Russian Civil Law Between Remnants of the Past and Flavor of the Present

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Introductory Remarks

In all countries, the civil law—especially, the law of property—is linked closely to the social and economic systems. This was particularly true in the Soviet Union. Despite the end of the Marxist experience of law, there seems little doubt that the transition to a market-oriented system of civil law in Russia cannot erase all the remnants of the past.

In order to attempt to characterize the new civil law in Russia, it may be of some interest to briefly study one example of such a remnant of the past before focusing attention on an institution—that of the trust—which is new in Russia.1

Remnants of the Old Times: The Right of Economic Management (pravo khoziaistvennogo vedeniia) and the Right of Operative Management (pravo operativnogo upravleniia)

According to Article 294 of the new Civil Code of the Russian Federation,2 “a State or municipal unitary enterprise to which property belongs by right of economic management possesses, uses and disposes of this property within the limits determined in accordance with the present Code”. In addition to this “right of economic management”, Article 296 provides:

“1. A Treasury enterprise and also an institution, with respect to property consolidated to it, within the limits established by a law and in accordance with the purposes of its activity, effectuates the planning tasks of the owner and the designation [naznachenie] of the property, the rights of possession, use and disposition thereof.
2. The owner of the property consolidated to a Treasury enterprise or institution has


2 Part One, adopted on 30 November 1994 (Sobranie zakonodatel’stva Rossiiskoi Federatsii 1994 No.32 item 3301); Part Two, adopted on 26 January 1996 (Sobranie zakonodatel’stva Rossiiskoi Federatsii 1996 No.5 item 410); Part Three, adopted on 26 November 2001 (Sobranie zakonodatel’stva Rossiiskoi Federatsii 2001 No.49 item 4552); Part Four, adopted on 18 December 2006 (Sobranie zakonodatel’stva Rossiiskoi Federatsii 2006 No.52 (I) item 5496).
the right to withdraw surplus or unused property or property not used according to its designation, and to dispose of it at its discretion."

The right of operative management was conceived by Venediktov after the end of the Second World War\(^3\) and became one of the cornerstones of the Soviet law of property (see, e.g., Art.94(2), 1964 RSFSR Civil Code). However, the right of economic management appeared much later: in the 1990 RSFSR Law “On Ownership” (Art.24) and the 1991 Principles of Civil Legislation of the USSR and the Union Republics (Art.43). Both concepts were intended to provide legal persons—who were not “owners” strictly speaking—with an economic basis which would enable them to participate in an autonomous way in civil law relationships.\(^4\)

The right of economic management is provided for industrial enterprises (proizvodstvennie predpriiatiiia) (Arts.113-114, RF Civil Code) and for institutions engaging in commercial activity while the right of operative management is foreseen for non-commercial institutions (goshiudzhetnye uchrezhdeniiia) and treasury enterprises (kazennye predpriiatiiia). It is obvious that both these forms of property need to be understood in the light of the privatization process.\(^5\) Russian authors have recognized these norms of limited rights in rem as bearing a risk of being abused by enterprises organizations (or their organs) in order to transfer property from the state to the private sector under conditions which are disadvantageous for the state.\(^6\) It is for this reason that the content of these rights has been reduced in the new Civil Code as compared with the previous version.

According to Article 295(1):

> “an owner [i.e., the state or other public entity] of property held in economic management, in accordance with a law, decides questions of the creation of the enterprise and the determination of the objects and purposes of its activity, its reorganization and liquidation, appoints the director of the enterprise, and effectuates control over the use thereof according to the designation [of the property] and preserves property


\(^4\) In that sense, see Kommentarii chastii pervoi grazhdanskogo Kodeksa Rossiiskoi Federatsii dlia predprinimatelei, Moscow 1996, Arts.294-300, 262.


\(^6\) See Kommentarii, op.cit. note 4, 264.