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## Civil Procedure in the U.S.S.R.

J. Alex Morton

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## NOTES

### *Civil Procedure in the U.S.S.R.*

#### *Introduction*

CONTRARY TO THE POPULARLY held notion that the U.S.S.R. has no procedures for dispensing anything which could remotely be called justice, Soviet civil procedure in many ways resembles that of civil law countries. Because the Soviet Union follows the Marxist ideology in which the State dominates all phases of life, civil procedure has evolved differently from that of other civil law countries and has been described as "a new building erected of old bricks."<sup>1</sup>

In order to understand why this is so, a brief look at the reception and function of law in Soviet society is helpful. The traditional Marxist view of legal institutions was that they were a mere superstructure erected upon the economic base of society and as a result were the ideological reflection of economic relations.<sup>2</sup> The law was merely a tool of the economically powerful class, designed to provide maximum benefits and maximum control for the ruling class. Under this view, it was believed that once class domination was eliminated and the economy publicly owned, it would no longer be necessary to submit disputes to the judicial process — spontaneous and unofficial social pressures from the community would lead to their resolution.<sup>3</sup> However, when the Soviets were faced with the realities of governing such a large nation, they restored many traditional institutions.

Their law was also affected for it attained new respectability under the name of "socialist law" in 1936 when Stalin proclaimed the completion of the socialist construction of the U.S.S.R.<sup>4</sup> Since Stalin's death there have been significant legal reforms, reflecting the decline of one-man rule and political terror with a corresponding increase in emphasis on legal norms and legality.<sup>5</sup>

When the Soviets came to power in 1917, Russian civil proce-

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<sup>1</sup> V. GSOVSKI, *SOVIET CIVIL LAW* 856 (1948) [hereinafter cited as GSOVSKI].

<sup>2</sup> H. BERMAN, *JUSTICE IN THE U.S.S.R.* 16 (rev. ed. 1963).

<sup>3</sup> *Id.* at 280.

<sup>4</sup> *Id.* at 47.

<sup>5</sup> *Id.* at 66-67.

ture was governed by a relatively modern code enacted in 1864 by the Tsarist government, based on the French Code.<sup>6</sup> A new Code of Civil Procedure was enacted in 1923 in the Russian Socialist Federated Soviet Republic (R.S.F.S.R.), to supersede the Tsarist Code. In 1964, a new R.S.F.S.R. Code of Civil Procedure took effect, but it involved no significant changes from the 1923 Code.

There are three factors which have shaped the Soviet legal system and made their influence felt in the R.S.F.S.R. Code of Civil Procedure. First, there is the Marxist view of the role of law, touched upon earlier, which is manifested in a distaste for legal formalities. Second, there is the total pervasiveness of the State, a dictatorship which dominates the social, economic, and political life of the U.S.S.R. Third, there is the educational role of Soviet law, often referred to as the parental function of Soviet law. The parental function of law lies in its duty to help create the "Soviet man," who will make Communism a success by working hard for the State while not expecting large monetary rewards.<sup>7</sup> In this sense, legal man in the U.S.S.R. is not an independent possessor of rights and duties, but instead is a dependent member of a collective group, whom the law protects but also trains and disciplines.<sup>8</sup>

Recognition of these factors is important to understand the nature and function of civil procedure since:

procedure reflects important and often basic cultural, ideological and political values, attitudes and convictions separating one legal system from another and mirrors the type of the political system, particularly the relationship prevailing in a given society between those in power and those governed by them.<sup>9</sup>

### *Court System and Jurisdiction*

The lowest general courts or courts of first instance for civil cases in the U.S.S.R. are known as the "people's courts." Several of these courts may be found in each district or rayon, a political subdivision in the U.S.S.R. corresponding roughly to a county.<sup>10</sup> A court bench consists of a professional judge, popularly elected for a five year term, and two lay assessors, elected to a two year term

<sup>6</sup> GSOVSKI at 856.

<sup>7</sup> BERMAN, *supra* note 2, at part III.

<sup>8</sup> *Id.* at 283.

<sup>9</sup> L. BOIM, G. MORGAN & A. RUDZINSKI, *LEGAL CONTROLS IN THE SOVIET UNION* 287 (1966).

<sup>10</sup> GSOVSKI at 838.

at general meetings of workers or peasants.<sup>11</sup> The judge is considered professional because he or she serves full time and is salaried in contrast to the lay assessors, but he or she is not required to have legal training of any sort.<sup>12</sup> The distinction between judge and lay assessor does not correspond to that between judge and jury since all of the bench decides by majority vote questions of both fact and law.<sup>13</sup>

The civil jurisdiction of these courts of first instance includes:

disputes arising from relations of civil, family, labour and collective farm law where any one of the parties to the dispute is a citizen or collective farm<sup>14</sup>

unless such a dispute is assigned by law to an administrative tribunal or some other tribunal.<sup>15</sup> Civil disputes assigned to administrative tribunals include those concerning quasi-criminal sanctions such as disputes involving membership or expulsion from a collective farm, dismissals of executives in certain categories and application of disciplinary codes enacted for employees in certain industries.<sup>16</sup> Commercial disputes involving state enterprises are heard by the state arbitration tribunals.<sup>17</sup> Other disputes which may be heard in the people's courts include: disputes over contracts involving the international carriage of freight by rail or air;<sup>18</sup> certain cases involving administrative-legal relations;<sup>19</sup> cases of special procedure,<sup>20</sup> such as to declare a citizen dead or missing; and cases in which foreign citizens or foreign enterprises and organizations take part.<sup>21</sup> Some civil cases may be tried by "Comrades Courts," informally elected tribunals consisting of a defendant's peers which impose minor sanctions<sup>22</sup> if the regulations of

<sup>11</sup> Shapiro, *Proof of Foreign Law in the Soviet Courts*, A.B.A. INT'L & COMP. L. SEC. PROC. 133 (1963).

<sup>12</sup> GSOVSKI at 838.

<sup>13</sup> *Id.*

<sup>14</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 25(1). All references to this Code are taken from a translation in A. KIRALFY, *THE CIVIL CODE AND THE CODE OF CIVIL PROCEDURE OF THE R.S.F.S.R.* — 1964 (1966).

<sup>15</sup> *Id.*

<sup>16</sup> GSOVSKI at 837.

<sup>17</sup> BERMAN, *supra* note 2, at 124-29.

<sup>18</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 25(2).

<sup>19</sup> *Id.* § 25(3).

<sup>20</sup> *Id.* § 25(4).

<sup>21</sup> *Id.*

<sup>22</sup> BERMAN, *supra* note 2, at 288-91.

these courts provide for the hearing of such cases.<sup>23</sup> There is a presumption in favor of the jurisdiction of civil courts over disputes involving different claims, since it is provided that:

In the event of a combination of several inter-connected claims, some of which are subject to the jurisdiction of a court and others to that of arbitration organs, all of the claims are to be tried in court.<sup>24</sup>

The intermediate appellate court system in the U.S.S.R. is not uniform because the various union republics which make up the U.S.S.R. are administratively subdivided in different manners. The R.S.F.S.R. is subdivided into autonomous republics and such lesser entities as provinces, autonomous provinces, and national districts. To each subdivision corresponds a court having jurisdiction over the subdivision, and to this list of courts must be added the city courts, which have jurisdiction over the larger urban areas. Each of these intermediate courts may function as a court of first instance or as an appellate court for cases heard in a people's court located in the administrative subdivision with which the court corresponds. If the intermediate court exercises its power to remove a case from a people's court and hear the case as a court of first instance,<sup>25</sup> the bench will consist of a judge and two lay assessors elected by the highest government organ of the corresponding administrative subdivision.<sup>26</sup> If the intermediate court sits as an appellate court, the bench consists of three judges and its decision is final.<sup>27</sup> The R.S.F.S.R. Supreme Court generally sits as an appellate court reviewing the decisions of intermediate courts sitting as courts of first instance,<sup>28</sup> but it has the power to remove a case from any court in the R.S.F.S.R. and sit as a court of first instance.<sup>29</sup>

Above all courts sits the U.S.S.R. Supreme Court, the only federal court in the U.S.S.R.<sup>30</sup> It is composed of judges and lay assessors elected by the Supreme Soviet of the U.S.S.R. Its civil panel sits as an appellate court for cases from the supreme

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<sup>23</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 26.

<sup>24</sup> *Id.* § 28.

<sup>25</sup> *Id.* §§ 114-15.

<sup>26</sup> GSOVSKI at 840.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 840-41.

<sup>29</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 116.

<sup>30</sup> GSOVSKI at 836.

courts of all the union republics.<sup>31</sup> The Supreme Court of the U.S.S.R. is a special appellate court, however, only in the sense that a private party may not bring an appeal before it. Only the Procurator General of the U.S.S.R. and the President of the U.S.S.R. Supreme Court may bring such appeals.<sup>32</sup>

Generally a plaintiff may bring his or her action at the defendant's place of residence, or if the defendant is a juridical person the plaintiff may bring the action where the main office or property of the juridical person is situated.<sup>33</sup> Other options are also available to a plaintiff. If a defendant's place of residence is unknown or if he or she has none, an action may be brought where the defendant's property is located or in his or her last place of residence.<sup>34</sup> A personal injury action may also be brought at plaintiff's place of residence or where the harm occurred.<sup>35</sup> Property damage actions may be brought where the harm occurred.<sup>36</sup> In actions on a contract in which a place of performance is stipulated an action may be brought there<sup>37</sup> or wherever else the parties to a contract stipulate.<sup>38</sup>

No matter where the action is brought a court has the power to transfer the case to another court if the following occurs: a defendant whose address was previously unknown becomes known; a judge has been challenged and cannot be replaced in that court; or the court does not appear to have jurisdiction.<sup>39</sup> The doctrine of *forum non conveniens* appears to have a place in Soviet civil procedure. This doctrine allows a court to transfer a case if it "would be more properly and expeditiously tried in another court, particularly at the place where most of the evidence is situated."<sup>40</sup> An even more interesting provision, emphasizing the parental function of Soviet law, provides that an intermediate court may transfer a case from one people's court to another if this would result in a more proper and expeditious trial in keeping

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<sup>31</sup> *Id.* at 844.

<sup>32</sup> *Id.*

<sup>33</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 117.

<sup>34</sup> *Id.* § 118.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* § 120.

<sup>39</sup> *Id.* § 122.

<sup>40</sup> *Id.*

“with the object of better ensuring the educational effect of a judicial hearing.”<sup>41</sup>

#### *Parties and Persons Taking Part in a Suit*

Civil litigation in the U.S.S.R. reflects the concept that an individual is not the independent possessor of personal rights and duties but is a member of a collective society with collective rights and duties. Consequently, in addition to the parties to a dispute corresponding to a plaintiff and defendant, a lawsuit concerns others who may be called persons taking part in a suit, including the procurator, third persons, and various organizations to be described later. The fact that so many persons have been given civil procedural capacity is due in part to the extreme nature of the State's control of Soviet life so that distinction between public and private law is practically absent from Soviet law.<sup>42</sup> Additionally, legal sanctions in the U.S.S.R. serve to do more than merely compensate a plaintiff. In accordance with the parental function of law they also provide for deterrence, rehabilitation, and prevention in regard to future disputes of the same kind.<sup>43</sup> As a result, increased attention has been given to procedural forms which facilitate correction of the defendant and education of others, such as the participation in the case of persons other than the parties.<sup>44</sup>

The individuals whose legal rights and duties are directly affected by a lawsuit are parties and third persons. A party is either a plaintiff or defendant. A party plaintiff may either bring the suit “for the defence of his right or legally protected interest,”<sup>45</sup> or may have suit brought on his or her behalf by the procurator or some other organization.<sup>46</sup> A third party cannot initiate suit and he or she is in one of two categories. First, a third party who makes an independent claim to the subject matter of a dispute may intervene before the court pronounces judgment and enjoys all the rights and duties of a plaintiff.<sup>47</sup> Second, a third party who does not make an independent claim to the subject matter of the dispute but whose rights and duties in relation to one of the parties may be

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<sup>41</sup> *Id.* § 123.

<sup>42</sup> O'Connor, *Soviet Procedures in Civil Decisions: A Changing Balance Between Public and Civic Systems of Public Order*, 1964 U. ILL. L. F. 51, 62.

<sup>43</sup> *Id.* at 64.

<sup>44</sup> *Id.* at 65.

<sup>45</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 4(1).

<sup>46</sup> *Id.* § 33.

<sup>47</sup> *Id.* § 37.

affected may intervene as either plaintiff or defendant, or be joined in the case upon the application of the parties or procurator or on initiative of the court.<sup>48</sup> In this situation, the third party enjoys all the procedural rights and duties of a party except the right to alter the basis or subject matter of the action, to increase or reduce the claim, to withdraw the action (if a plaintiff), to concede the action (if a defendant), or to settle out of court.<sup>49</sup>

The procurator is also permitted to institute suit on behalf of another and take part in any civil suit, an institution unique to the Soviet legal system. Procurators are government attorneys found in the various administrative subdivisions of the U.S.S.R. who make up a federal apparatus since they are appointed by the Procurator General of the U.S.S.R.<sup>50</sup> The function of the procuracy has been described as two-fold.<sup>51</sup> First, it consists of a supervisory power over the administration of justice by which a procurator can commence or participate in any civil suit "if . . . required to protect State or public interests or the rights or legally protected interests of citizens."<sup>52</sup> Second, it includes a general supervisory power by which the procurators make sure that the law as promulgated by the central authorities is followed by local government. It is the first function with which civil procedure is concerned, another manifestation of the supreme power and control of the Soviet State having an interest in civil litigation of any sort.

Participation by a procurator in a civil action is mandatory if provided for by law or if the court requests his or her opinion of law.<sup>53</sup> The procurator possesses all the procedural rights of the party on whose behalf he intervened or instigated the suit, but the party may continue the suit even if the procurator later abandons it.<sup>54</sup> Rather than being considered a party to the action, the procurator only "calls the procedure in a given case to life, . . . ." <sup>55</sup> Suits are brought by a procurator when a wronged party does not wish to do so, perhaps because he or she is dependent upon the wrongdoer in some way, and when a suit is needed to protect the legal rights and interests of Soviet citizens.<sup>56</sup> Common examples of suits instigated by the procurator include: suits to protect labor

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<sup>48</sup> *Id.* § 38.

<sup>49</sup> *Id.*

<sup>50</sup> GSOVSKI at 846.

<sup>51</sup> *Id.* at 846-47.

<sup>52</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 41.

<sup>53</sup> *Id.*

rights of citizens which officials of economic enterprises may violate; suits to protect housing rights, such as declaring invalid an order for the provision of living space or a suit to evict a tenant; or suits to protect rights arising from family relationships.<sup>57</sup> Through the participation of the procurator in these civil suits the State is able to exert more control over its citizens and ensure that the law is applied in a manner consistent with the State interest.

An even more unique aspect of civil procedure in the U.S.S.R. is that in certain instances the right to bring civil action on behalf of another and to intervene or be joined by the court to state conclusions regarding the action lies with:

organs of State administration, trade unions, State institutions, enterprises, collective farms and other cooperative and public organizations or private citizens . . . in protection of the rights and legally protected interests of other persons.<sup>58</sup>

This procedural innovation is important because of its relation to recent Soviet ideology as well as being yet another device to enable the State to exert control over civil lawsuits through its various organizations. A modern Soviet corollary to the Marxist doctrine of the eventual withering away of the state as a communist society is that social organizations will play a greater role in the governing of society and enforcement of legal norms.<sup>59</sup> Having the procedural capacity to participate in civil suits in which they have no direct interest, social organizations can begin to exert more of an influence in the governing of the U.S.S.R. by determining when and how the legal rights of others are to be exercised. The Soviet courts have gone even further in allowing social participation. Sometimes even spectators are allowed to give conclusions or opinions on a case rather than testify to facts in question in the case, although this is not provided for in the Code of Civil Procedure.<sup>60</sup> One also cannot ignore the paternal nature of Soviet law with reference to the participation of social organiza-

<sup>54</sup> *Id.*

<sup>55</sup> Shueitser, *On the Draft Fundamentals of Civil Procedure of the U.S.S.R. and Union Republics*, in J. HAZARD & I. SHAPIRO, *THE SOVIET LEGAL SYSTEM* 133 (1962).

<sup>56</sup> Krastsov, *The Instituting of Suits by the Procurator — An Important Form of the Rights and Interest of the Soviet Citizens*, in J. HAZARD, I. SHAPIRO & R. MAGGS, *THE SOVIET LEGAL SYSTEM* 133 (rev. ed. 1969).

<sup>57</sup> *Id.*

<sup>58</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 42.

<sup>59</sup> BERMAN, *supra* note 2, at 285-86.

<sup>60</sup> O'Connor, *supra* note 42, at 80.

tions in civil actions, since for the most part cases in which their representatives participate are those in which reform in conduct is sought.<sup>61</sup>

In addition to being able to bring suit and enjoy all the procedural rights of a party, organizations commonly intervene or are joined by the court to give their conclusions regarding the merits of a case and what action should be taken by the court. As a result their procedural status is difficult to define. The organization may in some instances act as a party, but it also may participate in a case in which it has no material interest in the outcome, but rather an interest in reforming conduct through the law.<sup>62</sup> It does not act in the capacity of a witness since the organization through its representative gives its conclusions of fact and law and not testimony as to facts within its knowledge.<sup>63</sup> In fact, an organization may abandon a lawsuit entirely and the case may still continue until there is an adjudication on the merits if the party on behalf of whom the action is brought so desires. It is perhaps less important to classify the procedural status of social organizations in civil actions than it is to be aware of their procedural rights and duties.

#### *Pre-trial Procedure*

A legal action is commenced by filing a written pleading which must state the circumstances upon which the plaintiff bases his claim, the evidence proving the circumstances described by the plaintiff, a list of any evidentiary documents attached to the pleading, and the plaintiff's prayer for relief.<sup>64</sup> Upon examining the pleadings, the judge has the right to conduct a separate trial as to certain claims or parties if he feels that this would be more appropriate.<sup>65</sup> The judge conducts an examination of both plaintiff and defendant to find out more about their respective claims and defenses and to decide who may be joined or who can intervene, including the procurator or any organizations. The judge may even notify another person whom he finds to be an interested party that there is a case in progress. He also decides which witnesses shall be summoned and either procures documentary and other evidence

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<sup>61</sup> *Id.* at 78.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 126.

<sup>65</sup> *Id.* § 128.

for the parties or issues a search warrant to obtain evidence.<sup>66</sup> After the case has been prepared for trial the judge announces the place and date of trial.<sup>67</sup>

The right of voluntary dismissal exists in the U.S.S.R., but it is significantly circumscribed because of the State's desire to control civil litigation. A plaintiff may alter the basis of his or her action or the amount of his or her claim and technically he or she is given the right to withdraw his or her action completely and settle out of court.<sup>68</sup> A court, however, is not obligated to accept such a withdrawal and settlement if this will "violate the law or the rights or legally protected interests of any person."<sup>69</sup> The Soviets view this power of the court as:

one of the guarantees of legality and protection of the interests of the state and of the citizens, which are harmoniously fused in socialist society. . . .<sup>70</sup>

In reality, it reflects the subordination of the right of the individual to pursue his or her remedy as he or she sees fit to the will of the State. Gsovski has observed:

All this shows what a hazard a litigant runs in the soviet [sic] civil court. As soon as he sets the proceedings in motion, they are no longer under his control.<sup>71</sup>

### *Trial*

In general a trial in the U.S.S.R. will be held in public unless a State secret will be endangered.<sup>72</sup> *In camera* trials are permitted if intimate facts concerning the lives of persons taking part will be disclosed.<sup>73</sup> A party has the right to challenge the participation in the case of a judge, a lay assessor and even a procurator "if he is personally interested, directly or indirectly, in the result of the case or other circumstances exist which cast doubt on his impartiality."<sup>74</sup> A judge or lay assessor can be challenged if he took part in a pre-

<sup>66</sup> *Id.* § 141.

<sup>67</sup> *Id.* § 143.

<sup>68</sup> *Id.* § 34.

<sup>69</sup> *Id.*

<sup>70</sup> Kleinman, *Comments on the Fundamentals of Civil Procedure*, in J. HAZARD & I. SHAPIRO, *THE SOVIET LEGAL SYSTEM* 117 (1962).

<sup>71</sup> GSOVSKI at 860.

<sup>72</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 9.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* § 18.

vious trial of the same case, or if he is a relative of a party or person taking part in the case, or if he is personally interested in the case and might not be impartial.<sup>75</sup> Challenge is made either by a party, or by a judge or lay assessor, in which case it is a self-challenge.

The presiding judge conducts the court session and keeps order, but it requires the majority vote of the full membership of the court to decide any objection to an aspect of the proceedings raised by a party.<sup>76</sup> The hearing begins with a report on the claims and evidence from the presiding judge or a lay assessor. The presiding judge then asks the plaintiff if he or she persists in the demands, and the defendant if he or she admits the claims of the plaintiff. The judge also inquires whether the parties wish to settle out of court.<sup>77</sup> Next the plaintiff, defendant, third persons, the procurator and representatives of organizations, in that order, present their explanations.<sup>78</sup> The testimony of witnesses is then heard, and the presiding judge must warn each witness of his or her responsibility for testifying and for knowingly giving false testimony. In fact the witness must sign an acknowledgment that the duties and responsibilities have been explained to him or her.<sup>79</sup> Final agreements, referred to as court pleadings, are presented by each participant in the same order as their opening arguments; each also having a right to reply, with the defendant having the final word.<sup>80</sup> When a procurator participates in a case, he or she is entitled to present conclusions as to the substance of a case after the court pleadings.<sup>81</sup> The arguments of all should be confined to matters and evidence brought out in the trial. Finally, the judges retire to compose a judgment and upon their return either the presiding judge or a people's assessor pronounces the judgment, which includes the method of appeal and the term for appealing.<sup>82</sup>

### *Evidence*

As in other civil law countries, there are no exclusionary rules

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.* § 145.

<sup>77</sup> *Id.* § 164.

<sup>78</sup> *Id.* § 166.

<sup>79</sup> *Id.* § 169.

<sup>80</sup> *Id.* §§ 185-86.

<sup>81</sup> *Id.* § 187.

<sup>82</sup> *Id.* §§ 189-90.

of evidence in the U.S.S.R., evidence being characterized as:

only factual data on the basis of which the court, following the procedure prescribed by law, established the presence or absence of circumstances supporting the claims or defenses of the parties and other circumstances material to a correct decision of the case.<sup>83</sup>

If the court feels that the evidence is insufficient, it may order the parties to produce more. Another example of State control of civil litigation through the courts is that in addition to appointing its own expert witness, a Soviet court may itself gather evidence pertinent to the case.<sup>84</sup> While the admissibility of evidence is left to the discretion of the court, the verdict should be based on relevant evidence only.<sup>85</sup> At an earlier point in the history of the U.S.S.R., when the transformation to socialism was incomplete and so-called "hostile" classes, such as merchants and landowning peasants still existed, a court was to consider the class status of a witness in evaluating his or her testimony and pay less heed to testimony from members of these "hostile" classes.<sup>86</sup> Now, however, with the socialization of the nation and the elimination of "hostile" classes, a court must evaluate evidence:

according to its own inner conviction based on all-round, full, and *objective* consideration at the trial of all the circumstances of the case, looked at as a whole, being guided by the law and its socialist legal conscience (emphasis added).<sup>87</sup>

Evidence is divided into five categories in the Soviet legal system. Explanations by parties and third parties are acceptable as evidence unlike other civil law countries. However, the court is not bound by admissions of fact, not even an admission by one party of a fact upon which the other party bases his or her claim. A court only has to consider an admitted fact as established if it is convinced that the admission is factual and that the party had no ulterior motive for making the admission.<sup>88</sup> Testimony of witnesses and documentary evidence are the next two categories of evidence<sup>89</sup> and the court can levy fines against individuals who re-

<sup>83</sup> *Id.* § 49.

<sup>84</sup> *Id.* § 50.

<sup>85</sup> BERMAN, *supra* note 2, at 304.

<sup>86</sup> J. HAZARD, I. SHAPIRO & R. MAGGS, *THE SOVIET LEGAL SYSTEM* 124 (rev. ed. 1969).

<sup>87</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 56.

<sup>88</sup> *Id.* § 60.

<sup>89</sup> *Id.* § 62.

fuse to testify or produce documentary evidence.<sup>90</sup> The fourth category is real evidence, consisting of objects which may serve as a means of establishing facts material to a case. Finally there is expert testimony, including those experts appointed by the court. It should be noted that the power of a Soviet court is such that the bench is not bound by the report of any expert, and the court may disagree with an expert's opinion if it states the grounds of its disagreement in its opinion.<sup>91</sup>

### *Judgment and Costs*

There is no such thing as a default judgment in the U.S.S.R. If a party fails to appear without just cause a court may hear the case in his or her absence.<sup>92</sup> A judgment must be signed by all the judges, including a dissenter, and is divided into four parts: the introductory part, which names the court, judges, parties and other persons taking part in the trial; the descriptive part, which describes the plaintiff's claim, the defendant's defense, and the explanations of other persons taking part; the reasoned part, which indicates the circumstances established by the court, the evidence upon which its conclusions are based and any controlling law; and the operative part, which provides the decision to grant or deny relief, the allocation of court costs, and the method and time for appeal.<sup>93</sup>

Court costs, as in other civil law countries, are paid by the losing party, include the attorney's fees of the winner, and are measured as a percentage of the amount in controversy. One of the more interesting provisions on the allocation of court costs allow the winning party to recover for any lost working time, if a suit was filed or defended in bad faith by the other party.<sup>94</sup> Another provision, which reflects the privileged position of the laborer in Soviet society, exempts workers from paying costs when they file an "action for wages or on other claims arising out of their employment."<sup>95</sup>

A judgment becomes *res judicata* upon the expiration of the term for cassationary appeal or protest if it has not been appealed

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<sup>90</sup> *Id.* § 68.

<sup>91</sup> *Id.* § 78.

<sup>92</sup> *Id.* § 158.

<sup>93</sup> *Id.* § 197.

<sup>94</sup> *Id.* § 92.

<sup>95</sup> *Id.* § 80.

or protested, otherwise upon the affirmation of the judgment by the appeals court.<sup>96</sup> Parties and other persons taking part in the case and their legal successors, therefore, cannot:

apply anew to a court with the demands in the action on the same basis, or to dispute in any other proceeding, the facts and legal relations established by the court.<sup>97</sup>

A court also has the power to pronounce separate judgment against appropriate persons if in the course of a trial it discovers any violations of law. These persons are bound to report to the court on any measures taken to comply with the law within one month of the decision.<sup>98</sup> Again it can be seen that the court possesses broad powers of control to ensure that the law is obeyed.

### *Appeal-Cassationary*

The standard method of appeal in the U.S.S.R. is that of the cassationary appeal. The original French concept of the court of cassation was that of an ultimate court passing only upon questions of law, which would either uphold the decision of the court of first instance or reverse and remand it. This stood in contrast to the German revisional procedure on appeal. Under the German method the appeals court could review both the merits and the application of the law and enter a new judgment rather than merely remanding the case. When the Soviets took power in Russia they abolished intermediate courts of appeal and provided for only one appeal, by the way of cassation.<sup>99</sup> Since further review of the merits of a case was necessary, appeal gradually took on some of the aspects of a revisionary appeal, so that appeal in the U.S.S.R. has been described as "a kind of a hybrid."<sup>100</sup>

Only one appeal of a case, called cassationary, can be had by a party or person taking part in a case, or by a procurator, even if he or she did not take part in the case, the latter being called cassationary protest.<sup>101</sup> The appeal must be filed within ten days after final judgment.<sup>102</sup> The court of appeal can review both questions

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<sup>96</sup> *Id.* § 208.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* § 225.

<sup>99</sup> GSOVSKI at 883.

<sup>100</sup> *Id.*

<sup>101</sup> 1964 R.S.F.S.R. CODE OF CIVIL PROCEDURE § 282.

<sup>102</sup> *Id.* § 284.

of law and fact "so far as parts of the judgment appealed against are concerned as well as parts of the judgment not appealed against."<sup>103</sup> The powers of the court of cassation include the power to affirm judgment, to quash judgment and remand, to quash and dismiss the case, and to modify or pronounce a new judgment.<sup>104</sup>

A judgment may be quashed if there was a "violation" or "incorrect application" of the rules of substantive or procedural law.<sup>105</sup> Rules of substantive law are violated or incorrectly applied if the court failed to apply a law which should have been applied, applied a law which should not have been applied, or incorrectly interpreted the law. If a rule of procedural law has been violated, the judgment can be quashed if such violation "led or may have led to an incorrect decision of the case."<sup>106</sup> Examples include an unlawfully constituted court, failure to notify a person taking part in the case, or failure of a participating judge to sign a judgment. However, consistent with the Marxist distaste for the formalities of legal procedure, it is provided that a judgment which is "substantially correct" cannot be quashed for "purely formal reasons."<sup>107</sup>

Appellate review of the merits of a case may result in the quashing of the judgment if there has been incomplete elucidation of the material facts of the case, inadequate proof of material facts which the court considered to have been established, or a discrepancy between the court's conclusions as set out in the judgment and the circumstances of the case.<sup>108</sup> The appeals court is not limited to the evidence produced at the original trial. Parties or persons taking part in the case may produce additional evidence on appeal. The appeals court reevaluates the case on the merits as if it were a trial court except that the gathering of evidence is not repeated.

As mentioned previously, the Soviet court of appeal has the power to modify a judgment or pronounce a new judgment in addition to the standard power of a cassationary court to quash and remand. While the court of appeals has the power to modify a

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<sup>103</sup> *Id.* § 294.

<sup>104</sup> *Id.* § 305.

<sup>105</sup> *Id.* § 306.

<sup>106</sup> *Id.* § 308.

<sup>107</sup> *Id.* § 306.

<sup>108</sup> *Id.* § 306.

judgment or pronounce a new one, this power can be exercised only:

if there is no need to collect or reevaluate evidence, the circumstances of the case having been fully and correctly established by the court of first instance but a mistake having been made in applying the rules of substantive law.<sup>109</sup>

Thus a Soviet court of cassation cannot modify a judgment or pronounce a new judgment merely because the court of first instance has incorrectly evaluated the evidence or new evidence has been produced. In these cases, it must remand to a court of first instance for a new evaluation of the evidence. Other than this, the power of the court of cassation is another example of the broad power of the State in relation to that of the individual litigant, since the court can review parts of the judgment not appealed from and can base its decisions on arguments not presented by the litigants.

#### *Reconsideration of Judgments on the Basis of Newly Discovered Circumstances*

In addition to the procedure of appeal, a Soviet litigant may seek to overturn a judgment on the basis of newly discovered circumstances which prevented a fair hearing originally. A judgment, even one which has acquired *res judicata* effect, may be reconsidered if essential circumstances of the case were not known and could not have been known by the applicant, the judgment was based on false testimony of witnesses or forged documents, the judgment was based on a trial in which crimes were committed by parties, persons taking part in the case or their representatives or judges, or the judgment was based on another judicial decision which subsequently was quashed.<sup>110</sup> Application for reconsideration of a judgment is to be made by persons taking part in the case or by the procurator in the court which pronounced the judgment, with three months of the discovery of the new circumstances.<sup>111</sup> Upon such an application and hearing the court will either decide to quash the judgment or leave it in effect. Neither decision is subject to appeal.<sup>112</sup>

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<sup>109</sup> *Id.* § 305(4).

<sup>110</sup> *Id.* § 333.

<sup>111</sup> *Id.* § 334.

<sup>112</sup> *Id.* § 337.

*Reopening of Judgments Which are Res Judicata*

The final aspect of Soviet civil procedure to be discussed is the procedure by which judgments that have acquired legal effect are reopened, called an extraordinary protest or *nadzor* proceeding. Extraordinary protests are taken against judgments which are ill-founded on the facts or in which there has been a substantial violation of substantive or procedural law.<sup>113</sup> This procedure differs from cassationary appeal, however, because a party is not permitted to make an extraordinary protest, permission being granted only to the Procurator General of the U.S.S.R. and his Deputies, the President of the Supreme Court of the U.S.S.R. and his Deputies, the Procurator of the R.S.F.S.R. and his Deputies, the President of the Supreme Court of the R.S.F.S.R. and his Deputies, and other judicial officials such as the Presidents of the intermediate tier of courts and the Procurators of the various administrative subdivisions.<sup>114</sup> Although a party cannot bring such a proceeding he can inform a judicial official of an improper judgment. Because of a reform in the new Code of Civil Procedure, a party must be given notice of an extraordinary protest and the opportunity to produce written explanations.<sup>115</sup> In contrast to the limitation to one cassationary appeal, there is no limit on the number of extraordinary protests or the time in which they must be taken, which has led one observer to conclude:

it appears that until a case has passed the scrutiny of the plenary session of the Supreme Court of the U.S.S.R. without the decision having been rescinded and returned for a new trial to the lower court, the *nadzor* proceedings are not terminated.<sup>116</sup>

Although there are no statistics on the subject, it is believed that extraordinary protests are not frequently taken.<sup>117</sup> The extraordinary protest may serve as a means of correcting injustices, but in reality it is simply another device by which the State exerts control over civil litigation. By providing what is in effect a second appeal at the discretion of officials of the State judiciary, the central authorities have a means of reversing decisions which contravene state policy and which potentially could create small

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<sup>113</sup> *Id.* § 330.

<sup>114</sup> *Id.* § 320.

<sup>115</sup> *Id.* § 325.

<sup>116</sup> L. BOIM, G. MORGAN & A. RUDZINSKI, *LEGAL CONTROLS IN THE SOVIET UNION* 312 (1966).

<sup>117</sup> *Id.* at 313.

power centers following different thoughts from those of the central power.<sup>118</sup> As Gsovski observed:

This practice undermines the stability of judgments rendered under the soviet [*sic*] civil procedure. It makes the whole of the civil procedure more akin to an administrative than a judicial process.<sup>119</sup>

The same can be said of the extension of State control over all other aspects of civil procedure in the U.S.S.R.

### *Conclusion*

Civil litigation, even in a communist state like the U.S.S.R., must be based on justice in the sense that there must be some rational system of loss allocation and compensation for victims of civil wrongs. Additionally, the regime can afford to dispense justice at least in civil disputes involving individuals, without great cost to the preeminence of the State. This traditional function of civil litigation accounts for the similarities of Soviet civil procedure with that of other civil law nations, a procedure basically designed to allow all parties to relate the circumstances upon which they base their claims and the relief which they seek. Under the Marxist ideals, however, civil litigation must serve new functions, providing another means of ensuring State control over the lives of its citizenry and providing a forum in which the State can educate and mold society. The innovations of Soviet civil procedure, though unthinkable in a legal system such as our own, have served these functions well.

J. ALEX MORTON

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<sup>118</sup> *Id.* at 314-15.

<sup>119</sup> GSOVSKI at 909.