



REAL  
SOCIALISM.  
THEORY  
AND  
PRACTICE

Nikolai Malein

# Civil Law and the Protection of Personal Rights in the USSR



PROGRESS  
PUBLISHERS  
MOSCOW

D9155.12

Nikolai Malein

# Civil Law and the Protection of Personal Rights in the USSR

Citizens of the USSR shall enjoy in full the social, economic, political and personal rights and freedoms proclaimed and guaranteed by the Constitution of the USSR and by Soviet laws.

*Constitution (Fundamental Law) of the Union of Soviet Socialist Republics, Art. 39*



PROGRESS  
PUBLISHERS  
MOSCOW

20463

Translated from the Russian by *Benjamin Rifkin*  
Designed by *Nikolai Kondrashov*

**Николай Малейн**

**ГРАЖДАНСКИЙ ЗАКОН И ОХРАНА ПРАВ  
ЛИЧНОСТИ В СССР**

*На английском языке*

© Издательство «Прогресс», 1985

English translation © Progress Publishers 1985

*Printed in the Union of Soviet Socialist Republics*

М  $\frac{1203050000-441}{014(01)-85}$  82—85

## CONTENTS

	<i>Page</i>
<i>From the Author</i> . . . . .	9
<i>Chapter I.</i> GENERAL DESCRIPTION OF CITIZENS' PERSONAL RIGHTS AND THEIR PROTECTION BY LAW . .	14
<p style="margin-left: 40px;">The Significance of Spiritual Interests (14). Property Relations and Personal Non-Property Relations (18). The Nature of Personal Non-Property Rights (19). The Absolute Nature of Personal Legal Relations (21). Criteria for the Appraisal of Personal Rights (24). Protecting Personal Rights (26). Statute of Limitations (32). Citizens, Passive and Active Capacity (33).</p>	
<i>Chapter II.</i> THE PROTECTION OF HONOR, DIGNITY, AND NAME . . . . .	40
<p style="margin-left: 40px;">The Concepts of Honor and Dignity (40). Conditions for the Defense of Honor and Dignity (42). Parties to Suits for the Defense of Honor and Dignity (47). Means of Defense and Periods for Execution of Court Judgments (52). The Correlation Between Criminal and Civil Law Defense of Honor and Dignity (56). The Right to a Name (60).</p>	
<i>Chapter III.</i> THE PROTECTION OF PERSONAL INVIO- LABILITY . . . . .	65
<p style="margin-left: 40px;">The Protection of Personal Life (65). Advocate Secretary (67). Secrecy of</p>	

## Chapter V.

PROTECTING PERSONAL INTERESTS IN PROPERTY AND PERTINENT NON-PROPERTY RELATIONS . . . . . 142

Personal Non-Property Relations Pertinent to Property Relations (142). Protecting Personal Rights of Authors of Works of Science, Literature and the Arts (145). Protecting Personal Rights of Authors of Inventions, Innovative Proposals, Industrial Designs and Discoveries (157). Protecting Citizens' Per-

## Chapter IV.

PROTECTING HUMAN LIFE AND HEALTH . . . . . 90

The Special Nature of Civil Responsibility (92). General Prerequisites for Rights and Obligations to Make Restitution for Injury (95). The Responsibility of Owners of Sources of Increased Hazard (104). Responsibility for Injury Committed by Minors and Those Lacking Active Capacity (114). Determining the Extent of Harm Subject to Restitution (117). Compensation for Harm in the Event of Death (132). Compensation for Injury Sustained During an Attempt to Rescue Socialist Property (139).

sonal Welfare and Interests in Property Relations (167).

*Chapter VI.* PROTECTION OF PERSONAL INTERESTS BY FAMILY LEGISLATION . . . . . 172

The Conditions for Contracting a Marriage (174). Invalidation of a Marriage (178). Establishing Children's Parentage (180). Adoption (184). Personal Legal Relations Between Parents and Children (185). Deprivation of Parental Rights (189). Personal Legal Relations Between Spouses (193). Personal Non-Property Relations Between Other Members of the Family (195). Dissolution of Marriage (196). Family Property Relations Pertinent to Personal Relations (202). Alimony and Child Support: Rights and Duties (207). Trusteeship and Guardianship... (215).

*Chapter VII.* THE JUDICIAL SYSTEM AND JUSTICE . . . . . 218

Administration of Justice by the Court Alone (220). The Constitution of All Courts on the Electivity Principle (222). The Collegial Hearing of Cases in Court (223). The Independence of Judges and Their Subordination Only to the Law (225). Citizens' Equality Before the Law and in Court (226). The Administration of Justice in a National Language (227). The Procurator's Office and the Bar (227). Civil Procedure (229). The Protection of Civil Rights by Agencies Other than the Court (233).

*Afterword* . . . . . 238



REAL  
SOCIALISM.  
THEORY  
AND  
PRACTICE

Born in 1926, Nikolai Malein, D. Sc. (Law), is a Professor at the Institute of State and Law of the USSR Academy of Sciences.

A specialist in Soviet civil, economic and family law and the theory of law, he has written over 120 works, including monographs, textbooks, articles and pamphlets, some of which have been translated into English, French, German, and other languages.

Among his published monographs are *Civil Law and Personal Rights in the USSR* (Moscow, 1981), *Liability in Economic Relations* (Moscow, 1968), *Compensation for Personal Injury* (Moscow, 1964). He is the author of several chapters in the textbook *Economic Law* (Moscow, 1967, 1970, 1983) and a coauthor of the monograph *The Civil Status of the Individual in the USSR* (Moscow, 1975).

Malein participated in the preparation of the Fundamentals of Civil Legislation of the USSR and the Union Republics, and attended international jurists' conferences in Moscow, Berlin, Prague, Warsaw, and Budapest.



D9155.12

Nikolai Malein

# Civil Law and the Protection of Personal Rights in the USSR

Citizens of the USSR shall enjoy in full the social, economic, political and personal rights and freedoms proclaimed and guaranteed by the Constitution of the USSR and by Soviet laws.

*Constitution (Fundamental Law) of the Union of Soviet Socialist Republics, Art. 39*

721  
604-5  
M1241



PROGRESS  
PUBLISHERS  
MOSCOW

30463

Translated from the Russian by *Benjamin Rifkin*

Designed by *Nikolai Kondrashov*

**Николай Маленин**

**ГРАЖДАНСКИЙ ЗАКОН И ОХРАНА ПРАВ  
ЛИЧНОСТИ В СССР**

*На английском языке*

© Издательство «Прогресс», 1985

English translation © Progress Publishers 1985

*Printed in the Union of Soviet Socialist Republics*

М  $\frac{1203050000-441}{014(01)-85}$  82—85

## CONTENTS

	<i>Page</i>
<i>From the Author</i> . . . . .	9
<i>Chapter I.</i> GENERAL DESCRIPTION OF CITIZENS' PERSONAL RIGHTS AND THEIR PROTECTION BY LAW . .	14
The Significance of Spiritual Interests (14). Property Relations and Personal Non-Property Relations (18). The Nature of Personal Non-Property Rights (19). The Absolute Nature of Personal Legal Relations (21). Criteria for the Appraisal of Personal Rights (24). Protecting Personal Rights (26). Statute of Limitations (32). Citizens, Passive and Active Capacity (33).	
<i>Chapter II.</i> THE PROTECTION OF HONOR, DIGNITY, AND NAME . . . . .	40
The Concepts of Honor and Dignity (40). Conditions for the Defense of Honor and Dignity (42). Parties to Suits for the Defense of Honor and Dignity (47). Means of Defense and Periods for Execution of Court Judgments (52). The Correlation Between Criminal and Civil Law Defense of Honor and Dignity (56). The Right to a Name (60).	
<i>Chapter III.</i> THE PROTECTION OF PERSONAL INVIOABILITY . . . . .	65
The Protection of Personal Life (65). Advocate Secretary (67). Secrecy of	

Money Deposits and Notary Deeds (69).  
 The Confidentiality of Adoption (70).  
 Medical Confidentiality (71). The  
 Privacy of Correspondence, Telephone  
 Conversations, and Telegraphic Com-  
 munications (76). The Privacy of Let-  
 ters, Diaries, and Notes (78). The  
 Right to One's Own Likeness (79).  
 Inviolability of the Home (81). The  
 Protection of Personal Freedom (83).

*Chapter IV.* PROTECTING HUMAN LIFE AND HEALTH . . . . . 90

The Special Nature of Civil Respon-  
 sibility (92). General Prerequisites for  
 Rights and Obligations to Make Resti-  
 tution for Injury (95). The Respon-  
 sibility of Owners of Sources of Increased  
 Hazard (104). Responsibility for In-  
 jury Committed by Minors and Those  
 Lacking Active Capacity (114). Deter-  
 mining the Extent of Harm Subject to  
 Restitution (117). Compensation for  
 Harm in the Event of Death (132).  
 Compensation for Injury Sustained Dur-  
 ing an Attempt to Rescue Socialist Pro-  
 perty (139).

*Chapter V.* PROTECTING PERSONAL INTER-  
 ESTS IN PROPERTY AND PERTI-  
 NENT NON-PROPERTY RELA-  
 TIONS . . . . . 142

Personal Non-Property Relations Pertin-  
 ent to Property Relations (142). Pro-  
 tecting Personal Rights of Authors of  
 Works of Science, Literature and the  
 Arts (145). Protecting Personal Rights  
 of Authors of Inventions, Innovative  
 Proposals, Industrial Designs and Dis-  
 coveries (157). Protecting Citizens' Per-

sonal Welfare and Interests in Property Relations (167).

*Chapter VI.* PROTECTION OF PERSONAL INTERESTS BY FAMILY LEGISLATION . . . . . 172

The Conditions for Contracting a Marriage (174). Invalidation of a Marriage (178). Establishing Children's Parentage (180). Adoption (184). Personal Legal Relations Between Parents and Children (185). Deprivation of Parental Rights (189). Personal Legal Relations Between Spouses (193). Personal Non-Property Relations Between Other Members of the Family (195). Dissolution of Marriage (196). Family Property Relations Pertinent to Personal Relations (202). Alimony and Child Support: Rights and Duties (207). Trusteeship and Guardianship... (215).

*Chapter VII.* THE JUDICIAL SYSTEM AND JUSTICE . . . . . 218

Administration of Justice by the Court Alone (220). The Constitution of All Courts on the Electivity Principle (222). The Collegial Hearing of Cases in Court (223). The Independence of Judges and Their Subordination Only to the Law (225). Citizens' Equality Before the Law and in Court (226). The Administration of Justice in a National Language (227). The Procurator's Office and the Bar (227). Civil Procedure (229). The Protection of Civil Rights by Agencies Other than the Court (233).

*Afterword* . . . . . 238



## *FROM THE AUTHOR*

The issue of the rights of the individual is one of the most significant and relevant problems of our time. It is an issue of national and global concern. In 1948, the United Nations General Assembly proclaimed the Universal Declaration of Human Rights. Human Rights Day, the 10th of December, is celebrated in many countries all over the world, including the USSR. In 1973, the Soviet Union ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and in 1975 signed the Final Act of the Helsinki Conference on Security and Cooperation in Europe.

These international acts proclaim and recognize the rights of all people to life, liberty, personal inviolability, and dignity, freedom of conviction, speech, and conscience, peaceful assembly and association, participation in governing one's own country, the right to work, rest, education, social security, and the defense of one's moral and material interests. Every individual may only be limited in the exercise of his or her rights and freedoms by law in the interest of the due recognition and respect of other citizens' rights and freedoms, for the satisfaction of the just demands of morality and public order, and for the general welfare in a democratic society.

The Constitution of the USSR, adopted in 1977, recognizes and legally confirms all the rights and freedoms of Soviet citizens proclaimed in these international covenants and guarantees their real implementation in Soviet society. The Soviet Constitution declares that all power in the USSR is vested in the people (Art. 2), that the Soviet state and all its bodies function on the basis of socialist legality, ensure the maintenance of law and order, and safeguard society's interests and individual citizens' rights and freedoms (Art. 4), and that work collectives take part in discussing and deciding state and public affairs (Art. 8).

Citizens of the USSR enjoy in full the social, economic, political and personal rights and freedoms proclaimed and guaranteed by the Constitution of the USSR and by Soviet laws. Among these, political and personal rights and freedoms, that is, values of a non-economic character, are quite significant. When these values and interests are incorporated in and guaranteed by the Constitution, they assume a legal character, and social relations which arise pertaining to these values and interests become legal relations covering the rights of one party and the corresponding duties of the other.

The right of citizenship, the electoral right, the right to participate in the administration of governmental and social affairs, the right of association, freedom of conscience and religious belief, freedom of speech and of the press, freedom of assembly, meetings, street processions and demonstrations are all political rights and freedoms guaranteed in Chapter 7 of the Constitution of the USSR. These constitutional rights and freedoms are regulated in detail pri-



marily by Constitutional law as a branch of Soviet law.

Another category of rights includes those rights which are inalienable from the individual, which protect various aspects of the individual's life and privacy. These are the rights to protect one's honor, dignity, good name, health, and the right to privacy, including the privacy of the family, etc.; such rights are guaranteed by the provisions of Chapter 7 of the Constitution of the USSR.

Relations arising in connection with these rights and interests of the individual are regulated and protected primarily by civil and family legislation and, in some cases, by provisions of other branches of Soviet law (for example, by criminal or administrative law). That is why the norms of civil law are first of all considered in this book.

The source of civil law is the Fundamentals of Civil Legislation of the USSR and the Union Republics, a law adopted by the USSR Supreme Soviet on December 8, 1961.<sup>1</sup> The Fundamentals of Civil Legislation, as implied by their very name, are the law in which the fundamental provisions of law are established, in accordance with the Constitution of the USSR; the provisions of the Fundamentals are subject to be enforced throughout the territory of the USSR.

The Soviet Union is a multinational state in which fifteen Union republics are federally united. Each

---

<sup>1</sup> *Gazette of the Supreme Soviet of the USSR*, 1961, No. 50, item 525. After adoption of the new Soviet Constitution in 1977 this Law was amended; see *Gazette of the Supreme Soviet of the USSR*, No. 44, 1981, Item 1184.