

**GUEST EDITOR'S NOTE
ON THE 100TH ANNIVERSARY OF THE RUSSIAN 1917 REVOLUTION
AND LAW**

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This issue of the *Russian Law Journal* is dedicated to the 100th anniversary of the Russian 1917 Revolution. This Revolution in the Soviet world was named the Great October Socialist Revolution, hoping to mark a radical shift in the paradigm of the society on the global scale. The importance of this Revolution is frequently compared to the importance of the French Revolution, which radically changed the history of the humankind. The Russian Revolution also initiated a great shift in the society of the Russian Empire and later – many other countries throughout the world. The shift involved a new form of social organization (abolishing of social “classes” in Marxist interpretation), a new economy (state-planned economy with the national ownership of all means of production), a new political system (centralized both organizationally and ideologically in its political structure), and a new form of law.

The role of “legal” formalities played a major role in the Revolution. Legal documents formalized every political decision of the revolutionary government (such as the first decrees adopted right after the Revolution – decree on peace and decree on land). In this way, the Russian Revolution pretended to be made through legal instruments, addressing the critic to the substantial wrongness of these legal acts, keeping the formal legality fulfilled. The new social order was established through the legal declarations and constituting legal acts.

The substance of Soviet legality and practice radically evolved during the Soviet period (1917–1991). The law, established after the Revolution in 1917 was far from the law dismantling by perestroika and the new constitutions of Soviet states in 1990s, but its main principles and specific features remained the same from 1917 onward.

The specifics of this legal system, established in the Soviet states, is still left as a matter for deep research. The studies of Soviet law in the contemporary scholarship both in Russia and abroad was dramatically politicized, and only a few decades after collapse of the system we can start moving to an impartial analysis of its main ideas, its development and influence throughout the world, to understand the specific nature of Soviet law. Russian scholars that drastically criticized “bourgeois” law of Western democracies in 1960–1980, lost interest in Soviet law in 1990s, treating it as discarded and forgotten, belonging to the history only. Western jurists also hastened to argue that the Soviet law is dead. Today both realize that the Soviet law could not disappear without a trace and moreover its specificity can be a material for the future development of law in the world.

It is obvious today that, the Soviet law reflected the specificity of the Soviet social system as whole. The law reflected the economic and political realities of the Soviet society, and if western scholars treated these realities as incompatible with the ideas of democracy, they found consequentially the Soviet law to be unjust and far from ideals and principles of law in the Western culture. Some scholars even denied that Soviet law was law, focusing mainly on the actual gap between the law in books and the law in the life in the Soviet states. This approach objectively prevented the analysis of the institutions of the Soviet law, rejected or survived in the contemporary post-Soviet law.

Many institutions of the Soviet law share a great deal in common with Western law on the formal level, especially in the private law. The classification of Soviet law as a legal family of socialist law was based on the role of law in the society and the specifics of the political system, rather than the substance of regulation (e.g., such institutions as contract or torts). The legal institutions functioned within very different context and were sometimes interpreted in very specific way, but still can be a matter for comparative analysis, taking out the prejudices and political perceptions of Soviet law.

The difference in the formal and substantial dimensions of law were an area for deep misunderstanding between Soviet and foreign jurists. Soviet lawyers judged law on the formal side, believing that critics of the Soviet legal culture came from political motives. Western scholars found that the Soviet law did not provide effective protection of legal interests of people and did not reflect those principles, which are associated with the “nature” of law. All these issues raise a principal question: Did the Russian Revolution of 1917 make a specific legal system? Or did the Revolution organize the legal system with only minor variations of the legal institutions (e.g. property or political elections)?

A very important dimension of the analysis of the Soviet law today (also grasped by the contributors to this issue) is its influence on the legal development in post-Soviet republics (including Russia) as well as in other jurisdictions. The Soviet paradigm of the social organization was exported to many countries around the world together with Soviet concept of law. As a result, the traces of the Soviet law are found today in different social and legal contexts, in different legal traditions

and circumstances. These traces sometimes are contributions to the general ideas of law, sometimes are the variations of the legal institutions, specifically developed due to the Soviet ideas.

Today we can make the analysis of the Soviet law in both synchronic and diachronic perspectives, focusing on the phenomenon of the Soviet law in the historical and the development of law in the world. The special issue of the *Russian Law Journal*, presented herewith, is a contribution to this important purpose. The contributors to this issue aim investigate the Soviet concept of law, developed after the Revolution of 1917. These investigations focus both on the general overview of the pre-revolutionary imperial and the Soviet legal tradition (as Tatiana Borisova, Maria Zakharova and Vladimir Przhilenskiy) and its development in particular legal fields (papers by Ekaterina Mishina, Innokenty Karandashov and Ksenia Shestakova, Andrea Kluknavská and Tomáš Gábriš) and institutions (Piotr Szymaniec, Paul Fisher and Vlada Lukyanova). Most of the contributors are from Russia, making analysis of the Soviet law “from inside,” while three articles present the view “from outside.” This balance allows to compare the methodology and the principal approaches to the analysis of the Soviet law in different traditions.

Tatiana Borisova in her article “The Institutional Resilience of Russian Law Through 1905–1917 Revolutions” tries to trace the interaction of the Russian legal tradition with ideas of the Soviet law, focusing on the opposition between the Rule of law and *diktatura zakona* (dictatorship of the law). Examining the activity of three key social actors of the legal system (the sovereign, the intermediaries and the people) through the Russian revolutions of 1905 and 1917, Tatiana comes to the conclusion, that “in spite of traditional interpretation of the October Revolution as a breakdown of the imperial state and its law, the revolutionary changes should be considered as a culmination of prerevolutionary legal trajectories.” As a result, the Soviet approach to the law from its formal and technical side is proved to be not only the result of the Soviet ideology, but a continuity of the prerevolutionary imperial legal tradition as well.

Maria Zakharova and Vladimir Przhilenskiy in their paper “Two Portraits on the Background of the Revolution: Pitirim Sorokin and Mikhail Reisner” show the diversity of the social perception of the October Revolution and its reflection in law by the Russian society. This perception is extremely significant as it shows two radically different approaches. Pitirim Sorokin, a professor of the law faculty at St. Petersburg University, actively counteracted the Revolution thinking that Soviet ideology encroached on the basic principles and ideas of law. Mikhail Reisner, another professor of St. Petersburg University, started to develop “Marxist-Leninist” theory of law, believing that the new social order gives birth to a new kind of law.

One of the first fields of law, regulated in radical new manner, was the field of family and childhood law, which Ekaterina Mishina addresses in her article “Soviet Family Law: Women and Child Care (from 1917 to the 1940s).” The author argues that right after the Revolution the new government liberalized the legal rules for marriages and divorces, cancelled the ban for abortion, abolished the discrimination of children born out of

wedlock, but later, in 1930s, many of these measures became matters for revision. For instance, abortion became illegal again in 1936. The legal policy of the Soviet state in first years after the Revolution fundamentally changed in the consequent years.

Another field of law, reflected the policy of the Soviet state, was the international law, the changing Soviet paradigm of which is the matter of the article by Ksenia Shestakova and Innokenty Karandashov "The Principle of Equality of States in the Wake of the Russian Revolution." They demonstrate that the conceptual approach formed by Bolsheviks before the Revolution of 1917 strongly favored the equality of states (being one of the key principle in international law), while later both the political practice and the doctrine of international law of the Soviet state departed from this original position.

Paul Fisher from the UK, in his article "The Soviet Union's Approach to Arbitration and Its Enduring Influence upon Arbitration in the Former Soviet Space" investigates the history of arbitration in Russia. He starts from the pre-revolutionary use of arbitration in the Bolsheviks party and ends with the vestiges of the Soviet *arbitrazh* in today legal and judicial system of Russia. Analyzing the practice of enforcement of the commercial arbitration awards (including foreign international arbitrations), Paul concludes that the Soviet legal practice definitely appears in the practice of the post-Soviet countries of commercial dispute resolution.

Vlada Lukyanova in the article "Product Standardisation in the USSR: Legal Issues" focuses on the institution of standardization, generally dismantled in Russia in 2000s and replaced with a new system of "technical regulations." Vlada argues that the Soviet paradigm of product standards having binding force has to be kept in today Russia within the evolution from deregulation, applied in the state policy and legal regulation in 1990s, to the "optimization paradigm." The latter supposes involvement of the state in the regulation of economic activity more intensively, and the Soviet notion of standardization is a good instrument for this.

The Polish contributor to the Special issue Piotr Szymaniec focuses his attention in the paper "The Influence of Soviet Law on the Legal Regulations of Property in Poland (1944–1990)" on export of law from the Soviet states to the states of Eastern Europe under the communist regime. The legal concept of property – the central institution for legal regulation of economy – became the main subject for this research. Piotr argued that the Soviet ideas of property regulation were imposed in the Polish legal system through the Polish Constitution of 1952 and the Civil Code of 1964 and the vestiges of this regulation is still current for Poland.

Two authors from Slovakia, Andrea Kluknavská and Tomáš Gábriš, in the paper "Criminal Law Between the Capitalist and Socialist Paradigm?" presented the conceptual analysis of the criminal law in these two approaches. Making their analysis, the authors conclude that although the ideas and principles of the Soviet and western criminal law were quite different, they did not form so big difference to qualify them as separate paradigms, though the legacy of communism in Slovakia and other countries of Eastern and Central Europe appears quite obviously.