A REVIVAL OF COMMERCIAL LAW IN THE SOVIET UNION
AND OTHER EUROPEAN SOCIALIST COUNTRIES

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1. Introductory Remarks

It is widely assumed that socialist legal systems do not continue the distinction
between civil law and commercial law, traditional for the Romano-Germanic
family from which they derive their conceptual and cultural origin. Thus, Pro-
fessor Rodolfo Sacco writes that "civil law, in the definition of the jurists of
the countries dealt with, corresponds to Romanist civil and commercial law [in]
excluding family and economic law", and a Polish expert emphasizes the
fact that "in the present legal system, commercial law is not a separate
branch".

These options are, generally, correct. The problem is, however, that com-
mercial law has not completely ceased to exist in the socialist countries.

1. To begin with, the commercial codes or substantive commercial laws dating
back to the pre-socialist period have not always been completely abrogated in
the process of codification of socialist civil law. An abrogation took place only
in Czechoslovakia (1963-1964), and was linked up with formal separation of
economic law, the latter being codified in the Economic Code. In the Soviet
Union, in Yugoslavia and in Bulgaria, the problem was resolved in a general
manner prior to the eventual codification of civil law: all pre-revolutionary
laws were declared abrogated in one single act in Russia (1918) and in Bulgaria
(1951), and partly — as to their substantive provisions but not their principles
— in Yugoslavia (1946) and Albania (1947); in the latter country, even their
principles were no longer applied. This means that in Poland, Hungary and

No.1, 65 note 2.
2. A. Wiśniewski, "Introduction", in Kodeks handlowy. Wybrane przepisy o spółkach. Prawo
upadłościowe. Prawo o postępowaniu układowym, (A. Wiśniewski, ed.), 2nd ed., Warsaw
1988, 4.
3. See H. Izdebski, "Les révolutions et le droit en Europe depuis 1917", in Revolution, Reform,
Restauration. Formen der Veränderung von Recht und Gesellschaft, Frankfurt/M. 1988, 224-
the GDR some parts of the old commercial codes remained in force; Hungary eventually ceased to belong to this category, which at present (end of 1988) is composed of only two countries. In Romania, where a socialist-oriented civil-law codification has not yet taken place, the Commercial Code (dating back to 1887) remains a formal source of law. Apart from Romania, a formal co-existence of parallel codes, civil and commercial, no longer exists, but there may be a rump commercial code overshadowed by the civil code even in the GDR where, as in Czechoslovakia, the principle of civil law unity has been discarded in favor of a separation between economic law and civil law.

2. What is more, commercial-law solutions are not, at present, a simple residue or an historical curiosity. They result from the economic reform which is being carried out in five European socialist countries, including the USSR, but also in the PRC. The reform consists in introducing numerous market elements into the economic system, which until now rested on a purely administrative allocation of resources and goods. While the traditional, "orthodox", features of the economic system, particularly central planning, are not completely rejected, the reform aims rather at combining central planning with imperatives of the market place. The role of the latter is generally growing. Practical applications of this combination may be different. The Plan may be, for instance, mandatory in some respects only (as in the Soviet Union) or simply a "guide" for the participants in economic life, the degree of autonomy of these participants differing also from country to country and according to the forms of ownership (state, cooperative, individual, or private in the case, e.g., of China, Hungary, Poland, and, since January 1989, Bulgaria). The partly market-oriented character of the present reform, growing gradually, is a response to the structural crisis of the socialist economic system. The introduction of market elements thus ranks with the democratization of economy by means of self-management (this idea being, however, neglected in China), as the only means of giving a new push to the stagnant, if not (as in Poland) regressing economy. At present (November 1989) the idea of self-management is, however, more and more replaced, peculiarly in Poland, by that of privatization, and, within it, the idea of employees' participation by means of stock ownership.

What distinguishes the present reform from all the previous reforms is that it cannot be carried out without massive recourse to law. Law may thus play,


4. For characteristics of the reform, see H. Izdebski, "Legal Aspects of Economic Reform in Socialist Countries: A Comparative Study", in American Journal of Comparative Law 1988 No.4, 1001-1052. The existence of this large study permits me to refer to it generally also as regards pre-1988 literature, with the exception of the specialized one, relative to commercial law problems.