THE STATUTORY FRAMEWORK OF THE SOVIET LAW OF PRIVACY

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I.

In introducing the 'right to protection of the citizens' "personal life" (lichnaia zhizn' grazhdan), the Soviet Constitution of 1977 does not, in its article 56, treat it as a "general right of privacy" within the meaning of the Warren-Brandeis doctrine, nor consider it a part of the "general right of personality", in Gierke's sense. (a) Unlike in the United States, the Constitution is not, in the Soviet Union, the ultimate source of all privacy rights and authority for their judicial protection. The inclusion of subjective rights into the Soviet Constitution merely acknowledges their social, political or ideological value; it does not generate these rights or touch upon their legal contents. Definition of the precise scope of legal protection is assigned to subordinate legislation, either expressly (e.g., art.58) or as an implied mandate to the legislator. Art.56 itself calls upon "ordinary" law to devise appropriate means for the protection of the citizens' personal life and to define the scope of this protection:

"The private life of citizens and the secrecy of correspondence, telephone conversations, and telegraph messages are protected by law."

Most "ordinary" laws which now safeguard the citizens' interests in privacy have, in fact, been enacted prior to the recognition of a constitutional right of citizens to the protection of their personal life. (b) While in West Germany, the Supreme Court treats the right of privacy (along with the rights to protection of one's feelings, secrecy, non-disclosure of confidential personal data, etc.) as part of a general right of the personality, protected by the Constitution as a "source right" (Quelle-recht), the Soviet Constitution recognizes a series of "personal non-property rights" (including those belonging to an author (art.47), safeguarding honor and dignity (art.57), protecting personal life (art.56), etc.), but does not place them into a larger, common context. In doctrine, in fact, the need...
for a comprehensive "general" right is often expressly denied. In art.56 itself, the Constitution provides separately for the protection, through appropriate laws, of the citizens' "personal life" and of the "secrecy of correspondence, telephone conversations and telegraph messages." One Soviet jurist has pointed out in 1981 that these two rights corresponded to two different concepts, even though they are connected by an "inner logic".

II.

What is the social value of privacy in a society built upon collectivist principles and ideals, to justify inclusion of the right to privacy into the Constitution? Soviet doctrine remains unsuccessful in its attempts to "justify" this inclusion on the basis of social significance alone. Some analysts maintain that legal protection of the "private sphere" is confined, in the Soviet Union, to actions and relations (a) aimed at the satisfaction of individual needs, (b) through the use of means which do not represent an immediate or direct social interest: The same actions and relations, they claim, cease to be a part of the "private sphere" as soon as they acquire a social interest. Other authorities, on the contrary, claim that the right of privacy is unthinkable in isolation from the social context: legal norms protect only those aspects of privacy that are deemed socially significant.

Questions relating to privacy with which Soviet doctrine is concerned differ often substantially from those which preoccupy jurists in the common-law systems:

(a) Soviet jurists agree that some aspects of privacy should be governed by rules of ethics in preference to legal norms. They do insist, however, that (1) the interests at stake in the civil (tort) law of privacy (e.g. those relating to protection of one's likeness, name, confidentiality of personal writings, etc.) are not merely marginal or parasitic, or at all events subordinate to more significant countervailing values, as they often are in English and American law, but constitute important elements of an individual's "private sphere" worthy of judicial protection; (2) legal protection of privacy must be sought under the branch of law in which the subjective right has been provided for, and by means defined therein, not through direct appeal to the Constitution or under some general principle or category such as property, breach of trust or confidence — or even "privacy".

It is the task of doctrine to isolate, within each branch of law, those norms which provide for protection of the privacy interests of individuals. One important clue facilitating this task is that all such norms provide for personal non-property rights devoid of an intrinsic economic (pecuniary) contents, although some may be "connected" with property rights while others are not. What is the practical value of this exercise? (1) In the absence of a general ("umbrella") right of privacy, it enables Soviet jurists to determine the true scope of privacy protected under the Constitution; (2) in a norm