SOVIET CIVIL LAW

by

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INTRODUCTION

The civil law of the USSR has been the subject of many works published by Soviet as well as foreign legal scholars. Before emigrating from the Soviet Union, I myself wrote a three-volume textbook on Soviet civil law,[1] quite apart from dozens of other books and hundreds of articles on this subject. Why, then, should there be a vital need to return to this topic? Is it to describe a partial rejuvenation of civil legislation at the all-union and republican levels?[2] But the necessary information could easily be found in Soviet official or literary sources. Is it to subject this rejuvenation to a free and objective analysis? But, in such a case, it would suffice to publish an article instead of writing a book. The simple fact is that although the publication of yet another book on Soviet civil law might appear repetitious, there really is no repetition at all. My task is not to repeat that which has already been published more than once, but to fill in the gaps which have resulted from the unavoidably one-sided character of Soviet (internal) and non-Soviet (external) publications.

Internal publications have one undisputed advantage. They are written by authors who know Soviet civil law from the inside, who understand not only its letter but its spirit, and who are able to distinguish between its lifeless formulae and its real vitality. However, the Soviet political regime deprives these authors of the opportunity to write down exactly what they believe and in this regard policies of "glasnost" (openness) declared by Mikhail Gorbachev have not entailed substantial changes in the realm of legal doctrine, judging from new publications which will be referred to below. Even the most honest scholars are forced to distort legal reality, at least to the extent necessary to safeguard their personal safety and to make sure that their completed works will be

1. O.S. Ioffe, *Sovetskoe grazhdanskoe pravo*, Leningrad, vol.I, 1958; vol.II, 1961; vol.III, 1965.
2. *E.g.*, the edict of the Presidium of the USSR Supreme Soviet of 30 October 1981 on the modifications of, and supplements to, the Fundamental Principles of Civil Legislation of the USSR and the Union Republics (*Ved.SSSR* 1981 No.4 item 1184) and the corresponding edicts of republican agencies concerning the civil codes of the union republics, *e.g.*, the edict of the Presidium of the RSFSR Supreme Soviet of 24 February 1987 (*Ved.SSSR* 1987 No.9 item 250).

published. It goes without saying that when an inveterate careerist puts pen to paper, it becomes almost impossible to tell the truth from falsehood, or reality from fantasy.

External publications also have their own very important advantages. They are written by authors who are not shackled by the Soviet political regime, and neither personal safety nor concerns about the publication of their works can induce them to produce intentional distortions. However, foreign scholars, being separated from Soviet reality, cannot, in their studies, go beyond the limits of legal texts. This unfortunate situation is improved only in part by intermittent contacts with Soviet scholars or by occasional visits to the Soviet Union. It goes without saying that if a Western professor of Soviet law strives to court the good will of the country which he studies in order to make that country more accessible to him, or if he embellishes the same country's law in order to make his profession look more important in the eyes of Western people, he deserves no more confidence than does a native Soviet careerist.

To combine the advantages of internal and external research, and at the same time to avoid the disadvantages of both, one must ideally be a Soviet scholar by origin and a foreign scholar in one's present position. My forced emigration from the USSR has placed me in this extraordinary situation. It is therefore not surprising that I am attempting now to fully utilize this opportunity, cherishing a hope that, maybe, it will help me to produce a truthful book on Soviet civil law, in contrast to my one-sided works published in the USSR. One can, of course, say that despite their advantages, Soviet emigrés are vulnerable on one very essential point: being angry with the USSR in general, they must also maintain an angry posture with regard to Soviet law.[3] Even if this were not an empty postulate, an angry posture does not preclude truthfulness, just as an affected kindness is not a guarantee against a clever falsehood. The problem is not one of subjective predisposition towards truth or falsehood which does not depend on sympathy or animosity. An objective opportunity to deal with Soviet law, independently from political or cognitive limitations – this is the most important condition of truthfulness in the area of legal research. Since such an opportunity has presented itself to me, I shall do my best to exploit it fully, and let those who identify truth about Soviet law with an angry posture, say whatever they will. If, in our disputes, facts prevail over emotions, the reader as the ultimate judge can be relied upon to make the right decision.

Before, however, initiating a direct analysis of civil law in the USSR, some introductory questions must be answered. What do the Soviets understand by civil law, and how can one explain distinctions between it and other branches of Soviet law? Which legal sources are characteristically used by Soviet civil law,

3. John N. Hazard, review of O.S. Ioffe and P.B. Maggs, *Soviet Law in Theory and Practice*, in *International Journal of Legal Information* 1984 Nos.1 and 2, 34.

and how are they interrelated? Is there a system of civil law that is peculiar to the USSR or does this system duplicate the models already known to legal history? Does the study of this branch of Soviet law demand any special methods of research, or is it sufficient to use the universally applicable theoretical approaches? Only when these questions are fully answered can the general and special problems of Soviet civil law be considered worthy of description or analysis. Consequently, the introduction to this book is not less important than any of the chapters which follow it.

1. Definition of Soviet Civil Law

a. Concepts

According to its statutory definition, "Soviet civil legislation shall regulate property and personal non-property relations connected therewith ... In instances provided for by law, civil legislation also shall regulate other personal non-property relations".[4] Between these two sentences there are words which describe the purposes of civil law regulation in the USSR as "creating the material-technical base of communism and satisfying more fully the material and spiritual needs of citizens". These words are not entirely demagogic. They also have practical importance, in allowing for the denial or restriction of civil rights under the pretext that these rights have been exercised in contradiction to their legally formulated purposes. But to use such a pretext, judicial agencies have seldom recourse to the above-mentioned provision, because a great number of other rules can be used to effect the same results with greater ease and simplicity. At any rate, for the purposes of defining civil law, the first-cited formula is sufficient without its demagogical and sinister addition. This formula, however, has proved itself to be very complicated, and led to a great number of theoretical discussions regarding virtually every single word and every notion therein.

What does *property relations* mean? In Soviet doctrine, they are defined either as relations of production, or as the volitional part of production relations, or as relations which have an economic value owing to their connection with the means of production, etc.[5] Judicial and other practice in the realm of civil law functions without any of these criteria. But Russian legal traditions, inherited by Soviet jurisprudence, attach great importance to general definitions and to the explanation of all of their components. Therefore, in accordance with a strictly observed rule in the civil law doctrine in the USSR, it would

4. Fundamental Principles of Civil Legislation, art.1.

5. For a review of these and other concepts, see S.N. Bratus', *Predment i sistema sovetskogo grazhdanskogo prava*, Moscow 1963; O.S. Ioffe, *Razvitie tsivilisticheskoi mysly v SSSR*, Part I, Leningrad 1975.

be impossible to characterize Soviet civil law without an explanation of the essence of property relations.

What, then, are *personal non-property relations*? In this regard, Soviet doctrine seems almost unanimous,[6] in considering as personal non-property relations those which deal with incorporeal values: honor and dignity, authorship, etc. As for the two kinds of the same phenomenon spelled out by the law itself, ("personal non-property relations connected with property relations" and "other non-property relations") these are also unanimously characterized in the following way. Personal non-property relations are "connected" with property relations when both stem from a common source, as, for example, copyright, where the right of authorship and the right to receive permissible profit would result from the very creation of literary or scientific works. In the absence of such a "connection", the law speaks of "other" personal non-property relations. This distinction, in contrast to the definition of property relations, does have a practical importance. The first kind of personal non-property relations belongs to civil law in general unless there are specific provisions which provide otherwise. The second kind falls within the scope of civil law only in those cases directly indicated in the legal text itself: civil law protection of honor and dignity,[7] of the interests of persons depicted in a work of fine art,[8] and of the confidentiality of personal letters, diaries, notebooks, and other private writings.[9]

Legal provisions also outline, along with the kinds of relations encompassed by civil law, the circle of potential participants in these relations. The latter can be established between state, cooperative, and social organizations; between citizens and state, cooperative or social organizations; and between citizens themselves.[10] Thus, from the viewpoint of the law, this problem has been solved with all necessary certainty; as a doctrinal issue, however, the legal solution has become the object of sharp dispute of a practical rather than theoretical significance.[11] Although civil law deals with property relations independently of the peculiarities of their participants, civil law rules addressed to state and other organizations differ immensely from those intended for citizens. In the first instance, the centralized plan as an administrative method prevails over the contract as a civil law approach, while, in the second instance, the civil law contract usually depends on the partners' agreement, and only in exceptional circum-

6. For more details, see Serge L. Levitsky, *Copyright, Defamation, and Privacy in Soviet Law*, No.22 *Law in Eastern Europe*, (F.J.M. Feldbrugge, ed.), Alphen aan den Rijn, The Netherlands/Germantown, MD 1979.
7. Fundamental Principles of Civil Legislation, art.7.
8. Art.514 of the RSFSR Civil Code and the corresponding articles of the civil codes of all other union republics, except the Kazakh SSR.
9. Kazakh Civil Code, art.491; Uzbek Civil Code, art.540-1.
10. Fundamental Principles of Civil Legislation, art.2.
11. See note 5.

stances will it rely upon some administrative prerequisites. Notwithstanding such essential distinctions, one group of Soviet scholars suggests preserving the present situation in which economic planning is regulated by administrative law and economic contracts by civil law. Their opponents think otherwise. They insist upon limiting the sphere of civil law to property relations between citizens or those in which they participate at least on the one side, while, according to their viewpoint, rules about economic planning and rules about economic contracts must be withdrawn from administrative and civil law in order to create a new branch of the Soviet legal system – economic law. Each of these conceptions has its own rationale, depending on the point of departure. Those who want to see an extremely centralized Soviet economic system are adherents of economic law. Those who think that some economic freedom is necessary reject economic law.[12] Some countries within the Soviet bloc (Czechoslovakia, the GDR) have already implemented in practice the theoretical idea of economic law. In the USSR, the theoretical discussion goes on, but thus far the legislator's position has remained unchanged. As for future developments, the situation is extremely uncertain. If maneuvering between economic centralization and economic decentralization is thought to be a stable Soviet policy, then the comprehensive functioning of civil law in the realm of property relations and restricted application in the realm of personal non-property relations will be preserved. If, on the contrary, centralization reduces the role of decentralization in economic management to nil, then the actual influence of civil law will be restricted in connection not only with personal but also with property relations. Gorbachev's economic reforms, a subject of subsequent discussion, embody the trend to decentralize. But these reforms also contain substantial elements of centralism. In addition, new developments in the USSR will entail new reforms and these will develop in opposite directions, as the history of the Soviet economy proves. As a result, numerous twists in the correlation between civil law and economic law remain possible.

b. Differentiation

Thus, civil law in the USSR deals with property and personal non-property relations between state and other organizations, between those organizations and citizens, and between citizens themselves. However, these relations are not isolated from other branches of Soviet legislation, such as administrative law, family law, land law, labor law or collective farm law. Therefore, in order to

12. Both attitudes toward the Soviet discussion on economic law can also be found in Western literature. Compare, for example, the viewpoints of H.J. Berman, "The Concept of Soviet Economic Law and its Implications for the Soviet Planned Economy", and S. Pomorski, "The Current Economic Law Debate and its Ramifications", in *Perspectives on Soviet Law for the 1980s*, (F.J.M. Feldbrugge, ed.), The Hague/Boston/London 1982, 192-202, and 205-210.

clearly define civil law, one must differentiate it from similar legal phenomena.

To some extent, this problem has been solved directly by the law in force. According to article 2 of the Fundamental Principles of Civil Legislation, this legislation "shall not apply to property relations based on the administrative subordination of one party to another". In other words, the differences between civil law and administrative law do not reside in the peculiarities of the subject of regulation – in both cases this can be represented by property relations, but in the specific method of regulation: civil law uses the method of coordination; administrative law operates by the method of subordination. This criterion, although quite sufficient in practice, cannot satisfy Soviet jurisprudence in terms of ideology. The Marxist thesis that the economic basis serves as a determining factor and that the juridical superstructure is only a derivative result is incompatible with a differentiation between legal branches according to the method of regulation (the juridical superstructure) rather than the subject of regulation (the economic basis). Still, Soviet scholars have striven, in vain, to find more satisfactory criteria from the Marxist point of view. All their attempts at solving the problem, either exclusively or principally based on the subject of regulation, have failed. Actually, this failure has been implicitly recognized by one of the most recent Soviet textbooks on civil law where the method of coordination is typified as a component not only of civil law regulation but also, at the same time, as a component of the subject of this regulation.[13] As a result, the legal definition of civil law – proclaimed insufficient in words – has become the only definition available to Soviet doctrine in practice.

The situation is even more complicated with regard to other branches of Soviet law that are close to civil law on the subject of regulation. In this respect the legal text does not go beyond the general instruction that "family, labor, land . . . relations, as well as relations in collective farms arising from their charter, shall be regulated respectively by family, labor, land...and collective farm legislation".[14] Where the line between all of these legal branches stemming from civil law should be drawn is not officially laid down. The theoretical explanation, which either avoids asking "what" one or another of them are or answers the question in a very uncertain manner, has concentrated on the question of "why" the enumerated branches are separated from civil law in the USSR. Sometimes, this may sound reasonable as, for instance, when one explains the separation of land law from civil law by referring to the withdrawal of land from economic circulation. In other instances, the arguments put forward are obviously preposterous, as, for instance, when one contends that family law cannot be a part of Soviet civil law because, in contrast to marital relations in the capitalist countries, under socialism marriage is based not upon property trans-

13. *Sovetskoe grazhdanskoe pravo*, Part I, Leningrad 1982, 4-9.
14. Fundamental Principles of Civil Legislation, art.2.

actions but upon mutual love. In the meantime, this remains a very important practical issue for the Soviet legal system. Soviet civil codes have been drafted with a far greater degree of care than the Soviet family, labor or land codes. Suffice it to say that the civil codes contain a so-called "general part", consisting of about one hundred articles that are applicable together with all special civil law institutions, unless otherwise provided for by the law. This ensures the solution of any civil law problem, even allowing for the inevitable gaps in the civil legislation. In contrast, family, labor or land codes formulate only a few general rules which cannot be considered the true equivalents of a general part. Is it permissible to apply the general part of the civil codes to property and personal non-property relations in the areas of family, labor or land law, when these legal branches do not answer certain practical questions because of gaps in their codes and current legislation? Logical consistency would lead one to a negative answer, since all of the afore-mentioned areas of Soviet law are separate and independent one from the other. But, in practice, such a solution proves to be unacceptable either entirely or to a certain degree. For example, land codes do not include legal rules concerning statutes of limitation, and there is no other alternative but to apply the corresponding civil code rules in appropriate cases. Family codes sometimes themselves refer to civil codes, as, for instance, article 12 of the RSFSR Family Code which regulates the calculation of time periods, or article 46 of the same code when it touches upon property consequences of the annulment of marriage. Moreover, only civil codes define joint property[15] in general terms, whereas family codes address only one aspect of this phenomenon – the spouses' joint property.[16]

Under these circumstances, if one looks for reasonable solutions, and not for artificial concepts, one will recognize that side by side with civil and administrative law there are legal branches which combine elements of both civil and administrative norms. On these grounds, one cannot help but conclude that when such legal branches reveal some gaps, they must be supplemented by the general rules of civil or administrative law, depending on the legal nature of the different gaps. When ideological considerations do not intervene, the Soviets follow this way without hesitation. Thus, the Maritime Code of the USSR says in article 18: "Rules of civil, administrative, or other legislation of the USSR and the union republics shall apply, respectively, to civil, administrative, and other legal relations arising in merchant shipping and not regulated by the present code". But family law or labor law preclude analogous treatment in the USSR. To say that they were made up of a combination of civil and administrative rules would be tantamount – according to Soviet postulates which do not allow for any deviation – to claiming that marriage is a kind of transaction and the labor

15. Civil Code, art.116.
16. Family Code, art.20.