



SELF-REGULATION OF PROPERTY CIVIL RELATIONS WITH THE PARTICIPATION OF STATE-OWNED ENTERPRISES: SHORTCOMINGS OF THE SOVIET APPROACH

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Abstract

The article examines the peculiarities of the exercise of freedom of contract and freedom of entrepreneurial activity by state-owned enterprises in the USSR under the conditions of the state monopoly in the production of property goods, planned regulation of production and administrative-command economy in general.

The author examines certain historical aspects of the formation of state-owned enterprises as subjects of property relations on the basis of state-owned industries. The article highlights the problems of granting state-owned enterprises with civil legal personality and their participation in property turnover within the framework of the concept of economic calculation, the impact of the planned approach on the scope of freedom of contract and freedom of entrepreneurship of state-owned enterprises in the course of their activities. The author determines the correlation between the plan and the contract as means of regulating property relations and outlines the functions of the contract in the property turnover of the USSR.

Keywords

Self-Regulation of Property Civil Relations, State-Owned Enterprises, Freedom of Entrepreneurial Activity, Freedom of Contract

I. Introduction

The full-scale armed invasion of Ukraine by the Russian Federation, the Kremlin's revisionist policy, and Russia's gradual political, cultural, and economic self-isolation force us to recall the peculiarities of doing business in an administrative-command economy as an alternative to the free market. In today's environment, it is difficult to argue that there are two main and clearly distinguished economic paradigms: market and administrative-command economies. After all, as practice has shown, it is the market environment that

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contributes to greater economic growth, providing broad freedom of self-regulation of property relations, including freedom of contract. In this regard, modern economic structures, characterized by significant state control over economic processes, are only varieties of market economies, except with more imperative management. A striking example of this is the People's Republic of China. The total control over the economy, which was embodied in the monopoly of state-owned enterprises in all spheres of production, began to ease in 1979 with the granting of market access to private producers (Bai, Lu and Tao, 2006). As a result, today foreign producers opening production facilities in China are turning to the form of a joint venture with the involvement of the state government (Roper and Schoenberg-Orgad, 2011), and with regard to Chinese state-owned enterprises, scholars note that in order to achieve competitive success, they must transform themselves into capitalist companies (Chan and Unger, 2009).

Returning to the Russian Federation, it should be noted that today the state has formally abandoned the monopoly of state ownership of manufactories, factories and plants. The government is pursuing the development of the so-called “state capitalism”, in which private producers are actively operating alongside state-owned enterprises, and the state itself uses the form of economic companies (joint-stock, limited liability, etc.) to participate in property turnover, rather than the legal form of the state enterprise itself, thereby acting as a legally equal entity in civil turnover alongside private companies. However, the self-isolation processes launched by the Russian Federation, the policy of import substitution, the withdrawal of foreign investors from the state economy and the simultaneous transfer of the economy to “military rails” make us recall how the Russian Federation acquired ownership of production, granted them the status of a subject of legal relations, and created state-owned enterprises, and how these subjects, having a monopoly in all spheres of social production, exercised freedom of self-regulation under an administrative and planned approach. In other words, we will discuss the extent to which the freedom of self-regulation of property relations was necessary for state-owned enterprises in the Soviet period, how it was consistent with communist ideology, what was the actual level of such freedom, and how it evolved and was actually implemented within the strict administrative-planned economy.

II. Materials and Methods

The methodological basis of the work is the historical method, the use of which made it possible to trace the evolution of the formation of state-owned enterprises in the USSR, as well as the development of their civil law freedom of self-regulation of civil relations. Using this method, the author reveals in historical retrospect the interrelationships between planned management in the economy, the extent of freedom of entrepreneurial activity of state-owned enterprises and the importance of a contract for the regulation of property relations involving such enterprises.

The article also occasionally uses the comparative historical method, in particular, when referring to the Chinese model of functioning of state-owned enterprises, which allows drawing parallels with the late Soviet approach to solving this problem and demonstrating

the inconsistency of the relevant organizational and legal form with the vector of economic development of states in the context of globalization.

The methods of analysis and synthesis have become the methodological basis for considering the essence of planned regulation of property relations in general and, in particular, the plan as an act of regulation of relevant social relations, and for determining the functions of a contract in an administrative command economy, etc. The article also uses the hermeneutic method to analyse the provisions of legal sources that determined the legal status of state-owned enterprises in the Soviet period, in particular, with regard to the scope of freedom of entrepreneurship and freedom of contract.

III. Results and Discussions

A. Prerequisites for the establishment of state-owned enterprises as subjects of rights in Soviet Russia and their transformation from an object to a subject of self-regulation

For quite a long time in Europe and around the world, enterprises have been considered as objects of rights – manufactories, factories and plants – as opposed to business entities, which were independent subjects of civil turnover. In this regard, even if the production facility was owned by the state, the status of a legal entity was granted to the state authority in charge of such production. At the same time, such production could be privately owned by individuals and business entities.

The Russian revolution was a decisive impetus for rethinking the relationship between the state and business in Eastern Europe. The revolution, which took place under the slogans of social justice and a radical change in the state system, and which was accompanied by profound transformations in the sphere of property. These processes were characterized by extreme manifestations of redistribution of property wealth, one of which was nationalization. The new Soviet state was taking away business and even personal savings in precious metals from individuals. Private industries (manufactories, factories, plants, etc.) were also targeted for nationalization.

In general, the Soviet government used two mechanisms to transfer ownership of private manufactories, factories, and plants to the state: confiscation and nationalization. In fact, they did not differ in any way, as they were even applied by acts of the same authorities. As a rule, the formal grounds for nationalization of an enterprise were public interests, and therefore it was applied, in particular, if the enterprise was of strategic importance or the owner tried to close it, while confiscation was usually applied if the owner was unwilling to allow labour control over the enterprise.

Just to name a few of the countless cases of nationalization: the factory of Smirnov's Manufactory (Lykin City, Vladimir Governorate), along with materials, raw materials, and other items, was declared the property of the Russian Republic in connection with the owner's attempt to close it. The resolution of the People's Commissars Council (the Council) stated that the owner sabotaged production, and the factory itself was important because it fulfilled orders for the army and simultaneously served the poorest segments of the population (Council's resolution of November 17 (30), 1917). The Putilov plants,

which belonged to the Joint Stock Company of Putilov Plants, were transferred to the ownership of the Russian Republic by a resolution of the Provisional Workers' and Peasants' Government of December 27 (January 9, 1918) due to a debt to the treasury of the Russian Republic. The Nevsky plant was transferred to the state for its debt to the treasury (decree of January 12 (25), 1918) (*Decrees of the Soviet government, 1957*).

As for confiscation, the following examples can be cited: mines, factories, all live and dead inventory on the territory of the Petrovsky Metallurgical Plant, Sofia, Verovsk, Bunchevsky, Narnevsky mines, which belonged to the Russian-Belgian Metallurgical Society, were confiscated due to the Society's intention to cease its activities and simultaneously failure to comply with the decree of the Council on the introduction of labour control at the enterprise (Council's resolution of December 15 (28), 1917). The Rostokin Dyeing and Pressing Factory was confiscated for refusing to produce in the presence of raw materials (decree of January 4 (17), 1918) (*Decrees of the Soviet government, 1957*).

This is only a very small part of the cases of nationalization and confiscation of enterprises carried out by the Soviet authorities. In fact, within a short period of time, virtually all businesses were nationalized or confiscated under various pretexts.

After the proclamation of Soviet power in Ukraine, as well as its recognition of the Ukrainian state as a federal part of the Russian Republic (December 25, 1917), the process of nationalization of enterprises in Ukraine was carried out according to the same rules, one example of which is the decree of the Council of January 27 (February 9), 1918, on the nationalization of the Shymansky Plant in Kharkiv (*Decrees of the Soviet government, 1957*).

At the same time, it should be noted that the industrial potential of the socialist state was based not only on nationalized and confiscated facilities. The process of industrialization was accompanied by active construction of new enterprises. For example, such foundry giants as Azovstal, Kryvorizhstal, Zaporizhstal, Dniprospetsstal, and others were built in Ukraine between 1918 and 1940 (Kushakova, 2019).

Management of enterprises required new approaches, as practice has shown that centralized management became ineffective due to the significant concentration of management objects under the direction of the relevant departments and, simultaneously, due to attempts to switch to planned production, which required the management entity to have complete and accurate information about the management object and which could not be ensured due to the cumbersome management system. This, in our opinion, combined with the fact that the revolutionary movement was associated with the creation of workers' councils at individual factories, created the preconditions for granting manufactories, factories and plants civil legal personality, thus establishing such a legal form of business as a "state enterprise", and also laid powerful preconditions for granting state enterprises a relatively broad scope of freedom of self-regulation. However, this characterized the situation at the early stage of the creation of state-owned enterprises.

B. Restriction of civil law freedoms of state-owned enterprises and rethinking the meaning of a contract as a tool for regulating property relations with their participation

The concentration of the entire production potential of the country in the hands of the government and, at the same time, the active and sometimes rough implementation of planned methods of economic management led to a rethinking of the content of freedom of enterprise and freedom of contract in the Soviet state in the context of the activities of state-owned enterprises as the main producers of property goods. In this regard, this issue has attracted special attention of civil law scholars.

In this regard, it should be noted that, in general, the two mentioned civil liberties are tightly intertwined in the activities of business entities. After all, while freedom of entrepreneurship is the ability to conduct activities not prohibited by law in order to make a profit, in a market economy, freedom of contract is a way to achieve this goal by using contractual means of regulating property relations, in particular by entering into contractual relations with other participants in the turnover and thus ensuring the movement of property, which ultimately leads to profit.

However, as the practice of legal regulation of property relations in an administrative command economy has shown, the methods of managing economic processes inherent in such a paradigm limit freedom of entrepreneurship, freedom of contract, and simultaneously force a rethinking of the role of entrepreneurship in the economic life of society as a whole.

When considering the outlined problems of state-owned enterprises in the Soviet period, it is impossible not to refer to the scientific conclusions of legal scholars of that time, which most clearly reflect the changes in the state economy that took place at that time.

First of all, it should be noted that the problems were still based on an updated approach to the activities of state-owned enterprises, which combined economic calculation with a planned economy. As S. S. Alekseev noted in this regard, economic calculation is a form (method) of planned economic management based on the use of the law of value. According to the scientist, providing a cost estimate of social and individual costs in their comparison with the results of social labour, economic calculation as a form (method) of planned economic management was expressed in a number of organizational principles of construction and operation of socialist economic organizations. The main principle of the scientist was the operational and economic independence of enterprises in the implementation of planned tasks, because certain property was assigned to enterprises for operational management, and therefore the enterprise could cover its expenses at the expense of income received from the sale of products (Alekseev, 2010).

Thus, it may seem that at that time state-owned enterprises had a certain degree of freedom of entrepreneurship, since at least they still had the opportunity to make payments using cash. However, in reality, this problem was much deeper and directly affected the scope of freedom of contractual regulation of property relations involving state-owned enterprises. The reason for this was the importance of the state plan for enterprises that produced property goods, which in fact not only established the necessary volumes of production, but also determined the links between production, i.e., in fact, programmed legal relations

between specifically defined persons. According to S. S. Alekseev, from the legal point of view, economic planning was expressed in the assignment of precise, time-bound tasks to enterprises and organizations, i.e., the obligation to take active positive action (Alekseev, 1966).

In addition, the preservation of monetary settlements within the concept of “self-sufficiency” against the background of the desire to gradually abandon the use of money, as enshrined in the provisions of theoretical communism, received a specific explanation in the civilizational literature of the Soviet period. In particular, R. O. Khalfina, author of the work “The Meaning and Essence of the Contract in Soviet Socialist Civil Law” (Moscow, 1954), who can rightly be called a leading expert in the field of contractual regulation of civil relations in the Soviet period, noted that under socialism, the means of production are not goods, and the relations of state socialist organizations regarding the distribution of means of production are not commodity in nature, despite the fact that outwardly these relations are formalized in the form of a paid transfer of means of production under contracts.

In this regard, raising the question of the possibility of using a contract as a form of mediation of property relations for formalizing relations concerning the transfer of relevant benefits in a socialist society, the author gives an affirmative answer to it, noting that the preservation of the external form of goods for property benefits which cease to be goods in a socialist society nevertheless retains the possibility of extending to relations concerning such goods the old form of mediation, a contract which acquires a different content in a socialist society. At the same time, the scientist notes that the introduction of “self-sufficiency”, which is associated with the need to apply the law of value, has certain positive aspects, since “it teaches businessmen to systematically improve production methods, reduce production costs, make economic calculations and achieve profitability of the enterprise” (Khalfina, 1954). In fact, this is an attempt to explain the “socialist expediency” of using the treaty in conditions when the very monetary transactions themselves contradict the essence of communism. After all, according to one of the theoretical provisions of communist ideology, the construction of communism is accompanied by the rejection of commodity-money relations, which, however, as practice has shown, is a highly debatable thesis even within the framework of theoretical communism.

In general, it should be noted that the introduction of targets almost completely eradicated the freedom of self-regulation of state-owned enterprises, which formed the basis of the Soviet economy. At the same time, despite the denial of entrepreneurial activities by state-owned enterprises that contradicted communist ideology, the introduction of self-supporting financing actually meant that state-owned enterprises carried out such activities, albeit in a specific, controlled form.

Also, it should be noted that in general, the issue of the need for state-owned enterprises to enter into contracts has been addressed unevenly at the regulatory level. In particular, M. M. Agarkov cited the example of the decision of the Labor and Defense Council of April 7, 1935, on the plan for the distribution of automobiles, which regulated relations between manufacturing plants and buyers, which were socialist organizations.

The provisions of the legal act clearly stated that the relationship between the parties was not formalized by contracts (Agarkov, 2002).

At the same time, R. O. Khalfina notes that the annual resolutions of the Council on the procedure for concluding economic contracts for the next year were aimed, among other things, at strengthening the link between plans and contracts to be concluded, and thus strengthening the role of the contract in the struggle to fulfil the plans. However, some exceptions to the general rule, such as the redistribution of certain types of products during World War II, were perceived by businessmen as a signal of a gradual complete withdrawal from the treaty (Halfina, 1954).

In our opinion, the practice of ignoring the conclusion of a contract, which did not cause critical negative consequences for property turnover, emphasized the fact that in Soviet times, in the context of the administrative-command economy, which was based on a plan, the contract did not play as significant a role as it does today. Moreover, the Soviet scholars who defended its importance in the Soviet period pointed out the complementary nature of the treaty to the plan. For example, R. O. Khalfina noted that the contract contributes to the implementation of the plan (1954), while S. S. Alekseev explicitly recognized the contract as an additional form of organization of economic relations (2010). This is direct practical evidence of the actual low level of freedom of self-regulation of state-owned enterprises in the Soviet period.

C. Contract as an optional means of regulating property relations

The concentration of all production enterprises in the hands of the state, the construction of economic relations on the basis of an administrative command approach, and the planning of the economy in clear stages (five-year plans) naturally led to the deepening of economic ties between individual enterprises and the formation of stable economic chains. Therefore, while in the early twentieth century freedom of contract, and therefore the limited (Soviet) model of freedom of entrepreneurship, still existed at least nominally, in the middle of the century most state-owned enterprises knew exactly where to get raw materials and where to deliver their products. Therefore, if, for example, a construction trust did not have its own concrete plant, it had a clearly defined concrete supplier, which was another trust. In this regard, the relations between the relevant entities under the plan were almost without alternative, as both had to fulfil the plan. Moreover, legal relations were also planned at the centralized level, so that, for example, if a bearing plant was located in Kharkiv but specialized, say, in the production of railway bearings, its products were planned to be supplied to railcar manufacturing plants that could be located in other parts of the Ukrainian SSR or the USSR as a whole. As J. S. Hensley and G. B. Assaf noted, the large state-owned enterprises were tightly integrated with raw material suppliers, intermediate producers, and final consumers through the mechanism of all-Union central planning. Also, very often suppliers and consumers were located in different parts of the USSR (1997). Of course, after the World War II, the restoration of the damaged industry was associated with the creation of new factories and plants that could have a city-forming character (they were the main employment platform in the city). In this regard, their construction could

be associated with the need to establish new legal ties between state-owned enterprises to obtain resources that were not available in the region, but this was mostly temporary. In turn, the construction of new enterprises could be associated with both the failure to meet the state's needs for certain property goods and the actual expansion of the volume of relevant resources and an increase in the planned workload. It also required establishing new legal ties between the companies. However, later they also became established, which again excluded the development of both freedom of entrepreneurship and freedom of contract as a way to implement it in practice.

Freedom of contract, where it could be manifested in the context of a planned approach, generally had a rather specific content, and its implementation in practice was ambiguous. On the one hand, public authorities emphasized the need to conclude contracts in the context of production planning, and on the other hand, state-owned enterprises often did without contracts when building property relations, which in practice demonstrated that there was no need for them at all and simultaneously the possibility of regulating the relevant relations by alternative forms, such as work orders. It is very difficult to consider the latter as a contract in the traditional sense due to the lack of necessary details and fixation of the mutually agreed will of the participants in the property turnover. Rather, it is a primitive form of an offer, again, with possible content defects due to the lack of the required information.

With regard to the freedom of contract in the relations between state-owned enterprises and household consumers, i.e., citizens, it should be noted that within the framework of attempts by civil law scholars to comprehend the relevant aspect of civil turnover from the perspective of communist ideology, the relevant activity, as we noted earlier, was not considered as entrepreneurial. Given, as we noted earlier, the attempts of scholars to comprehend the essence of the commodity under socialism, they began to view it mainly as a means of satisfying the needs of citizens, rather than a means of making a profit for enterprises, especially since the very concept of profit, which was based on value, was also understood in terms of communist provisions. Today, in terms of market categories of supply, demand, cost, and profitability, we can say that state-owned enterprises are engaged in business activities. At the same time, the expansion of the distribution network was driven by the need to meet the needs of Soviet citizens, not by the need to make a profit. It should be added here that among all state-owned enterprises, only state-owned trading enterprises entered into contractual relations with citizens. Industrial enterprises, due to the specifics of their activities, entered into contractual relations only with other legal entities.

D. “Perestroika” and expanding the freedom of contract of state-owned enterprises

Rethinking the role of state-owned enterprises in the USSR economy, liberalization of the economy, opening market access to private producers, and, in this regard, shifts towards expanding the freedom of entrepreneurship and freedom of contract of state-owned enterprises took place at the end of the twentieth century as part of complex, sometimes profound, and simultaneously rapid changes, united under the general name of “perestroika”.

In 1987, the Supreme Soviet of the USSR adopted the Law “On State Enterprise (Association)”, which actually preserved a unified approach to enterprises, whereby a state enterprise as a legal entity was mainly considered to be an association of separate production complexes (enterprises – objects), which was previously called a trust. However, the provisions of the Law, including through the use of appropriate terminology, shifted the emphasis from a trust as an association of separate enterprises to the state-owned enterprise itself as a separate subject and object of rights (1987).

Perestroika did not fundamentally affect the ownership structure of the economy, and therefore retained state ownership of enterprises. That is why paragraph 3 of Article 1 of the said Law enshrined the social orientation of state-owned enterprises (associations), which was reflected in the need to meet, first of all, the social needs of the national economy and citizens in the products (works or services) of such an enterprise. Formally, the freedom of entrepreneurship and freedom of contract were expanded compared to the legal status of a trust. In particular, it was established that a state-owned enterprise operates on the basis of the state plan (part one of Article 2), but simultaneously on the principles of full economic calculation and self-financing (part two of Article 2). It was the highest state authority that ensured planning of the enterprise’s activities (part one of Article 9). However, self-support was recognized as the main source of enterprise development and labour remuneration, which is at the disposal of the enterprise, not subject to withdrawal and used by the enterprise independently (part one of Article 3). At the same time, the enterprise was granted the right to own, use and dispose of its material and technical base and funds (part one of Article 4), for which it could sell its products, perform works and provide services in accordance with economic contracts with consumers, trade and logistics enterprises or through its own network for the sale of products, performance of works or provision of services (part one of Article 16). Along with centralized price setting, the right of a state-owned enterprise to determine prices by contract with the consumer or independently was provided for (part seven of Article 17) (1987).

However, almost exactly a year later, in 1988, the USSR Law “On Cooperation in the USSR” was adopted, which, although it defined socialist cooperation as a progressive form of socially useful activity (part one of Article 1) (1988), actually initiated the development of private entrepreneurial activity, as it removed the process of producing property goods (works or services) from the monopoly of state-owned enterprises. Three years later, in 1991, in the process of gaining independence, the Law of the Ukrainian Soviet Socialist Republic “On Enterprises in the Ukrainian SSR” was adopted. In the context of the beginning of the development of a market economy in a state whose economic relations were based on administrative command principles, this was a real breakthrough. Now,

individuals could not be limited to the legal form of a cooperative and choose an individual, family, private, collective enterprise, etc. for the production of property goods (1991), with their own management structure, scope of freedom of entrepreneurship and freedom of contract, which significantly expanded not only the scope of freedom of contractual self-regulation of property civil relations in the business sector, but also the freedom of self-regulation in the field of corporate relations.

The law provided for the assignment of property to state-owned enterprises on the basis of the right of full economic management, which allows them to own, use and dispose of the relevant property benefits (part three of Article 10). The general rule for all types of enterprises was that enterprises should plan their activities independently (part one of Article 20). All enterprises were allowed to fully independently determine the price of their products (part one of Article 23), only for enterprises that held a monopoly position in the market, the state was allowed to set the price scale (part two of Article 23) (1991), which significantly expanded contractual freedom, including for state-owned enterprises that had lost their monopoly in their field of activity. At the same time, the Law did not pay special attention to state-owned enterprises, which made it clear, on the one hand, that the planned approach, which could no longer be applied in the context of competition in certain industries with private enterprises, was being abandoned, and, on the other hand, that a structural rethinking of the concept of state-owned enterprises, their tasks and nature of their activities was beginning.

Subsequently, after the states that were part of the USSR gained independence, they began an active process of transition from an administrative command economy to a market economy. As a result, state-owned enterprises were deprived of their monopoly on the production of goods, works and services in most areas in which they had a monopoly position before perestroika. In addition, in the process of privatization, which has become an integral part of the transition of post-Soviet states to market economies, most state-owned enterprises have become private.

IV. Conclusion

The administrative-command system that operated in the USSR for almost 80 years served as an effective platform for various economic experiments, including identifying the advantages and disadvantages of the state's monopolization of the production of property goods (works or services) through the nationalization of private industries and the creation of state-owned enterprises and the redistribution of such goods through a plan that almost completely eliminated the freedom of contract of the relevant entities. As a result, private business was almost completely absent in the USSR, while the state-owned business was developed through planned production. The end of the Union of Republics, we believe, was largely the result of the Soviet paradigm's lagging behind the economic trends of the world and economic globalization.

Today, economic paradigms that completely eliminate the real contractual regulation of property relations seem unviable, and the economies of states that may try to adopt such paradigms are likely doomed to failure. However, it should not be ruled out that, for example, in conditions of significant economic isolation, such paradigms may be almost

the only possible way to maintain a certain level of economic well-being. A modern example of this is North Korea, whose economic system has existed unchanged for decades, ensuring the functioning of the state itself. Extrapolating this model to the Russian Federation raises questions about its greater viability, given the nature and amount of resources located in the country. In this regard, if Russia continues to oppose itself to the world, there is a possibility that we may indeed witness the development of a “Soviet Union v. 2.0” in the state with its inherent level of civil liberties and economic management, although perhaps with certain modifications. Moreover, history tends to repeat itself.

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