Jurisprudence and Laws of the R.F.S.S.R.

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IN contradistinction to the civil law of bourgeois countries, our civil law sanctions two systems of property: a communistic and a civil—and herein lies its characteristic feature. Where we have made concessions in our new economic policy, in order to call forth the private initiative required for a sound development of the productive forces of the country, and for the restoration of its economic power, our commanding positions are perfectly untouched, for we declare the ground itself, its resources, the forests, waters, railways designed for general use with their rolling stock, and aeroplanes, to be the exclusive property of the workers' and peasants' state, that is, to be communistic property. These things are categorically excluded from any free economic traffic. No trade may be conducted in these objects. They cannot be bought or sold. They cannot form the subject of a business or any other agreement. They are communist property, and the communistic character of this property is confirmed by the Civil Code of Laws of the R.S.F.S.R. The land, its treasures, forests,, etc., remain exclusively in the hands of the workers' and peasants' state, in the same manner as all large industrial undertakings, all large factories and plants, remain in our hands.

On the other hand the necessity of restoring our whole economic force induces us to give private iniative a free hand in commerce, and in small and medium industrial undertakings. The Code of Civil Law thus first specifies everything which can be the subject of private property. The code is not limited to a declaration, and does not enumerate the objects of communist property, but gives a detailed list of all objects of private property with an exactitude excluding every possibility of ambiguity or false interpretation. All objects are named expressis verbis. These are: non-municipalised buildings, commercial undertakings, industrial undertakings, in which the number of wage workers does not exceed a number fixed by special laws, instruments and means of production, money, securities and other values, including gold and silver coins and foreign securities, articles of general household and personal use, goods, the sale of which is not prohibited by law, and other property not excluded from private commercial traffic. The code further adds that telegraphy, radio-telegraphy, and other institutions, possessing state importance may only form the object of private property by virtue of special concessions granted by the government.

We thus know exactly what can be private property under the new conditions. But what is the might of property in the light of our code? Is it that limitless, sacred, inborn, unapproachable right of property, the right of possession as understood by bourgeois law? By no means. The right of property is limited in two essentials by our code. The owner possesses the right—this is clearly and exactly stated by the code—with legally established limits, to possess, use, and dispose of property. Beyond this our code recognises no property, that is, it does not recognize that well known arrangement of the bourgeois world, by which under certain circumstances prescription changes automatically into right of possession. Our Soviet law does not recognize such a right of possession. Such rights it only recognizes to the extent of utilization, or, more exactly stated, to the extent of utilization on tenure.

In the second place, in the Soviet republic the rights of property. like every other private right, must certainly contain elements of conformity to social purposes. In certain cases the state power grants a right of possession to its citizens, but it fixes certain limits to the use of the property thus granted out of consideration for the interests of the development of the productive forces of the country. In exactly the same manner as the state reserves the right, in accordance with the fundamental laws on the socializing of the land, to deprive a landowner of land which he systematically does not cultivate, the code of civel law gives the state the right to deprive property owners of the protection of the law in cases where civil property laws are being utilized in antagonism to their social-political aims.

All we need is a sound private initiative. We want to spur this on. But private initiative is only of interest to us if it is useful for the development of the productive powers of the country. It is solely with this object that we are restoring capitalist relations in Russia. Solely for the purpose of developing the productive forces of the country—so declares the code of civil law of the R.S.F.S.R.—do we grant to persons a civil right of possession, that is, the possibility of possessing civil rights and obligations.

Here it is proper to emphasize that the code of civil law permeated exclusively with the aim of furthering the rebirth of our economic life—does not concern itself in the least with the former owners of property "ill-treated by the revolution." Any possibility of misunderstanding is avoided by a paragraph of the code of law, which declares that the former owners, whose property was expropriated by revolutionary law, or passed into the possession of the workers before May 22, 1922, have no right to demand the return of their property.

After creating a suitable legal protection for communist property, after designating everything which can become the object of private property, after establishing the limits and conditions under which civil law is to be applied, the code of civil law grants the most favorable possible conditions to private initiative, to civil economic life, to commerce, and to small industrial undertakings, but invariably keeps the interests of the state in view, and defends these when they come into conflict with private interests.

The code of civil law establishes a number of points protecting the interests of private property and of civil economic life: thus for instance the building law, the law of inheritance, the law of mortgage, and the system known as liability laws; the laws pertaining to rents, sales and purchases, exchange, loan, deliveries, liabilities, powers of attorney, companies (simple, full, trust companies, limited liability companies, joint stock companies), insurance companies, etc.

The code of civil laws recognizes the right to build. In order to solve that sad inheritance of 7 years of war, the housing problem, the code of civil law grants private persons the right to enter into agreements with local organs entrusted with the disposal of land, for the purpose of building on ground belonging to town and country, for a term not exceeding 49 years; the right of possession of these buildings, that is, the right of using them and freely disposing of them, also of selling them, is granted for the same period. The code of civil law does not however grant the owners of the buildings any right to the ground on which they stand.

As a concession to petty bourgeois ideology, the code of civil law partially restores legal and testamentary rights of inheritance; but in the first place we limit the right of inheritance to a certain sum, a maximum of 10,000 gold roubles, so that any inheritance exceeding this sum falls to the state, and in the second place we limit permissible heirs to direct offspring (children, grand children, and great grandchildren), surviving wife or husband, and persons unable to work and without possessions, who have been actually supported by the deceased for at least a year before his death. Besides this we impose a high progressive tax on inheritance.

As regards the standard of the so-called laws of liability, it is perfectly clear that if the new economic policy aims at introducing private enterprise in the place of the former principle of strict state regulation, and if this private enterprise is to be granted legal protection, this naturally cannot be done in the name of any abstract principle of justice, but in the interests of the essential needs of the economic rebirth of the republic. Private enterprise, free economic intercourse, and the development of the money system, accompanied by the real rights granted to private persons, render it imperative that these persons are given the possibility of making agreements among themselves, and that these private agreements are under the protection of the state.

The characteristic feature of our liabilty laws lies in the fact that the protection of state interests is placed before the protection of the personal rights of individual citizens. Where the well-known Professor Duguy, the leading legal theorist of the University of Bordeaux, merely raised his hammer to destroy individual juridical personality, individual property, and the subjective rights of human beings, where Professor Duguy only laid down the doctrine that private civil law should not differ in any way from public law, our code of civil law created not merely a theoretical situation, but an actual one, in which relations based on civil law, as understood in bourgeois countries, do not exist at all.

And it is not possible for such to exist in a land under proletarian dictatorship. In our state, public law alone can exist. When Duguy says that private civil law, after passing through the metaphysical phase, reaches the positive phase, and from there passes swiftly and inevitably to complete objectivity, this signifies in our situation nothing else than the inevitable substitution of the subjective conception of individual personality by the objective conception of social function, the conclusion of social economic adaptiveness to purpose. The state shall not protect the rights of private persons so much, as rather the citizens are under the obligation to fulfil social functions.

In bourgeois science the whole conception of law is built upon individualism, consequently a contract between two persons is nothing else than a simple accord of two wills. But is it not true that this principle, arising from the depths of the French revolution, has been transformed in actual capitalist practice, into the fact that the stronger dictates his will to the weaker?

Civil law maintains the principle that all requirements of the law (requirements of public right) possess a complimentary character only, that is, they do not come into force until the parties (here private civil law is in action) have not been able to regulate their relations in any other manner. According to civil law the relations of private justice thus dominate over public justice, and in recent times many learned representatives of the capitalist countries have begun to recognize the obligatory character of some laws, that is, they admit that these laws (public law) must continue in force even when the parties have come to an agreement in a contrary sense.

Our code of civil law has decisively broken with the old standpoint, that is, with the standpoint of unqualified defense of that which civil law names "free will of the parties." The Code of Civil Law also gives the state the right to annul economic relations, based on agreements, which obviously do harm to the proletarian state, as an economic organism. The Code of Civil Law of the R.S.F.S.R. has also imparted a character of public justice to the private judicial relations of individual citizens.

I shall adduce an instance illustrating my assertion, and showing the deep chasm dividing Soviet law and civil private law.

Our code makes it a demand of public law that parties having made an agreement can apply to the

(Continued on page 8)