

The Legal Status of Foreigners in the U.S.S.R.

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The expansion of mutually beneficial and equal trade and other relations between the U.S.S.R. and the United States is directly linked to the sojourn of their citizens in each other's territory. This makes it important to ascertain the question of the principles underlying the legal status of foreigners, including citizens of the United States, on Soviet territory.

First and foremost, it must be noted that the legal status of foreigners in the U.S.S.R. and of Soviet citizens abroad is determined not only by their legal link with their own country but, to a certain extent, also by the internal laws of the country of residence in conjunction with the pertinent international agreements.

In the U.S.S.R. foreigners usually come under the same laws that are applicable to Soviet nationals, i.e., foreigners are accorded "national treatment." National treatment usually affords foreigners the full range of civil and procedural rights and duties guaranteed to citizens by internal (national) legislation.

Strictly speaking, the terms of national treatment do not necessitate the establishment of special norms relating to the rights and duties of foreigners on the territory of a given country. In practice, reference is usually made to prevailing laws and other normative acts.

However, this by no means signifies that Soviet internal legislation contains no norms directly relating to the legal status of foreigners. Under the Constitution of the U.S.S.R. legislation on the rights of foreigners comes within the jurisdiction of the Union of Soviet Socialist Republics rather than of the individual republics.¹

Legislative norms regulating the legal status of foreigners are contained in the laws of the Supreme Soviet of the U.S.S.R., in the edicts of the Presidium of the Supreme Soviet, in the decrees of the Council of Ministers of the U.S.S.R., and in other legal acts. In confirmation of this, Article 122 of the Fundamentals of Civil Legislation of the U.S.S.R. and the Union Republics provides: "In the U.S.S.R. foreigners enjoy civil legal capacity on an equal footing with Soviet citizens. Individual exceptions may be established by the law of the

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1. Constitution, art. 14, para. v. (U.S.S.R.).

U.S.S.R."² Article 8 of the Fundamentals of Civil Legislation defines civil legal capacity as the capacity to have civil rights and duties.

The purpose of national treatment as a universal norm of international law is precisely to serve as a legal guarantee of civil law and civil procedure rights and duties of foreigners on the territory of countries granting such treatment.

As a rule, Soviet laws do not stipulate that foreigners are granted national treatment on the basis of reciprocity. However, if in the Soviet Union a foreigner enjoys national treatment, Soviet citizens, naturally, should be granted national treatment in the foreigner's country.

National treatment grants foreigners only those civil law rights and freedoms that are guaranteed to the citizens of the given country, and imposes on foreigners the same civil duties that are imposed on its own citizens, taking due account, however, of the limitations established for foreigners in each concrete case in order to protect public order and state security.

Civil law rights include:

(1) the right, in accordance with the law, to own personal property; Article 25 of the Fundamentals of Civil Legislation of the U.S.S.R. and the Union Republics states: "Citizens may own property designated for the satisfaction of their material and cultural requirements. Each citizen may own earned income and savings, a house (or part of a house) and ancillary household facilities, objects of household use, personal use and convenience. Property owned by citizens cannot be used for the extraction of unearned income."³

(2) the right to use dwelling premises and other property;

(3) the right to inherit and bequeath property;

(4) the right to choose an occupation and place of residence;

(5) copyright in works of science, literature and art; the right to discovery, inventions, and rationalization suggestions. Thus, according to Article 7 of the Statute on Discoveries, Inventions, and Rationalization Suggestions of August 21, 1973, foreign authors of inventions and rationalization suggestions and their heirs (including legal entities) enjoy the rights envisaged in the Rules and other acts on an equal footing with citizens (or legal entities) of the U.S.S.R.

Regarding scientific discoveries foreigners enjoy the same rights as citizens of the U.S.S.R. provided the discovery was made in cooperation with a Soviet citizen or in fulfillment of work at a factory, organization, or office in the U.S.S.R.⁴

2. Fundamentals of the Civil Legislation of the U.S.S.R. and the Union Republics, art. 122, [1961] 50 (1085) *Vedomosti Verkhovnogo Soveta S.S.S.R.* 1272, 1305 [hereinafter cited as *Ved. Verkh. Sov. S.S.S.R.*].

3. *Id.*, art. 25 at 1281.

4. [1973] 19 *SOBRANIE POSTANOVLENIY PRAVITEL'STVA SOIUZA SOVETSKIKH SOTSIALISTICHESKIKH RESPUBLIK* (COLLECTED DECREES OF THE GOVERNMENT OF THE U.S.S.R.) Item 109 [hereinafter cited as *S.P.-S.S.S.R.*].

(6) the right to have other property and personal non-property rights.

Foreign citizens have the right to enter into all civil law relations and transactions in which Soviet citizens may take part (purchase-sale, gift, hire, and so on).

On the basis of national treatment foreigners in the U.S.S.R. also enjoy *socio-economic rights* namely, the right to work, the right to rest and leisure, the right to material security in old age and also in the event of illness or loss of capacity of work, and the right to education (Articles 118, 119, and 120 of the Constitution of the U.S.S.R.).

These socio-economic rights are enjoyed by foreigners permanently residing or working in the U.S.S.R. The granting of these rights may be provided also by international agreements.

All foreigners in the U.S.S.R. whether on a short stay or residing over a long period or permanently, enjoy the *civil freedoms* envisaged in Articles 124, 127, and 128 of the Constitution of the U.S.S.R. These freedoms are also encompassed in the national treatment of foreigners. They include:

(1) freedom of speech if it is not used against the public order or the state security of the U.S.S.R.;

(2) freedom of conscience, which embraces freedom of religious worship;

(3) inviolability of the person, by virtue of which no person may be placed under arrest except by decision of a court or with the sanction of a procurator;⁵

(4) inviolability of homes and privacy of correspondence are protected by law.

Foreigners may not claim rights that they enjoy in their own countries which are inconsistent with the fundamental principles of

5. Under established procedure, in all cases in which a foreigner is arrested or detained, the diplomatic or consular representative of the state of which the foreigner is a citizen is notified. Representatives of the embassy or the consulate may visit the person arrested or sentenced to imprisonment. They must apply to the Ministry of Foreign Affairs of the U.S.S.R. or to the Diplomatic Service of that Ministry within 48 hours for permission to visit the detainee to provide him with legal assistance. Permission is denied if the detainee does not desire a meeting with his country's diplomatic or consular representatives; in that case they may correspond with him. In particular, in accordance with Article 12 of the Consular Convention between the Government of the U.S.S.R. and the Government of the United States of June 1, 1964 and the Protocol to that convention, notification of a consular official of the arrest or other form of detention of a citizen of the presenting state shall be carried out in the course of 13 days from the moment of arrest or detention, depending on the conditions of communication. A consular official may visit or communicate with a citizen of the presenting state who is under arrest or otherwise detained in the course of 2-4 days after arrest and detention, depending on the place of residence of such citizen. The rights of a consular official to visit and communicate with a citizen who is under arrest or otherwise detained or who is serving a term of imprisonment shall be granted on a periodic basis. Consular Convention with the U.S.S.R., June 1, 1964, [1968] 19 U.S.T. 5018, T.I.A.S. No. 6503.

Soviet law and order. For instance, the transportation of weapons and drugs is forbidden in the U.S.S.R. and, consequently, there is no right to own weapons or drugs. Further, Soviet legislation does not recognize certain limits placed on the rights of foreigners by the laws of their own countries (for instance, the limitation of the legal capacity of married women, illegitimate or adopted children, and so on).

In accordance with universally recognized norms of international law and on the basis of international treaties and agreements signed by the Soviet Union, foreigners may enjoy privileges and immunities not envisaged by Soviet legislation. Thus, Article 129 of the Fundamentals of Civil Legislation of the U.S.S.R. and the Union Republics provides: "If an international treaty or international agreement signed by the U.S.S.R. establishes rules other than those contained in Soviet civil legislation, the rules of the international treaty or the international agreement shall be applied."⁶

The granting of national treatment to foreigners presupposes the possibility of safeguarding the granted rights. In the U.S.S.R., civil rights are safeguarded by the court or arbitration tribunal in cases, in the procedure established by law, and also by comrade courts, trade unions, and other social organizations. In cases specified by law, civil rights are protected administratively (Article 6 of the Fundamentals of Civil Legislation). Further, the Fundamentals of Civil Legal Procedure of the U.S.S.R. state that "foreign citizens have the right to litigation in the courts of the U.S.S.R. and enjoy civil procedure rights on an equal footing with Soviet citizens."⁷

In addition, foreign citizens have the same rights as Soviet citizens to use the services of state notary offices and other organizations with the powers of a notary. The right to use the services of state notary offices and consular institutes of the U.S.S.R. is enjoyed also by foreign enterprises and organizations.⁸

National treatment signifies not only that foreigners receive the same civil law rights as Soviet citizens but also that they have duties springing from Soviet civil legislation. The obligatory duties of foreigners include:

- (1) non-interference in the U.S.S.R.'s internal affairs in any form for any motivation;
- (2) respect for national customs and for the rules of socialist community life;
- (3) observance of laws and public order. For illegal actions on Soviet territory foreigners bear civil, administrative or penal responsibility.

6. Fundamentals of the Civil Legislation of the U.S.S.R. and the Union Republics, art. 129, [1961] 50(1085) Ved. Verkh. Sov. S.S.S.R. 1306.

7. Fundamentals of Civil Procedure of the U.S.S.R. and the Union Republics, art. 59, [1961] 50(1085) Ved. Verkh. Sov. S.S.S.R. 1307, 1322.

8. U.S.S.R. Statute on the State Notary's Office, art. 26, at 19 (1973).

Under the Statute on Diplomatic and Consular Representatives of Foreign States in the U.S.S.R., the head of the diplomatic mission and members of the mission's diplomatic staff enjoy immunity from the criminal, civil, and administrative jurisdiction of the U.S.S.R. and the Union Republics. Moreover, they enjoy personal immunity and cannot be detained or placed under arrest. However, these persons may be subject to the jurisdiction of the U.S.S.R. and the Union Republics in the event of a clearly expressed consent to this by the accrediting state.⁹

Immunity from the civil and administrative jurisdiction of the U.S.S.R. and the Union Republics is established on the basis of reciprocity covering the performance of duties by the administrative and technical personnel of diplomatic missions, provided they are not Soviet citizens or persons permanently residing in the U.S.S.R. Proceeding from the principle of reciprocity, the other privileges and immunities enjoyed by the diplomatic staff may cover administrative and technical personnel on the basis of a special agreement. Examples are the agreements of the U.S.S.R. with the United States and also with Great Britain, the Federal Republic of Germany and Canada on the reciprocal granting of all diplomatic privileges and immunities to the administrative, technical, and service staffs of the diplomatic missions of these countries.

The consular conventions signed by the U.S.S.R. with the United States, Great Britain, Finland, and Sweden provide for special privileges and advantages for the personnel of the consulates of these countries, who are thereby equated to the personnel of diplomatic missions. The consular staffs of these countries receive the privileges and immunities of diplomatic personnel; the administrative and technical staffs of consulates enjoy the same privileges and immunities as the administrative and technical personnel of diplomatic missions, while the service staffs of consulates enjoy the same rights as the service staff of diplomatic missions.

Fully in keeping with the Statute on Diplomatic and Consular Representatives, the Fundamentals of Criminal Legislation of the U.S.S.R. and the Union Republics (Article 4, Part 2) states: "Questions relating to the criminal responsibility of diplomatic representa-

9. Statute on Diplomatic and Consular Representatives of Foreign States on the Territory of the U.S.S.R., arts. 12-13, [1966] 22(1316) *Ved. Verkh. Sov. S.S.S.R.* 397, 400-401. One of these rules is that immunity from civil jurisdiction cannot be invoked when the head of the diplomatic mission or members of the mission's staff enter into civil-law relations as private persons in connection with claims to real property owned by them in the U.S.S.R., inheritance or other activities lying outside their official functions (art. 13, *supra*, at 401). On the basis of reciprocity, the head of a diplomatic mission and members of the mission staff are exempted from all taxes and personal duties (art. 14, *supra*, at 401).

tives of foreign countries and other citizens, who, according to prevailing laws and international agreements, do not come under jurisdiction of the courts in the event they commit crimes on the territory of the U.S.S.R., shall be settled through diplomatic channels.”

The principle of reciprocity operates with regard to some of the rights granted to foreigners. For instance, the trademarks of foreign legal entities and foreign citizens are registered in the U.S.S.R. provided that “Soviet enterprises and organizations are, on the basis of reciprocity, granted the right to register trademarks in the country of the applicant.”¹⁰ Similarly, money inherited by foreigners is remitted from the U.S.S.R. to a foreign country without hindrance provided that there is reciprocity on the part of the given foreign country.¹¹ Questions linked with the recognition of marriages contracted between foreigners at foreign embassies or consulates in the U.S.S.R. are settled in a similar manner.¹²

In some cases recognition of certain rights enjoyed by foreigners is made dependent upon permanent residence in the U.S.S.R. For example, under Article 12 of the Fundamentals of Legislation of the U.S.S.R. and the Union Republics on Public Health, only those foreign citizens who are permanent residents in the U.S.S.R. and have received special training and the appropriate degree at a higher or secondary special institution of learning in the U.S.S.R. may engage in medical or pharmaceutical work in the U.S.S.R. in accordance with the special training and degree received by them.¹³ The same provision (Article 32) provides that foreign citizens permanently residing in the U.S.S.R. enjoy the right to receive medical services on an equal footing with citizens of the U.S.S.R.¹⁴

As we have already noted, in some cases foreigners residing in the U.S.S.R. may enjoy rights on the basis of special agreements. For instance, on the basis of government-to-government agreements and plans for cultural, scientific, and technical cooperation between the U.S.S.R. and certain countries, foreign citizens are enrolled as students or scientific trainees at higher or secondary special institutions of learning and scientific establishments in the U.S.S.R.

10. Decree of May 15, 1962, Trademark Rights of Foreign Citizens and Businesses, art. 8, [1962] 7 S.P.-S.S.S.R. Item 59 (Council of Ministers of the U.S.S.R.).

11. Decree of April 21, 1955, [1959] 11 SBORNIK PRIKAZOV I INSTRUKTSII PO FINANSOVOKHOZIAISTVENNYM VOPROSAM (COLLECTED DECREES AND INSTRUCTIONS ON FINANCIAL-ECONOMIC QUESTIONS) 31 (Council of Ministers of the U.S.S.R., Decree No. 781).

12. Fundamentals of Legislation of the U.S.S.R. and the Union Republics on Marriage and Family, art. 31, [1968] 27(1425) Ved. Verkh. Sov. S.S.S.R. 400, 404.

13. Fundamentals of Legislation of the U.S.S.R. and the Union Republics on Public Health of 1970, art. 12, [1969] 52(1502) Ved. Verkh. Sov. S.S.S.R. 709, 715.

14. *Id.*, art. 32 at 721.

It has been pointed out that in accordance with Article 122 of the Fundamentals of Civil Legislation of the U.S.S.R. and the Union Republics "individual exceptions" may be made with regard to foreigners in the U.S.S.R. What are these individual exceptions? Among them are restrictions on the political rights of foreigners. It is a generally accepted rule that foreigners do not enjoy suffrage and other political rights, which in their entirety are the privilege of the citizens of a country and thereby determine the qualitative character of the status of citizenship. Further, Soviet law specifically provides that non-Soviet citizens in the U.S.S.R. do not enjoy the right to elect or be elected to the Supreme Soviet of the U.S.S.R.¹⁵

Other political rights such as freedom of the press, freedom of assembly and meeting, and freedom of street processions and demonstrations, which are guaranteed to citizens of the U.S.S.R. by the Constitution, may be enjoyed by foreigners only with the permission of the appropriate administrative authorities. For example, foreigners require special permission from the government of the U.S.S.R. to distribute foreign printed matter in the Soviet Union. Also, foreigners need the permission of the Ministry of Internal Affairs to hold rallies and meetings. Applications for a rally or a meeting must be made beforehand to the agencies and other organizations receiving and serving foreigners. In a similar manner foreigners must receive permission for street processions and demonstrations.

There are, in addition, some restrictions on the rights of foreigners in the practice of professions and in fishing and hunting. Among them are:

- (1) the crews of Soviet merchant ships must consist exclusively of citizens of the U.S.S.R.;¹⁶
- (2) the crews of aircraft entered into the State Register of the U.S.S.R. must consist exclusively of citizens of the U.S.S.R.;¹⁷
- (3) the staffs of Soviet diplomatic missions and also of Soviet trade missions in foreign countries must consist exclusively of citizens of the U.S.S.R.;¹⁸
- (4) some commercial pursuits must be engaged in exclusively by citizens of the U.S.S.R.: fishing, marine mammal hunting, plant gathering, the development of minerals and the use of the continental shelf in Soviet waters.¹⁹ These pursuits may be engaged in by foreigners if so

15. Law of January 9, 1950, Statute on Elections to the Supreme Soviet of the U.S.S.R., art. 9, [1950] 2 Ved. Verkh. Sov. S.S.S.R.

16. Merchant Shipping Code of the U.S.S.R., art. 41, (1968).

17. Air Code of the U.S.S.R., 19 (1961).

18. Vienna Convention on Diplomatic Relations, art. 8, done Apr. 18, 1961, 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95.

19. Law of September 15, 1958, Statute on the Conservation of Fish Reserves and on the Regulation of Fishing in the U.S.S.R., art. 7, [1958] 16 S.P.-S.S.S.R. 127. In this statute it is stated that aliens are forbidden to engage in commercial fishing, commercial hunting of marine mammals, and the harvesting of plants in reservoirs of

provided by international agreements signed between foreign countries and the Soviet Union.

Lastly, there are a number of cities and regions in the U.S.S.R. that are closed to visits by foreigners. Foreign citizens do not have the right to visit these cities and regions. Any violation of this rule is punishable by administrative measures or in a court of law.

In the application of national treatment, foreigners in the U.S.S.R. enjoy rights which in many capitalist countries are not recognized: equal pay for men and women, paid leaves, and so on. In turn, this enables the Soviet government, through its diplomatic and consular representatives in the capitalist countries, to protect the civil rights, freedoms, and interests of Soviet citizens accorded by foreign national treatment that provides for rights which have been abolished in the U.S.S.R., e.g., private property in land, right to free enterprise, and so on.

Inasmuch as the content and scope of civil rights and freedoms and also of the duties of foreigners are dissimilar and sometimes quite distinctive in different countries, the need arises for supplementing national treatment with most-favored-nation treatment by means of international agreements. Such agreements usually do not indicate the specific scope of the rights and duties of foreigners but only record the principle that foreign citizens enjoy the same rights and have the same duties as nationals. The equalization of the rights and duties of foreigners on the basis of most-favored-nation treatment is incompatible with any privileges, conditions, or reservations of a discriminatory character. This is the very foundation of the legal significance of that treatment. In the U.S.S.R., citizens of countries with which the U.S.S.R. has agreements according most-favored-nation treatment are entitled to the same civil law rights and are subject to the same duties as citizens of other countries accorded most-favored-nation treatment.

In addition to national and most-favored-nation treatment, international cooperation has given rise to special treatment of foreigners engaged in carriage of persons or goods by air or sea. Thus under Soviet bilateral agreements with foreign countries on direct air com-

the U.S.S.R. However this right has been granted, under certain conditions, by treaty to citizens of Finland, [1959] 14 (946) Ved. Verkh. Sov. S.S.S.R. 255, Norway, [1962] 34(1121) Ved. Verkh. Sov. S.S.S.R. 362, and Japan. Cf. agreement between the U.S.S.R. and Finland of June 13, 1969, 26 SBORNIK DEISTVUIUSHCHIKH DOGOVOROV, SOGLASHENII I KONVENTSII, ZAKLIUCHENNYKH S.S.S.R. S INOSTRANNYMI GOSUDARSTVAMI (COLLECTION OF PREVAILING TREATIES, AGREEMENTS, AND CONVENTIONS CONCLUDED BY THE U.S.S.R. WITH FOREIGN STATES) 307-314 (1973). See also: Mining Rules of the U.S.S.R., art. 6, [1927] 68 SOBRANIE ZAKONOV I RAZPORIAZHENII RABOCHE-KREST'JANSKOGO PRAVITEL'STVA SOIUZA SOVETSKIKH SOTSIALISTICHESKIKH RESPUBLIK 688.

munication it is provided; that visas for the flight crew and personnel of an airliner operated on treaty airlines are issued beforehand for a term of at least six months and are valid for any number of flights in the course of their term of validity; that crews employed on treaty airlines may stop overnight and spend their leisure time in the capitals that have aerodromes, provided they leave on the same aircraft on which they arrived or on their next regularly scheduled flight;²⁰ that each of the signatory countries gives the other signatory country the right to maintain on its territory a definite number of technical and commercial personnel needed for the operation of the treaty airlines.

In merchant shipping it is a universally recognized custom that on a reciprocal basis merchant ships have the right freely to enter the open ports of any country so long as they inform the port authorities of the purpose of such entry. The crews of foreign merchant ships have the right to go ashore and, as long as their ships stay in the port, to go to the territory of the port and the port city by passes issued at a check-point upon the presentation of their identity cards which must be valid and have the photograph of the owner.

These conventional rules are universally accepted. However, when discriminatory measures are taken against the U.S.S.R. the Soviet authorities are compelled to take retaliatory measures. For instance, at the close of 1967 the United States unilaterally instituted a number of discriminatory restrictions on the free entry of Soviet merchant vessels into the open ports of the United States. In retaliation the Soviet Government was compelled, as of January 1, 1968, to take analogous steps with regard to U.S. merchant ships. In accordance with an understanding reached in 1973 the right of Soviet and U.S. merchant ships to enter the free ports of the U.S.S.R. and the United States was restored.

The Soviet Union is a signatory of the Geneva Convention on Territorial Waters and the Adjoining Zone of April 29, 1958.²¹ In

20. Under Soviet law, "a flight into or out of the U.S.S.R. without permission, the non-observance of the route stated in the permission . . . or any other violation of international flight rules shall be punished by imprisonment for a term of one to ten years or by a fine of up to 10,000 rubles with or without the confiscation of the aircraft." Law of December 25, 1958, Law on Penal Responsibility for State Crimes, art. 21, [1959] 1(933) Ved. Verkh. Sov. S.S.S.R. 40.

21. Decree of the President of the Supreme Soviet of the U.S.S.R. on the Ratification of the Convention of the Law of the Sea, [1960] 42(1026) Ved. Verkh. Sov. S.S.S.R. 40. Convention on the High Seas, *done* Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82. In signing this convention, the Soviet Union made the following reservation to Article 23: "The Government of the U.S.S.R. considers that a coastal state has the right to institute a procedure requiring the issuance of permission for the passage of foreign warships across its territorial waters." VOENNO-MORSKOI MEZH DUNARODNO-PRAVOVOI SPRAVOCHNIK (NAVAL INTERNATIONAL LAW REPORTER) 88 (1966).

accordance with this convention foreign non-military vessels have the right of peaceful passage across Soviet territorial waters. During this passage across Soviet territorial waters foreign ships and their crews must observe the laws, decisions and rules of the coastal state concerning: the shipping regime in territorial waters; the procedure for using radio communication, radar and so on; the procedure of using the services of pilots in hazardous areas; roadsteads and regions closed to shipping; the procedure for enforcing penal jurisdiction on board a foreign vessel in the territorial waters of a coastal state; and so on. The authorities of a coastal state exercise penal jurisdiction when a crime committed on a ship affects the coastal states or violates the legal order in the territorial waters and also when the captain of the vessel or the consul of the country whose flag is flown by the vessel requests assistance. The authorities do not exercise their jurisdiction in the event the crime has been committed on the ship before it enters the territorial waters of the coastal state with the exception of crimes listed in international agreements designed to combat crime.