



1-1-1993

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Recommended Citation

Larisa Krasavchikova, *Comments on the Law on Property in the Russian Soviet Federated Socialist Republic.*, 24 ST. MARY'S L.J. (1993).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol24/iss2/6>

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PERSPECTIVE

COMMENTS ON THE LAW ON PROPERTY IN THE RUSSIAN SOVIET FEDERATED SOCIALIST REPUBLIC

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During the period from 1960 to 1990, ownership of property in the Russian Federation was regulated by the Principles of the Social Structure and Policy of the Union of Soviet Socialist Republics (USSR).¹ These fundamental principles of legislation were reinforced in the Civil Code of the Russian Soviet Federated Socialist Republic (RSFSR) of 1964.² Accordingly, prior to the advent of Perestroika,³

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1. See KONST. SSSR [Constitution (Fundamental Law) of the USSR] arts. 10-13 (1977), reprinted in 8 MODERN LEGAL SYSTEMS ENCYCLOPEDIA 8.150.152-81 (Kenneth R. Redden & Linda L. Schlueter eds., 1991) (providing for socialist ownership of property); Richard C. Schneider, Jr., *Developments in Soviet Property Law*, 13 FORDHAM INT'L L.J. 446, 448 (1990) (discussing Soviet constitutional provisions governing ownership of property). Professor Schneider explains, "[T]he Soviet Constitution generally distinguished among three classes of owner: the Soviet State, Collective Farms and other social organizations, and citizens of the Soviet Union." *Id.*

2. See GK RSFSR [Civil Code of the RSFSR] arts. 92-95 (1964), reprinted in THE SOVIET CODES OF LAW 391-541 (William B. Simons ed., A.K.R. Kiralfy trans., 1980) (reinforcing status of State as sole owner of state property).

3. "Perestroika" is a term describing the process of change. DAVID LANE, SOVIET SOCIETY UNDER PERESTROIKA 10 (Unwin Hymen, Inc. 1990). The term "may be translated as restructuring, or radical reform, or even revolutionary transition." *Id.* With respect to the radical changes in the property law of the RSFSR, Perestroika was used by Mikhail Gorbachev to represent a recognition of the need for progressive development and fundamental change within both the former Soviet Union and the world. MIKHAIL S. GORBACHEV, PERESTROIKA: NEW THINKING FOR OUR COUNTRY AND THE WORLD 254 (Harper & Row 1987). However, the term is not always used so positively. See Stanislaw Pomorski, *Restructuring the System of Ownership in the USSR*, in PERESTROIKA AT THE CROSSROADS 225 (Alfred J. Reiber & Alvin Z. Rubinstein eds., M. E. Sharp, Inc. 1991) (defining perestroika as failing attempt to balance individual self-determination with governmental control).

there existed a period of stability and stagnation.⁴

Revolutionary changes in all spheres of social life, including ownership of property, came with the legal reforms associated with Perestroika.⁵ On March 6, 1990, the Supreme Soviet of the USSR adopted the Law on Ownership in the USSR.⁶ Many rules of law concerning ownership were changed. New forms of ownership were declared, new objects of the right of ownership were named, and additional guarantees for the protection of the rights of ownership were created. However, the radical changes found in the Law on Ownership in the USSR were recognized in the Russian Federation for less than one year. On December 24, 1990, the Supreme Soviet of the Russian Federation adopted the Law on Property in the RSFSR.⁷

According to the Soviet Union's Constitution, the Supreme Soviet of the Russian Federation had no right to preempt or contradict legislation of the USSR.⁸ Nevertheless, the Supreme Soviet of the Russian Federation stated that as of January 1, 1991, the Soviet Union's Law on Ownership in the USSR was of no force or effect within the Federation's borders.⁹ In 1991, Russia "won" this "war of laws" and re-

4. See MIKHAIL S. GORBACHEV, *PERESTROIKA: NEW THINKING FOR OUR COUNTRY AND THE WORLD* 18-19 (Harper & Row 1987) (noting stagnation as condition warranting era of Perestroika).

5. See DAVID LANE, *SOVIET SOCIETY UNDER PERESTROIKA* 13-17 (Unwin Hymen, Inc. 1990) (outlining basics of Gorbachev's goals under Perestroika). The goals of Perestroika, as presented by Mikhail Gorbachev, involved four mobilizing strategies: (1) changing the soviet society to a system that would encourage the expression of individual and group interests; (2) allowing public criticism (*glasnost*) and access to information; (3) transforming the decision-making process to a democracy (*demokratiya*); and (4) moving towards the creation of a socialist state that would provide its citizens with rights, yet constrain them by the rule of law. *Id.*

6. *Vedomosti SSSR* [Law on Ownership in the USSR] (Mar. 6, 1990), reprinted in *BASIC DOCUMENTS ON THE SOVIET LEGAL SYSTEM* 269-81 (W. E. Butler ed. & trans., 2d ed. 1991).

7. *Vedomosti RSFSR* [Law on Property in the RSFSR] (Dec. 24, 1990), reprinted in *THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS—LEGAL MATERIALS* (John N. Hazard & Vratislav Pechota eds., 1992). The new law contains thirty-two articles divided into six parts separated as: Part I, General Conditions; Part II, Private Property Rights; Part III, Property Rights of Social Amalgamations (Organizations); Part IV, State and Municipal Property Rights; Part V, Property Rights of Joint Ventures, Foreign Citizens, Organizations and Governments; and Part VI, Defense of Property. *Id.*

8. See KONST. SSSR [Constitution (Fundamental Law) of the USSR] art. 2 (1977), reprinted in *8 Modern Legal Systems Encyclopedia* 8.150.152-81 (Kenneth R. Redden & Linda L. Schlueter eds., 1991) (providing that all other state bodies are accountable to Soviets of People's Deputies of USSR).

9. See *Vedomosti RSFSR* [Law on Property in the RSFSR] art. 1, § 1 (Dec. 24, 1990),

jected the usage of the Law on Ownership in the USSR in its territory. Accordingly, even before the disintegration of the Soviet Union, all ownership relations in Russia were regulated by the Russian Federation's Law on Property in the RSFSR adopted on December 24, 1990.

The Law on Property in the RSFSR introduces several new basic principles for governing the relationships associated with ownership. Article 2, for example, creates a stability in ownership established in accordance with the law.¹⁰ Property cannot be taken against the will of its owner.¹¹ Prior to the adoption of this principle, private ownership was by no means secure, since the state could appropriate property without question.¹²

Another principle of ownership, introduced in Article 2, Section 3, is the equality of all forms of ownership.¹³ The state can no longer establish privileges for one form of ownership over another. The state is required to ensure to citizens, organizations, and other owners equal protection of the right of ownership. This principle is of great importance because during the entire post-revolutionary period (from October 1917), a very different position has dominated Soviet Law.

reprinted in THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992) (providing for supremacy of RSFSR provision). The Russian Federation's provision provides: "All acts of State Organs of power and management and participants in economic relations and other figures that contradict the state sovereignty and economic interests of the Russian Federation and its constituent republics are forbidden and recognized as invalid." *Id.*

10. *Id.* art. 2, § 1. Article 2, Section 1 provides: "In the RSFSR, the stability of property relations are guaranteed and the conditions for their development and defense are guaranteed." *Id.*

11. *See id.* art. 2, §§ 2, 3 (providing that owner controls property according to his own discretion, free from state limitation). Exceptions to this rule are set forth in Articles 31 and 32 with a requirement of compensation for the owner. *See id.* art. 31, §§ 1, 2 (providing for compensation of property owner where property rights are terminated through legislative act); *see also id.* art. 32, §§ 1, 2 (providing for compensation of property owner injured by legislative act in violation of Law on Property in the RSFSR).

12. *See* KONST. SSSR [Constitution (Fundamental Law) of the USSR] art. 10 (1977), *reprinted in* 8 MODERN LEGAL SYSTEMS ENCYCLOPEDIA 8.150.152-81 (Kenneth R. Redden & Linda L. Schlueter, 1991) (providing that state-owned socialist property cannot be used for personal gain); GK RSFSR [Civil Code of the RSFSR] art. 142 (1964), *reprinted in* THE SOVIET CODES OF LAW 391-541 (William B. Simons ed., A.K.R. Kiralfy trans., 1980) (providing for state acquisition of cultural treasures without notice if warning necessary).

13. Vedomosti RSFSR [Law on Property in the RSFSR] art. 2, § 3 (Dec. 24, 1990), *reprinted in* THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992).

Under the laws preceding the Law on Property in the RSFSR, special rules existed concerning the privileges of state ownership. For example, Article 90 of the Civil Code of the RSFSR provided that the statute of limitations does not extend to claims by state organizations for restoration of state property unlawfully possessed by citizens or other organizations, cooperative or public.¹⁴ Claims to regain all other forms of ownership, collective or personal, were generally limited by periods of one to three years.¹⁵ The Civil Code of the RSFSR also established that state property unlawfully alienated in any way could be reclaimed from any acquirer, including a bona fide purchaser.¹⁶ In contrast, the success of a comparable suit by a citizen to reclaim property depended mainly on the good or bad faith of the possessor.¹⁷ As one might expect, state ownership frequently received preferential treatment. According to the Law on Property in the RSFSR, however, the provisions allowing for the inequality between state and private ownership are no longer legally enforceable.¹⁸ Simply put, the principle of privileges for state ownership no longer exists.

Article 2, Section 3 of the Law on Property in the RSFSR delineates the main forms in which property can be owned. According to this article, property can be owned by: (1) the private citizen, (2) social (public) organizations, (3) the state, and (4) municipalities.¹⁹ All

14. GK RSFSR [Civil Code of the RSFSR] art. 90 (1964), *reprinted in* THE SOVIET CODES OF LAW 391-541 (William B. Simons ed., A.K.R. Kiralfy trans., 1980).

15. *Id.*

16. *Id.* art. 153. The Code provides: "State property and the property of collective farms and other cooperative and public organizations, unlawfully alienated in any way whatever, may be reclaimed by such organizations from any acquirer." *Id.*

17. *Id.* art. 152. With respect to a citizen's attempt to recover property, the Code provides:

If property has been acquired for value from a person who had no right to dispose of it, provided the acquirer did not know and ought not to have known this (acquirer in good faith), then the owner is entitled to reclaim his property from this acquirer only where the property had been lost by the owner or by some person into whose possession the property had been delivered by him, or where it had been stolen from one or the other or they had parted with possession in some other involuntary way.

Id.

18. *See* Vedomosti RSFSR [Law on Property in the RSFSR] art. 2, § 3 (Dec. 24, 1990), *reprinted in* THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS—LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992) (equalizing various forms of ownership). By establishing the Law on Private Property in the RSFSR as supreme, the Russian Federation erased the inequalities found within the Civil Code of the RSFSR. *See id.* art. 1, § 1 (mandating supremacy of provision).

19. *Id.* arts. 2, 3.

forms of ownership are equal.²⁰ For the first time since October 1917, true private ownership can exist in Russia.

Under Article 2, the right to the private ownership of property is now granted to, among others, the citizen.²¹ The boundaries of this right are detailed in Article 10 which describes the main objects of a citizen's private ownership rights. Under Article 10, the citizen may own land, dwelling houses, dachas, garden houses, garages, money, stocks, mass media, enterprises, buildings, equipment, and other means of production, as well as various other forms of property.²² This list is open-ended, so any type of property could be the object of private ownership by a citizen, except for matters connected with national security and the international obligations of the Russian Federation.²³ Types of property not subject to ownership by citizens may be established by legislative acts of Russia.²⁴ The composition and value of other property acquired by a citizen as permitted by law are not limited.²⁵

Article 10 is revolutionary. For example, for the first time it is declared that land may be owned by a citizen. Before this statute, the state had the exclusive right to own land.²⁶ Furthermore, a citizen is

20. *Id.*

21. *Id.*

22. Vedomosti RSFSR [Law on Property in the RSFSR] art. 10, § 1 (Dec. 24, 1990), reprinted in *THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS* (John N. Hazard & Vratislav Pechota eds., 1992). Article 10, Section 1 provides:

A citizen may own:

- plots of land;
- residential buildings, apartments, vacation homes, greenhouses, garages, household articles and consumer goods;
- monetary goods;
- stocks, obligations and other securities;
- media;
- businesses, property complexes in the sphere of production of goods, services, trade, other spheres of business activity, buildings, structures, equipment, means of transportation, and other means of production;
- any other property of a production, consumer, social, cultural or other nature with the exception of individual kinds of property stipulated by legislative acts which because of state and social security or in accordance with international obligations may not be owned by citizens.

Id.

23. *Id.*

24. *Id.*

25. *Id.* art. 10, § 2.

26. *Compare* Vedomosti RSFSR [Law on Property in the RSFSR] art. 10, § 1 (Dec. 24,

permitted to own dwelling houses, dachas, garden houses, and the like. In the Civil Code of the RSFSR, similar rights of ownership were severely limited.²⁷ A citizen was not allowed to have more than one dwelling house and the maximum size of a dwelling belonging to a citizen could not exceed sixty square meters.²⁸ Special rules regulated the termination of the right of individual ownership of more than one house.²⁹ If, as permitted by law, more than one dwelling was individually owned by a citizen, the owner had the right to elect which of these to keep.³⁰ Within the course of a year, the other dwelling had to be sold, given away, or otherwise disposed of.³¹ If within one year the owner failed to dispose of the dwelling, the house became subject to compulsory sale after a decision of the executive committee of the district or city Soviet Workers' Deputies.³² The former owner received the proceeds of the compulsory sale after deduction of the costs connected with the sale.³³ In cases where the compulsory sale did not take place for lack of buyers, the house passed into state ownership after a decision by the local Soviet with the former owner receiving no compensation.³⁴ In short, the simple conversion from the singular (house) to the plural (houses) has destroyed significant limitations on private property ownership that had existed for over seventy years.

1990), reprinted in *THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS* (John N. Hazard & Vratislav Pechota eds., 1992) (expressly allowing citizen ownership of "plots of land") with *Vedomosti SSSR [Law on Ownership in the USSR] art. 7, § 1 (Mar. 6, 1990)*, reprinted in *BASIC DOCUMENTS ON THE SOVIET LEGAL SYSTEM 269-81* (W.E. Butler ed. & trans., 2d ed. 1991) (making no allowance for citizen ownership of land).

27. Compare *Vedomosti RSFSR [Law on Property in the RSFSR] art. 10, § 1 (Dec. 24, 1990)*, reprinted in *THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS* (John N. Hazard & Vratislav Pechota eds., 1992) (allowing for citizen ownership of "residential buildings, apartments, vacation homes, greenhouses, garages . . .") with *GK RSFSR [Civil Code of the RSFSR] art. 105 (1964)*, reprinted in *THE SOVIET CODES OF LAW 391-541* (William B. Simons ed., A.K.R. Kiralfy trans., 1980) (allowing for citizen ownership of only "a dwelling-house or part of a house. . .").

28. *GK RSFSR [Civil Code of the RSFSR] arts. 105, 106 (1964)*, reprinted in *THE SOVIET CODES OF LAW 391-541* (William B. Simons ed., A.K.R. Kiralfy trans., 1980).

29. *Id.* art. 107.

30. *Id.* art. 108.

31. *Id.*

32. *GK RSFSR [Civil Code of the RSFSR] arts. 107, 108 (1964)*, reprinted in *THE SOVIET CODES OF LAW 391-541* (William B. Simons ed., A.K.R. Kiralfy trans., 1980).

33. *Id.* art. 107.

34. *Id.*

The objects subject to ownership by citizens have been expanded to include mass media, entities, means of production, and property of any other designation.³⁵ During the previous history of the Socialist State the main aim of personal ownership by a citizen was to satisfy personal consumption requirements. Indeed, the whole character of citizen ownership under socialism is best described as “consumption ownership.”³⁶ This terminology was used to distinguish between the means of *consumption* and the means of *production*.³⁷ The means of production were simply not subject to ownership by the individual citizen. The new law discards this distinction.³⁸ For the first time, the composition and the value of private property are not limited. This change is monumental and of obvious importance in Russia’s move towards a market economy. It will presumably stimulate personal activity, especially for small and medium businesses. Indeed, the proportion of statutory change is so great that Russia will no doubt experience significant growing pains as its people learn more about private property.

35. Vedomosti RSFSR [Law on Property in the RSFSR] art. 10, § 1 (Dec. 24, 1990), reprinted in THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992).

36. See KONST. SSSR [Constitution (Fundamental Law) of the USSR] art. 13 (1977), reprinted in 8 MODERN LEGAL SYSTEMS ENCYCLOPEDIA 8.150.152-81 (Kenneth R. Redden & Linda L. Schlueter eds., 1991) (allowing personal property of citizens to include “articles of everyday use, personal consumption and convenience”); GK RSFSR [Civil Code of the RSFSR] art. 105 (1964), reprinted in THE SOVIET CODES OF LAW 391-541 (William B. Simons ed., A.K.R. Kiralfy trans., 1980) (allowing citizens to own “property intended to satisfy their material and cultural needs”).

37. See KONST. SSSR [Constitution (Fundamental Law) of the USSR] art. 11 (1977), reprinted in 8 MODERN LEGAL SYSTEMS ENCYCLOPEDIA 8.150.152-81 (Kenneth R. Redden & Linda L. Schlueter eds., 1991) (providing for state ownership of means of production); *id.* art. 13 (allowing citizens to own property only for personal consumption); see also GK RSFSR [Civil Code of the RSFSR] art. 95 (1964), reprinted in THE SOVIET CODES OF LAW 391-541 (William B. Simons ed., A.K.R. Kiralfy trans., 1980) (providing for state ownership of means of production); *id.* art. 105 (allowing citizens to own property only to satisfy “material and cultural needs”).

38. Vedomosti RSFSR [Law on Property in the RSFSR] art. 10, § 1 (Dec. 24, 1990), reprinted in THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992). Article 10, Section 1 provides in part that a citizen may own:

businesses, property complexes in the sphere of the production of goods, services, trade, other spheres of business activity, buildings, structures, equipment, means of transportation and other means of production; any other property of a production, consumer, social, cultural or other nature. . . .

Id.

In some instances, to harmonize private and public interests, the Law on Property in the RSFSR allows for the limited use of a citizen's property by a business enterprise.³⁹ Such easements, covenants, and servitudes, familiar to American lawyers for many years, were not uncommon in the civil law which predated the socialism of the Soviet state. Thus, as a well-known Russian proverb says, "New things are forgotten old things."

Under the Law on Property in the RSFSR, the right of private ownership is given not only to the citizen but also to various other entities.⁴⁰ Specifically, the new law addresses the ownership of property by social organizations which traditionally served as non-profit organizations. According to Article 17, social organizations, including philanthropic and other social foundations, may own various types of property.⁴¹ Social organizations may also acquire, from their

39. *Id.* art. 5, § 2. Article 5, Section 2 provides:

The owner may attach property belonging to him to a business founded by him with the right of conducting economic activity.

Realizing the right of full ownership of property attached to it, a business owns, uses and manages the indicated property and carries out any activity with that property that does not contradict the Law. To the right of full ownership apply the rules of the right to own property unless legislative acts or contract between the business and the owner stipulate otherwise.

The owner or parties authorized by the owner to manage his property in accordance with the Law and the business's constituent documents resolve issues of the creation of the business and definition of the goals of its activities, its reorganization and liquidation and the exercise of control over the efficiency of its use and the safety of property entrusted to it.

The owner has the right to receive a portion of the profit from the use of property which he has transferred to the business in the amount determined by contract between him and the business. Disagreements arising from the determination of this portion are to be resolved by the court, State arbitrage or courts of arbitration.

Id.

40. *See id.* arts. 14-16 (establishing property rights of businesses such as "[e]conomic organizations and associations, cooperatives, collective and other enterprises . . ."); *id.* arts. 17-19 (establishing property rights of social organizations); *id.* arts. 20-25 (establishing state and municipal property rights).

41. *Id.* art. 17, § 1. Article 17, Section 1 provides in part:

Social amalgamations (organizations) which are legal entities may own buildings, structures, housing funds, equipment, inventory, property of a cultural-educational and sanitary nature, monetary resources, stocks and other securities necessary to guarantee the activity stipulated in their regulations (conditions).

Id. Similar legal status is accorded to religious organizations, which are now legal persons with civil rights and obligations. *Id.* art. 19, § 1. Specifically, Article 19, Section 1 provides in part: "Religious organizations have the right to own property acquired or created by them at their own expense, donations from citizens or organizations, property transferred to them by the state or obtained by other legal means." *Id.*

assets, enterprises providing services in accordance with the purposes specified in their regulations or charters.⁴² For example, a charitable foundation can engage in some business activity, but all its money should be used to further the given charity and the other social goals of the fund.

The Law on Property in the RSFSR contains many new rules pertaining to ownership by states and municipalities. State ownership is divided among several independent entities, including federal republics, autonomous republics, autonomous circles, and regions.⁴³ Objects of Russian Federation ownership include property of various governmental agencies, the resources of the continental shelf and marine economical zone, cultural and historical treasures of common state importance, state budgets, state banks of Russia, parts of the Union gold stock, diamond and currency funds, and other republican funds.⁴⁴ Other constituent republics and governmental entities also own various types of property ensuring the sovereignty, economic autonomy, and economic and social development of the Federation.⁴⁵

42. Vedomosti RSFSR [Law on Property in the RSFSR] art. 17, § 1 (Dec. 24, 1990), reprinted in THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992). Article 17, Section 1 provides: "Social Organizations may engage in business activity, create and acquire other property for conducting their activity insofar as is necessary to fulfill their obligations as outlined by their regulations." *Id.* Property remaining after the liquidation of a social organization shall be directed to the purposes provided for by its charter. *Id.* art. 17, § 3.

43. *Id.* art. 20. Article 20, Section 1 provides: "State property of the RSFSR takes the form of federal property and property of the constituent republics of the Russian Federation, the autonomous oblasts [districts or regions], autonomous okrugs [districts], regions and oblasts." *Id.* art. 20, § 1. The Soviet of the People's Deputies and special state organs handle the management and disposition of state property. *Id.* art. 20, § 3.

44. *Id.* art. 21, § 1. Article 21, Section 1 provides:

State property of the RSFSR includes the property of organs of power and government of the RSFSR, resources of the continental shelf and maritime economic zones of the RSFSR, cultural and historical valuables of an all-state nature, means comprising the state budget of the RSFSR, of the state banks of the RSFSR, the RSFSR's share of the all-union gold reserves, diamond and hard currency funds, of republic pension, insurance, reserve and other funds. State property of the RSFSR and subjects of the federation may be means of production in industry, transportation enterprises, communications, information, fuel-energy complexes, and other enterprises, and property necessary to the execution of the tasks of the RSFSR.

Id.

45. *Id.* art. 21, § 2. Article 21, Section 2 provides:

The property of the constituent republics of the Russian Federation, autonomous oblasts, autonomous okrugs, regions, and oblasts may be the property of their organs of power and government, cultural or historical valuables of the people of the constituent

Under the Law on Property in the RSFSR, provisions for the municipal ownership of property exist for the first time.⁴⁶ Municipalities include regions, cities, and their administrative-territorial divisions.⁴⁷ All functions connected with the management and disposition of municipal ownership are handled by the local Soviet of the People's Deputies and the organs of local self-government.⁴⁸

As discussed, the Law on Property in the RSFSR provides for the ownership of property by (1) the private citizen, (2) social organizations, (3) the state, and (4) municipalities. Fortunately, the new law recognizes the need for mixed forms of ownership. Article 3 allows for a combination of the various forms of ownership.⁴⁹ This is also a

republic of the Russian Federation, autonomous oblasts, autonomous okrugs, regions or oblasts; resources corresponding to its budget, as well as enterprises, property complexes and other property which guarantees the independence of the national-state and administrative-territorial formation of the federation.

Id.

46. Vedomosti RSFSR [Law on Property in the RSFSR] art. 23, §§ 1-3 (Dec. 24, 1990), reprinted in THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS—LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992). Municipal property is established as including:

the property of the local organs of governmental power and local self-management, resources of the local budget and extra-budget funds, the housing fund, articles of the engineering infrastructure (structures and networks of the water and sewage system, heat supply, electricity, gas works, city electric transportation, and external articles related to the provision of public services), and other articles indirectly related to consumer service and located on the territory of the Council's of People's Deputies with the exceptions provided for by legislature on local self-government.

Id. art. 23, § 1. The scope of what constitutes municipal property is further explained within Article 23, Section 2:

The municipal property of a region, city or administrative-territorial formation belonging to them may be farming enterprises, trade ventures, services, transportation, business, construction and other enterprises, property complexes, national educational institutions, cultural, health care and other property necessary to the economic and social development of and fulfillment of other tasks of the corresponding administrative-territorial formation in accordance with the legislature of the local self-government.

Id. art. 23, § 2.

47. See *id.* art. 23, § 1. (providing for municipal ownership by "a region, city [or] other administrative-territorial formations attached to a city").

48. *Id.* art. 23, § 3.

49. *Id.* art. 3, §§ 1-4. Article 3 provides:

(1) Privately owned, state, municipal and social amalgamation (organization) property may be amalgamated unless otherwise stipulated by the present Law.

(2) Property may be common (collective), simultaneously owned by several parties with definition of each owner's share (partial property) or without definition of share (joint property). Ownership, use and management of property that is commonly owned exist by agreement among all owners and in the case of the absence of such agreement, the court, State Arbitrage or the court of arbitration establishes it at the behest of any of the owners.

new development in the property law of the Russian Federation.

Special rules of the Civil Code of the RSFSR took a position opposed to the combining of the forms of ownership. According to Article 123 of the Civil Code, the shared ownership of property between citizens and the state, or between citizens and organizations, could, absent permission otherwise, be terminated within one year from the date the co-ownership began.⁵⁰ Such a termination was to be effectuated by means of:

- (1) partition of the property if partition were feasible;
- (2) buying up by the state, cooperative, or public organization of the shares belonging to citizens;
- (3) sale to the citizens of the shares belonging to the state, cooperative, or public organization;[or]
- (4) sale of the whole property followed by division of the proceeds of sale among the co-owners in proportion to their shares.⁵¹

However, under new Russian property law, legal permission for the creation of mixed forms of ownership is no longer necessary because all forms of ownership are equal and there are no real differences in their legal status.

Regardless how progressive the changes within the Law on Property in the RSFSR may be, they are ineffective if no mechanism exists to enforce their validity. Accordingly, a great number of rules found in the new law are devoted to the protection of the rights of ownership. In addition to remedies under the traditional civil law, revindication and *actio negatoria*,⁵² the new law on ownership adds means of

(3) A participant in common proportional property has the right to apportion his share and a participant in common joint property has the right to determination of and apportionment of his share.

(4) Upon the sale of a share in common property to an outside party, the remaining participants in common proportional property have the primary right of purchase of the share for sale according to the procedure and under the conditions established by the legislation of the RSFSR, constituent republics of the Russian Federation, and by the regulations of a legal entity.

Id.

50. GK RSFSR [Civil Code of the RSFSR] art. 123 (1964), reprinted in THE SOVIET CODES OF LAW 391-541 (William B. Simons ed., A.K.R. Kiralfy trans., 1980).

51. *Id.* art. 123.

52. *Id.* arts. 151, 156. Article 151 of the Civil Code of the RSFSR gave the owner of property standing for a vindicative suit by providing that "[e]very owner has the right to reclaim his property from any person in unlawful possession of it." *Id.* art. 151. Article 156 of the Code established the right to *actio negatoria* by stating that "[a]n owner may demand that any violation of his rights be remedied even if not connected with a deprivation of possession."

legal protection previously unknown.

Under the new law, the losses caused to the owner as a result of a governmental adoption of legislative acts which terminate the right of ownership shall be compensated in full.⁵³ In particular, the new law protects against government takings without any compensation.⁵⁴ Ironically, under the new law, if lawmakers decide to end cooperative ownership, the basis of the now discarded Soviet regime, the state will incur an obligation to pay compensation to all the owners whose property rights are violated.

Also new is the creation of what is essentially judicial review: if the government promulgates an act which violates the Law on Property in the RSFSR, such an act may be recognized as invalid by a court of law.⁵⁵ Losses caused to citizens, organizations, or other persons as a

Id. art. 156. The right to vindication is restated in the new Law on Private Property in the RSFSR. *Vedomosti RSFSR [Law on Property in the RSFSR] art. 30, § 1 (Dec. 24, 1990), reprinted in THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992).* Similarly, the right to a negatorian suit reappears in the new law as well. *Id.* art. 30, § 2.

53. *Vedomosti RSFSR [Law on Property in the RSFSR] art. 31, §§ 1, 2 (Dec. 24, 1990), reprinted in THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS (John N. Hazard & Vratislav Pechota eds., 1992).* Article 31 provides:

(1) In case the USSR, RSFSR or constituent republics of the Russian Federation take legislative acts terminating the right of property, losses caused to the owner as the result of such acts by court decision are to be compensated for in full measure by the USSR, RSFSR or corresponding constituent republic of the Russian Federation.

(2) The termination of property rights in connection with a decision by a governmental organ aimed directly at the seizing of property from its owner including the decision to seize land on which a house, building, other structure, installation, planting belonging to the owner, is permitted only in cases and by procedure established by legislative acts of the RSFSR, constituent republics of the Russian Federation. In such case the owner is to be compensated with equally valued property or provided with compensation in full measure for losses incurred by termination of ownership rights.

In case the owner disputes such a decision which terminates his ownership, the decision may not be carried out before the claim has been settled in court, by State Arbitrage, or in a court of arbitration. While settling such a dispute all questions of compensation to the owner for losses are also resolved.

Id.

54. *Id.* art. 31, § 2.

55. *Id.* art. 32, § 1. Article 32, Section 1 provides:

If as the result of publication of an act that does not correspond to this Law by organs of governmental supervision or local organs of governmental power the rights to possession, use and management of an owner or other legal entities are violated, such an act may be recognized by the court as invalid should the owner or any person whose rights were violated bring such matter to court.

result of the promulgation of such an act shall be subject to compensation in full.⁵⁶ Although the state assumes this obligation to compensate the owner for all losses resulting from a crime against his or her property, the state's expenses are to be collected from the resources available to the responsible governmental agency.⁵⁷ This charitable article embarks on a great social mission. The only question is whether there will be enough money in the state treasury to compensate for losses from the numerous crimes against private ownership. As the Russian Federation struggles to forge a market economy, the resources available to a given governmental agency most certainly will be limited at best. In the vast majority of cases, there will be a great difference between the amounts claimed and the amounts paid. Accordingly, the ambitious enforcement mechanisms of the Law on Property in the RSFSR are probably only paper rules, with little practical effect. They are more political rules than economically well-founded regulations of ownership.

The Law on Property in the RSFSR is truly an ambitious and revolutionary transformation in the basic concepts of property within the Russian Federation. The rights of ownership "created" in the document signal a complete reversal in the understanding of what constitutes property. Although inadequacies exist, this new law should be viewed as representative of an ongoing experiment: moving from a socialistic regime of property to a regime of individualism and free markets. This is, indeed, a very long move.

Id.

56. *Id.* art. 32, § 2.

57. *Vedomosti RSFSR* [Law on Property in the RSFSR] art. 32, § 2 (Dec. 24, 1990), reprinted in *THE PARKER SCHOOL OF FOREIGN AND COMPARATIVE LAW, COLUMBIA UNIVERSITY, RUSSIA AND THE REPUBLICS — LEGAL MATERIALS* (John N. Hazard & Vratislav Pechota eds., 1992). Article 32, Section 2 provides: "Losses, including loss of profits, suffered by citizens, organizations and other entities as the result of the publication of such acts as described above [in Article 32, Section 1] are to be compensated for in full measure by the resources available to the corresponding organ of power or agency." *Id.*