

LEGAL AND POLITICAL ASPECTS OF RUSSIA'S TRANSITION TO CAPITALISM: 1989 – 1999

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I. HISTORICAL CONTEXT

In the early 1980s, the adoption of Western legal and economic models became more intense and accompanied economic reforms, when the sliding away from dependence on USSR conceded peoples' democracies to some extent an autonomous economic policy. This served as a breakthrough in the planned economy. The drive towards self-government and cooperatives, acquired during the period of the socialist economy, is the first step to opening up the market and trying to reconcile it with the planned one. Their development manifested a shift from the imposition of a single Soviet model to the circulation of legal models in the Communist bloc. Influenced by these innovative impulses, USSR undertook its own restructuring with the *perestroika*, announced in 1985 by Mikhail Gorbachev. However, the Soviet state and the peoples' democracies proved to be in crisis: the more they opened up to the market and the private economy, the more divided the energy of the centrifugal and reformative forces became. USSR opened up to foreign investment in 1987. In 1988 the commercial and the social legal norms entered into force in USSR and throughout Eastern Europe to regulate the new reality. USSR, established with the 1924 Constitution, legally ceased to exist in 1991. In its place, the Commonwealth of Independent States (CIS) was created, and the Russian Federation inherited its international relations from the former Union. The last multinational state was divided after the downfall of the Ottoman Empire and Austro-Hungary. Soviet law ceased to apply. Russian law returned in the Russian Federation, and national law returned in the states of Central and Eastern Europe, having emerged after the dissolution of the USSR.

II. THE PATH TO CAPITALISM

After 1989-1991, the former Soviet Union and the former peoples' republics saw the need to go back the legal path they had followed after the October Revolution and after WWII. During this intricate transition period, four types of problems originated:

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- The single party, manifesting the dictatorship of the proletariat, was replaced by a democratic multi-party establishment, therefore a requisite emerged for a constitutional system, based on parliamentarism, to be introduced;
- The substitution of the planned with market economy evoked the necessity to establish norms and institutions, which to regulate the new institutes of private and commercial law, banks, stock exchanges, free competition, and other forms of economic liberalism;
- The conversion of state property into private produced the need to stabilize and further intensify the privatization processes of the formidable state apparatus;
- The transposition of the proletarian internationalism of the communist ideology into legal guarantees for individual nationalities, the subsequent requirement to respect cultural and political rights, and the right to self-determination of national minorities emerged likewise. The urge for working-class unity has led to the rejection of the aspirations of national minorities to have some of their rights legally recognized. With the fall of communism, it was necessary to respect not only certain cultural rights, but also full political rights, as well as the right to self-determination of national minorities.

Post-revolutionary Russia abrogated the tsarist legislation, and the states that joined the Soviet circle after the war limited themselves to abolishing the former law, replacing it with a Soviet-molded one. In the former European peoples' democracies, the pre-emptive law entered into force in the place of the annulled communist law, which formally did not cease to be valid even though it was not applied. In the former Soviet Union, by contrast, a return to the pre-revolutionary law was not feasible because it no longer existed.

After 1989, new laws needed to be issued to govern the market economy. But the old nomenclature, the government of the state-owned industry and the economic state apparatus were opposed to liberalization. In order to prevent the returning of the one-party system, the new electoral laws adopted a proportional system that allocated seats in parliament dependent on the votes received for each party. As a result, parliaments were fragmented and in turn produced volatile governments in coalition. Critics of the market economy and, therefore, of the new codes, were present in a democratic parliament that could obstruct the legislative process. Therefore, in the immediate post-communist phase, issuing new codes proved more difficult than using old ones in court.

1. The reforms of the Commonwealth of Independent States

Although the codes, pertaining to the communist era, were formally similar to the Western ones, after the end of the USSR it was not possible for them to be maintained in private law, since Marxist-Leninist ideology has modeled them according to the requirements of a planned economy. For example, property (as regulated by the Soviet Civil Code of 1964) was no different than that, regulated by the Italian Civil Code of 1942. However, the Constitution and the ideology of the Party claimed that the state, not the individual, held the property and the means of production. These were the origins of the weakening of the classical institutes of private law. As a consequence of the restrictions on private property, the guarantee law also

degenerated: the security, the mortgage, the norms in defense of the turnover of goods had become of secondary importance. The slowdown affected trade law most of all: stock markets, investment sources and financial intermediation were institutes that either did not exist in the law of the communist states, or existed within the codes of the 1930s.

In conclusion, after 1989-1991, neither pre-war, nor communist codes could have been maintained, since they were weak in the compulsory for the creation of a market economy part. The alteration of the political system in CIS intensified internal needs and put pressure on models coming from outside. The political collapse was accompanied by a severe economic crisis.

2. The process of integrating the countries of Eastern and Central Europe with those of the West

While Western countries reached financial economy through a long evolution, the countries of Eastern and Central Europe – after 40 or even 70 years of planned economy – had several months to carry out a huge financial operation, such as the privatization of the former state-owned industry, which evoked the urgency of embracing new legislative instruments and, consequently, the adoption (without criticism and alternative) of the models, imposed by the international organizations.

The collapse of communism in 1991 led to the disintegration of common apparatuses, such as the common market of the East and the military establishment, known as the Warsaw Pact. The new nation-states in Eastern and Central Europe followed the model of the Western democracies and, in quest for new forms of economic, political and military integration, joined international organizations, such as the Council of Europe, the European Union, and NATO.

Since 1991, the countries of Eastern and Central Europe have signed the Accession Agreements provided for in the Treaty of Rome, with a view to future membership. Under these agreements, their parliaments were required to issue only laws, compatible with the Community ones. The international institutions were proposing homogeneous models of legislation in these fields, thus tying the law of the countries of Eastern and Central Europe closer to that of the liberal democracies in Western Europe.

The millennium dusked with the former Soviet Union, riddled with enigmas (political, economic, religious) and with the region of Eastern and Central Europe stepping up towards liberal democracy.

III. THE EXPANSION OF SOVIET LAW OUTSIDE USSR

Continental law extended primarily to Asian countries, which the tsarist expansion had enveloped in the Russian Empire. In Asian Russia, Soviet law superseded royal laws and sought to prevail over local customs: in particular, the official atheism of the Bolshevik regime provoked the downturn of Islamic law. After WWII, USSR was an indisputable force in the bipolar world, so its political-economic (and thus legal) model was exported not only to Eastern

Europe, but also beyond the Old Continent. In 1949, China overthrew the imperial dynasty and became a communist state. The Chinese revolution was supported by the USSR, from where legal models for the state's modernization came in, thus replacing codified models of Western European origin and liberal political orientation.

Socialism was no longer limited to a single country. The liberal forces of decolonization, the cultural upbringing of the Third-World political class in the communist countries, the USSR's imperial projects, and the frequent misunderstanding of the United States of the real nature of post-war political change, favored the emergence of Marxist countries. These were very different from one another, adapting to different degrees and via different means to the Soviet model.

Political structures emerged in Asia in likeness to the Soviet Union – Afghanistan, Vietnam, Cambodia, Laos, North Korea; among the Arab countries – Algeria, Syria, Yemen; in Africa – Congo, Ghana, Ethiopia, Cape Verde, Madagascar, Mali, Mozambique, Tanzania and Zimbabwe; in America, Marxist countries became some of those closest to the US – Cuba, Nicaragua, Suriname. Adoption of the Soviet legal model reached its maximum development in the late 1970s and declined in the early 1990s, alongside the collapse of the Soviet bloc. Even in Japan, some local administrative units were communist. Same could be stated about some countries on the Old Continent, among which Italy with the strongest communist party in Western Europe. However, it is problematic to draw a parallel between Cuba, North Korea and Emilia-Romagna – realities with little in common.

In 1989, communist and socialist ideologies were abandoned. Among the previous communist states, only the regimes in Cuba and North Korea survived. But the collapse in communist ideology did not mean that the problems, it was intended to solve, have been resolved, and this gave rise to a so-called “third way” of conduct. The term is by no means new – fascism and national socialism have been seen as the “third” (middle, intermediate) path between capitalism and communism. China, it seemed, was looking for its own way, consisting in the cultivation of a new branch of capitalism onto the solid base of traditional Chinese communism. Social-democratic European parties (based on the remnants of Western communist parties) were seeking their way between capitalism and socialism, moving in the opposite direction – striving to maintain the vitality of the fragile twig of social services on the formidable trunk of capitalism. There is still broad uncertainty about the nature of the Western “third path”, which presents itself as a capitalist economic policy, explained by the rhetoric of social democracy.