The New Political Polarization of the World and the Reform of State Property Management in Russia

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Introduction

The repeal of Article 6 to the USSR Constitution in 1990—which had proclaimed the leading and guiding role of the CPSU in Soviet society—was a milestone in Soviet and Russian jurisprudence, in the course of overcoming ideological opposition between the West and East. That event has radically changed Soviet and Russian jurisprudence.

In Soviet jurisprudence, this event was similar to the crash of the Berlin Wall. After the repeal of Article 6 from the Soviet Constitution, Soviet society became open for a multi-party political system as the country veered towards democracy and the protection of human rights—movement which has become irreversible.

The ideological defeat of communism in the Soviet Union has finally led to variety in the political spectrum inside the country and has led to the expansion of foreign trade outside the country. The rejection of the CPSU’s guiding role in society gave rise to democratic civil legislation which we observe now in Russia and, also, in other states of the CIS.

At the same time, one can still observe the residue of the planned economy according to the principle of centralized management which was dictated by the militarization of the Soviet economy during the Cold War. On the legal horizon, this can be seen in the institutes of economic ownership (khoziaistvennoe vedenie) and operative management (operativnoe upravlenie) of state property in Russian legislation. These legal constructs have two characteristics which are important for our discussion: (a) they remain the primary forms of managing state property in Russia; and (b) they crowd out the development of the new legal model (for Russia) of trust management which arose as a competitive legal form to the two legal constructs of khoziaistvennoe vedenie and operativnoe upravlenie.

The legal model of trust management has its roots in Equity and has its basic features in the original trust. The latter proved to be unacceptable to the vast majority of Russian civil-law scholars. Witness to that is the short-lived fate

1 The ideas set forth in the present chapter, and in particular the interrelation which we are presenting of a new political polarization of the world on a ‘North-South’ rather than its ‘East-West’ axis—as well as the concept of reforming the management of the state property in Russia—are ones which we have not yet encountered in Russian (legal) literature. Of course, we realize that sources may exist of which we are unaware. A more recent presentation of fresh materials relating to political polarization ‘North-East’ are in a presentation delivered by Alexei Mordashov, General Director of the Severstal’ Corporation, in which he expressed the concept of ‘Northern Measurement’ (severnoe izmerenie) during the 2010 Petersburg Economic Forum; see <http://www.forumspb.com/ru/programme/SPIEF_2010/programm_3#translation86|1276774768>.
of the December 1993 Edict of the RF President “On Trust”.\(^2\) The fire storm of criticism which it met from the Russian civil-law establishment\(^3\) led to the quick replacement of the 1993 Edict by the 1994 Russian Civil Code.

By the way, there is a legal model of trust in Ukraine.\(^4\) This is some evidence that the original concept of trust can be accepted by the legislator of a country which is from the continental legal system.

In our opinion, similar to the fashion in which the Soviet Union shed Article 6 of its Constitution, as Russia could stand down from an all-embracing system of state property during the process of privatization; thus, it is necessary for Russia to shed its all-embracing system for the state management of state property. As Russia has rejected ubiquitous planned management of its economy, it should likewise reject khoziaistvennoe vedenie and operativnoe upravlenie in favor of the form of the trust management of (state) property. As variety in everything is the basis of the new market-type economy, so too should there be flexibility of economic behavior in managing the affairs of legal persons.

Economic ownership and operative management should be surgically removed from Russian trade and commerce, indeed from economic activity in general in the new Russian Federation—and also from the legal horizon—in the course of globalization and economic integration in conditions of the emerging, new world political (multi-)polarization instead of the Cold-War opposition of two superpowers. Such political polarization has been termed the ‘North-South’ polarization, about which political commentators spoke during those times.\(^5\)


4 \textit{Grazhdanskii Kodeks Ukrainy}, Chapter 31 (Folio, Khar’kiv, 2007).