of goods delivered to him which could not be discovered under the usual method of accepting goods, and for presentation to the supplier of claims arising from delivery of goods of improper quality shall be determined by the legislation of the U.S.S.R.

In respect of goods intended for long-term use or storage, state standards or technical specifications may provide longer periods for disclosure by the buyer in the proper manner of said defects (guarantee periods) with subsequent presentation to the supplier of claims for removal

of these defects or replacement of the goods. The supplier shall gratuitously repair the defects of goods covered by a guarantee period, or replace them, unless he proves that the defects have been caused by the buyer's breach of the rules governing their use or safe-keeping.

Contracts may fix guarantee periods, where such are not provided by standards or technical specifications, and also longer guarantee periods than those provided by standards or technical specifications. In respect of consumer goods sold through retail trading organisations, the running of the guarantee period shall commence from the day of the retail sale of the thing (Article 42 of the present Fundamentals).

ARTICLE 49. Delivery of Goods in Complete Sets

Goods must be delivered in complete sets, in accordance with the requirements of state standards, technical specifications or price lists. Where completeness is not determined by state standards, approved technical specifications or price lists it may when necessary be determined by contract.

In the event of delivery of incomplete sets of goods the buyer must demand that the sets be completed or that the incomplete sets of goods be replaced, and until the sets are completed or replaced must refuse to pay for them, and where payment has been made, to demand a refund of the amounts paid for them.

Where the supplier fails to complete the sets of goods by the date fixed by agreement of the parties the buyer shall have the right to reject the goods.

ARTICLE 50. Regulations for Delivery and Special Terms of Delivery. Liability for Breach of Delivery Contract

Contracts for delivery shall be made and performed in accordance with the Regulations for Delivery, approved

by the Council of Ministers of the U.S.S.R., and the Special Terms of Delivery for separate types of goods, approved in the manner established by the Council of Ministers of the U.S.S.R., and, in cases provided by it, by the Councils of Ministers of Union Republics.

In conformity with these Regulations and Special Terms, breach of contract for delivery shall entail payment of penalty (fine, penal interest) and damages.

In the event of delivery of goods of improper quality or in incomplete sets, the buyer shall collect from the supplier the fixed penalty (fine) and, in addition, damages caused by such delivery, without any setoff for the penalty (fine).

CHAPTER FOUR

State Purchase of Agricultural Produce from Collective and State Farms

ARTICLE 51. Contract for Delivery of Agricultural Produce

State purchase of agricultural produce from collective and state farms shall be made by contracts for delivery of agricultural produce, which are concluded on the basis of plans for state purchases of agricultural produce and plans for the development of agricultural production in collective and state farms.

ARTICLE 52. Content of Contract for Delivery of Agricultural Produce

Contracts for delivery of agricultural produce must specify: the quantity (by types of produce), quality, delivery dates, procedure and terms of delivery, and place of delivery of agricultural produce;

the duty of purchasing organisations and enterprises to receive the produce and pay for it at the fixed prices and

at the proper time, and also the amounts and dates of advance cash payments to collective farms;

the duties of helping the collective and state farms to organise the raising of agricultural produce and its transportation to receiving centres and enterprises;

reciprocal material liability of the parties in the event of non-performance of their duties.

Standard contracts for delivery of agricultural produce shall be approved in the manner established by the Council of Ministers of the U.S.S.R.

CHAPTER FIVE

Lease

ARTICLE 53. Contract for Lease of Property

By contract for lease of property, the lessor undertakes to place property for temporary use by the lessee for a reward.

The lessor must surrender the property to the lessee in a condition which is in keeping with the terms of the contract and with the designated purpose of the property and must make extensive repairs to the property at his own expense unless the law or the contract provides otherwise.

The lessee must make payments for the use of the property at the proper time; use the property in keeping with the contract and with the designated purpose of the property; maintain it in good repair; make current repairs at his own expense, unless otherwise provided by law or contract; and upon the termination of the contract for lease return the property in the condition in which he had received it, subject to normal wear and tear, or in the condition specified in the contract.

ARTICLE 54. Continuation in Force of Lease Contract Where Property is Transferred to Another Owner

Where the right of ownership in leased property is transferred from the lessor to another party, the lease contract shall be binding on the new owner. The lease contract shall also continue to be effective where property is transferred from one state organisation (lessor) to another.

ARTICLE 55. The Letting to Hire of Everyday Things

The terms and manner of letting by state, co-operative and mass organisations to citizens of household articles, musical instruments, sports goods, passenger cars and other property for temporary use for a price (the letting to hire of everyday things) shall be established by the legislation of Union Republics.

Standard contracts for the several types of letting to hire of everyday things shall be approved by the Councils of Ministers of Union Republics. Departures from the terms of the standard contracts limiting the rights of hirers shall be invalid.

CHAPTER SIX

Housing

ARTICLE 56. Procedure Governing Allocation of Housing and Contract for Lease of Housing

Allocation of housing in buildings belonging to local Soviets of Working People's Deputies shall be made by the Executive Committee of the local Soviet with the participation of representatives of mass organisations, and in buildings belonging to state, co-operative and mass organisations, by a joint decision of the management and the factory or office committee of the trade union, and ap-

proved by the Executive Committee of the Soviet of Working People's Deputies. The use of housing in these buildings shall be formalised in a lease contract with the house management office.

Contract for lease of dwelling premises in houses belonging to citizens by right of personal ownership shall be made between the tenant and the house owner.

Members of the tenant's family who live with him acquire rights and duties arising from the lease contract equally with the tenant.

The contract shall determine the rights and duties of the parties. Articles 53 and 54 of the present Fundamentals shall, where relevant, apply to contract for lease of housing.

ARTICLE 57. Rent

Pending the introduction of gratuitous use of housing the lessee shall pay rent at the proper time.

The amount of rent shall be established by the legislation of the U.S.S.R.

Payment for the use of dwelling space in houses belonging to citizens by right of personal ownership shall be determined by agreement of the parties but may not be higher than the maximum rates established for such houses by the legislation of Union Republics.

ARTICLE 58. The Right of the Lessee to Renew the Contract

Where the contract for lease of housing in a building belonging to the local Soviet of Working People's Deputies or a building belonging to a state, co-operative or mass organisation has been made for a definite period, the lessee, upon the expiration of the term of the contract, shall have the right to renew the contract. This right can be contested by the lessor in a court of law only in the event of the lessee's systematic non-performance of his duties under the contract.

The same right shall belong to the lessee of dwelling premises in a house belonging to a citizen by right of personal property, except in cases:

where the lessee lives in premises under a contract made for a period of not more than one year with an obligation to vacate the premises upon the expiration of that period;

where the court establishes that the house owner and members of his family require the premises for personal use.

ARTICLE 59. Modification of Contract for Lease of Housing

The legislation of Union Republics may provide for the possibility of withdrawal by the court of surplus living space (in excess of the standard space) in the form of a separate isolated room. In such cases, the living space standard established by the legislation of Union Republics may not be less than nine square metres per person. Additional living space standards shall be established for some categories of lessees.

Surplus isolated rooms in buildings belonging to local Soviets of Working People's Deputies may be taken away only where the lessee fails to fill the vacant premises himself within three months after being served a written notice from the housing agency.

Where the surplus isolated room develops in a flat in the use of a single family, the lessee shall have the right either to occupy it in accordance with the rules of the present Article, or to demand removal to a smaller separate flat.

The legislation of Union Republics may also establish other cases in which the withdrawal of a surplus isolated room is not permitted.

If a room which is not isolated from the dwelling premises the lessee occupies and which adjoins them is vacated

in the flat in which the lessee lives that room shall be conveyed into his use.

ARTICLE 60. Rescission of Contract by the Lessee. Exchange and Subletting of Dwelling Premises

The lessee of dwelling premises shall have the right to rescind the contract at any time.

The lessee of dwelling premises shall have the right to exchange the premises he occupies.

Exchange of dwelling premises in buildings belonging to state, co-operative and mass organisations, and also in buildings belonging to citizens by right of personal ownership, shall be permitted only with the consent of the lessor. The procedure governing exchange of dwelling premises shall be established by the legislation of Union Republics.

The lessee may sublet dwelling premises in cases and in the manner established by the legislation of Union Republics.

ARTICLE 61. Rescission of Contract by the Lessor

Contract for lease of housing may not be rescinded and the lessee may not be evicted from the dwelling premises he occupies otherwise than in a judicial proceeding (apart from the exemptions listed in Article 63) and on grounds established by law.

A lessee evicted on grounds provided by law from a building belonging to the local Soviet of Working People's Deputies, or from a building belonging to a state, co-operative or mass organisation, shall be provided by the lessor with other modern dwelling premises, except in the cases specified below.

If the lessee or members of his family systematically destroy or damage the dwelling premises, or by their constant violation of the rules of socialist community life make it impossible for others to continue joint habitation with

them in the same flat or the same house, and if warnings and measures of public influence have proved to have no effect, the offenders shall be evicted without provision of other dwelling premises.

The legislation of Union Republics shall establish the grounds for rescission of the lease contract without provision of other dwelling premises also where the lessee and members of his family are absent for a long time; where the lessee possesses by right of personal ownership in the same populated locality a dwelling house which is fit for permanent habitation, and which he can occupy; and also where lessees of dwelling premises in buildings belonging to citizens by right of personal ownership systematically fail to pay rent.

ARTICLE 62. Special Cases of Eviction from Buildings Belonging to Enterprises and Establishments

The Council of Ministers of the U.S.S.R. and the Councils of Ministers of Union Republics may list the enterprises and establishments in key branches of the economy and under particular departments from whose buildings industrial and office workers who have terminated their labour relations in connection with discharge at their own request, or for breaches of labour discipline, or for the commission of a crime may be evicted in a judicial proceeding without provision of dwelling premises.

However, eviction without provision of dwelling premises in such cases shall not apply to disabled war veterans, Group I and II disabled workers, old age pensioners, persons receiving a personal pension, the families of persons serving in the Armed Forces of the U.S.S.R., and also the families of servicemen and partisans killed or missing in action in the defence of the U.S.S.R. or in the performance of other duties on military service.

ARTICLE 63. Eviction by Administrative Procedure

Eviction of citizens by administrative procedure shall not be permitted, except in respect of persons who occupy

dwelling premises without authorisation, and also of lessees from buildings threatened with collapse. Lessees evicted from buildings threatened with collapse shall be provided with other modern dwelling premises.

The legislation of Union Republics may establish the administrative procedure governing eviction from official buildings, hostels and hotels.

CHAPTER SEVEN

Contracting

ARTICLE 64. Contractor's Agreement

By contractor's agreement, the contractor undertakes to perform a job at his own risk and on the instructions of the customer from his own or the latter's materials, and the customer undertakes to accept and pay for the work performed.

The contractor must take all steps to assure the safety of the property entrusted to him by the customer and shall be liable for any want of care resulting in damage to, or loss of, the said property.

ARTICLE 65. The Rights of the Customer in the Event of Breach of Contract by the Contractor

If the contractor departs from the terms of the contract, thereby lowering the quality of the work, or allows any other defects in the job, the customer may elect to demand: gratuitous correction of the defects within an appropriate time, or reimbursement of the customer for the necessary expenses incurred by him in correcting the defects of the work, where the contract provides for such right of the customer, or a corresponding reduction of the reward for the work.

In the presence of essential departures from the contract or other essential defects in the work, the customer

shall have the right to demand rescission of the contract and compensation of damages sustained.

ARTICLE 66. Rules Governing Contractor's Agreements for the Supply of Everyday Services to Citizens

The rules governing contractor's agreements for the supply of everyday services to citizens shall be established by the legislation of Union Republics.

The Councils of Ministers of Union Republics shall approve standard contracts for the several types of services offered to citizens. Departures from the terms of the standard contracts limiting the rights of customers shall be invalid.

CHAPTER EIGHT

Contracting for Capital Construction

ARTICLE 67. Contractor's Agreement for Capital Construction

By contractor's agreement for capital construction, the contractor organisation undertakes to build at its own cost and expense and to deliver the planned project to the customer organisation, in accordance with the approved estimates and blueprints and within the fixed time, and the customer undertakes to place at the disposal of the contractor the building site, to provide him with the approved estimates and blueprints, to ensure the proper financing of building operations, and to accept the completed units and pay for them.

It shall be the duty of the customer to supply the building site with technological, power, electrotechnical and general industrial equipment and apparatuses, except in cases provided by special decisions. Special decisions may bind the customer to supply the building site with materials.

ARTICLE 68. General Contractor and Sub-Contractor

Contractor's agreement for capital construction shall be made by the customer with one building organisation, which, as the general contractor, shall have the right on the basis of sub-contractor's agreement to assign fulfilment of separate parts of the work to specialised organisations (Article 38 of the present Fundamentals).

Contract for assembly of equipment shall be made by the customer either with the general contractor or with the supplier of the equipment.

With the consent of the general contractor, contracts for assembly or other special operations may be made by the customer with organisations specialising in assembly or other operations.

ARTICLE 69. The Rights of the Customer

The customer shall exercise control and technical supervision over the volume, cost and quality of the work being done, in accordance with the estimates and blueprints. He shall have the right at any time to check up on the progress and quality of the building and assembly operations, and also on the quality of the materials used, without interfering, however, in the contractor's business activity.

Defects in the performance of the work or the materials used in the operations arising by the fault of the contractor (or sub-contractor) must be corrected by the contractor at his own expense.

ARTICLE 70. Liability of the Parties for Breach of Contractor's Agreement for Capital Construction

For non-performance or improper performance of duties under contractor's agreement for capital construction, the party responsible for this shall pay the established penalty (penal interest), and shall make good, in the amount in excess of the penalty, the damages sustained by the other

party in the form of expenses, or damage to, or loss of, his property.

The penalty (penal interest) paid by the contractor for delay in the performance of separate operations shall be refunded to the contractor if all the operations under the project are completed by the final date fixed by the contract.

ARTICLE 71. Rules Governing Contractor's Agreements for Capital Construction

Contractor's agreements for capital construction shall be made and performed in accordance with the rules approved by the Council of Ministers of the U.S.S.R. or in the manner it establishes. The legislation of Union Republics may establish special rules governing contractor's agreements for capital construction in kolkhozes.

CHAPTER NINE

Carriage

ARTICLE 72. Contract for Carriage

By contract for carriage of goods, the carrier (a transport organisation) undertakes to deliver the goods entrusted to it by the consignor to their destination and issue them to the person authorised to receive them (the consignee), and the consignor undertakes to pay the fixed charge for the carriage of the goods.

By contract for carriage of passengers, the carrier undertakes to carry the passenger to his destination, and, in the event of the passenger's registering luggage, also to deliver such luggage to its destination, and to issue it to the person authorised to receive the luggage; the passenger undertakes to pay the fixed fare for the passage, and when registering luggage, also for the carriage of such luggage.

The terms of carriage of goods, passengers and luggage and the liability of the parties in such carriage shall, in conformity with the present Fundamentals, be determined by the statutes (codes) for the several types of transport and by regulations issued in the established manner.

ARTICLE 73. Plan for the Carriage of Goods and Liability for Its Non-Performance

Contract for carriage of goods belonging to state, co-operative and mass organisations shall be made on the basis of the goods haulage plan, which is mandatory for both parties.

Contracts for carriage of goods not provided by the plan may be made in the manner established by the transport statutes (codes).

The carrier and the consignor shall be held materially liable for failure to supply the means of conveyance, failure to deliver the goods for carriage, and other breaches of duty arising from the goods haulage plan, and also for similar violations in the cases provided by clause two of the present Article.

ARTICLE 74. Liability of the Carrier for Damage to, and Shortage and Loss of, Goods or Luggage

The carrier shall be liable for damage to, and shortage and loss of, the goods and luggage he has undertaken to carry, unless he proves that the damage, shortage or loss has not occurred by his fault (Article 37 of the present Fundamentals).

The transport statutes (codes) may provide cases when the burden of proving the carrier at fault for damage to, or shortage or loss of, goods may be placed on the consignor or the consignee.

ARTICLE 75. Period for Delivery of Goods and Luggage and Liability for Delay

The carrier must deliver the goods or luggage at the destination within the period established by the transport statutes (codes) or regulations issued in the established manner. Where the period of delivery has not been established in the said manner, the parties shall have the right to stipulate such period in the contract.

The carrier shall be relieved of liability for delay in delivery of goods or luggage, if the delay has not been caused by his fault.

ARTICLE 76. Claims and Actions Arising from Carriage

Before an action arising from carriage is brought against the carrier, the claim must be presented to him.

Claims may be filed within a period of six months, and claims for the payment of fines and bonuses, within 45 days. The carrier must examine the claim and notify the claimant concerning the satisfaction or rejection of his claim within three months, and in respect of claims in connection with carriage performed by carriers using different types of transport under one instrument, within six months, and of claims for the payment of fines or bonuses, within 45 days.

Where the claim has been rejected or the answer has not been received within the period established by the present article, the claimant shall have two months in which to bring action from the day of receipt of the answer or the expiration of the period established for the answer.

The carrier shall have six months in which to bring an action arising from carriage against the consignors, consignees or passengers.

The period of limitation and the procedure of bringing an action in disputes arising from carriage on foreign service

shall be established by the transport statutes (codes) or international agreements.

ARTICLE 77. Liability of the Carrier for Causing Death or Injury to Health of Passengers

The carrier's liability for causing death or injury to health of passengers shall be determined by the rules of Chapter Twelve of the present Part, unless the law provides for increased liability.

CHAPTER TEN

State Insurance

ARTICLE 78. Types of Insurance

State insurance shall take the form of mandatory and voluntary insurance.

ARTICLE 79. Mandatory Insurance

Property specified by law shall be subject to mandatory insurance on the terms established by the law.

Under mandatory insurance, the insurance agency shall, upon the happening of the event provided by law (the insurable event), reimburse the insurant or a third party to whom the insured property belongs, for the damages sustained by him: to the full insurance amount, when the property is a total loss, and within the limits of the corresponding part of the insurance amount, in the event of partial damage. The insurant shall pay the stipulated insurance premiums.

The types of mandatory personal insurance shall be established by the legislation of the U.S.S.R.

ARTICLE 80. Contract for Voluntary Insurance

By contract for voluntary insurance, the insurance agency undertakes upon the happening of the event specified in the contract (the insurable event):

in the case of property insurance—to reimburse the insurant or a third party (the beneficiary) for the damages sustained (to pay the insurance compensation) within the limits of the amount fixed by the contract (insurance amount), and where the property has not been insured to its full value, to pay the corresponding part of the damages, unless otherwise provided by the insurance rules;

in the case of life and accident insurance—to pay the insurant or a third party (the beneficiary) the insurance amount fixed by the contract, regardless of any amounts due him under state social insurance, or social security, or amounts due by way of reimbursement for damages.

The insurant shall undertake to pay the insurance premiums stipulated by the contract.

ARTICLE 81. Transfer to the Insurance Agency of the Insurant's Rights in Respect of the Person Liable for the Damage Caused

The insurance agency which has paid the insurance compensation in the case of property insurance shall acquire within the limits of that amount the right of claim which the insurant (or a third party who has received the insurance compensation) has against the person liable for the damage caused.

ARTICLE 82. The Rules of Insurance

The rules of insurance shall be approved in the manner established by the Council of Ministers of the U.S.S.R.

CHAPTER ELEVEN

Payment and Credit

ARTICLE 83. Payments Between Organisations

Payments in discharge of obligations between state organisations, kolkhozes and other co-operative and mass

organisations shall be made by written order to credit institutions in which the said organisations keep their accounts, in accordance with the law. The forms and procedure governing payments shall be determined by the legislation of the U.S.S.R.

Payments in cash between state organisations, kolkhozes and other co-operative and mass organisations shall be permitted only in cases and within the limits established by the legislation of the U.S.S.R.

ARTICLE 84. Disposal of Accounts of Organisations at Credit Institutions

Organisations shall be authorised to dispose of the cash on their accounts in credit institutions, in accordance with the designated purposes of the funds in question.

Cash necessary for the payment of wages and equated disbursements shall be paid from an organisation's account, regardless of any outstanding claims against the owner of the account. Exemptions from this rule may be established by the Council of Ministers of the U.S.S.R.

Cash on the account of an organisation in a credit institution may be written off without its consent only in cases provided by the legislation of the U.S.S.R.

Claims shall be satisfied in the order of priority established by the legislation of the U.S.S.R.

ARTICLE 85. Extension of Credits to Organisations

Extension of credits to state organisations, kolkhozes and other co-operative and mass organisations shall be made in accordance with approved plans through the issue of time loans for a specified purpose by the State Bank of the U.S.S.R. and other banks of the U.S.S.R., in the manner established by the legislation of the U.S.S.R.

Extention of credit by one organisation to another in cash or in goods, including advance payments on account,

shall be permitted only in cases established by the legislation of the U.S.S.R.

The terms and procedure governing extension of credit by one kolkhoz to another when rendering assistance in production shall be established by the legislation of Union Republics.

ARTICLE 86. Bank Loans to Citizens

Loans to citizens shall be granted by the banks of the U.S.S.R., in cases and in the manner determined by the legislation of the U.S.S.R.

ARTICLE 87. Citizens' Deposits in Credit Institutions

Citizens may keep their money in state labour savings banks and other credit institutions, dispose of their deposits, earn income on their deposits in the form of interest or winnings, and settle their accounts by written order, in accordance with the statutes of the credit institutions and regulations issued in the established manner.

The state guarantees secrecy of deposits, their safe-keeping and payment at call.

The procedure governing disposal of deposits at state labour savings banks and other credit institutions shall be determined by their statutes and the rules listed in clause one of the present Article.

Citizens' deposits at state labour savings banks and the State Bank of the U.S.S.R. may be attached in virtue of a court sentence or judgement satisfying a civil suit arising from a criminal case, or a court judgement in a suit for alimony (in the absence of earnings or other property which may be attached), or for the separation of a deposit which is marital community property. Citizens' deposits in the said credit institutions may be confiscated on the

strength of a sentence that has acquired legal force or an order of confiscation of property made in accordance with the law.

CHAPTER TWELVE

Obligations Arising from Injury Caused to Another

ARTICLE 88. General Grounds for Liability for Injury Caused to Another

Injury caused to the person or property of a citizen, and also injury caused to an organisation, shall be subject to indemnisation in full by the person causing the injury.

The person causing the injury shall be absolved from indemnisation, if he proves that the injury was not caused by his fault.

An organisation shall repair the injury caused by the fault of its functionaries in the performance of their labour (official) duties.

Injury caused by lawful acts shall be subject to indemnisation only in cases provided by law.

ARTICLE 89. Liability of State Establishments for Injury Caused by the Acts of Their Functionaries

State establishments shall be liable for the injury caused to citizens by the improper official acts of their functionaries in the sphere of administrative management, in accordance with the general rules (Article 88 of the present Fundamentals), unless a special statute provides otherwise. For injury caused to organisations by such acts of their functionaries, state establishments shall be liable in the manner established by law.

For injury caused by the improper official acts of functionaries of organs of inquiry, preliminary investigation, the procurator's office and the court, the state organs concerned shall be materially liable in the cases and within the limits expressly provided by law.

ARTICLE 90. Liability for Injury Caused by Sources of Increased Hazard

Organisations and citizens whose activity is attended with increased hazard to other persons (transport organisations, industrial enterprises, building sites, owners of motorcars, etc.) must repair the injury caused by the source of increased hazard, unless they prove that the injury was the result of *force majeure* or intent on the part of the injured person.

ARTICLE 91. Liability for Death or Injury to Health of Person for Whom the Person Causing the Injury is Bound to Pay Insurance Premium

Where a worker, in the performance of his labour (official) duties, has been crippled or has suffered any other injury to health by the fault of an organisation or citizen bound to pay premium for him under state social insurance, such organisation or citizen must make reparation to the injured person for the injury in the amount over and above the allowance he receives or the pension which was awarded to him after the injury caused to his health and which he actually receives. Exemptions from this rule may be established by the legislation of the U.S.S.R.

In the event of the death of the injured person, the right to receive reparation for the injury shall belong to persons who are unable to earn and who had been the deceased person's dependents, or who at the time of his death were entitled to receive maintenance from him, and also the posthumous child of the deceased.

ARTICLE 92. Liability for Death or Injury to Health of Person for Whom the Person Causing the Injury is Not Bound to Pay Insurance Premium

Where crippling or any other injury to health has been caused by an organisation or citizen not bound to pay

premium for the injured person under state social insurance, such organisation or citizen must make reparation to the injured person for the injury caused, in accordance with the rules of Articles 88 and 90 of the present Fundamentals in the amount over and above the allowance he receives or the pension which was awarded to him after the injury caused to his health and which he actually receives.

In the event of the death of the injured person, the right to receive reparation for the injury shall belong to the persons listed in clause two of Article 91 of the present Fundamentals.

ARTICLE 93. The Fault of the Injured Person and the Property Status of the Party Causing the Injury

Where gross negligence on the part of the person injured has contributed to the occurrence of, or increase in, the injury, the amount of compensation, depending on the degree of fault of the injured person (and where the person causing the injury is at fault, depending on the degree of his fault), must be reduced or reparation of injury must be denied altogether.

The court may reduce the amount of compensation for injury caused by a citizen depending on his property status.

ARTICLE 94. Subrogated Claims

An organisation or citizen liable for injury caused must in answer to a subrogated claim filed by a state social insurance or social security agency reimburse the amounts of allowance or pensions which have been paid to persons listed in Articles 91 and 92 of the present Fundamentals.

Where the amount of the compensation for injury has been reduced (Article 93 of the present Fundamentals) the amount of reimbursement under a subrogated claim shall be reduced accordingly.

Obligations Arising from Rescue of Socialist Property

ARTICLE 95. Reparation of Injury Sustained in the Rescue of Socialist Property

Injury sustained by a citizen in rescuing socialist property from impending danger must be compensated by the organisation whose property the injured person was in the act of rescuing.

The procedure governing compensation for the injury shall be established by the legislation of Union Republics.

PART FOUR

COPYRIGHT

ARTICLE 96. Works to Which Copyright Applies

Copyright shall apply to any scientific, literary or artistic work, regardless of its form, purpose or value or of the manner of its reproduction.

Copyright shall apply to works, whether published or unpublished, but available in some presentable form allowing the reproduction of the product of the author's creative activity (manuscript, drawing, image, public recital or performance, film, mechanical or magnetic recording, etc.).

ARTICLE 97. Copyright to Works Published on the Territory of the U.S.S.R. and Abroad

Copyright to works first published on the territory of the U.S.S.R., or unpublished but located within the territory of the U.S.S.R. in some presentable form, shall be recognised as belonging to the author and his successors in law, regardless of their citizenship.

Copyright shall also be recognised as belonging to cit-

izens of the U.S.S.R., whose works are first published or are located in any presentable form on the territory of a foreign country, and also to their successors in law.

Copyright to works first published or located in some presentable form on the territory of a foreign country shall be recognised as belonging to other persons only on the grounds and within the limits of pertinent international agreements concluded by the U.S.S.R.

ARTICLE 98. The Rights of the Author

To the author shall belong the right:

to publish, reproduce and circulate his work under his own name, under an assumed name (pseudonym), or without indication of name (anonymously), by any legal means;

to the integrity of the work;

to receive remuneration for the use of his work by other persons, with the exception of cases expressly provided by law. The rates of author's remuneration shall be established by the legislation of the U.S.S.R. and Union Republics.

ARTICLE 99. Co-authorship

Copyright in a work produced jointly by two or more persons (collective work) shall belong to the co-authors jointly, regardless of whether such work forms an integral whole or consists of parts each of which also has independent value. Each of the co-authors shall retain the copyright to his part of the collective work which is of independent value.

ARTICLE 100. Copyright of Juridical Persons. Copyright in a Work Produced as an Official Assignment

Copyright shall be recognised as belonging to juridical persons in the cases and within the limits established by the legislation of the U.S.S.R. and Union Republics.

The author of a work produced as an official assignment

in a scientific or other organisation shall have copyright in that work. The procedure governing the use by the organisation of such work and cases of payment of remuneration to the author shall be established by the legislation of the U.S.S.R. and Union Republics.

ARTICLE 101. Use of the Author's Work by Other Persons

Use of the author's work by other persons shall not be permitted otherwise than under a contract with the author or his successors in law, except in cases specified by law.

Standard contracts for the use of a work (publishing, production, script, and other author's contracts) shall be approved in the manner established by the legislation of the U.S.S.R. and Union Republics.

Any terms of a contract made with the author which place him in a position less advantageous than that accorded by law or standard contract shall be invalid and shall be substituted by the terms established by law or standard contract.

ARTICLE 102. Translation of Works

Every published work may be translated without the author's consent, provided he is notified and provided the meaning and integrity of the work are retained. The right to receive remuneration for the use of the work in translation shall belong to the author of the original in cases provided by the legislation of Union Republics.

The translator shall have the copyright in his translation.

ARTICLE 103. Use of the Work Without the Author's Consent and Without Payment of Author's Remuneration

It shall be permitted without the author's consent and without payment of author's remuneration, but with compulsory indication of the name of the author of the work used, and the source of the borrowing:

1) to use the published work of another to produce a new, creatively independent work, with the exception of the re-writing of a story in dramatic form or in a motion-picture script, and vice versa, and also the re-writing of a play in a motion-picture script and vice versa;

2) to reproduce in scientific and critical works, educational and politico-educational publications any published scientific, literary and artistic writings, in whole or in part, within the limits established by the legislation of Union Republics;

3) to give information in the periodical press, on the screen, radio and television about published literary, scientific and artistic works;

4) to reproduce in newspapers, on the screen, radio and television public speeches, reports and also published literary, scientific and artistic works;

5) to reproduce in any manner, with the exception of copying by mechanical contact methods, artistic works on display in places open to the public, except exhibitions and museums.

ARTICLE 104. Using a Work Without the Author's Consent With Payment of Author's Remuneration

The following shall be permitted without the author's consent but with an indication of his name and payment of author's remuneration:

1) public performance of published works; however, if no admission fee is charged, the author shall have the right to remuneration only in cases established by the legislation of Union Republics;

2) recordings for the purpose of public reproduction or circulation of published works on film, records, magnetic tape or other device, with the exception of the use of works on the screen, radio and television (Clause 4 of Article 103 of the present Fundamentals);

3) use by a composer of published literary works for the creation of musical works with text;

4) use of artistic works and also of photographic works on manufactured articles; in such cases mention of the author's name is not compulsory.

ARTICLE 105. Duration of Copyright

The author shall enjoy the copyright for life. The legislation of Union Republics may establish reduced terms of copyright for some works.

Copyright shall descend by succession in the manner and within the limits established by the legislation of the U.S.S.R. and Union Republics. Where the term of copyright has been reduced, it shall pass to the heirs for the remainder of the term still running on the day of the author's death.

The legislation of Union Republics shall establish the limits for the exercise of copyright by heirs, in particular, the limits of payment to them of royalties depending on the amount, but not in excess of 50 per cent of the remuneration which would have been due to the author himself.

ARTICLE 106. Purchase of Copyright by the State

Copyright to the publication, public performance and other use of a work may be compulsorily purchased by the state from the author or his heirs, in the manner provided by the legislation of Union Republics.

PART FIVE

LAW OF DISCOVERY

ARTICLE 107. The Rights of the Author of a Discovery

The author of a discovery shall have the right to demand recognition of his authorship and priority of discovery, which is certified by a diploma issued in the cases and in the manner specified by the Ordinance on Discoveries, Inventions and Technical Improvements, approved by the Council of Ministers of the U.S.S.R.

The author of a discovery shall be entitled to remuneration payable to him at the issue of the diploma and also to the privileges stated in the Ordinance on Discoveries, Inventions and Technical Improvements.

ARTICLE 108. Descent by Inheritance of the Rights of the Author of a Discovery

The right to receive a diploma of the deceased author of a discovery and also remuneration for the discovery shall descend by inheritance in the manner established by law.

ARTICLE 109. Disputes Concerning the Authorship of a Discovery

Disputes concerning the authorship (co-authorship) of a discovery shall be decided in a court of law.

PART SIX

LAW OF INVENTION

ARTICLE 110. Certificate of Authorship and Patent

The author of an invention may, at his discretion, request either simple recognition of his authorship, or recognition of his authorship and of his exclusive right to the invention. In the first instance, a certificate of authorship is issued for the invention; in the second instance, a patent. Certificates of authorship and patents shall be issued on the terms and in the procedure specified in the Ordinance on Discoveries, Inventions and Technical Improvements.

The patenting abroad of inventions made within the territory of the U.S.S.R., and of inventions made abroad by Soviet citizens, as well as any transfer of Soviet inventions abroad shall be permitted only in the manner established by the Council of Ministers of the U.S.S.R.

ARTICLE 111. Use of Invention for Which a Certificate of Authorship Is Issued

Where a certificate of authorship is issued for the invention, the right to use the invention shall belong to the state, which provides for the realisation of the invention with an eye to the expediency of its application.

Co-operative and mass organisations may use the inventions falling within their jurisdiction on equal terms with state organisations.

An inventor to whom a certificate of authorship is issued shall, in the event his invention is accepted for realisation, have the right to remuneration depending on the economic or other positive effect resulting from the realisation of his invention, as well as the right to the privileges stated in the Ordinance on Discoveries, Inventions and Technical Improvements.

ARTICLE 112. The Rights of the Patent Owner

Patents shall be issued for fifteen years from the date of filing of the application. From the same date the right of the applicant shall be protected. No one may use the invention without the consent of the person to whom the patent belongs (patent owner). The patent owner may issue a licence for the use of the invention or surrender the patent to another.

An organisation which before the filing of the application for the invention had applied the said invention within the territory of the U.S.S.R., independently of the inventor, or had made all the necessary preparations for doing so, shall retain the right to continued gratuitous use of the said invention. Disputes on this question shall be decided in a judicial proceeding.

Where the invention is of special importance to the state, but no agreement is reached with the patent owner concerning the transfer of the patent or the issue of a licence, the Council of Ministers of the U.S.S.R. may decree a mandatory alienation of the patent or give the organ-

isation concerned a permit to use the invention and establish the amount of remuneration to the patent owner.

ARTICLE 113. The Rights of the Author of a Technical Improvement

The author of a technical improvement accepted for realisation shall be issued a certificate establishing his authorship. He shall have the right to remuneration depending on the economic or other positive effect resulting from the realisation of his improvement, and also the right to the privileges stated in the Ordinance on Discoveries, Inventions and Technical Improvements.

ARTICLE 114. Participation of the Inventor and the Rationaliser in the Realisation of Their Proposals

Inventors and rationalisers must actively co-operate in the realisation and further development of their proposals, and shall have the right to take part in the operations to realise their proposals in accordance with the procedure established by the Ordinance on Discoveries, Inventions and Technical Improvements.

ARTICLE 115. Descent by Inheritance of the Rights of the Author of an Invention and Technical Improvement

The right to obtain a certificate of authorship or a patent for an invention, a certificate for a technical improvement and remuneration for the invention and technical improvement, and also the exclusive right to the invention based on a patent, shall descend by inheritance in the manner established by law.

ARTICLE 116. Disputes Concerning Authorship and Payment of Remuneration

Disputes concerning the authorship (co-authorship) of an invention shall be decided in a court of law. Disputes concerning priority of technical improvements, where not settled in the organisation realising the proposal, shall also be decided in a court of law.

Disputes concerning the amount, the manner of calculation and the dates of payment of the remuneration for inventions and technical improvements shall be decided in accordance with the procedure established by the Ordinance on Discoveries, Inventions and Technical Improvements, with the inventor or rationaliser who considers the adopted decision incorrect having the right to apply to a court of law.

PART SEVEN

LAW OF SUCCESSION

ARTICLE 117. Grounds for Succession

Inheritance shall be effected by operation of law and under a will.

Inheritance by operation of law shall take place where, and insofar as, it is not modified by a will.

Where there are no heirs-at-law or testamentary beneficiaries, or none of the heirs accept the inheritance, or are disinherited by the testator, the property of the decedent shall pass to the state by the right of succession.

ARTICLE 118. Inheritance by Operation of Law

Where inheritance is by operation of law, the children (including the adopted children), the spouse and the parents (adoptive parents) of the decedent shall be heirs of the first turn, in equal shares. The posthumous child of the decedent shall also be an heir of the first class.

The grandchildren and great-grandchildren of the decedent shall be his heirs-at-law, if their parent who would have been heir is no longer alive by the time of the opening of the succession; they shall take equal shares of the portion which would have been due to their deceased parent under intestate succession.

The legislation of Union Republics may establish the subsequent turns of heirs-at-law. Heirs of each turn shall be entitled to inherit by operation of law only in the absence of heirs of the preceding turns or in the event of their non-acceptance of the inheritance.

Persons who are unable to earn and who had been dependents of the decedent for not less than one year prior to his death shall be heirs-at-law. In the presence of other heirs they shall take equally with heirs of the turn upon whom the estate devolves.

Ordinary household effects and furnishings shall pass to the heirs-at-law who lived together with the decedent, regardless of their turn or share in the estate. The terms of inheritance of this property shall be established by the legislation of Union Republics.

ARTICLE 119. Inheritance Under a Will

Every citizen may bequeath by will all his property or a part thereof (not excluding ordinary household effects and furnishings) to one or several persons who may or may not be his heirs-at-law, as well as to the state or to any state, co-operative and mass organisation.

Children of the decedent (including adopted children) who are minors or who are unable to earn, and also the spouse, the parents (adoptive parents) and dependents of the decedent who are unable to earn, shall inherit, regardless of the content of the testamentary disposition, not less than two-thirds of the portion which would have been due to each of them under intestate succession *(portio legitima)*. In determining the size of the portion secured to them the value of the part of the estate consisting of ordinary household effects and furnishings shall also be taken into consideration.

The procedure governing disposal *causa mortis* of deposits in state savings banks and the State Bank of the U.S.S.R. by special assignments of depositors shall be

determined by the charters of the said credit institutions and the rules laid down in the established manner.

ARTICLE 120. Liability of Heir for the Debts of the Decedent

An heir who accepts the inheritance shall be liable for the debts of the decedent within the limits of the actual value of the estate which passes to him by inheritance. The state, where it receives property under Articles 117 and 119 of the present Fundamentals, shall be liable on the same grounds.

ARTICLE 121. Place of the Opening of Succession

The last permanent domicile of the decedent, and where that is unknown, the place where the property, or its principal part, is located is deemed to be the place of the opening of succession.

PART EIGHT

LEGAL CAPACITY OF ALIENS AND STATELESS PERSONS

Application of Civil Laws of Foreign Countries, International Treaties and Agreements

ARTICLE 122. Civil Legal Capacity of Aliens

Aliens shall enjoy in the U.S.S.R. legal capacity equally with Soviet citizens. Exemptions may be established by the law of the U.S.S.R.

The Council of Ministers of the U.S.S.R. may impose retaliatory restrictions on citizens of countries imposing special limitations to the civil legal capacity of Soviet citizens.

ARTICLE 123. Civil Legal Capacity of Stateless Persons

Stateless persons residing in the U.S.S.R. shall enjoy civil legal capacity equally with Soviet citizens. Exemptions may be established by the law of the U.S.S.R.

ARTICLE 124. Foreign Trade Transactions of Alien Organisations

Alien enterprises and organisations may without special permission conclude in the U.S.S.R. foreign trade transactions and related operations in the settlement of accounts, insurance or other operations with Soviet foreign trade associations and other Soviet organisations authorised to conclude such transactions.

ARTICLE 125. Law Applying to the Form of Transaction

The form of transaction concluded abroad shall be governed by the law of the place where it is made. However, a transaction cannot be deemed invalid by reason of non-observance of the form, if it complies with the requirements of the legislation of the U.S.S.R. and the Union Republic concerned.

The form of foreign trade transactions concluded by Soviet organisations, and the procedure governing their signature, regardless of the place where such transactions are concluded, shall be determined by the legislation of the U.S.S.R.

The form of transactions relating to structures located in the U.S.S.R. shall be governed by the legislation of the U.S.S.R. and the Union Republic concerned.

ARTICLE 126. Law Applying to Obligations Arising from Foreign Trade Transactions

The rights and duties of the parties to a foreign trade transaction shall be determined pursuant to the laws of the place where it is concluded, unless otherwise provided by agreement of the parties.

The place of conclusion of the transaction shall be determined pursuant to Soviet law.

ARTICLE 127. Law Applying to Succession

Relations arising from succession shall be determined by the law of the country where the decedent had his last permanent domicile.

The capacity of a person to make and revoke his will, and also the form of bequest and the act of its revocation, shall be determined by the law of the country in which the testator had his permanent domicile at the moment of making the act. However, a will or its revocation may not be deemed invalid by reason of non-compliance with the form, if the latter satisfies the requirements of the law of the place where the act was made, or the requirements of Soviet law.

Inheritance of structures located in the U.S.S.R. shall in any case be determined by Soviet law. The same law shall determine the capacity of a person to make or revoke a will, and also the form of the latter, where a structure located in the U.S.S.R. is bequeathed.

ARTICLE 128. Limitation to the Application of Foreign Law

A foreign law shall not apply where its application contradicts the fundamental principles of the Soviet system.

ARTICLE 129. International Treaties and Agreements

Where an international treaty or international agreement to which the U.S.S.R. is party establishes rules other than those contained in Soviet civil legislation, the rules of the international treaty or international agreement shall apply.

The same rule shall apply in the territory of a Union Republic, if an international treaty or international agreement to which the Union Republic is party establishes rules other than those provided by the civil legislation of the Union Republic.

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ON THE BASIC PRINCIPLES OF SOVIET LEGISLATION ON CIVIL PROCEDURE

1. The Fundamentals of Civil Procedure (FCivP), like the Fundamentals of Soviet Legislation on other branches of law, are of dual legal significance. They are, first, the law which immediately regulates civil procedure, and, secondly, they are a guide for the legislative organs of the U.S.S.R. and Union Republics, which, in accordance with their jurisdiction enact laws governing proceedings in civil cases. In the Union Republics, these laws appear in the form of codes of civil procedure, with their amendments and additions.

This is set forth in Article 1 of the FCivP which says that the procedure in civil actions is governed by the FCivP and other laws of the U.S.S.R. issued in accordance with them and with the codes of civil procedure.

The FCivP determine the basic principles of the Soviet law of civil procedure and establish the principal features of its institutions, leaving it to the legislation of the U.S.S.R., and above all to that of Union Republics, to elaborate and supplement these provisions in the conclusive, complete and precise set of regulations of civil procedure.

Some rules are not subject to elaboration or amplification by the codes of civil procedure of Union Republics. This applies to articles which give a conclusive enumeration of powers, or conditions of performance of certain acts. Such are Art. 31, which specifies the conditions in which a judge must refuse to take cognisance of a complaint; and Art. 41, which establishes when the proceedings

in a case must be terminated. Upon the other hand, Art. 23 allows the legislation of the U.S.S.R. and Union Republics to extend the circle of cases in which the parties are excused from the payment of court costs for the benefit of the state; the laws of Union Republics may establish other grounds in addition to those enumerated in Art. 42 on which the court may refuse to proceed in a case.

2. The tasks of Soviet civil procedure are correct and expeditious trial and decision of civil cases for the protection of the social and state system of the U.S.S.R., the socialist system of economy and socialist property, the political, labour, housing and other personal and property rights and lawful interests of citizens, and also the rights and lawful interests of state, co-operative and other mass organisations.

Civil procedure in its entirety should promote the socialist rule of law, prevent violations of the law, and educate citizens in a spirit of Soviet legality and communist morality.

The FCivP indicate the sources of the rules of law by which the court must be guided in deciding civil cases, namely, the laws of the U.S.S.R. and the laws enacted by the legislative organs of Union and Autonomous Republics, and also executive acts, including acts made by administrative organs within their jurisdiction (Art. 12).

The requirement of legality also extends to the statutory application of the rules of foreign law.

3. In contrast to criminal law and procedure, civil procedure permits analogy of law (Art. 12). This is due to the great variety of civil legal relations and their constant development in forms which cannot be conclusively anticipated.

4. According to Art. 7 of the FCivP the courts alone administer justice in civil cases. This emphasises, on the one hand, that the activity of other organs deciding civil disputes, such as arbitration boards and comrades' courts, is not to be regarded as administration of justice, and, on

the other, that strict observance of procedural form, above all of its principles, is a characteristic feature of the activity of the courts. The FCivP connect this provision with equality before the law and the court of all citizens, irrespective of their social, property and official status, national and racial origin, and religious beliefs. No one in the U.S.S.R. enjoys any privileges in the application of substantive or adjective law. The Soviet judicial system is uniform for the whole country; its bodies, their jurisdiction and the procedure governing their activity differ only as regards the local and national features of Union Republics.

5. All cases in courts of first instance and in the higher courts are heard by a body of judges and people's assessors, a practice which ensures fullness and impartiality in court decisions and enhances the authority of the court in the eyes of the people. All judges are elected in the manner established by law, and those who commit acts unworthy of the eminent office of judge or people's assessor, or abuse the trust of their electors or the body which elects them may be recalled before the expiration of their term.

Courts of first instance hear cases as a bench consisting of a judge and two people's assessors, a practice which strengthens the court's ties with broad sections of the people. People's assessors have equal rights with the judge presiding at the trial in deciding all matters of fact and of law which arise in hearing the case and rendering judgement.

6. The fact that judges are independent and subject to the law alone is one of the most important constitutional principles of socialist justice which is aimed at ensuring that decisions are legally correct and well founded. This principle is further elaborated in the FCivP. The independence of judges rules out external interference in the activity of the court or pressure on the part of other agencies and persons. This principle extends to the court's evalua-

tion of the evidence, and also to its application, selection and interpretation of the laws. Art. 9 of the FCivP stresses that the independence of judges and their subordination to the law alone is a provision ruling out any external influence on the judges, but this principle is also incompatible with any intrusion *from within* the judicial system into the activity of the judges in their assessment of the evidence and application of the law. Art. 52 of the FCivP is of tremendous importance in this respect. It says that the higher court does not have the right to decide beforehand on the authenticity or unauthenticity of an evidence or its relative value. A court of first instance is not bound by any instructions of the higher court in the application of the rules of substantive law or the decision to be rendered in a fresh examination of the case.

7. The FCivP re-enact, specify and extend the rules in force which govern the procurator's participation in civil proceedings. The procurator has the right to bring an action or enter a suit wherever this is required for the protection of state or public interests or of the rights of citizens. He has the right to enter the case at any stage of the proceedings, whether it is the original trial, cassation proceeding, *ex officio* review, execution of the judgement or review of the decision by reason of newly discovered circumstances. The procurator's participation is mandatory in cases provided by law, or when the need of it is stated by the court. The procurator has a broad range of powers which assure him of the most active participation in the case both in organisational matters (such as challenges to judges, officers of the court, witnesses, etc.) and in the examination of the materials on record. Regardless of the form of his participation, whether he initiates the civil proceedings or enters a case that has been commenced, the procurator presents his opinion both on matters arising during the trial and on the merits of the case as a whole (Art. 29).

8. The FCivP reaffirm as a basic principle of civil pro-

cedure that the trial must be conducted in public and in the language of the Union or Autonomous Republic, National Area or the majority of the local population. Persons not familiar with the language in which the proceedings are conducted are enabled to follow the proceedings in court: to address the court and make declarations in their native language and have the services of an interpreter, in the manner established by law. Judicial documents which are drawn up in a language with which participants in the case are not familiar must be translated (Art. 10).

9. One of the most important principles of Soviet civil procedure is that the conclusions of the court concerning the facts of the case and the legal relations between the parties must correspond to the actual facts and the parties' actual rights and duties. This is based on the tenet of Marxist-Leninist philosophy that man is capable of cognising objective reality. Accordingly, the law requires the court to take all the necessary measures provided by law to make a full, comprehensive and objective examination of the actual facts of the case, and the rights and duties of the parties.

10. Evidence consists of any facts on the basis of which the court ascertains the circumstances substantiating the parties' claims and defences, and also any other facts relevant to the case (Art. 17). Consequently, the object of proof may consist of juridical facts on which depends the origination, modification or termination of the substantive rights and duties of the parties.

The FCivP further draw a line of distinction between evidence as such and as a means of proof (pleadings of parties and third persons, testimony of witnesses, documentary proof, exhibits, and findings of experts. In contrast to evidence as such—the evidentiary facts—the means used as proof, which are generally also termed "evidence", are strictly specified by the law.

The FCivP set forth a general but precise requirement concerning the admissibility of evidence: the facts of the

case which the law requires to be proved by one type of evidence, say, written documents, may not be proved by any other type of evidence (Art. 17). This requirement is based on the fact that some rights, duties and legal relations in civil commerce are so important as to require proof by relevant documents. Any doubts concerning the existence or content of such rights and legal relations must, as far as possible, be removed, in view of the importance of the bona they protect, such as rights in buildings, money obligations, etc.

Thus, according to the civil legislation in force, transactions for sums exceeding 50 rubles may, in the event of dispute, be proved only by written evidence, the testimony of witnesses being unacceptable. A similar rule has been established for contract of loan for sums exceeding five rubles.

The correct statutory documentation of the facts underlying rights and legal relations, as also the certification of the rights themselves, make it easier to prove and attest them in the event of a dispute at law. Moreover, this largely serves to prevent such disputes and usually the infringement of the attested rights itself. That is why the rule governing the kind of evidence that may be admitted is both a means of great economy of proceedings, which makes for correct and expeditious disposal of disputes, and a measure preventing such disputes.

11. The general rule in civil procedure—the principle of litigation—is that each party must prove the facts upon which he relies as the basis for his claims and defences (Art. 18). Evidence is also submitted by other participants in the case, notably third parties, including those who have and who have not filed independent claims, the procurator, and state and mass organisations permitted by law to take such steps. However, the court must not limit itself to the materials and grounds presented by the parties and other participants in the case but must take all steps to ascertain the actual facts of the case, especially where

insufficient evidence has been submitted. In such cases, the court orders the parties and other participants in the case to present additional evidence or collects evidence on its own initiative (Arts. 16 and 18). A highly important aspect of the court's activity in establishing the circumstances of the case is its explanation to the participants in the case of their rights and duties; it warns them of the consequences of procedural acts and omissions and helps them to exercise their rights (Art. 16). The court's explanations are naturally focussed on the acts aimed to prove the parties' claims and defences by means of juridical facts and evidence.

The court can also help the parties by ordering the pertinent establishments and persons to submit documents, briefs, blueprints, plans, etc., and by adjourning the proceedings to allow them to support their defences with the required materials and to consult a lawyer. The court summons other participants to the trial, among them the procurator, third parties, and state and mass organisations; secures the collection of the claim and execution of the judgement; permits, in the cases established by law, the execution of judgements not yet become final (so-called immediate execution) in claims for recovery of wages, author's royalties and alimony, in the event the defendant admits the claim, etc.

12. The FCivP state the right of any party in interest to invoke the court for judicial protection (Art. 5). This was the old rule: Art. 2 of the Civil Code of the R.S.F.S.R. said that waiver of the right to invoke the court is void. The FCivP now spells it out as a general principle.

The right to invoke the court is the right to judicial protection, which generally embraces both the activities of the court aimed at protecting infringed subjective rights and interests and the acts of parties in interest aimed at maintaining their causes, demands and defences.

A lawful interest may consist, for example, in recognition by the court of certain rights or legal relations and

also in the termination or modification of legal relations (Art. 6, FCivL).

13. In Soviet civil procedure, the right to invoke the court is guaranteed and is open to any party in interest, irrespective of his social, property and economic status, and national and racial origin, and Art. 23 of the FCivP is extremely important in this respect. It says that court costs—consisting of a state fee and the costs incurred in the proceedings—are not collected from plaintiffs in disputes over causes that are vital to working people: industrial, office and professional workers who sue for wages or file other claims arising out of labour legal relations. The same rule applies to members of kolkhozes who sue their farm boards for remuneration for work done. Plaintiffs in suits flowing from copyright, and also from the right to discovery, invention or technical improvement, are likewise excused from the payment of court costs, as are plaintiffs in suits for alimony, and for damages caused by maiming or other injury to health, or death of bread-winner. This enumeration is not conclusive, and additions respecting court costs may be made to it by the legislation of the U.S.S.R. and Union Republics. Moreover the courts are instructed to assess the ability of the plaintiff to pay and may, in any suit, excuse him from the payment of court costs for the benefit of the state. To this should be added the fact that court costs in the U.S.S.R. are very low and are never an obstacle to the institution of civil proceedings or to a party's full participation in them and active defence of his interests.

14. The right to invoke the court is also assured by other means, such as the assistance extended in the protection of this right by certain state and mass organisations and citizens. Thus, civil suits are commenced upon declaration by a party in interest petitioning the court for protection of his right or lawful interest, and upon declaration by the procurator, or organs of state administration, trade unions, state establishments, enter-

prises, kolkhozes and other co-operative and mass organisations and individuals, where the law permits them to invoke the court for protection of the rights and interests of other persons (Art. 6).

The procurator performs such acts not only because they are prescribed by the FCivP, but also *ex officio*, in virtue of the general powers vested in him by the Statute on Procurator's Supervision in the U.S.S.R., which says that participation in civil proceedings is one of the procurator's functions as a superintendent of the rule of law.

There is increasing participation in Soviet civil proceedings by organs of state administration, trade unions, organisations and citizens in defence of the rights of others. Thus, suits for the protection of the interests of children may be instituted upon complaints filed by organs of guardianship and curatorship, when children are orphaned or when parents fail to do their duty, etc. Any establishment, organisation and citizen may contest a certificate of authorship or patent and demand judicial recognition of the fact that the defendant is not the author of the invention in question. These institutions are designed to promote judicial protection of individual rights and interests in harmony with the public interest and the state policy conducted in a given sphere of social relations.

15. The reality of the right to invoke the court likewise largely depends on the rules which must be observed if the court is to take cognisance of the plea. Non-observance of these rules is ground for refusal to take cognisance of the plea or to terminate the proceedings when such defects are discovered in the course of the trial. The simpler and more definite these rules are, the more solid is the right to invoke the court. Much more may be read into the rules that are vague and complicated, and this may serve to cover up the lack of guarantees of the right to invoke the court for protection, and produce arbitrary judgements.

The FCivP draw on earlier legislation and Soviet judicial theory and practice to improve the procedure governing the exercise of the right to invoke the court. Article 31 describes the procedure of taking cognisance of civil suits. The question of deciding whether or not cognisance is to be taken of a civil suit is not a difficult one, and is decided by a judge sitting alone. Refusal to take cognisance of a suit is permitted in the instances specifically stated by the law and must be motivated; Art. 48 of the FCivP allows a party to bring an appeal against such orders.

The rules laid down in Art. 31, Clauses 1, 3, 4, 5 and 6, relate to the right to invoke the court. Where they are not observed, such right is non-existent and the judicial organs are not empowered to take cognisance of the suit. If the court should none the less docket the case and this is discovered at the trial, the court must terminate the proceedings (Art. 41). The rules set out by Art. 31, Clauses 2, 7, 8 and 9 refer to the procedure governing the exercise of the right to invoke the court, and the court may not take cognisance of a suit when these rules are not observed.

On the difference in the meaning of the rules listed depend the consequences of the court's refusal to take cognisance of a plea. In cases falling within the first group, no fresh application may be made with the same cause; in the other cases, refusal by the court to take cognisance of the plea is no bar to a fresh application with the same cause, if the defects are corrected.

The conclusive enumeration of the grounds for the court's refusal to take cognisance of a plea—an enumeration which may not be extended—is a substantial guarantee of the right to invoke the court, but it is not in itself sufficient and so is supplemented by an enumeration of the grounds for termination of proceedings (Art. 41).

16. Termination of proceedings is one of two ways of disposing of a case without a court judgement, the con-

sequence being that no fresh application may be made to the court with the same cause. Grounds for termination of proceedings are circumstances precluding the right to apply to the court, namely: the cause is not subject to judicial jurisdiction; there is a final court judgement on the same cause; there is a decision by the comrades' court rendered within the limits of its jurisdiction. Other grounds are: composition in court; plaintiff's abandonment of his claim; death of a party to the case where the rights and duties in the contested legal relation do not descend to another by right of succession.

The FCivP provide for another method of terminating proceedings without a court judgement which is no bar to a fresh application with the same cause: when the defects which served as ground for termination of the case are corrected, the plaintiff has the right to file the same suit in accordance with the general rules. It is called "refusal to proceed in the case" (Art. 42).

The court refuses to proceed in the case if the person filing the suit is legally incompetent; the person filing the suit on behalf of another person is not empowered to plead in the case; non-observance of the procedure governing preliminary extra-judicial settlement, as established for the given category of disputes, and the possibility for applying such a procedure is still open. Correction of these defects removes the bars to the court taking cognisance of the case and deciding it on the merits.

The court disposes of a case by refusing to proceed not because of the absence of a right to apply to the court, but because the procedure governing the exercise of this right has been violated. That is why the statutory enumeration of the grounds for terminating proceedings in this manner is not conclusive, and the FCivP permit the legislation of Union Republics to establish other grounds on which the court may refuse to proceed in the case.

17. The right of invoking the court, which is assured in every way, acquires especial importance in view of the

broad range of causes cognisable by judicial bodies. The FCivP lay down a new rule which governs the content and purview of judicial bodies. According to Art. 4 this includes not only disputes arising out of civil, family, labour and kolkhoz legal relations where at least one of the parties is a citizen or a kolkhoz, but also suits upon complaints filed against acts of administrative organs and cases subject to the rules for special proceedings, among which are establishment of juridical facts, and declaration of a citizen absent or dead. The law permits extension of the range of cases subject to the jurisdiction of the court. The FCivP provide for this possibility, for it is evident from the history of Soviet civil procedure that there is a tendency to such an extension, especially in the form of new categories of cases arising out of administrative legal relations and cases subject to the rules for special proceedings.

18. One part of the FCivP deals with the participants in a case, some of whom are interested in the adjudication of the civil case directly (the parties, third parties), and others, *ex officio* (the procurator, some organs of state administration). All these persons enjoy extensive procedural powers.

Citizens, and also enterprises, establishments, kolkhozes and other organisations enjoying the rights of juridical persons (Art. 11 of FCivL specifies the organisations which are recognised as juridical persons) may be parties in Soviet civil proceedings.

Art. 24 of the FCivP says that plaintiff and defendant have equal procedural rights, their equality of rights being a most important principle consistently maintained in Soviet legislation on civil procedure. Special emphasis must be laid on the fact that this equality is actually assured the parties in practice, it being the duty of the Soviet court to help the parties in the defence of their interests, and the exercise of their rights in order to prevent a citizen's unfamiliarity with legal form or any other circumstance from being used to his prejudice.

Art. 24 enumerates the major procedural rights enjoyed by the parties at the various stages of judicial proceedings. After the commencement of the trial plantiff and defendant may acquaint themselves with the materials on record in the case, make motions, submit evidence, take part in examining the evidence, freely present their case on any point arising in the hearing of the case. Appeals may be brought to a higher court from the judgements of all courts, with the exception of the Supreme Court of the U.S.S.R. and the Supreme Courts of Union Republics. The parties may also demand compulsory execution of judgements and be present at the executory acts of the officer of the court.

A special feature of Art. 24 of the FCivP is that it does not contain any conclusive enumeration of the procedural rights of plaintiff and defendant, Union Republics being given every legislative possibility to vest the parties with any rights of which no mention is made in the FCivP.

Until now, Soviet legislation on civil procedure (with the exception of the Code of Civil Procedure of the Ukrainian Republic) did not permit plaintiff to modify the subject-matter of his claim, i.e., to substitute another claim for the original one presented to defendant. This is now permitted by the FCivP. In the final analysis, the right of the party to modify the cause or the subject-matter of the claim and to increase or reduce the amount of the claim (Art. 24) allows the court to give expeditious protection to the infringed rights of citizens and organisations, without dismissing the case, or without thereby inevitably increasing court costs and red tape.

A similar purpose is served by the rule permitting substitution in the case of misjoinder (Art. 26). This is done when the court discovers that the suit has been filed by a party other than he who has the right to sue or against a party other than he who should answer the claim. In the first case, the proper plaintiff is substituted for the original plaintiff; in the second case, the defendant. These

acts may be performed on the motion of the parties or of the court. However, no plaintiff who has been improperly joined can be excluded from the trial without his personal consent, nor can there be a substitution of defendant if the plaintiff objects. But when such an objection is raised, the court may, without removing the original defendant from the proceedings, order the joinder as plaintiff of the person who, in the opinion of the court, may prove to be the actual offender against the plaintiff's interests. Consequently, the law assures all citizens and organisations the free exercise of their procedural and substantive rights and at the same time guarantees a fair trial of each case.

19. Thus, Soviet legislation on civil procedure permits every possibility of substitution in misjoinder. The procedure governing the joinder of third parties is also quite simple (Art. 27). It may happen that other citizens or organisations have a direct interest in the adjudication of a dispute between plaintiff and defendant, but the extent of their interest may vary, and the law takes account of this fact. For example, a citizen who took no part in the hearing of a dispute over the right of ownership of a certain thing may declare that the contested thing belongs to him, and not to the plaintiff or the defendant. He may join the proceedings already underway as a third party with an independent claim to the subject-matter of the dispute and is accorded the same juridical status as plaintiff.

Where a citizen or an organisation are connected with plaintiff or defendant by a legal relation which may be directly affected by any future judgement of the court, they participate in the trial as third parties without independent claims. Thus, the owner of a car which has caused damage to an aggrieved party is liable for such damage, but if the claim is satisfied, the owner has a subrogated claim against the person who was driving the car at the time the damage was caused. Consequently, the driver has a direct interest in the judgement that may be ren-

dered in the suit filed by the aggrieved party, and so must join the case as a third party.

Third parties who have no independent claims to the subject-matter of the dispute join the case on their own motion or are ordered to join on the motion of the parties, the procurator or the court. The old civil codes of Union Republics gave no definition of the legal status of these third parties, who are now vested with the procedural rights of parties, except for powers which pertain to the disposal of the subject-matter of the dispute (Art. 27). The said third parties may not modify the cause and subject-matter of the claim, increase or reduce the amount of the claim, abandon the claim, admit the claim, or make a composition in court.

20. As said above, Soviet legislation permits action in defence of another's substantive rights to be brought by the procurator, and in some cases by the trade unions, organs of state administration, various organisations and even individuals. This is a concrete expression of a principle which is being consistently implemented in the U.S.S.R. to harmonise personal and public interests; it reflects the concern of socialist society for its members.

For similar reasons, another category of participants in the case makes its appearance in Soviet civil proceedings. Previous practice is given legal form in Art. 30 of the FCivP which says that in the cases provided by law, organs of state administration may, on the motion of the court or on their own initiative, join the proceedings in order to present their opinion, thereby exercising their duty of protecting the rights of citizens and interests of the state.

One of the first cares of the Communist Party and the Soviet Government is the condition of the rising generation, and special organs for the protection of mother and child superintend the education of children. They participate in disputes involving children and take steps to protect their property and personal interests. Disputes over the ownership of buildings or the use of living space are

frequently joined by house management agencies, whose function it is to exercise technical and sanitary supervision over housing facilities. When taking part in civil proceedings, these agencies help the court to examine the facts of the case and to adjudicate it in accordance with the state policy in the sphere of housing.

21. A most important stage of Soviet civil proceedings is the trial of a case by a court of first instance. At that stage, the socialist court effectively fulfils the tasks set before it: it establishes the objective truth in the case, protects infringed rights, cuts short breaches of the law, and educates citizens in the observance of the laws and respect for the rules of socialist community life.

The salient features of judicial proceedings are briefly defined in Art. 34 of the FCivP. Cases are heard in a trial session of the court, which must serve notice of the time and place on the parties in interest. The court hears the pleadings of the parties and examines all evidence; then follow the pleadings of the parties, the procurator presents his opinion if he has participated in the trial, and the court retires to the conference room to render judgement. These provisions will be elaborated and made concrete in the new codes of civil procedure of Union Republics, which will take account of past experience and legal theory.

22. The court can adjudicate any case and fulfil all its duties only if the trial is direct, oral and uninterrupted. These are the three key principles underlying Soviet civil procedure (Art. 35).

The principle that the trial must be direct binds the judge to make a personal examination of the evidence in the case: he must hear the pleadings of the parties, the testimony of witnesses, the findings of the experts, study the documents and inspect the exhibits. Soviet law, judicial practice and legal doctrine all indicate that only such a method of verifying evidence creates the guarantees of its correct assessment and, consequently, the guarantees that the objective truth is ascertained.

From this it follows that primary evidence is preferable, for it is undoubtedly better to examine an eye-witness than a person who has heard a second-hand report of an event; it is better to study original documents than copies, etc. Soviet courts will allow secondary evidence only when original evidence is unobtainable or is extremely difficult to secure.

The rule that the trial must be direct equally applies to the bench as a whole and to each of the judges individually, which is why the law says that no changes must be made in a trial panel of judges during the hearing of a case. If a change is made because of the death or sickness of a judge, or for any other reason, the trial of the case must be recommenced. Soviet legislation on civil procedure permits some departures from this principle; thus, the FCivP provide for what is known as letters of request. The trial court may present to another court of the U.S.S.R. (Art. 20), or to a foreign court (Art. 62) letters of request asking it to perform separate acts of civil procedure, including the collection of evidence. The legislation of Union Republics permits certain other exceptions to the principle of directness; for instance, the court has the right to interrogate witnesses before adjourning the trial, and when the proceedings are revived these witnesses are not summoned to court even when a change has been made in the panel of the trial court. The evidence recorded earlier is made public and assessed by the court. It should be added that these exceptions to the principle of directness very rarely occur in practice.

It is equally important that the trial must be oral and uninterrupted. The former binds the court to hear the oral pleas of the parties, testimony of witnesses, and to read out the available documents. The oral nature of the trial is a necessary condition of its public nature and an important factor in the educational effect of judicial proceedings on those present at the trial of disputes between citizens.

It goes without saying that the oral nature of the proceedings does not rule out the submission of written materials (pleas, defences, documents, acts of expertise, etc.), or the taking of minutes of the hearing.

Finally, the principle that the trial must be uninterrupted also ensures a fair decision. To allow the judges to concentrate on the proceedings, they are not permitted to hear several cases at one and the same time; before a case is disposed of or adjourned, the court may not hear other suits. The trial session may be interrupted only for the period allotted for rest.

23. Special attention should be paid to Art. 36 of the FCivP, which introduces a new institution into Soviet legislation on civil procedure. The Twenty-First Congress of the Communist Party of the Soviet Union, which was held in 1959, pointed to the need of drawing broad sections of the people into the struggle against violation of legality and law and order. Under the influence of the Congress decisions there has developed the practice of members of the public participating in the trial of civil cases. This practice has been sanctioned by Art. 36 of the FCivP. It says that duly authorised representatives of mass organisations and collectives of working people, which are not parties to the case, may be allowed to participate in the proceedings in order to present to the court the opinion of their organisations and collectives. Before a representative is assigned to appear in court, the dispute and the behaviour of the parties are widely discussed at meetings of industrial, office and professional workers, collective farmers, students and tenants, and by the elective organs of mass organisations (trade union committees, etc.). This produces a collective opinion of the dispute before the court. As a result, plaintiffs abandon flimsy claims, defendants voluntarily perform their duties and parties arrive at an amicable agreement.

The fact that opinion is focussed on important civil legal disputes which are of interest to broad sections of the

working people, enhances the educational role of civil proceedings, helps to produce a fair trial, and to discover and eliminate the causes of unlawful and immoral acts. This is fully in line with the provisions of the new Programme of the Communist Party of the Soviet Union.

The definition of the legal status of persons chosen by mass organisations and working people's collectives as their representatives is left entirely to the Union Republics, which at present have broad procedural rights: they are permitted by the courts to study the materials on record in the case, make motions and file petitions, e.g., for additional evidence; they take part in the examination of evidence, state their case on all matters arising at the trial and take part in the pleadings. This experience will undoubtedly be summed up and reflected in the new codes of civil procedure of Union Republics.

24. The court judgement is a most important act of socialist justice, which is why Soviet legislation is so specific about its form and substance. Art. 37 of the FCivP says that the judgement must be legally correct and well founded, a concept to which very definite meaning is attached in Soviet law, judicial practice and legal doctrine. First of all, the judgement must contain a clear and exhaustive evaluation of the evidence collected in the case and examined at the trial session of the court. The FCivP stress that the court must motivate its rejection of any evidence. On the strength of this assessment of the evidence the court decides which of the facts may be regarded as having been established. A well founded judgement is one which reflects—in complete conformity with objective reality—actual human acts and events which are essential to the adjudication of the legal dispute before the court.

When the FCivP say that the judgement of the court must be legally correct this means, first, that its final decision satisfying or dismissing a claim must be based on the rules of substantive law governing the legal relations be-

tween the litigants; second, that no essential rules of civil procedure are violated in the hearing of the case.

Soviet civil procedure does not permit rendition of any partial, intermediate or conditional judgements. A single judicial act disposes simultaneously, finally and in full, of all the claims of the parties against each other.

The court renders its judgement in the conference room. The judges must deliberate in the utmost secrecy, violation of which is ground for annulment of the judgement.

The judges decide all matters before them by a majority, with the presiding judge voting after the people's assessors. None of the judges may abstain, and a judge who is in the minority may state his dissenting opinion in writing, which is attached to the record.

Another instance of steps taken by the socialist state to protect the interests of citizens, kolkhozes, and other organisations is the court's right, depending on the facts of the case, to adjudicate in excess of plaintiff's claim. Thus, where a citizen has filed a claim against an enterprise for compensation of damages caused by injury to his health, but has made a mistake in estimating the amount of compensation, the court may, proceeding from the established facts and the law, order recovery from the defendant in excess of the amount claimed by the plaintiff.

25. Under Soviet civil procedure, a judgement of the court which has become final is mandatory upon all citizens, organisations and persons in office (Art. 15). The moment at which judgement becomes final is determined by Art. 39 of the FCivP.

The decisions of the Supreme Court of the U.S.S.R. and the Supreme Courts of Union Republics are not subject to appeal and become final upon rendition, but it should be noted that these courts hear a relatively small number of civil cases and usually operate as courts of cassation or supervision. According to Art. 44, all other judgements without exception may be appealed from by the parties or protested by the procurator by way of cassation within a

definite period of time (10 days, according to the legislation of most Union Republics). Such judgements become final when the time limit for filing an appeal runs out or when either appeal or protest has been rejected by a higher court.

Upon becoming final the judgement acquires a number of important properties. For one thing, it cannot be appealed against by the parties in a court of second instance, although even in such cases Soviet law provides ways of correcting grave judicial errors. Judgements may be reversed by way of supervision or by reason of newly discovered facts, but these are exceptional modes of verifying the correctness of judgements which differ considerably from cassation proceedings (Arts. 49 and 53). A final judgement is also a bar to fresh litigation between the same parties over the same subject-matter and on the same grounds. The facts and legal relations established by such a judgement may not be contested in another suit by the participants or their successors (Arts. 31 and 39). A decision which has become final is subject to compulsory execution where plantiff refuses to perform his duties of his own accord (Art. 54).

26. A specific institution of socialist law is defined in Art. 38 of the FCivP. It is the rider. The Soviet court does not merely adjudicate disputes, but also takes every possible step to strengthen socialist legality, to prevent offences and educate citizens. One of the means at its disposal is the rider.

In examining disputes at civil law the courts frequently discover violations of legality, the rules of morality and socialist community life by persons in office or citizens, cases of red tape and infringement of the working people's interests, shortcomings in the work of organs of state administration, enterprises, establishments, collective and state farms, and other organisations. These facts are stated in riders which the court adds to its judgement. The riders are transmitted to state and mass organisations,

persons in office and working people's collectives, which are duty bound to take effective measures to remove the shortcomings discovered by the court, to analyse the behaviour of the persons at fault, and, where necessary, to institute proceedings against the offenders or apply other measures of public influence.

Thus, the court may dismiss an action for eviction of a citizen from a flat for reasons of bad behaviour which makes cohabitation with him impossible (Art. 61, FCivL). But the court may add a rider to its judgement informing the trade union at the defendant's place of work of his improper conduct. This is discussed by fellow workers and frequently has a most beneficial effect on the wrongdoer. That is why a plenary session of the Supreme Court of the U.S.S.R. has instructed the courts to make the best possible use of riders.

Establishments, enterprises, organisations, persons in office and working people's collectives to whom the rider is addressed study the court's recommendations and proposals, verify the facts brought to their attention by the court, and eliminate the shortcomings. Art. 38 of the FCivP emphasises that these organisations must inform the court of the measures they have taken.

27. After the judgement is drawn up and signed in the conference room, the judges return to the court room where it is read out by the presiding judge or a people's assessor. The presiding judge then indicates the manner and the time limit in which an appeal may be taken from the judgement. Within that period the parties and other participants in the case may bring appeals for quashing the judgement. The procurator has the right to lodge a protest against a judgement he considers incorrect even if he has not taken part in the trial (Art. 44). The appeals and protests are filed with a court which is superior to the trial court. Thus, judgements rendered by a district (city) people's court come up for review by the regional court.

28. The overwhelming majority of judgements rendered

by Soviet courts prove to be correct and are not appealed against by the parties, but judicial errors do occur, and are corrected through reviews of judgements not become final in cassation proceedings. The characteristic features of Soviet cassation proceedings are evident from Arts. 45, 46 and 47 of the FCivP.

The court of second instance does not limit itself to a review of the application by the lower court of legal rules in the adjudication of the civil case. Its task is also to verify whether the judgement is legally correct and well founded. A judgement which does not reflect the objective truth as regards the actual legal relations between the parties must be set aside.

The court of cassation always reviews the judgement in full, and from this standpoint its activity does not in the least depend on whether appeal has been brought against the judgement in full or in part, and whether appeals have been filed by all the parties in interest or by one of them. Nor is the court bound by the grounds specified in the cassation appeal or protest.

However, the Soviet judicial system has always been operated on the principle that cases must be decided on their merits in courts of first instance. The appellate system under which the higher court is empowered to make its own examination of the evidence, establish new facts and retry the case was rejected by the first Soviet decree concerning the courts in November 24, 1917.

Art. 45 says that the court of cassation in the presence of the parties examines the correctness of the judgement on the ground of the materials on record in the case and those additionally submitted, which applies only to written documents. Witnesses and experts are not present at cassation proceedings. The court of cassation does not establish any new facts, and this is the main feature of its powers.

29. The case must be returned for a fresh hearing if it is discovered that the court of first instance:

1) failed to examine all the facts relevant to the case;
2) assumed facts as proved without sufficient evidence therefor;
3) arrived at incorrect conclusions concerning the actual legal relations of the parties;
4) violated or incorrectly applied the rules of adjective or substantive law.

It should be noted that violation of the rules of civil procedure in the course of a trial entails different consequences. There are rules whose non-observance always results in a reversal of the judgement: trial of a case with the participation of a judge who was subject to removal from participation in the case; breach of rules concerning the language of civil proceedings, the secrecy of the judges' deliberation, service of notice on the parties about the time and place of the trial session (Arts. 10, 22, 34), etc. These are absolute grounds for reversal of judgement.

Breach of other rules of procedure is assessed by the cassation court with an eye to the specific features of each cause. The case is returned to the court of first instance if it is recognised that its error has resulted in the rendition of an incorrect judgement or one whose correctness is open to serious doubt. Thus, if, in violation of the rules governing jurisdiction, action for recovery of debt is tried at the plaintiff's place of residence, instead of that of the defendant, the latter may not be able to attend the trial, present his pleas and defences and bring evidence in support of them. Having established these facts, the court of second instance rules that failure to observe the rules governing jurisdiction in the case in question was an essential violation of the law, reverses the judgement and remands the case for a fresh trial.

But breach of the rules of jurisdiction does not always entail serious consequences. A case may be adjudicated by the wrong court, but the rights of the parties may not be infringed, and the judgement may be legally correct and well founded. In practice such an error of the court is not

regarded as essential and does not entail reversal of judgement. This is fixed in Art. 47 of the FCivP which says that no judgement which is essentially correct may be reversed for purely formal reasons, but in such a case the cassation court must inform the lower court of the breach of civil procedure it discovered, for future reference. Thus, Soviet law insists on strict observance of the established civil procedure but not to the point of defeating its purpose.

30. Another important question is the consequences of violation or incorrect application by a court of first instance of the rules of substantive (civil, labour, family, kolkhoz) law. When the court reviewing the cassation appeal or protest discovers such a violation it must determine to what extent this has affected the grounds for the judgement, and if it finds that some facts of the case have not been elucidated, the case is remanded to the court of original jurisdiction.

It often happens, however, that no such results flow from a breach of the rules of substantive law. The final decision on the legal relations between the parties may be incorrect, but the cassation review shows that the court of first instance had established all the facts of the case fully and correctly, and that there is no need at all to review the evidence on record or to collect additional evidence. In that case, the cassation court, according to Art. 46 of the FCivP, may modify the appealed decision or hand down a new decision, without remanding the case for a fresh trial. This rule enlarges considerably the powers of the cassation courts, which, under the legislation in force in most Union Republics, were empowered to render new judgements only in labour disputes. The new procedure will enable the courts to give ever more effective protection to the infringed rights of citizens, to reduce the time of the trial of cases and cut court costs.

The cassation court may also quash a judgement and dismiss the proceedings or refuse to proceed in the case.

This is done when the review of a judgement reveals that the citizen or organisation does not have the right to invoke the court for protection or that the continuation of the trial has become unnecessary (plaintiff abandons claim; composition in court; death of a citizen without any possibility of succession).

31. Fair decisions in civil cases are guaranteed by the democratic principles on which Soviet courts of first and second instance operate, but it may happen that an incorrect and unfair judgement becomes final, and so the law provides for special remedies in such cases. They are *ex officio* review of judgements and re-opening of cases by reason of newly discovered circumstances.

Art. 53 enumerates the grounds for review of final judgements, rulings, interlocutory orders by reason of newly discovered circumstances. First, it is the discovery of facts having an essential bearing on the case which were not known, and could not have been known, to the petitioner at the trial. Thus, a court judgement on the partition of an estate between heirs-at-law is subject to review if a testamentary disposition is discovered after its rendition.

The consequences are similar when the judgement in a criminal case establishes malpractices in the course of civil proceedings on the part of the parties, third parties, witnesses, experts, interpreters or judges. Another instance of newly discovered circumstances is reversal of an order made by the court or other organ on which the judgement in question was based. Thus, reversal of a judgement in a criminal case against a person accused of misappropriation of property, and dismissal of the case because of absence of *corpus delicti* in his acts, is sufficient ground for review of the judgement in the civil case based on the judgement in the criminal case, pursuant to which damages caused by the crime had been recovered from the person. It should be noted, however, that the re-opening of decided cases by reason of newly discovered circumstances is extremely

rare, the *ex officio* reversal of judgements being much more frequent (Arts 49, 50 and 51, FCivP).

Ex officio supervision is very similar to cassation proceedings: in both cases a higher court reviews the judgement in full, both from the standpoint of its being legally correct and well founded; the two courts have almost the same powers, and the grounds on which the judgement of the court of first instance is set aside or modified are basically similar, etc. However, there is a considerable difference between a cassation proceeding and an *ex officio* review, the chief being that only the latter is applied to judgements which have become final and the review is instituted not upon complaints by the parties but upon the protests of a limited number of judicial officers (the President of the Supreme Court of the U.S.S.R., the presidents of the Supreme Courts of Union Republics, the Procurator-General of the U.S.S.R., the procurators of Union Republics, their deputies, the presidents of the Supreme Courts of Autonomous Republics and regional and territory courts, the procurators of Autonomous Republics, regions and territories). This fact makes the supervisory stage of Soviet civil proceeding an exceptional one.

The FCivP have modified a number of rules of procedure governing *ex officio* review. The parties and other persons in interest were not notified of the review of the judgement. Art. 49 says copies of the supervisory protest must be served on these persons, which gives them a chance to submit to the supervisory court additional information, and to furnish additional material in support or rebuttal of the arguments specified in the protest and the grounds for the judgement.

Art. 49 also establishes that wherever necessary the parties are informed of the time and place of the review of the case, which means that the parties in interest may be present at the supervisory proceedings, plead on the merits of the case, maintain or rebut the arguments specified in the protest, present various petitions to the court,

etc. These new rules reflect the Soviet policy of further democratising socialist justice and extending the guarantees of judicial protection of the property and personal interests of citizens.

32. Execution of judgements is the final stage of Soviet civil procedure: it is the last act taken by organs of the state in the protection of the personal and property rights of citizens, and also the rights of enterprises, kolkhozes and other organisations. Art. 54 of the FCivP says that compulsory execution of court judgements is made upon the expiration of the period which the law allows debtors for the voluntary performance of their duties. This emphasises the voluntary nature of execution of judgements, an approach which is characteristic of Soviet civil procedure.

An officer of the court is employed to effect compulsory execution of all court decisions (judgements; sentences in the parts relating to recovery of property; orders, say, to secure collection of a claim or endorse a composition in court, etc.); and also awards by mediation boards, marine and foreign trade arbitration commissions; execution clauses issued by notaries public and certain other acts (Art. 58). His acts are strictly regulated by the legislation on civil procedure, it being the duty of the judge to see that judgements are executed correctly and at the proper time. The parties and other participants in the case have the right to appeal against the acts of an officer of the court (Art. 56), and the procurator who discovers any breaches of the law in his acts may lodge a protest.

The orders made by the officer of the court in executing judgements are binding on all enterprises, kolkhozes, and other organisations, persons in office and other citizens in the entire territory of the U.S.S.R. (Art. 55).

33. The final part of the FCivP defines the rights of aliens, stateless persons, foreign enterprises and organisations, and lays down the procedure governing the filing of suits against foreign countries and their diplomatic rep-

resentatives, and also execution in the U.S.S.R. of decisions of foreign courts and their letters rogatory.

Art. 59 clearly states that aliens are accorded the same rights as Soviets citizens, a principle on which Soviet legislation has always operated. Foreign countries and their diplomatic representatives are accorded unlimited judicial immunity (Art. 61). Exceptions to these principles may be made only by special decision of the Council of Ministers of the U.S.S.R. by way of retorsion against any discrimination practised in a foreign country against the Soviet state, its property, Soviet diplomats or citizens.

The Fundamentals of Civil Procedure of the U.S.S.R. and Union Republics are an important stage in the further democratisation and improvement of Soviet legislation on civil procedure and the operation of the organs of socialist justice.

FUNDAMENTALS OF CIVIL PROCEDURE OF THE U.S.S.R. AND UNION REPUBLICS

Approved by the Supreme Soviet of the U.S.S.R., December 8, 1961

PART ONE

GENERAL PROVISIONS

ARTICLE 1. Legislation on Civil Procedure

The procedure in civil cases shall be governed by the present Fundamentals and by other laws of the U.S.S.R. and the codes of civil procedure of Union Republics issued in accordance with them.

Legislation on civil procedure shall establish the procedure governing the trial of cases arising from civil, family, labour and kolkhoz legal relations, cases arising out of administrative legal relations, and cases subject to the rules for special proceedings. Cases arising from administrative legal relations and cases subject to the rules for special proceedings shall be tried under the general rules of civil procedure, subject to any exemptions established by the legislation of the U.S.S.R. and Union Republics.

ARTICLE 2. The Tasks of Civil Procedure

The tasks of Soviet civil procedure are the correct and expeditious trial and adjudication of civil cases for the

purpose of safeguarding the social and state system of the U.S.S.R., the socialist system of economy and socialist property, protecting the political, labour, housing and other personal and property rights and lawful interests of citizens, and also the right and lawful interests of state establishments, enterprises, kolkhozes and other co-operative and mass organisations.

Civil procedure must promote the strengthening of the socialist rule of law, the prevention of infringements of the law, and the education of citizens in a spirit of undeviating observance of Soviet laws and respect for the rules of socialist community life.

ARTICLE 3. The Procedure in Civil Cases

The procedure in civil cases in courts of Union Republics shall be governed by the laws of civil procedure of the U.S.S.R. and the Union Republic whose courts hear the case, perform separate acts of procedure or execute the judgement of the court.

The procedure in civil cases in the Supreme Court of the U.S.S.R. shall be governed by the laws of civil procedure of the U.S.S.R. and the Union Republic whose courts heard, or should have heard, the case, in accordance with the rules of territorial jurisdiction.

The procedure in civil cases shall be governed by the laws of civil procedure in force at the time the case is tried, the separate acts of procedure are performed or the court judgement is executed.

ARTICLE 4. Jurisdiction in Civil Cases

The courts shall have jurisdiction over disputes arising out of civil, family, labour and kolkhoz legal relations where at least one of the parties to the dispute is a citizen or a kolkhoz, except where the law refers the hearing of such disputes to administrative or other organs.

In the cases provided by law, civil suits may be heard by comrades' courts. The procedure governing the opera-

tion of comrades' courts shall be established by the legislation of Union Republics.

The courts shall have jurisdiction over suits upon complaints concerning incorrect entries in electoral rolls, acts of administrative organs in connection with the imposition of fines and other cases arising out of administrative legal relations referred by the law to the jurisdiction of judicial organs.

The courts shall have jurisdiction over actions subject to the rules for special proceedings: to establish facts having juridical significance, unless the law provides another proceeding for their establishment; to declare a citizen absent or dead, to declare a citizen legally incompetent in consequence of mental deficiency or feeble-mindedness.

The courts shall have jurisdiction over other cases referred by the law to the jurisdiction of judicial organs.

The courts shall also hear cases in which aliens or foreign enterprises or organisations participate.

ARTICLE 5. The Right to Invoke the Court for Judicial Protection

Any party in interest shall have the right, in the manner established by law, to invoke the court for protection of an infringed or contested right or lawful interest.

Renunciation of the right to sue shall be invalid.

ARTICLE 6. Institution of Civil Proceedings

The court shall commence the trial of a civil case:

1) upon declaration by a party applying for protection of his right or lawful interest;

2) upon declaration by the procurator;

3) upon declaration by organs of state administration, trade unions, state establishments, enterprises, kolkhozes and other co-operative and mass organisations or individual citizens, where the law permits them to apply to the

court for protection of the rights and interests of other persons.

ARTICLE 7. Administration of Justice Only by the Court and on the Principles of Equality of Citizens Before the Law and the Court

The court alone shall administer justice in civil cases on the principles of equality before the law and the court of all citizens, irrespective of their social, property and official status, national and racial origin, and religious beliefs.

ARTICLE 8. Participation of People's Assessors and Collegial Trial of Cases

Civil cases in all courts shall be tried by judges and people's assessors elected in the manner established by law.

Civil cases in all courts of first instance shall be heard by a panel composed of a judge and two people's assessors.

People's assessors shall enjoy equal rights with the judge presiding at the sitting of the court in deciding all matters which arise in hearing the case and rendering judgement.

Cases on appeal for cassation shall be heard before a bench composed of three judges, and cases reviewed by way of judicial supervision, by a bench of not less than three judges.

ARTICLE 9. The Independence of Judges and Their Subordination Only to the Law

In administering justice in civil cases, judges and people's assessors shall be independent and subject only to the law. Judges and people's assessors shall adjudicate civil cases on the basis of the law, in accordance with the socialist concept of justice and in conditions precluding any outside influence on the judges.

ARTICLE 10. The Language of Judicial Proceedings

Judicial proceedings shall be conducted in the language of the Union or Autonomous Republic or Autonomous Region, and, in cases provided by the constitutions of Union or Autonomous Republics, in the language of the National Area or the language of the majority of the local population.

Persons unfamiliar with the language in which the judicial proceedings are being conducted shall have the right to make declarations, give explanations and submit evidence, plead in court and file petitions in their native language and also to have the services of an interpreter, in the manner established by law.

Judicial documents shall, in accordance with the procedure established by law, be served on the participants in the trial in a translation into their native language or into some other language with which they are familiar.

ARTICLE 11. The Public Nature of Trials

Cases in all courts shall be heard in public, except where this is contrary to the interest of protecting state secrets.

In addition, by a motivated ruling of the court, cases may be heard *in camera*, in order to avoid publicity concerning the intimate life of participants in the trial.

The judgement of the court, in any event, shall be announced in public.

ARTICLE 12. Adjudication of Cases on the Basis of the Laws in Force

It shall be the duty of the court to adjudicate cases on the basis of the laws of the U.S.S.R., Union and Autonomous Republics, decrees of the Presidium of the Supreme Soviet of the U.S.S.R., the Presidiums of the Supreme Soviets of Union and Autonomous Republics, the decrees of higher organs of state administration of the U.S.S.R., Union and Autonomous Republics. The court shall also

apply acts issued by other organs of state power and administration within the jurisdiction vested in them.

The court, in accordance with the law, shall apply the rules of foreign law.

In the absence of any law regulating a contested relation the court shall apply the law regulating analogous relations, and in the absence of such law, the court shall proceed from the general principles and meaning of Soviet legislation.

ARTICLE 13. Supervision of Judicial Activity by the Supreme Court of the U.S.S.R., the Supreme Courts of Union and Autonomous Republics

The Supreme Court of the U.S.S.R. shall exercise supervision of the judicial activity of judicial bodies of the U.S.S.R., and also of judicial bodies of Union Republics, within the limits established by law.

The Supreme Courts of Union Republics and the Supreme Courts of Autonomous Republics shall exercise supervision of the judicial activity of the judicial bodies of their respective republics.

ARTICLE 14. Procurator's Supervision in Civil Procedure

Supervision of the faithful observance of the laws of the U.S.S.R. and Union and Autonomous Republics in civil procedure shall be exercised by the Procurator-General of the U.S.S.R., either directly or through subordinate procurators.

It shall be the duty of the procurator at every stage of civil proceedings to take timely measures provided by law to eliminate any infringements of the law, whosoever may be the source of such infringements.

The procurator shall exercise his powers in civil procedure independently of any organs or functionaries, being subject only to the law and guided by the instructions of the Procurator-General of the U.S.S.R.

ARTICLE 15. The Mandatory Nature of Court Judgements, Rulings and Orders

Judgements, rulings and orders of the courts which have become final shall be mandatory upon all state establishments, enterprises, kolkhozes and other co-operative and mass organisations, persons in office and citizens, and shall be subject to execution on the entire territory of the U.S.S.R.

The mandatory nature of judgements, rulings and orders shall not deprive the parties in interest of the possibility of invoking the court for protection of rights and lawful interests litigation over which has not been examined and decided by the court.

ARTICLE 16. Clarification by the Court of the Actual Circumstances of the Case, and the Rights and Duties of the Parties

It shall be the duty of the court, without confining itself to the pleadings and materials submitted, to take all the measures prescribed by law for the full, comprehensive and fair clarification of the actual facts of the case, and the rights and duties of the parties.

It shall be the duty of the court to explain to the litigants their rights and duties, to warn them of the consequences of procedural acts and omissions, and to help litigants in the exercise of their rights.

ARTICLE 17. Evidence

Evidence in a civil case shall consist of any facts on the basis of which, in the manner established by law, the court ascertains the existence or non-existence of circumstances proving the parties' claims and defences, and other circumstances relevant to a correct decision of the case.

These facts shall be established by the following means: pleadings of litigants and third parties, testimony of witnesses, documentary proof, exhibits and expert findings.

Circumstances of the case which the law requires to be proved by one type of evidence may not be proved by any other type of evidence.

ARTICLE 18. The Duty of Proving and Presenting Evidence

Each party must prove the facts upon which he relies as the basis for his claims and defences.

Evidence shall be submitted by the parties and other participants in the case. If the evidence submitted is inadequate, the court may order the parties and other participants in the case to submit additional proof or may collect it on its own initiative.

ARTICLE 19. Assessment of Evidence

The court shall assess the evidence in accordance with their inner convictions based on a full, comprehensive and fair examination of all the facts of the case in their totality, being guided by the law and by the socialist concept of justice.

No evidence shall have predetermined value for the court.

ARTICLE 20. Letters of Request

The court hearing a case may, where the need arises to collect evidence in another town or district, present letters of request to the appropriate court to perform certain acts of procedure.

Records and all materials collected in the execution of letters of request shall be immediately transmitted to the trial court.

ARTICLE 21. The Mandatory Nature of Judgements in Criminal Cases for Courts Hearing Civil Cases

The final judgement in a criminal case shall be binding on the court trying a case concerning the civil legal consequences of acts performed by the person in respect of

whom the judgement was rendered in the criminal case only as to whether such acts had taken place and whether they had been committed by the person in question.

ARTICLE 22. Challenges to the Judge, Procurator and Other Participants in the Trial

The judge, people's assessor, procurator, clerk of session, expert and interpreter may not participate in the trial and shall be removed from the proceedings where they are personally, directly or indirectly, interested in the outcome of the case, or where other circumstances cast doubt on their impartiality.

ARTICLE 23. Court Costs

Court costs shall consist of a state fee and the costs incurred in the proceedings.

Court costs for the benefit of the state shall not be collected from:

1) plaintiffs who are industrial, office and professional workers and who sue for recovery of wages or file other claims arising out of labour legal relations, or who are kolkhoz members and sue kolkhozes for remuneration of work done;

2) plaintiffs in suits flowing from copyright, and also from the right to discovery, invention or technical improvement;

3) plaintiffs in suits for alimony;

4) plaintiffs in suits for damages caused by maiming or other injury to health, and also death of bread-winner.

The legislation of the U.S.S.R. and Union Republics may provide for other instances in which parties are excused from payment of court costs for the benefit of the state.

The court or judge may, depending on the property status of a citizen, excuse him from payment of court costs for the benefit of the state.

PARTICIPANTS IN THE TRIAL; THEIR RIGHTS AND DUTIES

ARTICLE 24. The Parties, Their Rights and Duties

Citizens, and also state establishments, enterprises, kolkhozes and other co-operative and mass organisations, enjoying the rights of juridical persons, may be parties to civil proceedings—plaintiffs or defendants.

The parties shall enjoy equal procedural rights. The parties may study the material on record in the case, make challenges, submit evidence, take part in the examination of evidence, make motions and file petitions, deliver oral and written pleadings, present their arguments and considerations, enter their objections to the motions, petitions, arguments and considerations of the adverse party, appeal from the court's decisions and rulings, demand compulsory execution of court judgements, be present at the execution of the judgement by the officer of the court, and also to perform other procedural acts provided by law.

It shall be the duty of the parties to exercise honestly the procedural rights belonging to them.

Persons taking part in cases arising from administrative legal relations and in cases subject to the rules for special proceedings shall enjoy the rights and assume the duties of parties, except for exemptions established by law.

The plaintiff shall have the right to modify the cause or the subject-matter of the claim, to increase or reduce the amount of the claim, or abandon the claim. The defendant shall have the right to admit the claim. The parties may end the litigation by a composition.

The court shall not accept plaintiff's abandonment of the claim, or defendant's admission of the claim, and shall not endorse a composition between the parties, where such acts contradict the law or infringe another's rights and lawful interests.

ARTICLE 25. Plurality of Plaintiffs or Defendants in the Case

Suits may be filed jointly by several plaintiffs or against several defendants. With respect to the adverse party each of the plaintiffs or defendants shall appear in the case independently.

ARTICLE 26. Substitution in Misjoinder

The court, having established in the course of the proceedings that the complaint has been filed by a party other than he who has the right to sue, or against a party other than he who should answer the claim, may, without dismissing the case, permit the substitution of proper plaintiff or defendant for the original plaintiff or defendant.

Where the plaintiff does not consent to the substitution of another person for the defendant, the court may order that person to join the suit as a second defendant.

ARTICLE 27. Third Parties

Third parties who file independent claims to the subject-matter of the dispute may join the suit prior to the rendering of the judgement by the court. They shall enjoy all the rights and assume all the duties of plaintiff.

Third parties who do not file independent claims to the subject-matter of the dispute may join the suit either as parties plaintiff or parties defendant prior to the rendering of the judgement by the court, where the decision in the case may affect their rights or duties in respect of either litigant. They may also be called to join the suit on the motion of the parties or the procurator, or the court's own motion. Third parties who do not file independent claims shall enjoy the procedural rights and assume the procedural duties of parties, except for the right to modify the cause and subject-matter of the claim, to increase or reduce the amount of the claim, or the right to abandon the claim, to admit the claim or make a composition.

ARTICLE 28. Representation in Court

Citizens may plead their causes in court either personally or through their representatives. The causes of incompetents shall be pleaded by their legal representatives.

The causes of juridical persons shall be pleaded by their organs or their representatives.

ARTICLE 29. Procurator's Participation in the Proceedings

The procurator shall have the right to initiate or enter a civil case at any stage of the proceedings, wherever this is required for the protection of state or public interests or of the rights and lawful interests of citizens.

The procurator's participation in the trial of civil cases shall be mandatory, where this is prescribed by law, or where the procurator's participation in a given case is recognised as necessary by the court.

The procurator taking part in a case acquaints himself with the material of the case, makes challenges, submits evidence, takes part in the examination of evidence, makes motions and files petitions, presents his opinion on matters arising in the course of the trial and on the merits of the case as a whole, and also takes other procedural steps provided by law.

ARTICLE 30. Participation in the Trial of Organs of State Administration, Trade Unions, Establishments, Enterprises, Organisations and Citizens in Defence of the Rights of Others

In the cases provided by law, organs of state administration, trade unions, state establishments, enterprises, kolkhozes and other co-operative and mass organisations or citizens may take action in defence of the rights and lawful interests of others.

Organs of state administration, in cases provided by law, may be caused by the court to join the suit or may

join the suit on their own motion to present their opinion on the case in order to perform their duties or to act in defence of the rights of citizens or interests of the state.

The organs of state administration, establishments, enterprises and organisations enumerated in the present article, through their representatives and citizens, may acquaint themselves with the materials of the case, make challenges, deliver pleadings, submit evidence, take part in the examination of evidence, file petitions, and also perform other procedural acts provided by law.

PART THREE

TRIAL OF CASES IN COURTS OF FIRST INSTANCE

ARTICLE 31. Taking Cognisance of Complaints in Civil Suits

The judge, sitting alone, shall decide whether or not to take cognisance of a complaint in a civil suit.

The judge shall refuse to take cognisance of the complaint:

1) if the cause is not subject to trial by judicial bodies;

2) if the plaintiff has failed to comply with the procedure for preliminary extra-judicial settlement of dispute established by law for the given category of causes;

3) if there is a final court judgement or ruling which has been rendered in a dispute between the same parties, over the same subject-matter and on the same grounds, stating acceptance of the plaintiff's abandonment of the claim or endorsing a composition by the parties;

4) if there is a suit pending in court on a dispute between the same parties, over the same subject-matter and on the same grounds;

5) if a decision has been handed down by a comrades' court within the limits of its jurisdiction in a dispute between the same parties, over the same subject-matter and on the same grounds;

6) if the parties have made a contract to submit the said dispute to a mediation board;

7) if the cause is not subject to the jurisdiction of the given court;

8) if the complaint has been filed by an incompetent person;

9) if the complaint has been filed on behalf of the plaintiff by a person not empowered to plead the case.

The judge, in refusing to entertain the complaint, shall enter a motivated ruling to that effect.

Refusal of the judge to entertain a complaint on the grounds enumerated in Clauses 2, 7, 8 or 9 of the present Article shall not be a bar to a fresh application to the court with the same suit, provided the defects are corrected.

ARTICLE 32. Securing Collection of Claim

The court or judge, on the motion of participants in the case or on its own motion, may take steps to secure collection of the claim. Collection of the claim may be secured at any stage of the proceedings, where failure to take such steps may render execution of the court judgement more difficult or impossible.

ARTICLE 33. Preparation of Civil Cases for Trial

Upon receiving the complaint, the judge shall make preparations for the trial of the case in order to ensure its expeditious and correct adjudication.

ARTICLE 34. Judicial Investigation

Civil cases shall be heard in a trial session of the court with due notice to that effect being served on the participants in the case.

The court shall hear the pleadings of the parties and other participants in the case, examine other evidence and take other procedural steps.

After hearing the pleadings and the opinion of the procurator the court shall retire to the conference room to render judgement.

ARTICLE 35. The Direct, Oral and Uninterrupted Nature of the Trial

A court of first instance, in trying a case, must make direct examination of the evidence on record in the case; hear the statements of the participants in the case, the testimony of witnesses and the findings of experts, read documentary proof and inspect exhibits. Exemptions from the present rule shall be allowed only in cases established by the legislation of Union Republics.

The trial of a case shall be oral and without any changes in the bench. In the event of substitution of a judge during the proceedings the hearing of the case must be recommenced.

The trial of every case shall be conducted without interruption, except for the time allotted for rest. The court may not hear other cases before the termination or adjournment of the trial of a case which has been commenced.

ARTICLE 36. Participation of the Public in the Trial

Duly authorised representatives of mass organisations and working people's collectives which are not parties to the case may, by an interlocutory order of the court, be permitted to take part in the trial in order to present to the court the opinion of their organisations and collectives concerning the case before the court.

The rights and duties of representatives of mass organisations and working people's collectives shall be determined by the legislation of Union Republics.

ARTICLE 37. The Judgement of the Court

The judgement of the court must be legally correct and well founded.

The court shall base its judgement only on the evidence examined at the trial. In any event the judgement must state: the circumstances established by the court; the evidence on which the court's conclusions are based, and the reasons for which the court rejects any evidence; the laws by which the court was guided; the court's decision satisfying or denying the claim in full or in part; the time limit and manner in which appeal may be taken from the judgement.

Depending on the circumstances established in the case, the court may adjudicate in excess of plaintiff's claim, where this is necessary for the protection of the rights and lawful interests of state establishments, enterprises, kolkhozes and other co-operative and mass organisations or citizens.

The judgement of the court shall be made by a majority of votes; it shall be reduced to writing and signed by all the judges. Each judge may attach to the record his dissenting opinion.

The Supreme Court of the U.S.S.R. shall pronounce judgement in the name of the Union of Soviet Socialist Republics, and the courts of Union Republics, in the name of their Union Republic.

The court, having entered its judgement in a case, may determine the manner of its execution, postpone its execution, or permit execution in instalments, explain its judgement without modifying its content, and also enter a supplementary decision on a claim examined at the trial session but not decided by the court.

ARTICLE 38. Riders to Court Judgements

The court, having discovered in the trial of a civil case infringements of the law or the rules of socialist community life by persons in office or citizens, or essential shortcomings in the work of state establishments, kolkhozes and other co-operative and mass organisations, shall add a rider to its judgement and transmit it to the establish-

ments, enterprises, organisations, persons in office or working people's collectives concerned, which must inform the court of the measures they have taken.

If in the trial of a civil case the court discovers indicia of a crime in the acts of a party or another person, it shall inform the procurator thereof, or shall institute criminal proceedings.

ARTICLE 39. Final Determination of a Cause

The court judgement shall become final upon the expiration of the period for bringing an appeal for cassation and protest, if no appeal or protest has been filed against it. Where a cassation appeal or cassation protest has been brought, the judgement, if it has not been set aside, shall become final upon its examination by a higher court.

Judgements entered by the Supreme Court of the U.S.S.R. and the Supreme Courts of Union Republics shall become final immediately upon pronouncement.

When the judgement has become final, the parties and other participants in the case or their successors may not bring again the same actions, on the same grounds, nor contest in another trial the facts and legal relations established by the court.

ARTICLE 40. Suspension of Proceedings

The court must suspend proceedings in the following cases:

1) death of a citizen, if the disputed legal relation allows succession, or the extinction of a juridical person who was party to the suit;

2) loss of legal ability by a party;

3) defendant's service in a field unit of the Armed Forces of the U.S.S.R., or request of the plaintiff who is in a field unit of the Armed Forces of the U.S.S.R.;

4) the case in question cannot be determined prior to the adjudication of another case which is being tried in a civil, criminal or administrative proceeding.

The legislation of Union Republics may establish other grounds on which the court may, on the motion of the participants or on its own motion, suspend proceedings in a case.

ARTICLE 41. Dismissal of Action

The court shall dismiss an action:

1) if the cause is not subject to judicial investigation;

2) if plaintiff has not observed the procedure for preliminary extra-judicial settlement of the dispute, as established for the given category of suits, and it is no longer possible to resort to such a proceeding;

3) if there is a final judgement entered in a dispute between the same parties, on the same subject-matter and on the same ground, or a ruling concerning plaintiff's abandonment of the claim or endorsement of a composition;

4) if plaintiff has abandoned the claim and the abandonment has been accepted by the court;

5) if the parties have made a composition and it has been approved by the court;

6) if a decision has been handed down by a comrades' court, within its jurisdiction, in a dispute between the same parties, over the same subject-matter and on the same grounds;

7) if the parties have made a contract to submit the given dispute to a mediation board;

8) if, upon the death of a citizen who was a party to the case, the contested legal relation does not allow of succession.

In the event an action is dismissed, the same parties may not again bring an action over the same subject-matter and on the same grounds.

ARTICLE 42. Refusal to Proceed in a Case

The court shall refuse to proceed in a case:

1) if plaintiff has not observed the procedure for preliminary extra-judicial settlement of the dispute, as established for the given category of suits, and it is still possible to resort to such a proceeding;

2) if action has been brought by a legal incompetent;

3) if the complaint on behalf of plaintiff has been filed by a person who is not empowered to plead the case.

The legislation of Union Republics may establish other grounds on which the court may refuse to proceed in the case.

When the causes serving as grounds for refusal to proceed in the case are eliminated, plaintiff shall have the right to file the same suit in accordance with the general rules.

ARTICLE 43. Change of Venue from the Court of One Union Republic to the Court of Another Union Republic

Change of venue from the court of one Union Republic to the court of another Union Republic shall be effected on the strength of a court ruling upon the expiration of the time limit allowed for appeal or protest against the ruling, and in the event of the filing of an appeal or a protest, upon the entry of a ruling rejecting the appeal or protest.

In the event of a dispute arising between courts of different Union Republics over the venue of a case, the matter shall be decided by the Supreme Court of the U.S.S.R.

CASSATION AND SUPERVISION PROCEEDINGS

ARTICLE 44. The Right of Cassation Appeal and Pro test Against Judgements

Appeals for cassation of judgements rendered by all courts, with the exception of the judgements of the Supreme Court of the U.S.S.R. and the Supreme Courts of Union Republics, may be filed by the parties and other participants in the case, within the time limits established by the legislation of Union Republics.

The procurator shall lodge his protest against a legally incorrect or unfounded judgement, irrespective of whether or not he has participated in the given case.

Copies of the appeals or protests filed in the case must be served on the parties and other participants in the case. Notice of the time and place of the review of the case in a cassation proceeding shall be served on the parties and other participants in the case.

The procedure governing the service of copies of the appeal and protest and the procedure governing the service of notice of the time and place of the cassation proceeding shall be established by the legislation of Union Republics.

ARTICLE 45. Review of Cases in Cassation Proceedings

In reviewing a case in a cassation proceeding, the court, on the ground of the materials on record in the case and those additionally submitted by the parties and other participants in the case, shall examine whether the judgement of the court of first instance is legally correct and well founded, both in its contested and uncontested parts, and also with regard to persons who have filed no appeal.

The court shall not be bound by the grounds specified in the cassation appeal or protest, and must verify the whole case.

When a case is reviewed in a cassation proceeding, the procurator shall enter his opinion as to whether the judgement is legally correct and well founded.

ARTICLE 46. The Powers of the Cassation Court

The court, having reviewed the case in a cassation proceeding, may enter a ruling:

1) leaving the judgement without modification, and the appeal or protest, without satisfaction;

2) quashing the judgement in full or in part and remanding the case for a new trial by the court of first instance;

3) quashing the judgement in full or in part and dismissing the proceedings, or refusing to proceed in the case;

4) modifying the judgement or rendering a new judgement, without remanding the case for a new trial, where the case does not require any collection or additional verification of evidence, and the facts in the case have been established by the court of first instance fully and correctly, but an error has been made in the application of the rules of substantive law.

ARTICLE 47. Grounds for Quashing of Judgements in Cassation Proceedings

The following shall be grounds for quashing a judgement in a cassation proceeding and remanding the case for a new trial by the court of first instance: the facts of the case are not sufficiently clear; the facts of the case which the court deems established are unproven; the conclusions of the court set forth in the judgement do not correspond to the facts of the case; the rules of substantive law or the rules of adjective law are incorrectly applied or violated.

Court judgements shall be subject to quashing by way of cassation, with the court dismissing the proceedings or refusing to proceed in the case, on the grounds enumerated in Articles 41 and 42 of the present Fundamentals.

No judgement which is essentially correct may be reversed for purely formal reasons.

ARTICLE 48. Appeals and Protests from Rulings and Interlocutory Orders of Courts of First Instance

Appeals may be filed by the parties and other participants in the case and protests lodged by the procurator with a court of second instance against findings and interlocutory orders of a court of first instance, separately from the judgement, with the exception of the rulings of the Supreme Court of the U.S.S.R. and the Supreme Courts of Union Republics, in the instances specified by law, and also where the interlocutory order bars further proceedings in the case.

ARTICLE 49. Ex Officio Review of Final Judgements, Rulings and Interlocutory Orders

Judgements, rulings and interlocutory orders which have become final may be reviewed *ex officio* on protests lodged by procurators, presidents of the courts and their deputies in whom this power is vested by law.

Judicial officers who are authorised to lodge protests *ex officio* may suspend the execution of judgements, rulings and interlocutory orders until the termination of the *ex officio* review.

In an *ex officio* review of a case, the court, on the ground of the materials on record in the case and those additionally submitted, shall verify whether the judgement, ruling or interlocutory order is legally correct and well founded, both in its contested and uncontested parts, and also with regard to persons not specified in the protest.

The court shall not be bound by the grounds specified in the protest and must verify the whole case.

The procurator shall participate in the supervision proceeding and shall maintain his protest or the protest lodged by a superior procurator, or shall enter his opinion on

the case being reviewed upon protest by the president of the court or his deputy.

Copies of the protest lodged in the case shall be served on the parties and other participants in the case. Notices of the time and place of the supervision proceeding shall, when necessary, be served on the parties and other participants in the case.

The procedure governing the service of copies of protests, and the procedure governing the service of notice of the time and place of the *ex officio* review shall be established by the legislation of Union Republics.

ARTICLE 50. The Powers of the Court Reviewing a Case Ex Officio

The court, having reviewed a case *ex officio*, may enter a ruling or order:

1) leaving the judgement ruling or interlocutory order without modification, and the protest, without satisfaction;

2) reversing the judgement, ruling or interlocutory order in full or in part and remanding the case for a new trial by the court of first instance or the cassation court;

3) reversing the judgement, ruling or interlocutory order in full or in part and dismissing the proceedings, or refusing to proceed in the case;

4) leaving the earlier judgement, ruling or interlocutory order in the case in force;

5) modifying the judgement, ruling or interlocutory order, or entering a new judgement without remanding the case for a new trial, where the case does not require any collection or additional verification of evidence and the facts of the case have been established by the court of first instance in full and correctly, but an error has been made in the application of the rules of substantive law.

ARTICLE 51. Grounds for Reversal of Judgements, Rulings and Interlocutory Orders in Ex Officio Review

Unfoundedness of judgements, rulings or interlocutory orders or essential violations of the rules of substantive

or adjective law shall be grounds for their reversal in *ex officio* review.

A court judgement, ruling or interlocutory order shall be subject to reversal in an *ex officio* review, with the court dismissing the proceedings or refusing to proceed in the case, on the grounds enumerated in Articles 41 and 42 of the present Fundamentals.

ARTICLE 52. The Mandatory Nature of Instructions of Higher Courts

Instructions set forth in a ruling or order of a court reviewing a case in cassation proceedings or by way of judicial supervision shall be mandatory upon the court retrying the case.

The court reviewing a case in a cassation proceeding or by way of judicial supervision may not establish or consider proved facts which had not been established in the judgement or had been rejected by it, or predetermine the authenticity or unauthenticity of any evidence, the relative value of any evidence, or the application of any rules of substantive law, or the decision to be entered in a fresh hearing of the case.

Nor may the court, in reversing a cassation ruling in an *ex officio* review of the case, predetermine the decisions which may be entered by the cassation court in a fresh examination of the case.

ARTICLE 53. Review of Final Judgements, Rulings and Interlocutory Orders by Reason of Newly Discovered Circumstances

Judgements, rulings and interlocutory orders which have become final may be reviewed by reason of newly discovered circumstances.

The following shall be grounds for a review of judgements, rulings and interlocutory orders by reason of newly discovered circumstances:

1) facts material to the case which were not known, and could not have been known, to the petitioner;

2) false testimony of witness, false findings of expert, deliberately incorrect translation, and forged documents or exhibits, as established in a final judgement of the court, which have resulted in the rendition of a legally incorrect or unfounded decision;

3) criminal acts of parties, other participants in the case or their representatives, or criminal acts of judges committed in the hearing of the case and established by a final judgement of the court;

4) reversal of the court judgement, or interlocutory order, or decision of any other body which served as ground for the given judgement, ruling or interlocutory order.

The period of limitation and procedure governing the review of judgements, rulings and interlocutory orders by reason of newly discovered circumstances shall be established by the legislation of Union Republics.

PART FIVE

EXECUTION OF COURT JUDGEMENTS

ARTICLE 54. Execution of Final Judgements

Court judgements shall be executed upon becoming final, with the exception of cases of immediate execution, as established by the legislation of Union Republics.

Compulsory execution of court judgements shall be made upon the expiration of the period allowed debtors for voluntary execution of court judgements, in accordance with the legislation of Union Republics.

Judgement in a case in which at least one of the parties is a citizen may be presented for compulsory execution within three years from the date it becomes final, and for all other cases, within one year.

The legislation of the U.S.S.R. and Union Republics may

lay down other periods for execution of court judgements for separate categories of cases.

ARTICLE 55. The Mandatory Nature of Orders in Execution of Court Judgements

Orders given by the officer of the court executing court judgements shall be mandatory upon all state establishments, enterprises, kolkhozes and other co-operative and mass organisations, persons in office and citizens on the entire territory of the U.S.S.R.

ARTICLE 56. Control over Correct and Timely Execution of Court Judgements

Control over correct and timely execution of court judgements shall be exercised by the judge.

The parties and other participants in the case may appeal against the executory acts of the officer of the court. The procedure governing the examination of such appeals shall be established by the legislation of Union Republics.

ARTICLE 57. Attachment of Property of Citizens, State Establishments, Enterprises, Kolkhozes and Other Co-Operative and Mass Organisations

Recovery from citizens shall be effected by attachment of the debtor's personal property, and of his part of common property, and marital community property, and also of the property of a collective-farm household or an individual peasant farm.

Recovery of damages caused by a crime may also be effected by attachment of property which is marital community property and the property of a collective-farm household or an individual peasant farm, if the judgement in a criminal case has established that the said property was acquired for money obtained by criminal means.

The deposits of citizens in state labour savings banks and the State Bank of the U.S.S.R. may be attached on the strength of a court sentence or judgement satisfying

a civil suit which arose out of a criminal case, or a court judgement in action for alimony (in the absence of earnings or other property which may be attached), or for partition of a deposit which is marital community property.

The debtor's wages or other earnings, pension or grant may be attached, where the debtor does not possess any property or where the amount of such property is insufficient for full recovery.

The debtor's property shall not be attached, where the amount to be recovered is not in excess of the part of the monthly wage or other earnings, pension or grant which may be attached under law.

Social insurance benefits paid during temporary incapacitation, and also allowances paid from kolkhoz mutual insurance funds may be attached only by a court order for recovery of alimony or compensation of damages caused by maiming or other injury to health, and also by death of bread-winner.

Recovery from state establishments, enterprises, kolkhozes and other co-operative and mass organisations shall be effected above all by attachment of the debtor's cash resources in credit institutions, in accordance with the rules established by the legislation of the U.S.S.R.

Enumeration of the types of property of citizens, state establishments, enterprises, kolkhozes and other co-operative and mass organisations, the proportion of wages or other earnings, pensions and students' grants which may not be attached, and also the order of priority for satisfaction of claims for recovery in the event of shortage of the amounts attached shall be established by the legislation of the U.S.S.R. and Union Republics.

ARTICLE 58. Execution of Judgements in Parts Relating to the Collection of Property, Compositions Made in Court, and Other Decisions and Orders.

Execution of judgements in parts relating to collection of property, court rulings and orders, compositions made

in court, awards of mediation boards, awards of maritime and foreign trade arbitration commissions, decisions of labour disputes commissions, decisions on labour disputes made by factory and office trade union committees; execution clauses issued by notarial offices; and also decisions of arbitral agencies and other decisions and orders in the cases provided by law shall be effected in the manner established for the execution of court judgements.

PART SIX

THE CIVIL PROCEDURAL RIGHTS OF ALIENS AND STATELESS PERSONS. SUITS AGAINST FOREIGN COUNTRIES. LETTERS ROGATORY AND JUDGEMENTS OF FOREIGN COURTS. INTERNATIONAL TREATIES AND AGREEMENTS

ARTICLE 59. Procedural Rights of Aliens, and Foreign Enterprises and Organisations

Aliens shall have the right to apply to the courts of the U.S.S.R. and shall enjoy civil procedural rights equally with Soviet citizens.

Foreign enterprises and organisations shall have the right to apply to the courts of the U.S.S.R. and shall enjoy procedural rights for the protection of their interests.

The Council of Ministers of the U.S.S.R. may impose retaliatory disabilities on citizens, enterprises and organisations of countries allowing special limitations to the civil procedural rights of Soviet citizens, enterprises or organisations.

ARTICLE 60. The Civil Procedural Rights of Stateless Persons

Stateless persons resident in the U.S.S.R. shall have the right to apply to the court and shall enjoy civil procedural rights equally with Soviet citizens.

ARTICLE 61. Suits Against Foreign Countries. Diplomatic Immunity

Filing of a suit against a foreign country, securing collection of a claim and attachment of property of a foreign country located in the U.S.S.R. may be permitted only with the consent of the competent organs of the country concerned.

Diplomatic representatives of foreign countries accredited in the U.S.S.R. and other persons specified in relevant laws and international agreements shall be subject to the jurisdiction of the Soviet court in civil cases, only within the limits determined by the rules of international law or agreements with the countries concerned.

In cases where a foreign country does not accord the Soviet state, its representatives or its property the same judicial immunity which, in accordance with the present Article, is accorded foreign countries, their representatives or their property in the U.S.S.R., the Council of Ministers of the U.S.S.R. or other authorised organ may impose retaliatory measures in respect of that country, its representatives or the property of that country.

ARTICLE 62. Execution of Letters Rogatory from Foreign Courts and Presentation of Letters Rogatory by the Courts of the U.S.S.R. to Foreign Courts

The courts of the U.S.S.R. shall execute letters rogatory requesting performance of separate procedural acts (service of summons and other instruments, interrogation of parties and witnesses, performance of expertise and view of the premises, etc.), presented to them in the established manner by foreign courts, with the exception of cases where:

1) performance of the request would contradict the sovereignty of the U.S.S.R. or jeopardise the security of the U.S.S.R.;

2) performance of the request is outside the competence of the court.

Letters rogatory from foreign courts requesting performance of separate procedural acts shall be executed on the basis of Soviet legislation.

The courts of the U.S.S.R. may present letters rogatory to foreign courts requesting performance of separate procedural acts. The procedure governing relations between Soviet and foreign courts shall be determined by the legislation of the U.S.S.R. and Union Republics and by international agreements of the U.S.S.R. and Union Republics.

ARTICLE 63. Execution in the U.S.S.R. of Judgements of Foreign Courts and Arbitration Boards

The procedure governing execution in the U.S.S.R. of judgements of foreign courts and arbitration boards shall be determined by relevant agreements between the U.S.S.R. and foreign countries or by international conventions of which the U.S.S.R. is a signatory. Judgements of foreign courts or arbitration boards may be presented for compulsory execution in the U.S.S.R. within three years from the date the judgement has become final.

ARTICLE 64. International Treaties and Agreements

Where an international treaty or international agreement to which the U.S.S.R. is party establishes other rules than those contained in the present Fundamentals the rules of the international treaty or international agreement shall apply.

The same provision shall apply in the territory of a Union Republic, where an international treaty or international agreement to which the Union Republic is party establishes other rules than those provided by the legislation on civil procedure of the Union Republic.

TO THE READER

The Foreign Languages Publishing House would be glad to have your opinion of the translation and the design of this book.

Please send all suggestions to 21. Zubovsky Boulevard, Moscow, U.S.S.R.

Подписано к печати 5/X-1963 г. Формат 84×108¹/₃₂.
Бум. л. 2³/₄. Печ. л. 9,02. Уч.-изд. л. 8,54.
Заказ № 2239. Цена 80 коп.
Тираж 9300

Московская типография № 3 Мосгорсовнархоза

Printed in the Union of Soviet Socialist Republics