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Constitutional Implications of Changes in Property Rights in the USSR

Introduction

The major Soviet property rights issue at the start of the 1990s was the fate of centralized ownership of state property. Since the 1930s, the Constitutions and laws have established and recognized the central government as the owner of all land, almost all productive resources, and a large portion of urban housing. Republic and local governments owned no property; state enterprises owned no property; collective farms owned no land; private businesses owned only a tiny fraction of productive assets; and most apartment dwellers did not own their apartments. Within and outside the Soviet Union, critics blamed this overcentralization of property ownership for the political and economic shortcomings of the Soviet system. There was a consensus that much state property should devolve to the non-state sector and that much of what remained should devolve to the republic and local levels. The possibility that some republics will secede from the Soviet Union has fueled the discussion of change and raised important legal questions about the fate of USSR property located in these republics.

The 1977 Soviet Constitution,¹ like the 1936 Constitution, envisions a highly centralized system of state property ownership. This ownership is centralized in two respects. First, the state owns all the land and the most important means of production. Second, state ownership is ownership by the USSR as a whole, not by republic or local bodies. Article 11 of the 1977 Constitution provides:

State ownership is the common wealth of the whole Soviet people, the basic form of socialist ownership.

The following are owned exclusively by the state: land, its minerals, bodies of water, forests. The basic means of production in industry, construction, and agriculture, means of transportation and communications, banks, property of trade, municipal, and other enterprises organized by

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1. See KONST. SSSR [Constitution of the USSR] art. 6, *reprinted in* BUTLER, COLLECTED LEGISLATION OF THE USSR AND CONSTITUENT UNION REPUBLICS I-1 7 (Vol. I, 1983).

the state, the basic urban housing stock, and also other property necessary for the conduct of state tasks shall belong to the state.²

By the start of 1990, this article of the Constitution appeared doomed. The Congress of People's Deputies delegated to the Supreme Soviet the task of developing an alternative Constitutional scheme of property ownership.³

I. Devolution of USSR Ownership to Republic and Local Governments

A. Land and Natural Resources

Draft legislation published by the Supreme Soviet in 1989 abandoned the theory of a unitary state property system. The Draft Ownership Law provided:

State ownership is the wealth of Soviet citizens and belongs to the Soviet people as a whole, the people of union republics, of autonomous republics, of other autonomous entities and administrative-territorial entities.⁴

At the start of 1990, the USSR (as opposed to the republics or local governments) still owned all land and natural resources. Republic and local authorities, however, had long had the power to determine local land use policies and to allocate land to particular users.⁵ They could not, however, sell land.

In the Supreme Soviet session in the fall of 1989 there was considerable disagreement over the question of devolution of land ownership. This debate resulted in the appearance of competing drafts of legislation. In November 1989, the USSR Supreme Soviet published a draft which provided:

Land and other natural resources are the non-takeable wealth of Soviet citizens, belong to the peoples living on the given territory, to the Soviet people as a whole.⁶

The Soviet press published at least two alternative draft laws on ownership. The Supreme Soviet of the Lithuanian republic submitted one draft which provided:

2. *Id.* at art. 11.

3. *O porucheniiakh Verkhovnomu Sovetu SSSR i Konstitutsionnoi komissii po nekotorym konstitutsionnym voprosam* [On Delegation to the Supreme Soviet of the USSR and the Constitutional Committee on Certain Constitutional Matters], *Izvestiia*, Dec. 23, 1989, at 1, col. 4.

4. *Proekt: Zakon Soiuz Sovetskikh Sotsialisticheskikh Respublik o Sobstvennosti v SSSR* [Draft: USSR Law on Ownership in the USSR], *Izvestiia*, Nov. 18, 1989, at 1, col. 4, art. 22(1) [hereinafter Draft Ownership Law].

5. *Osnovy zemel'nogo zakonodatel'stva Soiuz SSR i soiuznykh respublik* [Fundamentals of Land Legislation of the USSR and the Union Republics], *Ved. Verkh. Sov. SSSR*, 1968, No. 51, item 485, as amended, *Ved. Verkh. Sov. SSSR*, 1980, No. 3, item 42.

6. Draft Ownership Law, *supra* note 4, art. 23(1).

Natural resources (land, its minerals, internal and territorial waters, air space over the territory of the republic, the continental shelf) are in the ownership of the union republics.⁷

The other, drafted by the USSR Supreme Soviet Committee on Ecology, provided:

Land in the USSR may be in the ownership of Soviets of Peoples' Deputies of all levels, state and collective enterprises, societal and religious organizations, and private individuals. The sizes of private land-holding shall be related by the USSR Law on Land, in accordance with which land may be rented out, sold, and transmitted by inheritance.⁸

Latvia also published its own draft law on ownership, slanted toward increased rights for the republics.⁹

In December 1989 the USSR Supreme Soviet published draft land legislation which took a more radical approach to the devolution of land ownership: "Land is the non-takeable wealth of the people living on a given territory."¹⁰ In February and March 1990, the Supreme Soviet adopted a final version of the Land and Ownership Laws with the same definition of land ownership as the one contained in the draft land legislation.¹¹

B. Other Assets

The Ownership Law is heavily weighted toward USSR ownership. The law would continue USSR ownership of major transport enterprises, military equipment, and assets of the state bank.¹² Republic ownership would include less important transport facilities and banks.¹³ Local government ownership would include housing, local transport, utilities, and recreation facilities.¹⁴ Proponents of decentralization will, no doubt, argue that the law does not nearly go far enough.

7. *Proekt razrabotan v Litovskoi SSR: Zakon Soiuzna SSR o Sobstvennosti SSSR [Draft Prepared in the Lithuanian SSR: Law of the USSR on Ownership by the USSR]*, *Izvestiia*, Nov. 21, 1989, at 2, col. 1 [hereinafter Lithuanian Draft].

8. *Proekt razrabotan Komitetom Verkhovnogo Soveta SSSR po voprosam ekologii i rational'nogo ispol'zovaniia prirodnykh resursov: Zakon Soiuzna Sovetskikh Sotsialisticheskikh Respublik o Sobstvennosti v SSSR [Draft Prepared by the Committee of the USSR Supreme Soviet on Matters of Ecology and the Rational Use of Natural Resources]*, *Izvestiia*, Nov. 21, 1989, at 2, col. 1.

9. *Latvian Parliament Amends Several Constitution Articles*, TASS dispatch, Riga, Jan. 12, 1990, available on NEXIS, TASS library.

10. *Proekt: Osnovy zakonodatel'stva Soiuzna SSR i soiuznykh respublik o zemle [Draft: Fundamentals of Legislation of the USSR and the Union Republics on Land]*, *Izvestiia*, Dec. 6, 1989, at 1, col. 4, art. 4 [hereinafter Draft Land Legislation].

11. Land Legislation, *Izvestiia*, March 6, 1990, at 1, col. 1; Ownership Law, *Izvestiia*, March 10, 1990, at 2, col. 1.

12. Ownership Law, *supra* note 11, art. 21.

13. *Id.* art. 22.

14. *Id.* art. 23.

C. The Issues

The ongoing debate over the allocation of ownership between the USSR and the republics concerns two separate issues. The first is the division of power between governmental bodies at various levels in the Soviet Union. Although there is universal agreement that the present system is too centralized, there is great disagreement over the amount of decentralization needed. The second issue is how state property will be allocated if a republic leaves the USSR. The property law is bound to face strong criticism from both decentralizers and secessionists.

II. Republic Independence and Property Rights

A. Introduction

The peoples of nations forcibly incorporated into the Soviet Union have long had a strong but suppressed desire for independence, or at least autonomy. Soviet troops invaded the Caucasus in the 1920s and incorporated Azerbaijan and Georgia into the USSR. The Hitler-Stalin Pact assigned Lithuania, Latvia, and Estonia to the Soviet Union. After Soviet invasions, puppet governments in these countries voted to join the Soviet Union. Before Gorbachev, anyone who tried to suggest that a republic secede faced severe legal or extra-legal consequences.¹⁵ Starting in the late 1980s, however, Soviet authorities began to tolerate talk of exercising the right of secession. Now, in early 1990, Lithuania and Estonia, and perhaps Azerbaijan, Georgia, Latvia, and Moldavia are attempting to gain independence from the USSR. This push toward republic independence is raising questions regarding the allocation of property rights.

B. Theories of Independence

The independence movements rely mainly on the legal theory that the initial incorporation of various republics into the USSR was illegal.¹⁶ Gorbachev, on the other hand, argues that independence can come only through Article 72 of the Soviet Constitution, which provides: "Each republic maintains the right of free secession from the Soviet Union."¹⁷ The different theories have important implications for post-independence property rights. Undoing the illegal invasion and forcible incorporation of a republic would appear to require returning property rights to the *status quo ante bellum*. On the other hand, Gorbachev's approach, when combined with the bias of the new ownership legislation toward USSR ownership, could leave the USSR with important ownership rights in a secessionist republic.

15. O. IOFFE & P. MAGGS, *SOVIET LAW IN THEORY AND PRACTICE* 247 (1983).

16. Keller, *Lithuania Declares Annexation by Moscow Void*, N.Y. Times, Sept. 24, 1989, § 1, at 5, col. 1; Fein, *Upheaval in the East: Soviet Congress Condemns '39 Pact That Led to Annexation of Baltics*, N.Y. Times, Dec. 25, 1989, § 1, at 1, col. 2 [hereinafter Fein].

17. Mikhail Gorbachev Address—Full Text, TASS dispatch, Vilnius, Jan. 14, 1990, available on NEXIS, TASS library [hereinafter Gorbachev Address].

C. Substantive Property Rights

By early 1990, both sides were attempting to set the substantive and procedural rules for a division of property rights. The draft property legislation prepared in Lithuania provides:

In case of the exit of a union republic from membership in the USSR, it shall receive:

(a) compensation in the amount of its general share ownership. The compensation may be received in the form of monetary funds or material resources located on the territory of the republic;

(b) part of the common joint ownership, determined depending upon the share of participation by the union republic during the years of its membership in the USSR and the size of the common joint ownership of the union republics at the moment of its exit from the USSR. It may be returned in the form of monetary compensation or material resources under the same conditions as indicated in subparagraph (a) of the present paragraph.¹⁸

At a meeting in Lithuania in January 1990, Gorbachev stated:

In this connection we should accelerate the drafting and passing of a law on the mechanism of the withdrawal of a constituent republic from the Soviet Union and of its self-determination. There must be such a mechanism. If there is such a right, then there must be a mechanism of its implementation. I promise it will be developed . . .¹⁹

Algimantas Cekuolis, a member of the council of the Lithuanian nationalist organization, Sajudis, replied that Mr. Gorbachev "was proposing to adopt a divorce law when the Lithuanians did not even consider themselves married."²⁰

Gorbachev cited the issue of property rights in military installations as an example of the difficulties involved in secession without clear legal guidelines:

It seemed to some that it is enough to have a show of hands to decide the matter. This is understandable in an inexperienced man, but he who deals with history, politics and real life realizes that problems of this kind are not resolved in this way. Things are considerably more complicated. Today, for example, we met with the military and I heard them cite some figures. The Baltic Military District alone has basic assets worth 21 billion roubles in Lithuania. Comrade Ivanov, Commander-in-Chief of the Baltic Fleet, said that the Navy's assets in the Baltic republics amount to 35 billion. These are real facts. Apart from security. You understand: it is necessary to study and sort things out to decide what is to be done. It is necessary, indeed, to come down from concepts, from rostrums—to life. These problems must be discussed with, for instance, a conciliatory commission, and the process should be conducted normally, democratically. The problem of secession comprises deep economic, social, political-legal, defence-strategic and international geopolitical aspects. It is

18. Lithuanian Draft, *supra* note 7, at 2. col. 1.

19. Gorbachev Address, *supra* note 17, at 13.

20. Fein, *supra* note 16, at 6, col. 6.

impossible to ignore the interests of the union, in which the interests of all republics are interrelated and do not exist in isolation.²¹

Politics will likely prevail over law in any final disposition of state property if a republic manages to break away from the Soviet Union. Nevertheless, the players involved apparently think that legal maneuvering is an important aspect of developing a political bargaining position.

III. "Privatization": The Devolution of State Ownership in Productive Enterprises to Non-Governmental Entities

A. Introduction

From 1987 through early 1990, the idea of "privatization" gained increased acceptance. Very little privatization occurred in practice, however. Legislation adopted in 1989 and 1990 provides a framework for a very extensive privatization policy. The most important question facing the Soviet law of ownership is whether or not this planned revolution in ownership will actually take place.

In the late 1980s, two serious economic problems were facing the Soviet Union. First, its planned economy was incapable of keeping up with market economies in the production of goods and services. Second, the public had accumulated large quantities of cash, causing serious inflationary pressures. A movement toward private enterprise offered potential solutions to both these problems. Private management would be more efficient and cash would flow from the public to the state in the form of compensation for state property used by private parties, or transferred to private hands. In the Supreme Soviet legislation was presented which was designed to provide a path to privatization through leasing or selling off state enterprises. In April 1989, the Supreme Soviet adopted rather timid legislation providing for medium and long term "leasing" of means of production to lessee organizations and individual farmers.²² Six months later it adopted more radical legislation, giving the lessee the right to buy the property (excluding land) of the lessor and thus convert the leased business to a private business.²³ The new Ownership Law specifies the permissible forms of ownership of the new non-governmental businesses.

The changes in property rights are designed to allow transition to an economy that would be competitive in two senses. First, there would be market competition between independent producers of goods and services. Second, there would be competition among various forms of property ownership, including state enterprises, cooperatives, business

21. *I Have Already Had an Opportunity to Speak at One of the Meetings*, TASS dispatch, Jan. 14, 1990, available on NEXIS, TASS library.

22. *Ob arende i arendnykh otnosheniakh v SSSR*, Ved. Verkh. Sov. SSSR, 1989, No. 15, item 105.

23. *O poriadke vvedeniia v deistvie Osnov zakonodatel'stva Soiuza SSR i soiuznykh respublik ob arende* [On the Procedure for Putting into Effect the Fundamentals of Legislation of the USSR and the Union Republics on Leasing], *Izvestiia*, Dec. 1, 1989, at 1, col. 7.

partnerships, and stock corporations. At present, both types of competition are lacking in the Soviet economic system.

In December 1989, the highest Soviet legislative body, the Congress of People's Deputies, issued a decree outlining the planned economic revolution.²⁴ It planned to complete the passage of a package of legislation which would create the structure for privatization by the summer of 1990 and would revise wholesale prices and agricultural procurement prices by the start of 1991. Then, during the 1990s, there would be a gradual transition from state ownership to ownership by independent entities and from planned economy to market economy. There is little doubt that Gorbachev can push through both the proposed legislation and the price reform. The proposed legislation, however, appears insufficient to form the basis of a market economy. The decree provides no clear mechanism for overcoming the bureaucratic inertia that will surely be a major barrier to movement away from central planning.

The Ownership Law introduces a variety of new forms (and new names for old forms) of ownership of means of production. Soviet citizens may own a labor-based business (*trudovoe khoziaistvo*) or a peasant farm (*krest'ianskoe khoziaistvo*). The law creates a new concept, "collective ownership," which includes a variety of forms of ownership: ownership of leased enterprises, ownership of a collective enterprise, ownership by members of a cooperative, ownership by a stock company, ownership by economic associations or partnerships, ownership by societal organizations, and ownership by religious organizations.²⁵

B. Labor-based Business

Since the 1920s, Soviet law has allowed some private businesses to operate, but under severe restrictions. The 1977 Brezhnev Constitution provided, "in the USSR individual labor activity shall be permitted in accordance with the law in the sphere of handicrafts, agriculture, domestic services for the populace, and also other forms of activity based exclusively on the personal labor of citizens and members of their families."²⁶ Legislation adopted in 1986 and 1987 clarified and enhanced the status of small, individually-owned businesses.²⁷ The provisions of

24. *O merakh po ozdorovleniiu ekonomiki, etapakh ekonomicheskoi reformy i printsipial'nykh podkhodakh k razrabotke trinadtsatogo piatiletnego plana* [On Measures for Healing the Economy, Stages of the Economic Reform, and Approaches in Principle to the Development of the Thirteenth Five-Year Plan], *Izvestiia*, Dec. 22, 1989, at 1, col. 1 [hereinafter On Measures for Healing the Economy].

25. See Ownership Law, *supra* note 11, arts. 10-18.

26. KONST. SSSR, *supra* note 1, art. 17.

27. *Ob individual'noi trudovoi deiatel'nosti* [On Individual Labor Activity], *Yed. Verkh. Sov. SSSR*, 1986, No. 47, item 964, art. 6; *Rekomendatsii o primenenii nekotorykh polozhenii Zakona SSSR "Ob individual'noi trudovoi deiatel'nosti"* [Recommendations on the Application of Certain Provisions of the USSR Law "On Individual Labor Activity"], *Biulleten' normativnykh aktov* [Bulletin of Normative Acts], 1987, No. 7, at 29 [hereinafter *BNA*]; *Pis'mo Goskomtruda SSSR, Ministerstva finansov SSSR i Ministerstva iustitsii SSSR ot 10 apreliia 1987 g. No. 52-IG*. [Letter of the USSR State Committee on Labor and Social Problems, the USSR Ministry of Finance, and the USSR Ministry of Justice of April 10, 1987, No. 42-IG], *BNA*, 1987, No.

the Ownership Law go beyond the 1986-87 legislation and beyond the 1977 Constitution. The scope of the Constitution allowed limited private businesses to labor-based, family businesses. Article 8 of the Ownership Law goes further than the Constitution in two ways. It allows capital-intensive businesses and permits participation of non-family members. The participants will own defined shares of the business property. They will not enjoy limited liability. Thus, Article 8 of the Ownership Law creates an ownership category similar to that of business partnerships in American law.

C. Peasant Farm

Article 9 of the Ownership Law introduces the concept of the "peasant farm" (*krest'ianskoe khoziaistvo*). The peasant farm may own livestock, equipment, crops, and supplies. In addition, the new land legislation provides that the peasant may hold land in "lifetime inheritable possession."²⁸ Participants in a peasant farm own its property jointly, but without defined shares, as in the traditional Russian peasant or collective-farm household. Republic legislation may, in time, provide for other forms of joint ownership. For example, the participants may define shares by contract.

The major issue with respect to the peasant farm is the compromise proposal to give farmers "lifetime inheritable possession." Clearly, Soviet agriculture needs a better incentive system. The question is whether anything short of allowing private ownership of land can provide sufficient incentives.

D. Collective Enterprise

Article 12 of the Ownership Law provides that a Collective Enterprise is owned by those working at the enterprise, with the ownership interest of each person determined by the contribution he has made to the buy-out of the enterprise from the state or to the subsequent accumulation of

7, at 35 (supplementing the Recommendations on the Application of Certain Provisions of the USSR Law "On Individual Labor Activity," *BNA*, 1987, No. 7, at 29); *Poriadok obespecheniia grazhdan, zanimaiushchikhsia individual'noi trudovoi deiatel'nost'iu, produktsiei proizvodvenno-tekhnicheskogo naznacheniiia i priobreneniia etimi grazhdanami izlishnikh i neispol'zuemykh material'nykh tsennostei i otkhodov proizvodstva i potrebleniia u predpriatii i organizatsii* [Procedure for Supplying Citizens Engaging in Individual Labor Activity With Goods for Production and Technical Purposes, and for the Obtaining by these Citizens of Excess and Unused Items of Value and Production and Use Waste at Enterprises and Organizations], *BNA*, 1987, No. 6, at 38; *O poriadke prodazhi grazhdanam, zanimaiushchimsia individual'noi trudovoi deiatel'nost'iu, tovarov v gosudarstvennoi i kooperativnoi roznichnoi torgovoi seti i realizatsii izgotovlennykh imi izdelii* [On the Procedure for Sale to Citizens Engaged in Individual Labor Activity of Goods in the State and Cooperative Retail Trade Network and the Sale of Goods Made by Them], *BNA*, 1987, No. 6, at 41; *O stavkakh arendnoi platy za nezhilnye pomeshcheniia, predstavliaemye grazhdanam, zanimaiushchimsia individual'noi trudovoi deiatel'nost'iu* [On the Rates of Rental Payments for Non-Residential Premises Made Available to Citizens Engaged in Individual Labor Activity], *SP RSFSR*, 1987, No. 7, item 53; *O merakh po uluchsheniiu organizatsii prodazhi tovarov, proizvodimyykh kooperativami i grazhdanami, zanimaiushchimsia individual'noi trudovoi deiatel'nost'iu*, *SP SSSR* 1987, No. 45, item 152.

28. Land Legislation, *supra* note 11, art. 25.

enterprise capital.²⁹ Article 12 provides only a very sketchy outline of the nature of the individual enterprise worker's ownership interest. This interest is not transferrable. The worker receives the value of his interest if he leaves the enterprise. The worker's heirs receive the value of the worker's interest if the worker dies. This type of enterprise will only be viable when detailed legislation specifying the rights and duties of the association and its members is adopted. Because there is no mechanism for interests in collective enterprises to be bought and sold in a capital market, collective enterprises present only a step on the way to a true market economy.

E. Cooperatives

After a rather timid beginning in 1987,³⁰ the Soviet legislature authorized "cooperatives" as a general business form in 1988.³¹ These "cooperatives" were in essence private companies, enjoying limited liability, but without tradeable shares of stock (though they could issue something like bonds). To a large extent they were free from price controls. Many cooperatives managed to buy goods at low, regulated prices from state enterprises and farms and then resell them at high, market prices. This legalized black market operation aroused a great deal of public resentment and led to legislation restricting cooperative activities.³² The fate of the cooperative legislation casts grave doubts upon the potential success of the new wave of privatization laws. People will be less likely to invest in private business ventures after the change in policy on cooperatives.

F. Business Associations and Business Companies

The Ownership Law introduces the institution of the business association and business company.³³ If the law is passed, a business company will enjoy the status of a legal person. Those who contribute assets to the company will have ownership interests and apparently will enjoy limited liability, but will not receive stock certificates. This will be an

29. Ownership Law, *supra* note 11, art. 12.

30. *O sozdanii kooperativov obshchestvennogo pitaniia* [On Creating Food Service Cooperatives], SP SSSR, 1987, No. 10, item 41; *O sozdanii kooperativov po bytovomu obsluzhivaniiu naseleniia*, [On Creating Service Cooperatives], SP SSSR, 1987, No. 11, item 43; *O sozdanii kooperativov po proizvodstvu tovarov narodnogo potrebeniia* [On Creating Consumer Goods Production Cooperatives], SP SSSR, 1987, No. 10, item 42; *O sozdanii kooperativov po vyrobokke konditerskikh i khlebobulochnykh izdelii* [On Creating Confectionery and Bakery Cooperatives], SP SSSR, 1987, No. 44, item 148.

31. *O kooperatsii v SSSR* [On Cooperatives in the USSR], Ved. Verkh. Sov. SSSR, 1988, No. 22, item 355.

32. *O vnesenii izmenenii i dopolnenii v Zakon SSSR "O kooperatsii v SSSR"* [On Amending and Augmenting the USSR Law "On Cooperatives in the USSR"], *Izvestiia*, Oct. 21, 1989, at 1, col. 1; *Ob uporiadochenii trgovno-zakupochnoi deiatel'nosti kooperativov i regulirovanii tsen na tovary (uslugi), realizuemye kooperativami naseleniia i organizatsiiami* [On Regularizing Trade and Procurement Activity of Cooperatives and Regulation of Prices for Goods (and Services) Sold by Cooperatives to the Public and Organizations], *Izvestiia*, Oct. 21, 1989, at 1, col. 1.

33. Ownership Law, *supra* note 11, art. 14.

appropriate form for small, closely-held businesses and trade associations.

G. Stock Corporations

Creation of a stock corporation (*aktsionernoe obshchestvo*) may be a means of privatization of state property, of mobilization of property for productive purposes, or of organization of a state enterprise. A stock corporation may be formed from a state enterprise "by the issuance of stock for the full value of the property of the enterprise Stockholders may be enterprises, institutions, organizations, and state agencies."³⁴ The Ownership Law allows Soviet citizens to own stock except as forbidden by law and allows foreign legal persons to own stock only as specifically permitted by law.³⁵ It envisions the stock corporation as one form of joint venture.³⁶ Obviously, more detailed legislation will be needed to make stock companies a reality. The Congress of People's Deputies has called for drafting of law on stock corporations and its presentation to the Supreme Soviet during 1990.³⁷

In addition to serving as a possible vehicle for privatization, stock corporations may provide a means for removing enterprises from the suffocating control of ministerial hierarchies, or for restructuring those hierarchies, on more rational lines determined by economic competition rather than planners' fiat. To prevent corporate takeovers from leading to monopolies, the Congress of People's Deputies has asked for an "antimonopoly program" and a draft law on competition.³⁸

The mere availability of the stock corporation as a corporate form, however, does not guarantee any change in the Soviet economy. Stock corporations have existed through most of Soviet history. Since the 1920s, however, they have not played any significant role in the economy.

H. Societal Organizations

Societal organizations are limited to owning property related to their charter purposes. Presumably a stamp collectors' club could not own an airplane factory. An interesting question is whether these provisions could be used to prevent the Communist Party from maintaining an economic basis by having the government grant it ownership of a large number of highly-profitable enterprises.

I. Religious Organizations

The Ownership Law gives religious organizations the power to own buildings and other property appropriate for performing their func-

34. Ownership Law, *supra* note 11, art. 15.

35. *Id.* arts. 15, 28-29.

36. Ownership Law, *supra* note 11, art. 29.

37. On Measures for Healing the Economy, *supra* note 24, at 1.

38. *Id.* at 1.

tions. Although religious organizations have long lacked legal status, decrees of the Council of Ministers have given these organizations the right to own property as if they were legal persons.³⁹ While the change is symbolic of the improved status of religion under Gorbachev, it is of little practical importance to the economy.

IV. Increasing the Categories of Property Which Soviet Citizens Can Own

A. Interests in Productive Enterprises

The Ownership Law vastly expands the ability of citizens to invest in productive enterprises. They are permitted to own interests in labor-based businesses, peasant farms, cooperatives, business companies, and stock corporations. The Ownership Law envisions possible limitations on ownership only with respect to stock corporations.⁴⁰ Undoubtedly, the implementation of the Law may lead to the creation of a new class of wealthy Soviet property owners. New tax legislation in 1990 may be highly progressive, in order to slow enrichment of Soviet entrepreneurs.⁴¹ Such legislation will, however, curb the incentives that the Ownership Law is designed to create. The emergence of this class of wealthy Soviet property owners may lead to popular resentment which may in turn slow or stop the attempt to move toward a competitive market economy. Alternatively, if the population accepts a class of wealthy capitalists as essential for improvement of its standard of living, the Communist Party will be deprived of its *raison d'être*.

B. Housing

For many years, Soviet policy kept most state-owned urban housing and rented apartments at far below market prices. Vacated or newly-built apartments have been assigned to persons already residing in the locality who need better housing, or those who have political influence or who bribe officials. The lack of an urban housing market has made Soviet society very immobile. Labor immobility, with its negative economic effects, is a consequence of this housing situation. A more serious consequence has been the maintenance of ethnic concentrations. These concentrations have fostered secession movements and civil strife.

In 1989, the government legalized the outright sale of apartments. Such sales may be a step toward the creation of a free market in housing and could help soak up excess rubles in public hands.⁴²

39. *O molitvennykh zdaniakh religioznykh obshchestvakh [On Buildings for Prayer of Religious Societies]*, 3 *Sobranie Deistvuiushchego Zakonodatel'stva SSSR [Collection of Legislation in Force of the USSR]* 393.

40. Ownership Law, *supra* note 11, art. 15.

41. Conversation by the author with Soviet tax officials in 1989.

42. *O prodazhe grazhdanam v lichnuiu sobstvennost' kvartir v domazh gosudarstvennogo i obshchestvennogo zhilishchnogo fonda [On the Sale to Citizens in Personal Ownership of Apartments in Buildings of the State and Societal Housing Stock]*, SP SSSR, 1989, No. 1, item 4.

V. Procedures for Determining and Protecting Property Rights

In the past, because the state owned almost all property of economic importance, there was little need for formal procedures to determine and protect property rights. Disputes over the allocation of land and other state property were solved through political processes. As the number of potential owners of property multiplies, however, the potential for a larger number of property disputes increases. Some will be of an ordinary commercial nature: questions of land title, contract performance, etc. Others will have political overtones: division of state property between the USSR, the republics, and the local governments; and questions arising out of republic secession. To encourage investment in property, there must be confidence that property owners will have effective remedies against arbitrary governmental action.

The Ownership Law enlarges property owners' judicial remedies. It allows courts to invalidate administrative and local government regulations that infringe on ownership rights and to award damages. Courts may award damages but may not invalidate USSR or republic legislation that infringes upon ownership rights.

The newly-created Commission on Constitutional Supervision has the right to suspend republic or lower level USSR legislation which violates the Constitution or is contrary to USSR laws.⁴³ In theory, this Commission may consider and decide some of the disputes over property rights now arising between republics and the USSR. Some republics are likely to reject the authority of the Commission, as Lithuania has already done.⁴⁴

Conclusion

The outcome of the current changes in property rights may determine both the political makeup of the Soviet Union and the success of its economy. Recent events in Lithuania and Azerbaijan suggest that careful manipulation of the legal system may be more effective than guerilla warfare in the protection of republics' rights and movement toward independence. The property and land legislation, when supplemented by promised legislation on joint stock societies, monopolies, and competition, will provide a framework for a market economy in the Soviet Union.

Unless Soviet law undergoes many additional radical changes, however, the new system of ownership rights may turn out to be merely a new set of names for the moribund central planning system. The legislation forbids non-governmental land ownership and thus removes the most valuable category of assets from the market system. It makes no provisions for a modern banking or capital market system. It provides

43. *O konstitutsionnom nadzore v SSSR [On Constitutional Supervision in the USSR]*, *Izvestiia*, Dec. 26, 1989, at 1, col. 7.

44. *Uscilla, Lithuania: No Referendum Will be Held*, TASS dispatch, Jan. 16, 1990, available on NEXIS, TASS library.

for continuation of planning through “state orders” for a substantial part of Soviet output. It does not provide an escape from administered prices.

