

Soviet Law and Procedure Concerning Property and Inheritance

Foreword

This article was motivated by the display of interest in the subject of Soviet property and inheritance law which followed the address of former Judge Alexander F. Volchkov at the 1968 meeting of the Section of International and Comparative Law of the American Bar Association in Philadelphia. This response was encouraging in light of the great misunderstanding among American lawyers and laymen which has surrounded this subject. It is hoped that the article will help to correct some of these misunderstandings, and also to sustain the interest in the subject which Judge Volchkov's address has created.

The article contains no original thoughts or opinions of the stated author. It consists entirely of excerpts from testimony given by Judge Volchkov and by Professor Harold Berman of the Harvard University Law School before the Orphans' Court of Philadelphia County, Pennsylvania in March, 1968, in *Estate of Semen Struchmanczuk, deceased*, No. 532 of 1965, a test case on the issue as to whether, within the meaning of a Pennsylvania statute, a Soviet citizen would have the "use, benefit and control" of an inheritance from a Pennsylvania decedent, if the Court were to award it to him.

Judge Volchkov's testimony as to his qualifications was as follows: He was educated in the USSR and received a Juridical degree from the University of Moscow in 1927, as well as a doctor's degree from the same university. He has taught international law for more than thirty years at Moscow university, and has published forty-five articles in connection with his teaching. During the past ten

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years he has specialized in international and private law. He has also practiced law and served as a judge of the Supreme Court of the Russian Federated Republic, and was one of the eight Soviet judges sent to the Nuremberg trials. At present he is Chairman of Injurcollegia (the Foreign Law Division of the Moscow College of Advocates), a post which he has held for the past nine years.

Professor Berman's qualifications as an expert on Soviet Law are too well known to require restatement.

I. The General Law of Property and Inheritance

An examination of the property and inheritance law of the Soviet Union can begin with the Soviet Constitution. The Constitution of the Soviet Socialist Republics was adopted in 1936 by the Supreme Soviet. Article 10 of the Constitution protects the rights of citizens to own personal property, income and savings derived from their work, a dwelling house, household articles and articles of personal use and convenience. Article 10 also protects the right of citizens to inherit property.

Another major source of Soviet property and inheritance law is found in *Fundamental Principles of Soviet Civil Law and Procedure*, which became effective in 1962. These laws were part of the 1962 codification of all laws which included codification of the criminal and administrative laws as well.

Article 25 of the *Fundamental Principles of Soviet Civil Law and Procedure* states that the personal property of citizens may not be used to derive unearned income. Article 25 also provides that citizens may have only one dwelling house in their personal ownership. However, this article does not prohibit a Soviet citizen from earning interest on his savings; nor does it prevent a Soviet citizen from owning a second house if that house was inherited and not bought.

The term "unearned income" in Article 25 has been interpreted as applying only to income which has been derived contrary to law. Article 87 specifically allows a Soviet citizen to earn income on savings accounts. Examples of unearned income which have been given are speculation in foreign stocks and bonds, buying and selling property in violation of the established price regulations and making a business of selling property for a profit.

Article 19 states that the owner of property shall have the right of possession, use and disposal of the property within the limits

established by law. This section has been interpreted to mean that in the absence of any legislation to the contrary, an owner has the rights stated in Article 19. Thus, no executive authority could impose restrictions upon possession, use or disposal of property which would deprive an owner of his Article-19 rights.

There is, however, a great deal of legislation which imposes some limitations on these Article-19 rights. These limitations include the laws which prohibit a person from owning more than one house and which prohibit a person from deriving income in violation of the rent control laws. Other limitations include the restrictions on using property to go into business without a license, the restriction on using property in order to hire labor, and the impossibility under the Soviet system of investing in private companies.

Article 28 gives an owner the right to recover his property from the unlawful possession of another. An owner can bring a tort action for conversion, or a civil action to recover the goods or their value. Also, the unlawful possession of the goods of another can be severely punished under Soviet criminal law.

Article 117 provides for inheritance by operation of law when there is no will disposing of the property. The article also provides that in the absence of any heir or beneficiary to take the property, it will pass to the state by right of succession.

Article 119 states that every person may bequeath his property to anyone he chooses. In earlier times one could not disinherit any heir within three named classes; but now anyone can be disinherited, except minor heirs and dependents.

Article 122 makes it clear that a Soviet citizen or an alien may bequeath his property to foreigners. There are many cases in which American citizens have received dollar amounts distributed from estates of Soviet citizens.

Each of the fifteen republics also has its own constitution, civil code and criminal code; but all of these must conform to the basic principles laid down in the Soviet Constitution, and the *Fundamental Principles of Soviet Civil Law and Procedure*.

II. Soviet Economic Policies Which Affect Property and Inheritance Rights

In 1947 the value of ten rubles was reduced to one ruble, but this was accompanied by a corresponding scaling down of prices of most

commodities. Bank accounts were also cut down to one-tenth at that time.

Today the ruble is worth \$1.11 in American currency. But this exchange rate serves only to accommodate tourists and to accommodate transfers of foreign exchanges sent to the Soviet Union, since the ruble is a purely internal currency and cannot be used abroad. The Soviets are hoping that eventually it will be an international currency, but at the moment it is too weak.

In 1957 the Soviet government declared a moratorium on the redemption of certain bonds for twenty years. At least several hundred million dollars in bonds were involved. The government has not repudiated these obligations and plans to pay them off eventually. The interest on these bonds is being computed although it is not being paid.

Soviet citizens can lend money to other people and receive interest on such loans, although the amount of interest permitted is prescribed by regulation. Soviet citizens who live in foreign countries may enter into any transaction which is permitted by the laws of the country in which they reside. However, a Soviet citizen living within the Soviet Union must obtain permission from the government in order to purchase United States bonds. If a citizen is granted permission to purchase such bonds, he must also obtain separate permission to sell them. Permission to purchase and sell such bonds is not often granted. With regard to the selling of such bonds, it is easier to obtain permission to sell if you have a foreign currency account in the bank.

A Soviet citizen may not retain physical possession of American currency. He may receive such currency, but he must then deposit it in a bank unless he has a special need for American currency, such as an upcoming trip to America. Also, it is illegal for a Soviet citizen to send rubles outside of the country without special government permission.

Bank accounts are treated as individual property and can be disposed of in any manner, including bequest by will. Savings accounts in Soviet banks earn from 2% to 5 1/2% interest depending on the length of time the account remains open. There is no maximum limit on the number of rubles which a Soviet citizen may save in a bank.

A wage earner may use his income as he pleases. Also, if money is sent to a Soviet citizen, he may use this money as he wishes.

A separate government planning commission establishes a schedule of prices. Wages are established by the trade unions in connection with government institutions.

III. Effect of the Soviet Legal and Political Systems

The Soviet court system is the protector of the citizens' rights with respect to inheritance and ownership of property. At the lowest level, there is the trial court of general jurisdiction, the People's Court. This court hears more than eighty per cent of all cases, both criminal and civil. Judges of the court have been selected by the people by secret ballot since 1938. While these judges are not required to have a legal education, almost all of them do. In addition to the judge, the court consists of two lay assessors.

Decisions of the People's Court may be appealed to the District Court where the jurists are all professionals. In addition to the District Court, each republic has a Supreme Court which reviews decisions of the District Court. All of the Supreme Court judges are professional jurists. There is also a Supreme Court of the Soviet Union, but that court reviews only matters of great importance, and disputes between republics. Thus, in most cases, the Supreme Court of the republic is the court of final resort.

Soviet trial courts are not greatly influenced by political considerations. They are more concerned with avoiding reversible error. However, at higher levels the Soviet judges are more prone to political pressure from high Communist party officials.

Today, however, most Soviet officials recognize that laws are made in order to safeguard the proper functioning of society, and to support order. They have charged the courts with the responsibility of keeping proper order. This is in contrast to the Stalin era during which the Constitution and the laws were bent for political expediency. The infamous midnight raids of the secret police during that era no longer occur. Also, people are no longer punished because of political opposition to Communism, unless they actively "agitate" or "propagandize" against the Soviet system.

Since 1959, all laws of general application which have been passed by the Supreme Soviet have been published in the official *Gazette of the Supreme Soviet*, and all decrees of general application are published in the *Collection of Decrees of the Government*. Also, a

list of the laws which have been republished or changed, has been published from time to time during the past ten years.

Yet the Soviet society is still not nearly as politically secure as the American society. A person may still be punished for speaking out against Communism. There is a rather severe law which makes it a criminal offense to circulate anti-Soviet propaganda. Also, the Praesidium can still constitutionally impose retroactive laws; although such laws are now a rare exception.

In addition, there are no constitutional protections against *ex post facto* laws. There are some protections against such laws in the *Fundamental Principles of Soviet Civil Law and Procedure*, but in a particular case these can be overruled by the express vote of the legislature.

There are still no effective constitutional guarantees to protect the people against dictatorial acts of the government. Under the Constitution, the Communist Party organization is the central core of all state and social organizations. However, there are some words in the Constitution which restrain the leadership, and these words have acquired more reliability and meaning since 1958.

The anti-parasite laws have been improved but "parasitism" remains a crime. No longer can a "parasite's" property be confiscated. Most of the power to deal with "parasites" has been transferred to the courts. And the vague phrases have been eliminated from the earlier laws. But still, under Article 12 of the Constitution, every citizen who is able must work. And if any healthy, able bodied person does not work or study, the State, after a six month probationary period, will send such a person to certain institutions in which he is compelled to do some productive work.

Even if a Soviet citizen were to inherit a large sum of money and that money were transmitted to the Soviet Union for his account, he would still not be permitted to cease working or studying. A citizen can accumulate any amount of money by legal means, but no matter how much wealth he accumulates he must still continue to work, if able.

Around 1958 it was generally thought by many American courts that the Soviet Government had the right to confiscate money or anything else sent from overseas. Also, it was generally felt that Russian citizens or anyone in Russia who might inherit property from overseas, was placed under pressure with regard to obtaining powers of attorney and other documents.

Since 1958, however, there has been a favorable ten-year history

in several American jurisdictions with regard to the distribution of funds from American estates to Soviet heirs. Also, since 1958, interest on bank accounts has been allowed; stores where purchases can be made with American dollars have come into existence; and as a result of the 1962 codification of laws, two sections dealing with the rights of a Soviet citizen with regard to inheriting from a foreign estate now appear in the *Fundamental Principles of Soviet Civil Law and Procedure*. In addition, the recent Consular Treaty between the United States and the Soviet Union recognizes that there exist in each country inheritance laws and property laws which will protect the interests of citizens who receive foreign inheritances.

Inheritances have been sent to citizens of the Soviet Union from approximately thirty countries, including certain states of the United States, Canada, England, France and Germany. It is believed that no other country in the world besides the United States withholds distribution of funds and estates to Soviet heirs. (Although at one time there was difficulty in getting funds transferred from Yugoslavia to the Soviet Union)

The United States Treasury Regulations prohibited the government from sending Social Security payments or Veterans' payments to citizens of the Soviet Union. There is, however, some indication in a letter written by an Assistant General Counsel of the Treasury Department that this prohibition is more related to political considerations than to consideration relating to the use, benefit and control of the funds, since Poland, Rumania and Bulgaria were all removed from the Treasury's list shortly after they settled claims of the United States Government against them. Also, according to the Legal Adviser of the State Department, in an opinion letter dated February 6, 1964, and published in the *American Journal of International Law*, Volume 58, pages 1007-1008, determinations regarding the Soviet Union made by the Secretary of the Treasury under these regulations apply solely to the particular federal laws involved and do not apply to questions of law or fact concerning remittances of private funds, including inheritance funds.¹

IV. The Mechanics of Inheriting from Foreign Estates

Most of the inheritance matters which involve a foreign state will be handled at the Russian end by an organization known as Iniurcol-

¹ Since this testimony was given, the USSR has been removed from the Treasury list.

leguia. The Iniurcolleguia is the foreign-law division of the Moscow College of Advocates. The College of Advocates may be analogized to the American bar, but there are substantial differences.

All members of Iniurcolleguia must be lawyers. The body is composed of sixty members of the Moscow bar. Its function is to represent or defend the interests of Soviet citizens in foreign countries. It also represents the interests of foreign citizens and firms within the Soviet Union. Most Soviet citizens who have an interest in a foreign estate turn to Iniurcolleguia because of its familiarity with the jurisdiction and laws of foreign countries. But a Soviet citizen may turn to any of the twenty thousand advocates in the Soviet Union to represent him in such a matter.

A member of the Iniurcolleguia would receive up to ten per cent of the amount received by the client as his fee for handling such a matter. However, Iniurcolleguia receives no money from the Soviet government.

When a Soviet citizen is informed that he may be entitled to receive some money from an American estate he would first engage a Soviet advocate. The advocate would explain the steps which would have to be taken in order to procure the money. He would also inform the client of the twenty-five-per-cent fee of the American attorney and of his own fees.

Next, the Soviet advocate will recommend an American attorney to the client. A New York firm acts as correspondent counsel for one Iniurcolleguia.

If Iniurcolleguia is handling the matter, it will assemble all required birth, death and marriage records. Another service of Iniurcolleguia is the selling of United States bonds for Soviet citizens who have received government permission to hold and sell such bonds.

If the client accepts the recommendation of his Soviet advocate, a power of attorney is executed in accordance with Soviet law. It must be signed by the client, certified by a Soviet notary public, then by the Supreme Court of the republic and then by the Ministry of Foreign Affairs of the Soviet Union, and finally it must be attested by the American Consul in Moscow.

The Soviet notary should not be confused with an American notary public. A Soviet notary is a judicial officer who, in effect, administers the estate. He is always a lawyer, and acts under the control of the courts. His duties include notifying all heirs, including

foreign heirs. And when foreign heirs are involved, an extension of the normal six-month period for claiming an inheritance will be granted.

After a power of attorney has been granted, the actual transmission of the inheritance money may take place. Although it is possible to put money in an envelope and mail it or deliver it personally, almost invariably money transferred to the Soviet Union is handled through the bank. Only the Soviet State Bank can receive such money. Upon receiving funds from a foreign country, the State Bank will inform the heir and, if it is handling the matter, Injurcolleguia. The bank will also deduct a small sum as its fee for handling the transaction.

The heir need not report to the government the fact that he has become entitled to receive a foreign inheritance, and the government levies no inheritance tax nor any other type of tax on moneys received from foreign estates.

If Injurcolleguia is handling the matter it will ascertain the wishes of the client and then carry out these wishes. A recipient has the right to receive the money in three ways: first, he may receive the money in rubles at the prevailing rate of exchange of one ruble for one dollar and eleven cents of American currency and may keep the rubles in cash or put them in a savings account in a Soviet bank; second, he may receive the money in foreign currency which he must then keep in a foreign currency account in the State Bank, where it will draw interest in the foreign currency; third, he may transfer the money from the foreign currency account in exchange for certificates for use in stores called Vneshposyltorg (Foreign Parcel Store), where he can obtain products valued in foreign currency.

The purpose of these stores is to attract foreign exchange from tourists coming into the Soviet Union, and also to attract the foreign exchange held by Soviet citizens received either by inheritance, gift or other legal means. These stores are also to attract the foreign exchange acquired illegally by Soviet citizens through a very large black market.

These stores, although not as large as American department stores, are larger than ordinary Soviet tourist shops, and sell such items as furniture, clothing and linens at prices much lower than other Soviet stores. They also offer opportunities to purchase vacations, nursing home service, or ownership in a cooperative apartment at greatly reduced prices.

Some Moscow residents resent these stores because people with foreign currency can get things so much cheaper than people without such currency. In many instances these prices are even lower than American prices for similar merchandise. And the prices in these stores have not risen since 1966.

Dollar accounts in such stores earn interest in the form of dollar credits which are added to the account. And the stores will give a preference with regard to the time of delivery to a citizen with foreign currency over a citizen with ruble currency.

These stores will usually not check the dollar certificates of Soviet citizens to determine the legality of the citizen's right to this money. They will usually check these certificates only if there are grounds for suspecting an individual, or if there are reports that certificates have been stolen or illegally acquired. As a general rule, Soviet citizens are encouraged to spend any money received from the United States in these stores.

V. Conclusion

It is hoped that this tracing of the procedure involved in getting funds from an American estate to a Soviet heir, when combined with the general background of the Soviet law of property, will give American lawyers a better idea of the Soviet system of inheritance, and will stimulate further interest in this little-known field.