

**THE USSR PROPERTY LAW:
POSSIBLE FORMS OF DEVELOPMENT**

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The reconstruction of the political and economic situation in the Soviet Union is closely connected with the development of new forms of property. The historical development of our country has resulted in the appearance of the state-managed economic system.

Not only governmental, but also co-operatives and semi-private farms (the so-called "subsidiary economy" with a small share of family income, plant growing and stock breeding) came under direct or indirect pressure of the State. Moreover, there was no appropriate legislation. Contradicting the fact that during the last decades there were real changes in the sphere of property in western countries, in the Soviet Union legislation remained the same as in the 1930s. That is why nowadays we are facing a severe social, economic and political crisis.

At present we have just started to create a juridical and economic base for the development of pluralistic forms of property. After the long and rather heated discussions in 1989-90, two preliminary Acts "On Lease" and "On Land", and the Law "On Property in the USSR" were adopted. The adoption of this legislation is considered the first necessary measure to carry out radical economic reform in order to solve critical social problems.

1. Property of USSR Citizens

In my opinion, the main feature of the law under consideration is the priority given to the property rights of the individual. The subordination of personal interests to social ones was the dominating principle in state policy, official ideology and juridical and economic theories for decades. That is the reason why the State was regarded as the "single and united" proprietor of the main part of the national wealth. Both in theory and in practice, most attention was paid to property as "mean of production" (mainly as industrial capital) while all property relating to "consumer goods", needed to meet various requirements of the population, was considered of minor importance. In other words, all individuals depended on the State for issues of welfare. Nowadays, a new approach to state management and legislation is coming into force: the state benefits when its citizens are able to obtain significant movable and fixed

property. This new idea has been formally expressed in the structure of the Law "On Property".

Unlike tradition, individual property right is formulated well before taking into consideration the issues related to the juridical regulation of collective and state ownership. These formal changes reflect changes in the content of the legislation under consideration.

1.1. *A Problem of the Private Property Right's Revival*

Draft statutes related to individual property right have been discussed in depth especially when they concerned private property relative to the economic activity. In Soviet society, a negative attitude to any form of private property and private entertainment has stable and deep roots. Not only politicians and dogmatic theorists, but a large number of managers and wide circles of the population have always been, and still are, under the influence of the notion that socialism and private property are incompatible. In the 1930s "the total and final victory of socialism" was proclaimed. It referred only to the economic sphere and was based only on the liquidation of private ownership and the securing of "the undivided rule" of collective ownership. This also resulted in the application of the administrative-commanding methods of state management, i.e. central planning. Therefore many people regard the restoration of private property as negatively as the "restoration of capitalism".

It is also significant that, despite the views of the founders of Marxism, for a long period socialist ideas actually included a principle of equality of forms of ownership; subsequently the liquidation of private property became the dominant ideology. The stability of this ideology has been supported in practice by a strong trend of equal profit distribution between individuals employed both in the state and the co-operative sectors of the economy. Therefore, the opponents of private ownership were able to intimidate certain social circles with the threat that "the Soviet bourgeoisie" would again gain strength.

Those favouring the inclusion of private ownership clauses in the law attempted to draw people's attention mainly to economic aspects. In their opinion, the restoration of private ownership can help speed up the reform process and overcome the social and economic crisis making it possible to produce more goods (especially foodstuffs) and services for our population. In conclusion, a pragmatic point of view has won. Although the term "private property" is not used in the legislation (a kind of compromise), the Supreme Soviet of the USSR legalised the existence of private property by introducing definitions such as "citizens' property", "private business" and "work economy" (*trudovoe khozjajstvo*).

Former legislation limited individual ownership rights to an "individual ownership of consumer goods", that is to say ownership of goods not used in business activities. In other words, according to the law there was no possibility to organize private enterprises. At present citizens' rights have been significantly extended; they are now allowed to obtain means of production (machinery, raw materials, means of transportation and so on) in their "work economy".

These forms of private business (e.g. forms of small business) are allowed in agriculture (under the title of "peasant economy"), trade, services and other economic spheres. The law especially underlines the citizens' right to own money, shares and other securities. As to the problem of the management of intellectual industrial property, in the near future appropriate legislation will be considered. On the basis of world experience in the field of patent law, citizens' ownership rights on their inventions and other intellectual properties has to be extended and guaranteed.

The Land Act contains some compromises of its own. The law does not recognise the existence of property on land but simply establishes the right to "inherit property for life". This means that the land which is needed to operate a "work economy" and is occupied by private houses is not subject to sale. It can only be inherited. Considering our historical background and current condition, this is a very progressive decision. It should stimulate the stable development of "work economies" by giving the definite juridical guarantees which are described in detail in the statutes of the legislation "On Land".

1.2. Perspectives for House Ownership

The significant extension of the right to own houses is one of the most important and progressive aspects of new Soviet legislation. Unlike the productive and trading sectors, a considerable part of the housing stock (approximately 40%) is concentrated into the hands of individuals who own single-flat dwellings. Houses divided into a number of flats are owned by the State. The payment of rents only compensate for less than 25% of maintenance expenses while the remainder plus more than 80% of investments in new house-building are shouldered by the State.

Some houses belong to co-operatives, but despite the fact that they have been built at the citizens' personal expense, families do not have housing rights and cannot, therefore, sell or manage their homes as they wish.

Historically, the structure of property in the USSR makes millions of people dependent on the State and on its officials in particular, thus sharply limiting citizens' personal freedom. The situation is becoming even worse due to the constant deficit of houses. 37-38 million people live in houses with less than 5 square metres per person. Many of them have been waiting for free-of-charge state flats for 10 to 15 years, or even longer. Thus, the "housing right", outlined in the constitution of the USSR usually called "Brežnev constitution", has simply turned out to be juridical fiction. The standards of living of Soviet population are not under discussion here; however, the housing issue inherited from the past is a pressing problem compared to others. Attempts to overcome the economic and political crises are made all the more difficult and complicated by the serious housing difficulties. The law "On Property" creates more favourable conditions for handling the housing questions; it enables the development of new forms of property where the purchase and sale of houses and flats are regulated by free-market-like mechanisms. Even before the passing of this law, the Supreme Soviet of the USSR, the Soviet government, had

permitted the sale of state flats to the citizens; now this right has been extended and secured.

The Soviet parliament has legalised the right to redeem state flats and thus they have become the property of individual citizens; house-owners co-operatives now come under the same jurisdiction. It has been established for the first time that a flat-owner can sell his own property, leave it in his will, lease it or conduct other actions which do not breach the law. The right steps have been taken to ensure the growth and the development of the housing market. The distribution of houses will be regulated by market relations rather than the bureaucratic state apparatus.

The new statutes on housing rights are of historical importance and will have long-term consequences. They will inevitably cause some qualitative changes in the condition of people's lives and their civil and political freedom. In the near future, the transformation of a theoretical right into a practical one will entail a marked progress in overcoming material and financial obstacles.

It will be difficult to extend the housing supply owing to the shortage of building materials, the inefficiency of construction firms, the poor quality of new houses and the wear and tear of old ones (because of insufficient maintenance). At the same time it is objectively impossible to raise demand for houses on the part of the majority of the population, especially those who already live in state flats, in the short run. Low income levels and the large proportion of family budgets allocated to the purchase of foodstuffs, clothing and other goods are serious obstacles. Besides, it is difficult for millions of people who have got used to waiting for free-of-charge state houses to abandon their habits. Therefore, the enforcement and success of the housing right and the organisation of an extensive housing market will demand a long-term period. This process can be speeded up by attracting foreign investment into house construction.

1.3. *Economic Restrictions of Private Property*

New laws which regulate citizens' property rights will not, naturally, cause radical economic or social changes in our society. Regardless of the so-called "individual small holdings" (plots of land of 0.1-0.25 hectares), private business should experience its second birth. The new political and legislative activities of the State will be able to encourage an increase in the production of goods and services and to hasten the promotion of a market economy—since a number of small private enterprises already exist. But in terms of the total deficit, private business will inevitably face tremendous obstacles.

There exists no premise that many citizens would be ready to go in for farming at their own risk in order to restore the so-called "work peasant economies" on a large scale. The situation differs sharply from that of the 1930s, when the transition to the famous "New Economic Policy" was being realised. At that time there were 20-25 million peasants who could have significantly increased agricultural production, if they had sufficient resources and the ability to operate freely.

On the contrary, at present, not only more workers, but additional material and technical resources are needed. Unfortunately, they are unavailable on the commodity market in the quantity and quality that would enable small-scale production on modern levels. The same difficulties and contradictions are linked to the fact that there is no labour market in the USSR. Moreover, owners willing to hire workers are bound to face both legal and practical problems.

Until recently, the use of the term "labour market" was condemnable. Both in theory and in practice a preference was given to "planned use of manpower resources" on the part of the State. Only nowadays have legal and economic restrictions on the state-managed labour market been lifted as an attempt at reviving the critical situation.

The law "On Property" declares every citizen's exclusive and unconstrained right to dispose of his ability to work productively and creatively in his own enterprise, or under labour contracts with other individuals. At the same time, all owners can conclude the contracts "on using labour" with other individuals on the terms, and within the limits, stated according to the law. The law contains only one restriction – which is deprived of any strict juridical definition – "the alienation of a worker from the means of production and the exploitation of workers". Traditionally, this restriction can be interpreted as the prohibition of wage labour in private enterprises, which are called "work economies", because it is inherently assumed that they are run by the proprietor and his family. However, such an interpretation contradicts the proprietor's right to conclude contracts to employ other workers, which is declared in statute 1 of the Law.

This inconsistency reflects the results of a compromise, which has been achieved after profound discussion. Thus, some additional legal obstacles could hinder the formation of an unrestricted labour market. There are, however, some grounds to suppose that under the pressure of economic necessity wage labour will, little by little, be used in private business also. But at present not all the required conditions are existent. Thus, the possibility of restoring private property and private business in the near future is rather doubtful. The fact that we have no labour market in our country greatly influences practical application of new legal rules managing collective and state forms of property.

2. Overcoming the Exclusive Position of State Property

For technical, economic and social reasons, private ownership and private business are not likely to play a significant or dominating role in the reform of our economy. In the sectors of production where large and very large enterprises are the rule, liquidation of private ownership has reached an irreversible stage. It is more realistic to proceed from the suggestion that radical changes in the economy and the successful fulfillment of economic reform will depend on how rapidly and to what extent it will be possible to renew state and co-operative ownership, which is dominant everywhere. The present social and economic crisis in the USSR is connected not only with the

prevalence of state and co-operative ownership, but also with the concrete historical forms which have developed in the past and under the pressure of Stalinism in particular.

The successful adoption of new legislation has to overcome the State's monopoly of property and qualitatively change the content of state ownership rights.

2.1. Transition to a Diversity of Forms of Collective and State Ownership

New legislation makes it possible to overcome the monopoly of state ownership. First of all diverse forms of collective ownership should be developed. For a long time these forms, including co-operatives, were considered in theory and in practice, as inferior and subordinate to the state form. What is more important, it has been suggested that, in future, they should merge and come under state ownership which is usually called public property. Actually there is no need for this, as co-operatives in agriculture, trade and in some other sectors of the economy from the beginning of 1930s found themselves in the same situation as state enterprises. In essence, they had no right to possess, use and command their property. This is one of the main reasons for the agricultural crisis.

Now, co-operatives which have been set up in the past should be given a non-governmental character. It is necessary to transform them into true collective ownership forms with full control over their means of production and manufactured goods. Legislative acts adopted recently are aimed also at encouraging the activity of co-operatives in certain new fields (industrial goods and services for the population, constructions, catering, industrial design, etc.). Besides co-operatives, the law "On Property" regards joint-stock companies and some other business societies and associations as collective owners. A state enterprise may be transformed into a stock company on the basis of a common decision taken by the "work collective", i.e. the enterprise staff and its authorised state body. Enterprises, institutions, state bodies and employees and other individuals may become shareholders if the law does not rule otherwise. It has been planned to submit a project of special legislation regulating the activity of joint-stock companies and other business associations and societies for examination by the Supreme Soviet of the USSR in 1990.

The "lease" enterprises have a legal status of their own which is attributed to state enterprises granted on lease to "work collectives", i.e. their staff. All products manufactured by their workers, all incomes and other property acquired by the leasing collective are in their possession. A special law "On Lease" in the USSR closely regulates relations between leasing collectives and authorised state bodies. A lease-holder has the right of redemption of the lease enterprises completely. In this case, the enterprise becomes "the property of a collective enterprise". Not only all manufactured products, but also all means of productions (industrial premises, equipment and machinery) become the property of the common collective. Such an enterprise may be created by

directly transforming the enterprise into the ownership of work collective by authorised state body.

Basic legal rules which regulate all the situations connected with forms of collective ownership, such as public property, religious organizations, charitable and other public funds are set down in this law.

State involvement in the national economy will be reduced as diverse forms of collective property grow. The transformation of specific forms of state property should be no less, if not more, important in the long run.

Two basic aspects are important in this connection. Firstly, state property exists in several forms, such as all-Union property of the Union and Autonomous Republics, of autonomous Regions and Areas and Municipal property. The Soviets of People's Deputies in charge of these territorial divisions are the subjects of these forms of property. This division creates certain legal prerequisites for the coordination of interest of the central state power and those of the state bodies executing power in the territories of the Union's Republics and other administrative political forms. However, the content of this important section of the law is unclear, its consequences are unsure. Contradictions existing between the central power and the Republics are not resolved in the law. For instance, in one article of the law, land (its entrails, water, etc.) is regarded as "an inalienable common property of the peoples inhabiting a given territory". From this viewpoint, the corresponding Republics of the USSR should be recognised as subjects of land property. But in other articles the right to own land is distributed between the central Union powers and the Republics.

This contradictions originates particularly from the fact that this law was adopted before legally resolving the problem of Federal organisation of the Soviet State. In the case that political sovereignty of the Union's Republics is adopted, they will evidently become the owners of the land on which they are situated and will regulate their land questions independently.

Secondly, the law considerably broadens the property rights of state enterprises. Before its adoption, in theory and in accordance with legislation, an enterprises had only the right of "operational management" that in fact reduced its independence to zero. It was the State itself, without any authorisation form specific bodies and persons, that was considered the sole owner of the property of the enterprise. Now this unrealistic principle has been rejected. The new law states that an enterprise possesses the property "under the right of full economic handling". An enterprise possesses, uses and disposes of its property and performs all the activities which are not in contradiction with the law according to its own discretion. At the same time all the benefits, after tax payments, are at the disposition of the work collective. In certain situations, like in the reorganisation of bankrupt firms, the staff has the right to demand that it be granted on lease to them or that it be transformed into a firm based on collective property. Though the rules which define the legal status of a state enterprise are far from perfection, they might have a positive significance in creating certain legal prerequisite for independent production management according to market demand.

Thus, in the new legislation state property is no longer defined in terms of

ownership of the whole people, i.e. property which is used to an equal extent in the interest of the people. This notion has prevailed for a long time in the USSR. This juridical fiction as well as the fiction of "the State of the whole people" contributed to strengthening conservative, neo-Stalinist forces in politics and ideology. New legal forms of collective and state property correspond to the necessity of performing radical economic reforms.

2.2. The Fundamentals of Property Rights of Foreign Juridical and Natural Persons

One of the major contradictions that restrains the successful development of the Soviet economy is its isolation from the world market, thus implying the impossibility of taking advantage of the international division of labour. Now, a new era has begun. The new political course of the Soviet government is directed towards all possible developments of international economic relations, the integration of our economy into the world economy. The new legislation on property orientates our economy towards the implementation of this policy.

The ownership rights of foreign persons on the territory of the USSR are expounded separately in Section V of the law "On Property". All the clauses of the law concerning ownership rights of the Soviet citizens are applicable also to foreign individuals who are living on the territory of the Soviet Union. The only exception to these rules is in the case of the "work economy" (*trodoboe khozjajstvo*) ownership right. Only foreign citizens living permanently in the territory of our State may be given this right. As far as the ownership rights of joint ventures with the participation of Soviet juridical persons are concerned, these enterprises may be set up in the form of joint-stock companies, business societies and associations. They may own the property needed to perform their business activity provided by their corresponding constituent documents. Under the laws "On Lease" and "On Land" foreign States, juridical persons and individuals have the right to become leaseholders of various objects of property including land plots (but lands earmarked for agriculture use is excluded).

The law states that foreign juridical persons may possess industrial and other enterprises, their buildings, constructions and other property needed for business. Other legislative acts state particular cases and rules concerning the adoption of this right. There is hope that more favourable juridical and economic conditions for foreign investments in the Soviet economy will develop in due course.

3. The General Conditions for Implementation of the New Ownership Right

It is unlikely that the adoption of new legislation alone will lead to the development and strengthening of a variety of forms of property and have a significant influence in the economic situation. Many policy-makers and scientists in the USSR overestimate the real economic significance of the laws

that regulate business and managerial activity. Recently, however, practical difficulties connected with the implementation of the law regulating property relations and other social relations have been recognized to a greater extent.

One of the obstacles to the implementation of this law originates from the fact that it is the first time in Russian history that there are the conditions for promoting the formation of ideas on the inviolability of property, respect for ownership rights and legal rules on the issue. The Stalinist policy of forced expropriation from peasants and all private owners, are confined by the wide application of forced and half-forced labour, and the deterioration of living conditions had the greatest negative consequences. Now, the development of new ownership forms depends on the process of changing the mentality and *modus operandi* of many millions of people.

It is also necessary to overcome the willingness of governmental administrative bodies to preserve a tradition of disregarding laws and supporting their violation by means of various instructions and methods of recommendation. For this reason it is impossible to immediately introduce guarantees of protection of ownership right in everyday life provided for by the new law. Difficulties and contradictions caused by economic, political and ideological factors are also very important.

3.1 *Property as a Prerequisite and Result of Reproduction Processes*

Property relations in the USSR constitute one of the preliminary conditions for the process of the reproduction of goods in different industries of the national economy. They continue to influence production results, the way of life and work conditions. It is necessary to change from emergency and crisis economic conditions of reproduction to normal social ones so that dramatic changes in the ownership rights will take place on a nationwide scale. It is the first time in Soviet history that objective financial, demographic, material and technical and other conditions favouring the efficient development of the production of goods and services have existed. In the past, Soviet society was in a state of permanent social economic crisis. Now, this crisis has got some new features related to the long term consequences of those activities that took place in the past. The general and deepest cause of the current crisis has its roots in a state of the productive forces (factors of production) and in the structure of the national economy inherited from the past. The state monopoly of the majority of products and the push for extensive economic growth restrained scientific and technological progress. Eventually equipment and technology became more and more outdated, depreciation and repair costs increased. If one adds to all these conditions the various social problems (the housing deficit, poor quality of health services, etc.) and environmental upheavals that have become more dramatic year after year, then the huge difficulties and problems facing *perestrojka* (reconstruction) of the Soviet economy and other fields of public life become evident.

It is clearly impossible to perform a real economic revolution and to transform essentially abnormal conditions into socially normal ones on macro and

micro levels in a short time. The new forms of property have little realistic chance of success in the near future. Not only private and collective forms of ownership, but the new right of state property that supposes wide-scale enterprises independence in day-to-day and strategic decision making, cannot suddenly eliminate economic inequality, the lack of consumer goods and technological underdevelopment.

Thus, the possibility of prompt transition from state managed, bureaucratic methods of economic administration to methods based on pure economic decisions is eliminated. The problem can be reduced only to the interference of governmental officials, to their inability to master modern management techniques. New forms of economic relations will strengthen only as a result of a series of social changes.

3.2. Dependence on the Reformation of the Political System

It is well known that the economy always depends on state policy. In the Soviet society the priority was usually given to a political approach to the settlement of economic problems. The whole system of production management was adjusted to implementing the Communist Party and government policy by changing its structure and methods of performance. This practice of party and government-managed administration by means of compulsory directives hindered not only the renewal and further development of new ownership forms but also the implementation of property rights of co-operatives and state enterprises that exists by law. The political system that developed in the past could not fail to become a factor hindering the renewal of the economy and the creation of new forms of ownership.

The new property legislation undermines the system to some extent, but does not abolish it. As a result, the same situation exists in the case of central planning. A significant feature of state ownership in general is the direct link it has with political power. That is why the transformation of state forms of ownership, its adjustment of present situation and the resolution of social economic problems are impossible without radical political reform.

Unfortunately, changes in the internal situation in the USSR enabling basic political reform (particularly the one-party system) have begun only quite recently. The implementation of reform of the economic system and the transformation of poverty relations were slowed down for this reason. Events that have taken place in 1990 (further development of democracy, the constitution of legal status of different parties and public organizations, elections of the President, etc.) are evidence of the radical changes taking place in the Soviet Union political system. Certain grounds exists for suggesting that this process is irreversible. Real political conditions for the development of diversified forms of ownership, acceleration of the recovery from social and economic crisis will be created as the result of this process. One of the most important conditions will be that party committees and government apparatus will put an end to their permanent interference in economic decision-making. Then, there will be a possibility that directors and managerial bodies will turn into true

managers provided that the structural reconstruction of the national economy and a reduction in the deficit of labour and consumer goods takes place.

Conclusions

Up to now, specific historical development is reflected in ideological views predominant in the USSR. Many people continue to place their hopes mainly in the activity of the bodies of state power and administration, not in private initiative. An interrelated implementation of political and economic reforms will contribute to the development of new theory and ideology. It will then be possible to combine a pragmatic and theoretical approach, and to accelerate the reform of the Soviet economy [theoretical, practical and historical aspects connected with the problem of property are considered in more detail by the author in his book *Economics and the Law* soon to be published by the "Economics" publishing house in Moscow].