# PRODUCT STANDARDISATION IN THE USSR: LEGAL ISSUES

VLADA LUKYANOVA,

Institute of Legislation and Comparative Law
under the Government of the Russian Federation (Moscow, Russia)

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*The article offers a comprehensive overview of academic views on the strategy and issues of the legal regulation of the Soviet state standardisation system as it formed and evolved. The USSR had a ramified system of legislative acts and codes of practice that thoroughly governed all aspects of quality and safety assurance across all stages of the product lifecycle. They were collectively known as the state system of standardisation. Yet at the turn of the 21st century, this system was largely dismantled under the influence of economic liberalisation ideas, and its underlying documents lost their binding nature.*

*Russia is currently phasing out of the so-called "market romanticism" period shaped by the idea of minimal state interference in the economy, when any imperative provisions of public law specific to the economy were perceived as administrative hurdles. We are witnessing the emergence of a new mechanism of state control over the Russian economy – one based on the principles of the optimisation of state regulation of economic activity. One of the manifestations of this process involves rebuilding the Russian standardisation system on a new footing. Making this process more effective calls for revisiting the Soviet experience and exploring both its strengths and pitfalls.*

*The article looks into the origins of standardisation in Russia, the key milestones in the history of Soviet standardisation, and the relevant legal regulation. Particular attention is devoted to how state standardisation institutions were established and how changes in the system of state agencies having jurisdiction over the matters of standardisation have influenced the efficiency of this system. The distinguishing features of the Soviet standardisation system, compared to those of other countries, are identified for each stage of system formation and evolution.*

*A fair amount of attention is given to an analysis of the Soviet paradigm of state regulation of the economy, as well as its historical and ideological underpinnings and key aspects. The way standardisation has been influenced by this paradigm, along with other*

*paradigms implemented in Russia in recent decades, is analysed. Correlations are drawn between specific aspects of the Soviet paradigm of state administration of the economy, legal issues of standardisation in the USSR and issues of Russian standardisation. The study was undertaken to explore the idiosyncrasies of the Soviet standardisation system attributable to the specifics of the entire economic, administrative, and legal system and ideology of the USSR. This will help identify the positive aspects of this system that were undeservedly discarded upon the transition to the new economic conditions, along with the unresolved legal issues that stand in the way of an effective standardisation system in the Russian Federation.*

*The study explores standardisation issues through a systemic and structural analysis of Soviet standardisation laws in conjunction with Russian and international legislation and practices. It incorporates a critical review of the major findings of academic and analytical studies focusing on standardisation issues. The study calls for an integrated approach that is indispensable to exploring the conditions under which the Soviet standardisation system formed and evolved in conjunction with changes in the academic community's perception of the legal nature of standards.*

*A comparative law study of international experiences concerned with the regulation of standardisation issues primarily focuses on the legislation of the biggest economies. This made it possible to draw a general correlation between the evolutionary trends and specifics of the Soviet standardisation system and the corresponding systems in these countries.*

*The legalistic, systemic and structural, comparative law, and historical law methods of study helped determine the optimal course for legislative improvements in this field.*

*Keywords: standard; standardisation; Soviet paradigm of state administration of the economy; deregulation paradigm; normative legal act; legal nature of normative legal act.*

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## Introduction

Standardisation is one of the crucial mechanisms behind the progress of human civilisation. Society's evolution follows two trends. One is variability, or society's striving and ability to innovate. The other one is stability, or a desire to secure the achievements and make them permanent. When one of these trends prevails and overrides the other, this destroys the underlying fabric of a society's culture[1] and disrupts its adaptive mechanisms. Indeed, rapid changes occurring over a prolonged period are likely to undermine the functional bonds among various components and strata of society to a point where it starts to resemble "loose sand" (A.N. Lutoshkin). On the other hand, a striving to preserve the *status quo* at any cost results in stagnation, which is attributable to the inability of society, its specific systems and subsystems to be receptive to external and internal stimuli for progress. This brings us to the biggest challenge of managing a state: the need to maintain an ongoing balance between the variability (progress) and stability (cohesion) of society. The former is achieved via a consistent innovation policy, while the latter is made possible through standardisation, or making the positive achievements permanent by codifying them in standards.

Standardisation, as a form of human social activity, originated a fairly long time ago and was originally associated with material production. The earliest historical evidence of standardisation dates back to the third millennium B.C. when the ancient Egyptians began using stones finished to precision to build their pyramids. The history of Russian standardisation also goes back several centuries. The earliest mentions of standards designed to secure the buyer's right to receive goods of proper quality were documented in the 9$^{th}$–13$^{th}$ centuries. Standards were mentioned in the ukases (decrees) of Ivan the Terrible dealing with the calibration of cannon balls. They introduced ring gauges for cannon ball sizing. Official state standards appeared under Peter the Great. Under his rule, standardisation was consistently implemented over a quarter of a century and covered shipbuilding, weapons manufacture, and construction, as well as other critical sectors of the economy at the time. In 1713, Peter the Great established the first government quality inspection committees in Arkhangelsk, Vologda, Narva and other cities. They inspected the quality of flax, timber, hemp, and other goods exported from Russia. Peter the Great also instituted prepackaging rules for export goods.[2]

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[1] *See* Степин В.С., Кузнецова Л.Ф. Научная картина мира в культуре техногенной цивилизации [Vyacheslav S. Stepin & Lidia F. Kuznetsova, *Scientific Picture of the World within the Industrial Civilization Culture*] (Moscow: Institute of Philosophy of the Russian Academy of Sciences, 1994).

[2] Определение Сената на просительные пункты, поданные Великобританскими купцами через Английского посла, от 25 января 1713 г. "О браковании пеньки и льна у города Архангельска" [*Senate Decree on Requests Submitted by UK Merchants Through the English Ambassador of 25 January 1713 "On Hemp and Flax Quality Inspection Outside the City of Arkhangelsk"*] in Полное собрание законов Российской империи с 1649 года. Т. V [*Full Collection of Statutes of the Russian Empire since 1649. Vol. V*], Art. 2635 (St. Petersburg: Printing Shop of the Second Department of His Imperial Majesty's Own Secretariat, 1830).

Standards and standardisation gained an even greater importance as the global economy transitioned to mass production based on the manufacture of standardised, i.e. interchangeable, parts.

The international experience has revealed an extensive range of problems and tasks that can be resolved with the help of (or sometimes only through) standardisation. These include the issues of labour and employment of the population,[3] anti-corruption efforts,[4] performance of government functions, and provision of public[5] education[6] and healthcare services. Standardisation theoreticians[7] also attribute such phenomena as literacy, chronology, and even beauty standards to the results of standardisation. Be that as it may, one of the most important domains of standardisation involves the standardisation of products and the processes of product design (including surveys), manufacture, construction, installation, commissioning, operation, storage, shipping, distribution, and disposal.

The USSR created one of the most effective standardisation systems in the 20th century. One proof of its effectiveness is the fact that when the International

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[3] For example, the numerous conventions of the International Labor Organization (ILO), as well as acts of supranational (communitarian) law that form the groundwork of national employment programmes in many countries, which include the establishment of reskilling and retraining centres for the working-age population, free employment services, unemployment benefits, community outreach, institution of job quotas for young people and other socially vulnerable groups in the labour market.

[4] The United Nations Convention against Corruption (UNCAC) of 31 October 2003, and the derivative acts of national legislation of the state signatories of this Convention, such as Federal law of 25 December 2008 No. 273-FZ "On Anti-Corruption Efforts," use a concept such as "anti-corruption standards" and interpret it as a system of prohibitions, restrictions, and permissions that directly or indirectly regulate the conduct of various parties (judges, public and municipal officials and individuals with equivalent status, such as managers of state-owned corporations, civil society institutions, etc.). For details, *see* Иванов С.Б. и др. Противодействие коррупции: новые вызовы: Монография [Sergey B. Ivanov et al., *Combating Corruption: New Challenges: Monograph*] (T.Ya. Khabrieva (ed.), Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation; Infra-M, 2016).

[5] *See* Федеральный закон от 27 июля 2010 г. № 210-ФЗ "Об организации предоставления государственных и муниципальных услуг," Собрание законодательства РФ, 2010, № 31, ст. 4179 [Federal law No. 210-FZ of 27 July 2010. On Arranging the Provision of Public and Municipal Services, Legislation Bulletin of the Russian Federation, 2010, No. 31, Art. 4179].

[6] Scholars have observed that educational standards play a twofold role in the Russian Federation. On the one hand, they guarantee a uniform educational space and serve as a yardstick for the quality of education. On the other hand, they ensure the appropriate variability of curricula at the relevant levels of education and allow the formulation of curricula adapted to different levels of complexity and specialisations with due account of the academic needs and abilities of students. For details, *see* Андриченко Л.В. и др. Образовательное законодательство России. Новая веха развития: Монография [Lyudmila V. Andrichenko et al., *Educational Legislation of Russia. New Evolutionary Milestone: Monograph*] (N.V. Putilo & N.S. Volkova (eds.), Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation; Yurisprudentsiya, 2015).

[7] Брославский Л.И. Техническое регулирование качества и безопасности продукции и окружающей среды: проблемы теории и практики, 2 Бизнес, менеджмент и право 48 (2015) [Lazar I. Broslavsky, *Technical Regulation of Quality and Safety of Products and the Environment: Theoretical and Practical Issues*, 2 Business, Management and Law 48 (2015)].

Organization for Standardization (ISO) was established in 1946, the USSR was not only among the founding countries but also manned the secretariats of several technical committees, including TC 37 "Terminology (General Principles and Coordination)."[8] Soviet integrated product quality management systems (e.g. the zero-defects workmanship system developed in the mid-1950s at mechanical engineering plants in the Saratov Region, the Gorky "First Product Quality, Reliability, and Longevity" (KANARSPI) system, and the Lviv Standardization-Based Integrated System for Product Quality Management, etc.) served as prototypes for the widely used ISO standards of the 9,000 series.

The Soviet standardisation system was based on scores of legislative acts and codes of practice, chiefly state, industry-specific, and republican standards. They thoroughly governed all aspects of quality and safety assurance across all stages of the product lifecycle in all sectors of the national economy. Their purpose was twofold: On the one hand, they ensured the manufacture of quality industrial and agricultural products. On the other hand, they created conditions favouring lower production costs and an overall reduction in production-related outlays. The latter was accomplished through the unification of designs and the establishment of a reasonably limited mix of part types and sizes, machinery assemblies and devices, mechanisms, equipment and instruments, machining jigs and tools. This ensured the interchangeability of specific parts and components of machinery and products, while also contributing to a more efficient utilisation of feedstock and materials. The relevant requirements were established by standards applicable to various types of products (model specifications; general specifications; parameters and/or dimensions; product mixes, grades, acceptance procedure standards, operation and maintenance rules, etc.). The state standard of the USSR entitled GOST 1.0-68 "State Standardization System. Basic Provisions"[9] (hereinafter GOST 1.0-68) also outlined other aspects of standardisation, such as the regulation of manufacturing processes and the definition of units of physical quantities, terms and symbols.

Under the conditions of a command economy, the Soviet standardisation system served as a major regulator of the social fabric and, yet again, was fairly effective. Yet the transition to a new economic reality changed the role and place of standardisation within the system of regulators of societal relations. Everything changed: the structure of the standardisation system and the scope of items and processes subject to standardisation, the legal force of the underlying documents, and the principles and procedure of drafting and applying standards. And yet the reform that brought about such drastic changes lacked appropriate academic

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[8] This Technical Committee formulated the core terminology used by ISO and all of its members.

[9] ГОСТ 1.0-68 "Государственная система стандартизации. Основные положения" [*GOST 1.0-68 "State Standardization System. Basic Provisions"*] in Государственная система стандартизации [*State Standardization System*] (Moscow: Standards Publishing House, 1970).

underpinnings. Its objectives and stages were not properly coordinated. This caused a drain of standardisation professionals from research institutions and industrial enterprises. The quality of national standards development deteriorated in many areas of standardization,[10] and the overall effectiveness of standardisation declined.

Russia presently faces the task of reversing these negative trends. This calls for a reassessment of the role and place of standardisation within the system of state administration of the economy and for the elaboration of a new legislative model of standardisation. This model should combine both evolved and fundamentally new legal instruments, ensure the legal continuity and preservation of best practices, and offer new legal solutions. This, in turn, calls for a comprehensive study of the Soviet standardisation experience.

This study aims to explore the idiosyncrasies of the Soviet standardisation system attributable to the specifics of the entire economic, administrative, and legal system and ideology of the USSR. This will help identify the positive aspects of this system that were undeservedly discarded upon the transition to the new economic conditions, along with the unresolved legal issues that stand in the way of an effective standardisation system in the Russian Federation. In light of the drastic changes that have taken place in the standardisation system, it would be impractical to study the Soviet experience in this field in isolation from the modern reality. This study therefore analyses the changes in the standardisation system attributable to the command economy and the transition to the new economic conditions.

## 1. Notion and Legal Nature of Standardisation

The International Organization for Standardization (ISO) defines standardisation as an

> activity of establishing, with regard to actual or potential problems, provisions for common and repeated use, aimed at the achievement of the optimum degree of order in a given context.[11]

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[10] Распоряжение Правительства Российской Федерации от 24 сентября 2012 г. № 1762-р "Об одобрении Концепции развития национальной системы стандартизации Российской Федерации на период до 2020 года," Собрание законодательства РФ, 2012, № 40, ст. 5485 [Russian Government Directive No. 1762-r of 24 September 2012. On Approval of the RF National Standardization System Development Concept Up to 2020, Legislation Bulletin of the Russian Federation, 2012, No. 40, Art. 5485].

[11] Руководство Международной организации по стандартизации ИСО/МЭК 2:1996 "Общие термины и определения в области стандартизации и смежных видов деятельности" [ISO/IEC Guide 2:1996 "Standardization and Related Activities – General Vocabulary"]. *Cited from* Румянцев М.И. и др. Стандартизация [Mikhail I. Rumyantsev et al., *Standardization*] 6 (Magnitogorsk: MSTU, 2003).

GOST 1.0-68 offered a similar, albeit more specific, definition. This document defined standardisation as

> an activity of establishing and using rules aimed at the achievement of order in a given context for the benefit and with the involvement of all the concerned parties, in particular the achievement of universal optimum cost savings while ensuring the proper conditions of operation (use) and adhering to safety requirements.[12]

It went on to elaborate:

> Under the conditions of the socialist command economy, the most crucial aspect of standardization is its active role in the administration of the national economy, which is manifested through planned activities of the public authorities, enterprises and organizations aimed at establishing and applying mandatory norms, rules, and requirements geared toward the acceleration of technological progress, greater labour productivity, and product quality improvements.[13]

It proclaimed the goals of standardisation to be:

– acceleration of technological progress, and greater effectiveness of social production and labour productivity, including the labour of engineers and managers;

– improvement of product quality and assurance of consistent optimum quality;

– reconciliation of product requirements with the country's defence needs;

– creation of conditions favouring extensive exports of high-quality products compliant with global market requirements;

– improvement of national economy administration procedures and formation of a sustainable product mix;

– development of product engineering and manufacturing specialisations;

– sustainable utilisation of production resources and sparing use of material and human resources;

– protection of public health and the safety of workers;

– promotion of international economic, technological, and cultural cooperation.[14]

In other words, standardisation was a tool of the planned and goal-oriented activities of the state. It was a means of implementing its technical and economic policies.

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[12] Clause 1.1 of GOST 1.0-68.

[13] *Id.*

[14] Clause 2.1 of GOST 1.0-68.

To achieve its goals, the state – represented by the relevant authorities – used standardisation tools and means to establish product specifications and regulate product quality, thereby influencing the activities of business entities in the manufacturing industry, construction, retail, public catering, logistics, and distribution. As such, standardisation was a form of administration by the government represented by its executive and administrative agencies. This activity involved creating unified norms, rules, and requirements for products subject to standardisation, which were intended for an indeterminate circle of entities and individuals, as well as implementing[15] them and ensuring compliance.

Yet one cannot help agreeing with those scholars who believed that

> no single enterprise can exist and operate in isolation from others. All of them are united by "nourishing" economic ties embodied in the legal form of a contract. In supplying products to one another in pursuance of contracts or production targets, enterprises proceed from the premise that product quality must conform to state standards, specifications or approved specimens under the Fundamentals of Civil Legislation of the USSR and Union Republics as well as other acts of legislation.[16]

The Fundamentals of Civil Legislation also defined the possible grounds for deviations from the requirements of state standards, specifically where the contract required supplying products whose quality exceeded the quality specifications of the standards (Art. 47 of the Fundamentals).

Legal provisions governing the issues of standardisation were industry-specific and, as such, formed an integrated (cross-disciplinary) institute of law when taken together. Public law (administrative law) provisions predominated in this context. Yet as the standardisation system evolved, a trend towards an expansion in permissive principles emerged. This trend further intensified during the transition from the command economy to a market economy.

Federal law of 29 June 2015 No. 162-FZ "On Standardization in the Russian Federation"[17] (hereinafter Federal law "On Standardization in the Russian Federation")

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[15] Clause 7.1 of GOST 1.0-68 defined the term "implementation of a standard" as "activities aimed at ensuring compliance with the standard." "Compliance with a standard" was defined as "adherence to norms, rules, and requirements prescribed by the standard within its scope of application from its effective date."

[16] *See* Емельянова М.Б. Вопросы стандартизации и качества продукции (правовой аспект проблемы) [Maria B. Emelyanova, *Standards and Product Quality (Legal Aspect of the Problem)*] 11 (Tallinn: Estonian Academy of Sciences, 1967).

[17] Федеральный закон от 29 июня 2015 г. № 162-ФЗ "О стандартизации в Российской Федерации," Собрание законодательства РФ, 2015, № 27, ст. 3953 [Federal law No. 162-FZ of 29 June 2015. On Standardization in the Russian Federation, Legislation Bulletin of the Russian Federation, 2015, No. 27, Art. 3953].

is presently the fundamental act governing standardisation in the Russian Federation. It associates standardisation primarily with technical regulation. Standardisation is interpreted as

> an institution of law aimed at improving the living standards of citizens and the competitiveness of products, work and services.

This institution is called upon to ensure:[18]

– the promotion of good faith competition among vendors of products, work, and services;

– the manufacture and distribution of innovative and hi-tech products;

– the elimination of formal obstacles to trade;

– improvements in the safety and quality of products, work, and services;

– the protection of the life and health of citizens, the assets of individuals and legal entities, state and municipal property;

– the protection of the environment, life and health of animals and plants;

– the prevention of practices that are misleading to buyers, including consumers;

– energy efficiency and the conservation of resources.

Under this Federal law, the standardisation in the Russian Federation is founded on the principles of the voluntary application of standardisation documents, on the one hand, and the mandatory application of standards in the instances specified by Russian laws, on the other. Under this Federal law and technical regulation legislation, standardisation is portrayed as a decentralised system founded on the principles of voluntary application and freedom of contract. For example, according to Clause 1 of Art. 21 of the Federal law of 27 December 2002 No. 184-FZ "On Technical Regulation"[19] (hereinafter Federal law "On Technical Regulation"), a voluntary conformity verification procedure offers a way to prove that a product subject to standardisation conforms to national standards or other standardisation documents. Conformity verification is carried out at the applicant's initiative on the terms of the contract between the applicant and the certification authority.

If you look at standardisation from the perspective of the application of the law, it is important to mention that the following question represented a substantial aspect of the debate about the role and place of standardisation in Soviet society: Are requirements of state standards a guaranteed minimum or the upper limit of possible requirements? Some scholars[20] believed that a standard established a minimum

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18 Russian Government Directive No. 1762-r, *supra* note 10.

19 Федеральный закон от 27 декабря 2002 г. № 184-ФЗ "О техническом регулировании," Собрание законодательства РФ, 2002, № 52 (ч. 1), ст. 5140 [Federal law No. 184-FZ of 27 December 2002. On Technical Regulation, Legislation Bulletin of the Russian Federation, 2002, No. 52 (Part 1), Art. 5140].

20 *See, for example*, Бахчисарайцев Х.Э. Договор поставки и борьба за качество продукции [Christopher E. Bakhtchisaraitsev, *Supply Contract and Product Quality Assurance*] 14–15 (Moscow: Juridical

of requirements for product quality and therefore permitted contract givers and contract acceptors to raise them contractually, and this should not be considered a violation of or deviation from the standard. This position was substantiated by the fact that the obligation to comply with the requirements of a standard should not be an obstacle to product quality improvements or restrain the initiative of enterprise teams aimed at inventing new ways to enhance product quality. Other scholars maintained that[21] product quality should not deviate from the requirements of a standard because standardised product manufacture implies making products in strict accordance with all of its indicators; a violation of at least one indicator should result in product rejection. Unauthorised deviations from a standard in either direction could compromise the whole idea of standardisation in Soviet society. Hence the only possible way to make products with parameters exceeding those set out in standards involves amending the relevant standard. It is safe to say that the proponents of the latter position had the upper hand in this dispute, considering the fact that, according to expert estimates, compared to the requirements of a mandatory minimum set out in standards, the provisions of Russian legislation under which enterprises were allowed to manufacture products of a higher quality were very seldom used.[22]

We attribute this to the fact that the primary objective of standardisation was seen not as the achievement of the optimum degree of order in a given context, as defined in the documents of the International Organization for Standardization (ISO), but as the formalization of comprehensive technical, economic, and aesthetic parameters of each type of product by the socialist state represented by its relevant authorities.[23]

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Literature Publishing House of the People's Commissariat for Justice of the USSR, 1941); Яковлева В.Ф. Исполнение обязательств между социалистическими хозяйственными организациями: Автореф. дис. ... канд. юрид. наук [Valentina F. Yakovleva, *Discharge of Obligations Between Socialist Business Entities: Author's abstract of a thesis for the degree of candidate of jurisprudence*] 11 (St. Petersburg, 1952); Яковлева В.Ф. О роли норм советского гражданского права в борьбе за высокое качество продукции, 3 Советское государство и право 57 (1954) [Valentina F. Yakovleva, *On the Role of Soviet Civil Law Provisions in High Product Quality Assurance*, 3 Soviet State and Law 57 (1954)]; Emelyanova 1967, at 65; Огрызков В.М. Правовое регулирование качества продукции [Vitaliy M. Ogryzkov, *Legal Regulation of Product Quality*] 76–79 (Moscow: Yurid. lit., 1973).

21 *See, for example*, Сарнэ А.А. Прекращение обязательств исполнением: Автореф. дис. ... канд. юрид. наук [A.A. Sarne, *Extinguishment of Obligations by Performance: Author's abstract of a thesis for the degree of candidate of jurisprudence*] 6 (Moscow, 1950); Кабалкин А.Ю. Гражданско-правовые формы борьбы за качество продукции: Автореф. дис. ... канд. юрид. наук [Alexander Yu. Kabalkin, *Civil Law Tools of Product Quality Assurance: Author's abstract of a thesis for the degree of candidate of jurisprudence*] 7 (Moscow, 1950).

22 Broslavsky 2015, at 50.

23 Clause 1.1 of Guide 2:2004 "Standardization and Related Activities – General Vocabulary," International Organization for Standardization (Oct. 25, 2017), available at http://isotc.iso.org/livelink/livelink/fetch/2000/2122/4230450/8389141/ISO_IEC_Guide_2_2004_%28Multilingual%29_-_Standardization_and_related_activities_--_General_vocabulary.pdf?nodeid=8387841&vernum=-2.

This issue seemingly lost its relevance under the conditions of the transition to a new economic reality, when all standards turned into acts subject to voluntary application. In reality, if a standard is an act subject to voluntary application, the product manufacturer is free to decide how to interpret the provisions of the standard: as a guaranteed minimum or as an upper limit of possible requirements. This issue has yet again been brought to the fore by the passing of the Federal law "On Standardization in the Russian Federation." Indeed, what should a manufacturer do if his products exceed the requirements of a standard appearing on the list of mandatory standards? Should he lower the product quality? Or should he violate the law by straying from the requirements of the standard? This question remains unanswered for the time being.

## 2. Standardisation in the Context of the Paradigm of State Administration of the Economy

In each historical era, the principles of legislative regulation of the nation's economy are underlain by a specific theoretical paradigm and a specific vision of the state's role in the economy. To quote a notable Soviet scholar, Piotr Nedbaylo,

> legal norms cannot be treated as a kind of self-sufficient entities that are a product of the "legislator's pure will." The state is limited by objective laws of social development in all of its activities, including the promulgation of legal norms.[24]

The specifics of state regulation of the economy are shaped by the need to address a certain range of tasks that arise due to "market failures" and which cannot be resolved "automatically." Accordingly, it is the paradigm of state administration of the economy adhered to by society and the state that predetermines the use (application) of various regulators of society's economic activities. This includes standardisation.

The mutual influence between society's dominant paradigm of state administration of the economy and the processes by which the standardisation system forms and evolves is inherent in all countries.

For example, the Japanese Constitution of 3 May 1947,[25] was called upon to create a liberal democratic state after the Western fashion, albeit with the preservation of the monarchical rule. For this reason, among the fundamental rights of its people,

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[24] Недбайло П.Е. Советские социалистические правовые нормы [Piotr E. Nedbaylo, *Soviet Socialist Norms of Legislation*] 51 (Lviv: Publishing House of the Lviv University, 1959).

[25] Конституции государств Азии. В 3 т. Т. 3 [*Constitutions of Asian Nations. In 3 vol. Vol. 3*] 1021–1037 (T.Ya. Khabrieva (ed.), Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation; Norma, 2010).

the Constitution states that the "the right to own or to hold property is inviolable" (Art. 29, para. 1). The Constitution also stipulates (Art. 25, para. 2) that

> in all spheres of life, the State shall use its endeavours for the promotion and extension of social welfare and security, and of public health.

In the field of standardisation, this constitutional provision gives national industrial standards different levels of legal force. Standards for the mineral extraction and processing industries are acts subject to voluntary application, whereas standards for medicinal products, agricultural crop pesticides, and mineral fertilisers are mandatory.[26]

### *2.1. Standardisation in the Context of the Soviet Paradigm of State Administration*

The Soviet state had ambitious goals from day one. The Constitution (Fundamental Law) of the Russian Socialist Federated Socialist Republic (hereinafter 1918 Constitution) passed by the 5th All-Russian Congress of Soviets on 10 July 1918,[27] set out the goal of

> eliminating all forms of exploitation of a human being by another human being, the complete eradication of the class system, the merciless suppression of exploiters, the establishment of a socialist organization of society, and the triumph of socialism in all countries.

Notable steps toward this goal included:

– in the economy – the abolition of private ownership of land, forests, mineral resources, water, "livestock and deadstock," exemplary estates and agricultural enterprises, banks, factories, plants, ore mines, railroads and other means of production and transportation; the transfer of these assets into state ownership,[28] and the institution of a universal labour duty;[29]

– in politics – the institution of the "power of laborers over exploiters."[30]

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[26] For details, *see* Минаев А.А. и др. Металлопродукция: сертификация, маркировка, упаковка: Учебное пособие [Alexander A. Minaev et al., *Metal Products: Certification, Labeling, Packaging: Course Book*] 87–89 (Donetsk: Nord-Press, 2006); Industrial Standardization Act (Act No. 185 of 1 June 1949) (Oct. 25, 2017), available at http://www.japaneselawtranslation.go.jp/law/detail/?id=20&vm=04&re=02&new=1; Act on Standardization and Proper Quality Labeling of Agricultural and Forestry Products (Act No. 175 of 11 May 1950) (Oct. 25, 2017), available at http://www.japaneselawtranslation.go.jp/law/detail/?id=1953&vm=04&re=02&new=1.

[27] Собрание узаконений РСФСР, 1918, № 51, ст. 582 [Legislation Bulletin of the Russian SFSR, 1918, No. 51, Art. 582].

[28] Clauses (a)–(g) of Art. 3 of the 1918 Constitution.

[29] Clause (f) of Art. 3 of the 1918 Constitution.

[30] Clause (c) of Art. 3, Art. 7 of the 1918 Constitution.

Scholars[31] observe that the revolutionary wording of the 1918 Constitution not only inspired destructive forces. It justified them by painting pictures of a bright future of "a socialist organization of society and the triumph of socialism in all countries"[32] – a future "without a class system or a government."[33] After serving its purpose, the 1918 Constitution made way for other, more traditional constitutional acts – the Fundamental Laws of the USSR of 1924, 1936, and 1977. They did away with the vehement wording, the figurative language, and the poetic forms, all the while retaining much of the inner substance.

Having entrenched the underlying principle of socialism – "from each according to his ability, to each according to his contribution" – the Constitution (Fundamental Law) of the USSR (hereinafter 1936 Constitution) approved by a Resolution of the Extraordinary 8th Congress of the Soviets of the USSR on 5 December 1936[34] proclaimed labour to be

> an obligation and a matter of honor for each able-bodied citizen according to the principle of "he that will not work shall not eat."

Meanwhile, the Soviet economy was shaped and guided by a state national economy plan

> in the interests of augmenting the public wealth, steadily improving the workers' material and cultural standards, strengthening the independence of the USSR and reinforcing its defence capability.[35]

The Constitution (Fundamental Law) of the USSR passed by the Supreme Council of the USSR on 7 October 1977[36] (hereinafter 1977 Constitution) was even more

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31 Лафитский В.И. О правовом гении славян и памятниках его законотворчества [Vladimir I. Lafitsky, *On the Legislative Genius of the Slavs and Its Legislative Artifacts*] in Сравнительное правоведение: национальные правовые системы. Т. 1: Правовые системы Восточной Европы [*Comparative Jurisprudence: National Legal Systems. Vol. 1: Legal Systems of Eastern Europe*] 175–176 (V.I. Lafitsky (ed.), Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation; Contract, 2013].

32 Art. 3 of the 1918 Constitution.

33 *Id.* Art. 9.

34 Конституция (Основной Закон) Союза Советских Социалистических Республик, утвержденная постановлением Чрезвычайного VIII Съезда Советов СССР от 5 декабря 1936 г., Известия ЦИК СССР и ВЦИК, 1936, 6 декабря [Constitution (Fundamental Law) of the USSR, approved by a Resolution of the Extraordinary 8th Congress of the Soviets of the USSR on 5 December 1936, Bulletin of the Central Executive Committee of the USSR and the All-Russian Central Executive Committee, 6 December 1936].

35 Art. 11 of the 1936 Constitution.

36 Ведомости Верховного Совета СССР, 1977, № 41, ст. 617 [Bulletin of the Supreme Council of the USSR, 1977, No. 41, Art. 617].

pragmatic. It proclaimed the overriding goal of social production under socialism to be the satisfaction of the growing material and spiritual needs of the public.[37] To achieve this goal, the state controlled the extent of labour and consumption based on the above-mentioned underlying principle of socialism.[38] The Soviet economy was treated as a

> single national economy complex encompassing all sectors of social production, distribution, and exchange in the territory of the country,[39]

which had, at its core, the socialist ownership of the means of production in the form of state (national) and collective farm or cooperative ownership.[40]

The Soviet paradigm of state regulation of the economy was also consistent with these constitutional precepts. The primary aspects of this paradigm included:[41]

– direct state control over the production and commercial activities of enterprises with a prevalence of planning and command methods of the regulation of economic relations;

– a predominance of inspection, oversight, and permissive functions of the executive and administrative agencies over the considerably smaller ratio of analytical and regulatory functions;

– the use of bylaws to institute the bulk of requirements binding on business entities;

– a combination of industry-specific and territorial administration of the economy;

– an externally directed administrative regulation (from government agencies to business entities).

In the context of this paradigm, the state acted as an "all-in-one administrator" (as figuratively described by Prof. Mikhail Piskotin) that regulated not just the processes of economic and social development of the country as a whole but also the production and commercial activities of specific enterprises. To quote him,

> the methods of umbrella administration were mostly the province of the agencies with overarching terms of reference – the Government of the USSR, governments of Soviet republics, executive committees of local Soviets and functional agencies (chiefly those of the planning and financial nature).

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37 Art. 15 of the 1977 Constitution.

38 *Id.* Art. 14.

39 *Id.* Art. 16.

40 *Id.* Art. 10.

41 *See* Хабриева Т.Я., Лукьянова В.Ю. Право и экономическая деятельность, 3 Общественные науки и современность 5 (2016) [Talia Ya. Khabrieva & Vlada Yu. Lukyanova, *Law and Economic Activity*, 3 Social Sciences and Modernity 5 (2016)].

> Notably, even they often resorted to methods of direct administration of enterprises, associations, and other subordinated entities by giving them direct tasks, reallocating their resources, etc. As for the industry-specific agencies of state administration, they relied on such methods almost exclusively.[42]

This distinguishing feature of the Soviet system of state administration was so prevalent as to become reflected even in works of fiction. For example, a novel by Alexander Bek tells a tale of a newly appointed commissar in charge of steel rolling and casting, who demands that the head of the central directorate submit reports on the performance of not just every plant subordinated to this central directorate, but also of every shop within such plants, every furnace and every mill.[43]

Obviously, this understanding of the government's role and place in society's economic domain could not help but influence the evolution of the Soviet standardisation system. Hence, it acquired the following attributes (Table 1):

– the binding nature of standards. Acting as an "all-in-one administrator," the government gave orders to the subordinated enterprises about the types of products they had to make. The government established all product parameters and characteristics (including aesthetic) and defined the requirements to be satisfied by products at every stage of their lifecycle. Notably, the Soviet standardisation system was created by a society that proclaimed the ideals of asceticism.[44] As such, it focused on eliminating the "irrational" and "unnecessary diversity of products."[45] This understanding of the objectives of standardisation was reflected not just in the academic literature but also in normative legal acts concerned with standardization;[46]

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[42] Пискотин М.И. Социализм и государственное управление [Mikhail I. Piskotin, *Socialism and State Administration*] 143 (Moscow: Nauka, 1984).

[43] Бек А.А. Новое назначение [Alexander A. Bek, *New Appointment*] 61–62 (Moscow: Knizhnaya palata, 1987).

[44] This moral construct was entrenched not just in the Moral Code of the Communism Builder, which proclaimed an intolerance of acquisitiveness and infringement on public interests, but also in works of fiction (*see, for example*, novels by the brothers Arkady and Boris Strugatsky, "The Final Circle of Paradise," "Monday Begins on Saturday," and "Tale of the Troika").

[45] Emelyanova 1967, at 10.

[46] *See, for example*, Постановление Совета Министров СССР от 16 октября 1959 г. № 1185 "О мероприятиях по улучшению работы в области государственной стандартизации и нормализации" [USSR Council of Ministers Resolution No. 1185 of 16 October 1959. On Measures to Improve State Standardization and Normalization Efforts], available at Legal Reference System "ConsultantPlus"; постановление Совета Министров СССР от 17 сентября 1973 г. № 677 "Об утверждении Положения о Государственном комитете стандартов Совета Министров СССР," СП СССР, 1973, № 21, ст. 117 [USSR Council of Ministers Resolution No. 677 of 17 September 1973. On Approval of the Regulation on the State Standards Committee of the USSR Council of Ministers, Collected Resolutions of the USSR, 1973, No. 21, Art. 117].

– the comprehensive nature of standardisation. Finished product requirements were established on the basis of the comprehensive standardisation of the quality parameters of the given product, as well as the feedstock, materials, semi-finished products, and components required for its manufacture;[47]

– the regulation of virtually every step taken by product manufacturers on the part of the socialist state represented by its relevant agencies. Scholars[48] observe that, unlike in capitalist societies, where the government influences the development of productive power only indirectly, the socialist state exerted both direct and indirect influence on the development of both productive power and manufacturing relations. Indirect influence was manifested in the fact that the government had to institute a type of legal regulation of manufacturing relations whereby workers would have a material interest in increasing their labour productivity and developing productive power. Direct influence was exerted by the government by way of prescribing specific methods of production through legislative provisions and codes of practice, particularly standards. To quote Nikolay Raigorodskiy,

> the Soviet state had an extensive arsenal of legal means of influencing the development of technology and accelerating technological progress. All it took was for the relevant agencies, while being aware of such legal means, to make better and full use of legal regulation to this end, particularly by *directly ordering* their subordinated organizations (particularly enterprises) to use *specific* more advanced methods of production in terms of the engineering, technology, and management of production.[49]

This objective was also accomplished with the use of standardisation, as evidenced by the provisions of GOST 1.0-68. This standard called for the development of not just standard specifications (comprehensive technical requirements for specific products) but also standards of model production processes, which would specify the methods and tools for performing and monitoring the process operations involved in manufacturing products of a specific group or type with a view to implementing an advanced production process and ensuring uniform product quality;[50]

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47 Clause 1.1 of GOST 1.0-68.

48 *See* Явич Л.С. Советское право – регулятор общественных отношений СССР [Lev S. Yavich, *Soviet Law – Regulator of Social Relations in the USSR*] 15 (V.I. Koretsky & S.A. Radzhabov (eds.), Stalinabad, 1957); Явич Л.С. О путях воздействия права на общественные отношения, 6 Советское государство и право 31 (1959) [Lev S. Yavich, *On Ways in Which the Law Influences Social Relations*, 6 Soviet State and Law 31 (1959)]; Райгородский Н.А. Роль права в ускорении технического прогресса, 2 Правоведение 34 (1961) [Nikolay A. Raigorodskiy, *Role of Law in the Acceleration of Technological Progress*, 2 Jurisprudence 34 (1961)].

49 Raigorodskiy 1961, at 43.

50 For details, *see* Ogryzkov 1973, at 97.

– the organisation of the standardisation system according to the industry-specific principle. According to GOST 1.0-68, industry-specific standards (known by their Russian abbreviation "OST," as transliterated) were one of the core elements of the Soviet standardisation system. They were approved by the ministry or department in charge of the manufacture of the relevant type of product. Activities aimed at the implementation of requirements established by the national and industry-specific standards were an equally important aspect of executive and administrative efforts by industry-specific ministries and departments, as well as cross-industry monitoring and oversight agencies;

– the emphasis of the standardisation system on solving product quality issues and arranging quality control. These issues dominated the attention of the Soviet state throughout its history as being critical to ensuring the proper living standards for the population. To quote Valery Kuibyshev, a notable party member and Soviet politician,

> the Bolshevik struggle for quality should serve as an additional lever for accelerating the socialist rebuilding of the entire national economy.[51]

The government looked for (and found) ways to improve the legislative and institutional mechanisms of product quality assurance and quality control. For example, Resolution of the Central Committee of the Communist Party of the USSR and the Council of Ministers of the USSR of 4 October 1965 No. 729 "On the Improvement of Planning and Stepping up Economic Incentives for Industrial Manufacture,"[52] instituted a process of state certification of product quality. This system existed (with slight modifications) up until the late 1980s, when USSR Council of Ministers Resolution of 21 April 1988 No. 489 "On the Rebuilding of the Activities and Organizational Structure of the State Standards Committee of the USSR"[53] approved the substitution of this system with a national product certification system. The state mark of quality was instituted in 1967.[54] It is also important to mention the

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[51] Куйбышев В.В. О качестве продукции [Valerian V. Kuibyshev, *On Product Quality*] in Материалы и документы по истории стандартизации. Вып. II [*Materials and Documents on the History of Standardization. Issue II*] 19 (2nd ed., Moscow: Standards Publishing House, 1966).

[52] Собрание постановлений Правительства СССР, 1965, № 19–20, ст. 153 [Collected Resolutions of the Government of the USSR, 1965, Nos. 19–20, Art. 153].

[53] Legal Reference System "ConsultantPlus" (Oct. 25, 2017), available at http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=ESU&n=10317&dst=0&profile=UNIVERSAL&mb=LAW&div=LAW&BASENODE=69774703-3926803787&SORTTYPE=0&rnd=282590.2271127933&SEM=-&ts=1786253409044693756326025746&opt=1&9=%2C%CF%EE%F1%F2%E0%ED%EE%E2%EB%E5%ED%E8%E5%EC%20%D1%EE%E2%E5%F2%E0%20%CC%E8%ED%E8%F1%F2%F0%EE%E2%20%D1%D1%D1%D0%20%EE%F2%2021%20%E0%EF%F0%E5%EB%FF%201988%20%E3%EE%E4%E0%20N%20489#0.

[54] *See* Государственный стандарт ГОСТ 1.9-67 "Государственный Знак качества. Форма, размеры и порядок применения" [*State Standard GOST 1.9-67 "State Mark of Quality. Shape, Dimensions, and Procedure of Use"*] in Государственная система стандартизации: Сборник ГОСТов [*State Standardization System: Collection of GOST Standards*] (Moscow: Standards Publishing House, 1983).

Regulation on State Acceptance of Products at Associations and Enterprises,[55] which was approved by the USSR Council of Ministers in May 1986.

Soviet standardisation agencies proceeded from the premise that the proper quality of products was assured at the product design and manufacturing stages. In light of this, quality control was viewed as an ongoing process across all stages of the product life cycle, from design to consumption. To quote Vitaly Ogryzkov,

> an essential precondition to product quality assurance involves determining and subsequently formalising at the legislative level the critical technical, economic, aesthetic, and other properties of products, which can ensure product suitability for its intended use at the relatively low cost of social labor given the current level of technological progress.[56]

Having asserted that state standards and other standardisation documents are the means by which the government establishes mandatory product quality requirements, this scholar interpreted them as legal guarantees of quality, i.e. as

> legal norms used by the socialist state to ensure that state-run organizations meet their obligations to manufacture and sell quality products, and also to protect the interests of product consumers.[57]

*Table 1*

| **Certain Features of the Soviet Paradigm of State Administration of the Economy** | **Idiosyncrasies of the Soviet Standardisation System** |
|---|---|
| – Proclamation of the ideals of asceticism | – Focus of the standardisation system on eliminating the "irrational" and "unnecessary diversity of products" |
| – Economic activities under the conditions of a command economy | – Systemic and comprehensive nature of standardisation<br>– Planning of standardisation in the context of state planning of research, development, and experimental activities[58]<br>– Proclamation of the need to make standardisation proactive |

[55] Постановление Совета Министров СССР от 12 мая 1986 г. № 542 "Об утверждении Положения о Государственной приемке продукции в объединениях и на предприятиях," Собрание постановлений Правительства СССР, 1986, № 25, ст. 141 [USSR Council of Ministers Resolution No. 542 of 12 May 1986. On Approval of the Regulation on State Acceptance of Products at Associations and Enterprises, Collected Resolutions of the Government of the USSR, 1986, No. 25, Art. 141].

[56] Ogryzkov 1973, at 43.

[57] *Id.* at 50.

[58] Clause 5.1.1 of GOST 1.0-68.

| | |
|---|---|
| – Direct state administration of production and commercial activities of enterprises | – Binding nature of standards<br>– Comprehensive lists of engineering, economic, and aesthetic parameters of products contained in standards<br>– Use of enforcement measures by the government to ensure compliance with the requirements of standards |
| – Predominance of inspection, oversight, and permissive functions of the executive and administrative agencies | – Regulation of virtually every step taken by product manufacturers on the part of the socialist state represented by its relevant agencies<br>– Emphasis of the standardisation system on solving product quality issues and arranging quality control |
| – Combination of industry-specific and territorial principles of administration of the economy | – Multi-tiered nature of the standardisation system (national, industry-specific, republican standards, etc.)<br>– Organisation of the standardisation system according to the industry-specific principle |

Several significant aspects are worth mentioning. In light of the mandatory nature of standards, the Soviet standardisation system had considerable protectionist potential. Both products made in the Soviet Union and those imported into the USSR had to meet the requirements of the relevant state standards. For example, the Regulations Governing the Design and Safe Operation of Steam and Hot-Water Boilers established that

> boilers and their components as well as semi-finished products used in their manufacture procured abroad must meet the requirements of these Regulations. The buyer must verify that the quality of equipment and materials to be supplied meets these Regulations prior to entering into a contract. Any deviations from these Regulations must be cleared by the buyer with the USSR State Committee for Industrial and Mining Safety Oversight prior to entering into a contract.
>
> Boiler strength calculations must be done according to applicable standards of the USSR Ministry of Heavy Mechanical Engineering, except where the umbrella organization of the boiler manufacturers can prove that the calculations done using the methods adopted by the supplier satisfy the requirements of the relevant standards. The umbrella research organization must confirm that materials of foreign brands meet the requirements of these Regulations and are suitable for use on a case by case basis. Copies of the relevant documents must be appended to the boiler data sheet.[59]

[59] Правила устройства и безопасной эксплуатации паровых и водогрейных котлов, утвержденные Госгортехнадзором СССР 18 октября 1988 г.; согласованы с ВЦСПС 29 марта 1988 г., с Госстроем

In other words, where foreign-made products did not meet the requirements of the state standards of the USSR, a separate permit had to be obtained for the importation and subsequent use of virtually every product item. This offered a way to protect the domestic market and the interests of Soviet manufacturers in foreign trade.

Another distinguishing feature of the Soviet standardisation system was that it was managed by the government. Standardisation was an

> object of goal-oriented activities of the government and a means of implementing its technical and economic policies.[60]

This is one way in which the Soviet standardisation system was different from the standardisation systems in Western Europe and the USA, where private organisations played a significant role in the field of standardisation until recently (and still do in a number of countries).

One of the downsides of the Soviet standardisation system is the excessive regulation of the processes of production setup of new types of products. In particular, GOST 15.302-81 established the procedure for production setup of products previously manufactured at other enterprises, while GOST 15.311-90 regulated the procedure for production setup of serially or mass-produced products that had to be manufactured according to detailed engineering designs of foreign companies. The latter standard applied to products wholly or partly intended to be sold in the domestic market, but was still subject to the terms of contracts and agreements concluded with international companies.

The Soviet paradigm of state administration exhausted itself in the last quarter of the 20th century. Negative trends in the field of standardisation began manifesting themselves more and more often: Documents of the state standardisation system increasingly started appearing independently of one another. Their requirements were contradictory in a number of cases. This complicated the functioning of the standardisation system as a single whole aimed at the achievement of specific goals. Standardisation also lost its proactive nature in many sectors of the economy. The process of revising and updating state standards and other standardisation documents slowed down appreciably at a time when maintaining the collection of technical regulations at an adequate level required updating at least 10 percent of

СССР 14 октября 1988 г. [*Regulations Governing the Design and Safe Operation of Steam and Hot-Water Boilers, approved by the USSR State Committee for Industrial and Mining Safety Oversight (Gosgortekhnadzor) on 18 October 1988; reviewed by the All-Union Central Council of Trade Unions on 29 March 1988, and by the USSR State Construction Committee on 14 October 1988*], Sec. 1.3 (Moscow: Energoatomizdat, 1989).

[60] Халап И.А. Правовые проблемы стандартизации в СССР: Автореф. дис. ... канд. юрид. наук [Ilya A. Khalap, *Legal Issues of Standardization in the USSR: Author's abstract of a thesis for the degree of candidate of jurisprudence*] 5 (Moscow, 1969).

that collection annually.[61] This led a number of experts to conclude that toward the end of the Soviet period, the standardisation system degenerated into something that was diametrically opposed to it, basically becoming one of the factors contributing to economic stagnation.

Crises affecting the economy as a whole and other aspects of life in the Soviet state started to intensify. These processes caused the government to abandon the command economy and begin a transition to a market economy.

### *2.2. Deregulation Paradigm and Standardisation*

The Russian Constitution adopted in 1993 proclaimed the principles of the freedom of economic activity (Art. 8, para. 1) and the equality of all forms of ownership (Art. 8, para. 2) to be the foundation of the legal policy of the Russian state. Notably, the concept of "market fundamentalism" (a term coined by Joseph Stiglitz) became ingrained in the public consciousness and, by extension, in law-making in the final years of the 20th century. Its quintessence is the notion that only

> unrestricted market activity leads to the creation of an effective and stable economy,

whereas

> governments are less familiar with the inviolable economic principles and less motivated by them, which is why their interference is most likely to disrupt the functioning of market mechanisms.[62]

In the Russian Federation, the ideology of market fundamentalism became embodied in the so-called deregulation paradigm with such key features as:[63]

– the minimisation of government involvement in economic processes: According to this paradigm, government involvement in society's economic processes must be limited to establishing the conditions for economic activities, along with clear and consistent rules of economic conduct, and guaranteeing the legitimacy of

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[61] Концепция развития национальной системы стандартизации, одобрена распоряжением Правительства Российской Федерации от 28 февраля 2006 г. № 266-р, Собрание законодательства РФ, 2006, № 10, ст. 1129 [National Standardization System Development Concept, approved by Russian Government Directive No. 266-r of 28 February 2006, Legislation Bulletin of the Russian Federation, 2006, No. 10, Art. 1129].

[62] Стиглиц Дж. Доклад о реформе международной валютно-финансовой системы: уроки глобального кризиса. Доклад Комиссии финансовых экспертов ООН [Joseph Stiglitz, *Report on the Reform of the International Currency and Financial System: Lessons from the Global Crisis. Report of the UN Financial Experts Committee*] 72 (Moscow: International Relations, 2012).

[63] Khabrieva & Lukyanova 2016.

transactions and the discharge of mutual obligations by business entities (with the use of the legal enforcement mechanism, where appropriate);

– the abolishment of the institution of government planning;

– the predominance of indirect government regulation of economic activity;

– administrative regulation aimed at creating conditions that maximally favour entrepreneurial conduct aligned with the interests of consumers.

The transition to new economic principles also necessitated reform in the field of standardisation. The changes affected both the fundamental approaches to forming the standardisation system and the legal status of its constituent documents.

Law of the Russian Federation of 10 June 1993 No. 5154-I "On Standardization"[64] expanded the scope of standardisation documents applicable within the Russian Federation by including international (regional) standards, as well as standardisation rules, norms, and recommendations. The same act of legislation introduced the division of the requirements of state standards into mandatory and recommended. Only requirements prescribed by state standards to ensure the safety of products, work, and services for the natural environment, the life and health of people, and property, as well as the technical and informational compatibility and interchangeability of products, the uniformity of control methods, and the uniformity of markings, were recognised as being mandatory for agencies of government and administration, and business entities. Other requirements of state standards for products, work, and services had to be complied with by business entities only pursuant to a contract, or if so instructed, by the engineering documentation of the product manufacturer or supplier, or the work and service provider. Accordingly, one and the same act could include both mandatory and optional norms and provisions. Notably, the wording of many acts making up the state standardisation system made it impossible to decide conclusively whether or not a particular rule was mandatory. This led to a widespread practice whereby the relevant authorities would publish clarifying documents designed to outline the scope of standards and their mandatory requirements. Moreover, in a number of instances – the controlling and oversight agencies decided at their own discretion which provisions merited a review and which did not.

Such conditions resulted in a perfectly logical subsequent stage of system reform called upon to establish quality and safety requirements for products and manufacturing processes. It involved separating mandatory and optional requirements and provisions into different categories of acts. Only technical regulations could establish requirements subject to mandatory application and observance. In their turn, standards (which lost their status as state standards) were viewed as acts subject to voluntary application. The relevant procedure was

[64] Ведомости СНД РФ и ВС РФ, 1993, № 25, ст. 917 [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation, 1993, No. 25, Art. 917].

instituted by the Federal law "On Technical Regulation." This Federal law (in its original wording) interpreted standardisation as an

> activity that involves establishing rules and characteristics with a view to their voluntary recurring application, aimed at the achievement of order in the context of manufacture and marketing of products, and making products, work, and services more competitive.

In turn, a "standard" was defined as a

> document that establishes – for purposes of voluntary recurring application – the product characteristics, the rules and characteristics of the processes of manufacture, operation, storage, transportation, sale, and disposal, performance of work or provision of services.

The state standardisation system in the Soviet Union was closely integrated with a legal system that regulated a broad range of issues. As a result, many acts of legislation that established certain requirements included references to standards (primarily state standards). When standards became optional, this created legal uncertainty in a number of cases. For example, clauses dealing with taxable assets and activities liable for the mineral severance tax (Art. 337 of the Tax Code of the Russian Federation) until recently included references to state standards of the Russian Federation, industry-specific standards, regional and other standards.[65] This gave rise to claims that this tax was not completely legitimate.

Other notable changes introduced by this Federal law include:

– the abandonment of industry-specific regulation of relations arising in connection with the drafting, adoption, application, and implementation of mandatory requirements for products and processes of product manufacture and distribution;

– a change in the legal status of work and services whereby mandatory state requirements can no longer be established in respect of work or services;

– the abandonment of total control over activities of business entities in favour of the establishment of minimum product safety requirements. The Federal law

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[65] Amendments to Clause 1 of Art. 337 of the Tax Code of the Russian Federation (which substituted the terms "state standard of the Russian Federation" and "industry-specific standard" with the term "national standard") were introduced by Федеральный закон от 19 июля 2011 г. № 248-ФЗ "О внесении изменений в отдельные законодательные акты Российской Федерации в связи с реализацией положений Федерального закона 'О техническом регулировании,'" Собрание законодательства РФ, 2011, № 30 (ч. 1), ст. 4596 [Federal law No. 248-FZ of 19 July 2011. On Amendments to Select Legislative Acts of the Russian Federation Necessitated by the Implementation of the Provisions of the Federal Law "On Technical Regulation," Legislation Bulletin of the Russian Federation, 2011, No. 30 (Part 1), Art. 4596].

"On Technical Regulation" stipulates that only those requirements without which product safety cannot be ensured may be mandatory. Requirements with respect to product quality and consumer properties, design and workmanship (except where the absence of such requirements makes it impossible to achieve the objectives of technical regulation), and properties accumulated over time, which are capable of causing harm, not immediately, but after a certain "accumulation threshold"[66] has been exceeded, cannot be mandatory.

The following are specific features of the standardisation system consistent with the deregulation paradigm (Table 2):

– any entity or individual can develop a standard;

– provisions of regional and international standards, as well as the standards of other countries may be applied in the Russian Federation. Notably, such standards do not need to be endorsed (approved, sanctioned for use in the Russian Federation) by the public authorities of the Russian Federation or adapted to the Russian conditions in any way. The only condition that must be complied with is that such standards had to be registered in the Federal Data Fund of Technical Regulations and Standards. Any concerned party could initiate the registration process;

– simplification of the hierarchical structure of the standardisation system.

*Table 2*

| **Certain Features of the Deregulation Paradigm** | **Idiosyncrasies of the Standardisation System** |
|---|---|
| – Abandonment of command economy principles | – Permission for any entity or individual to develop a standard<br>– Recommendatory nature of the national standards development programme prepared by the national standardisation authority |
| – Minimisation of government involvement in economic processes | – Change in status of national standards to optional<br>– Permission to apply provisions of regional and international standards as well as standards of other countries in the Russian Federation |
| – Combination of function-specific government administration with self-regulation of economic activities<br>– Indirect government regulation of economic activities in combination with multicentric corporate regulation | – Transition to a two-tiered system of standards (national standards and corporate standards) |

[66] In the latter case, Clause 7 of Art. 7 of the Federal law "On Technical Regulation" requires the establishment of requirements with respect to the notification of buyers about potential harm and the factors contributing to it.

| | |
|---|---|
| – Minimisation of inspection, oversight, and permissive functions of the executive and administrative agencies<br>– Focus of government administration on the elimination of administrative hurdles<br>– Administrative regulation aimed at creating conditions that maximally favour entrepreneurial conduct aligned with the interests of consumers | – Focus of the standardisation system on addressing product safety issues but not product quality issues<br>– Entrenchment of the principle of the inadmissibility of the creation of obstacles to the manufacture and distribution of products, performance of work, and provision of services to a greater extent than is minimally necessary for product safety assurance<br>– Legislative entrenchment of the principle whereby the greatest possible consideration must be given to the legitimate interests of the concerned parties when elaborating standards<br>– Abandonment of industry-specific rule-making in the field of technical regulation and standardisation |

It is safe to say that while in many Western countries, such as France and Germany, the standardisation system at the turn of the 21st century evolved along the path of making standards more binding and increasing their weight in the eyes of the law, our country moved this process in the opposite direction.

Practical experience shows, however, that by following the deregulation paradigm, we not only failed to resolve the existing standardisation problems but also aggravated them. In particular, the process of the revision of standards was brought to a halt in the early years of the 21st century in the face of the ban on industry-specific rule-making. Adherence to the deregulation paradigm in other aspects of Russian society also gave rise to certain problems. Deindustrialisation, rampant crime, unemployment, capital drain to international offshore jurisdictions, and the barely averted loss of economic sovereignty are just a few of them. It became obvious that society could not evolve without the government's active involvement in many sectors of the economy and social life. These challenges were answered by legal solutions in which the role of the government was different fundamentally from that of a "night watchman" and observer of economic activity.

A new paradigm of state administration of the economy is currently developing in the Russian Federation. It is known as the optimisation paradigm. The main features that set it apart from the deregulation paradigm are:[67]

– the focus of government regulation on maintaining a balance between public and private interests;

– a differentiated approach to using the tools of state administration of the economy depending on the specifics of the managed entity and factors that are external in relation to the given managed entity.

[67] Khabrieva & Lukyanova 2016.

In the context of this paradigm, the Russian government views standardisation as one of the essential tools of a public policy aimed at raising the living standards of the population and making products, work, and services more competitive.[68] That is why the enactment of the Federal law "On Standardization in the Russian Federation" became one of the most crucial steps on the path toward the institution of the optimisation paradigm. The major innovation introduced by this act of legislation is that, while preserving the principle of the voluntary application of standards, it has substantially changed the procedure for applying them. According to part 1 of Art. 26 of this Federal law,

> documents of the national standardization system shall be applied on a voluntary basis in equal manner and to the same extent regardless of the country and/or place of origin of products (goods, work, services), *unless specified otherwise by Russian laws.*

In analysing this innovation, it is important to mention the following. The provision whereby laws of the Russian Federation may establish the mandatory nature of standards does not contravene the principle of the voluntary application of standards. This can be explained using the example of Federal law of 30 December 2009 No. 384-FZ "Technical Regulations on the Safety of Buildings and Installations"[69] (hereinafter Technical Regulations on the Safety of Buildings and Installations). According to part 1 of Art. 6 of these Technical Regulations, the Government of the Russian Federation must approve a list of national standards and codes of practice (parts of such standards or codes of practice) whose mandatory application ensures compliance with the requirements of said Federal law[70] (hereinafter List). Part 4 of the same Article reinforces this provision by stipulating that the national standards and codes of practice appearing on the List are mandatory. However, the fact that a particular national standard has been included in this list does not change its legal nature, because it will be applied on a mandatory basis only for the purposes of ensuring compliance with the requirements of the Technical Regulations on the

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[68] Концепция развития национальной системы стандартизации Российской Федерации на период до 2020 года, одобрена распоряжением Правительства Российской Федерации от 24 сентября 2012 г. № 1762-р, Собрание законодательства РФ, 2012, № 40, ст. 5485 [National Standardization System Development Concept up to 2020, approved by Russian Government Directive No. 1762-r of 24 September 2012, Legislation Bulletin of the Russian Federation, 2012, No. 40, Art. 5485].

[69] Собрание законодательства РФ, 2010, № 1, ст. 5 [Legislation Bulletin of the Russian Federation, 2010, No. 1, Art. 5].

[70] The list of national standards and codes of practice (parts of such standards or codes of practice) whose mandatory application ensures compliance with the requirements of the Federal law "Technical Regulations on the Safety of Buildings and Installations" was approved by Russian Government Resolution of 26 December 2014 No. 1521 (Собрание законодательства РФ, 2015, № 2, ст. 465 [Legislation Bulletin of the Russian Federation, 2015, No. 2, Art. 465]).

Safety of Buildings and Installations, but will still be applied on a voluntary basis to ensure compliance with other technical regulations.

The validity of this interpretation is corroborated by the provisions of part 3 of Art. 6 of the Technical Regulations on the Safety of Buildings and Installations, according to which the requirements for buildings, installations, and other assets subject to technical regulation, as well as the approaches to ensuring their safety, which are prescribed by the national standards appearing on the List, may vary. In such case, the project owner (contract giver) may choose which of these requirements and approaches to follow in the context of design (including engineering surveys), construction, retrofitting, major repairs, or demolition (dismantling) of a building or installation. It is perfectly obvious that, in deciding to follow the requirements and approaches established by certain national standards and codes of practice appearing on the List, the project owner (contract giver) will simultaneously decide not to follow the requirements and approaches outlined in other national standards and codes of practice that also appear on the List. It is solely up to the project owner (contract giver) to choose the requirements of which standards to follow and which to ignore.

Overall, the new paradigm of state administration of the economy (the optimisation paradigm) is at a formative stage, which is why its constituent components may change. This can accordingly cause changes in the understanding of the role and place of standardisation in Russian society. This understanding will be shaped by the existing contradictions between actual social relations in the economy and the course of evolution of these relations. That is why the formulation and development of the optimisation paradigm calls for continued efforts to improve the academic and legal underpinnings of standardisation and for a reasonable approach that defines the role of standards in the regulation of economic relations. In particular, this requires the exploration of the issue of the legal nature of standards.

## 3. Legal Nature of Standards

Legal scholars extensively resort to studying the legal nature of various acts and phenomena as a way to determine the substance of their objects of study. This makes it possible to identify the specific features and typological attributes of the phenomenon being studied, and to perform their typification on this basis. This contributes to improvements in the structure of the Russian legal system and increases the effectiveness of the influence of Russian legislation on processes specific to the state and society.

In different periods of the evolution of standardisation, Soviet and Russian scholars offered different interpretations of the legal nature of standard-setting acts.

The Soviet state devoted a great deal of attention to the issues of standardisation from day one. For example, the USSR restored its membership in the International

Metric Convention in 1925 by a Resolution of the USSR Council of People's Commissars of 21 July 1925. This Convention and the accompanying regulations (Charter of the International Bureau of Weights and Measures) were recognised as binding on the USSR.[71] The issues of ensuring the uniformity of measurements were addressed at the national level even earlier than that. Pursuant to the Decree of the Council of People's Commissars of the Russian SFSR of 14 September 1918 "On the Institution of the International Metric System of Measures and Weights,"[72] all Soviet institutions and public organisations were obligated to begin implementing the international metric system of measures and weights beginning on 1 January 1919, with the transition to be completed by 1 January 1922.[73]

During that period, scholars interpreted an all-union standard[74] as a regulatory legal act or even an act of legislation. For example, Gleb Krzhizhanovsky, who was not only the first chairman of the USSR State Planning Committee and chairman of the State Committee on the Electrification of Russia, but also an academician with the USSR Academy of Sciences, suggested that a state standard be treated

> as a law governing the relations between the manufacturer and the consumer.[75]

A similar position was upheld by Boris Shlifer, who believed that a standard was an

> act of legislation expressed in the form of a technical document.[76]

This understanding of the legal nature of a standard crystallised in the course of the formation of the Soviet standardisation system during the pre-war period and was attributable to several factors:

– preconditions of a technical nature. For example, Vladimir Lenin said:

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71 Собрание законов СССР, 1926, № 32, ст. 191 [Collected Laws of the USSR, 1926, No. 32, Art. 191].

72 Известия ВЦИК, 1918, № 199 [Bulletin of the All-Russian Central Executive Committee, 1918, No. 199].

73 This transition was actually finalised only in the latter half of the 20th century.

74 The term "state standard" appeared only in 1940. *See* Постановление Совнаркома СССР от 23 августа 1940 г. № 1523 "О Всесоюзном Комитете по Стандартизации при Совнаркоме СССР," СП СССР, 1940, № 22, ст. 545 [Resolution of the USSR Council of People's Commissars No. 1523 of 23 August 1950. On the All-Union Committee on Standardization under the USSR Council of People's Commissars, Collected Resolutions of the USSR, 1940, No. 22, Art. 545].

75 Кржижановский Г.М. Плановость и стандартизация [Gleb M. Krzhizhanovsky, *Planning and Standardization*] in Материалы и документы к 50-летию введения государственной стандартизации в СССР [*Materials and Documents on the Occasion of the 50th Anniversary of the Introduction of State Standardization in the USSR*] 19 (Moscow: Standards Publishing House, 1975).

76 Шлифер Б.Г. Советско-правовая сущность стандартизации [Boris G. Shlifer, *Soviet Law Substance of Standardization*] in Сборник законодательных материалов по вопросам стандартизации [*Collection of Legislative Materials on Standardization*] 3, 7 (Moscow: Standardization and Optimization, 1932).

If it's the will of the government, it should be expressed as a law laid down by the authorities;[77]

– the binding nature of standards;

– the role which the standardisation system played in the processes of the state's transition to a new "model" of social and economic development and the creation of the nation's industrial infrastructure.

The first step toward forming a standardisation system was the Decree of the Council of People's Commissars of the Russian SFSR of 30 September 1921 "On Government Contracts and Supplies (Regulation),"[78] which obligated the contractor to "complete the assignment within the contractually stipulated time frame in a manner satisfactory to both the contractual terms and reasonable technical requirements," while obligating the supplier to "supply goods of an appropriate quality." Unscrupulous contractors and/or suppliers faced both material and criminal liability for violating the requirements of this Decree.[79]

An equally important milestone was the enactment of the Resolution "On Standardization of Export Goods" of 27 April 1923 by the Labour and Defense Council of the Russian SFSR.[80] In the context of this study, this Resolution is remarkable in that it delegated the functions of elaborating and approving standards, and pre-packaging and packaging requirements to be satisfied by export goods, to the executive and administrative authorities of the USSR: the People's Commissariat on Foreign Trade and other concerned agencies, which were required to coordinate their standards with the Supreme Council on the National Economy of the Russian SFSR and the Internal Trade Commission under the Labor and Defense Council of the Russian SFSR. As a result, standards were given the status of regulatory acts, whereas documents previously developed by the Committee on References and Standards (uniform standards for car and truck tires, raw hides, cotton, etc.) were

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77 Ленин В.И. Полное собрание сочинений. Т. 32 [Vladimir I. Lenin, *Complete Works. Vol. 32*] 340.

78 Известия ВЦИК, 1921, № 230 [Bulletin of the All-Russian Central Executive Committee, 1918, No. 199].

79 Art. 33 of the Decree of the Council of People's Commissars of the Russian SFSR "On Government Contracts and Supplies (Regulation)." *See also* постановление ЦИК СССР, СНК СССР от 23 ноября 1929 г. "Об уголовной ответственности за выпуск недоброкачественной продукции и за несоблюдение стандартов," СЗ СССР, 1930, № 2, ст. 9 [Resolution of the USSR Central Executive Committee and the USSR Council of People's Commissars of 23 November 1929. On Criminal Liability for the Manufacture of Off-Specification Goods and for Noncompliance with Standards, Collected Laws of the USSR, 1930, No. 2, Art. 9]; Постановление ВЦИК, СНК РСФСР от 20 марта 1931 г. "О дополнении Уголовного кодекса РСФСР статьями 128-а и 128-б," Собрание узаконений РСФСР, 1931, № 15, ст. 162 [Resolution of the All-Union Central Executive Committee and the USSR Council of People's Commissars of 20 March 1931. On Supplementing the Criminal Code of the Russian SFSR with Articles 128-a and 128-b, Collected Legislation of the Russian SFSR, 1931, No. 15, Art. 162].

80 Собрание узаконений РСФСР, 1923, № 37, ст. 392 [Collected Legislation of the Russian SFSR, 1923, No. 37, Art. 392].

not regulatory acts because they had not been enacted by public authorities, but were merely sent out to recipients via the local offices of the Supreme Council on the National Economy of the Russian SFSR.

It is also important to mention the Regulation on Standardization Authorities, approved by Resolution of the USSR Council of People's Commissars of 17 June 1933 No. 1230.[81] Under this Regulation, both the All-Union Standardization Committee under the Labor and Defense Council (the supreme standardisation and metrology authority) and the industry-specific standardisation committees were authorised to approve all-union standards.[82] This system existed until 1936, when pursuant to Resolution of the USSR Council of People's Commissars of 26 June 1936 No. 1123 "On Reorganization of Standardization Practices,"[83] the All-Union Standardization Committee was disbanded and its functions of approving the "most important standards drafted by people's commissariats" were delegated to the USSR Council of People's Commissars itself. In other words, their status was elevated to that of normative legal acts of the USSR Government. Other all-union standards, i.e. standards for "products of the sectors of the economy under the jurisdiction of the people's commissariats of the USSR," were approved by the relevant people's commissariats. In other words, they were industry-specific acts. However, the requirements of the standards were binding and had to be applied and complied with in all cases.

This approach, whereby all-union state standards for products were drafted by the people's commissariats responsible for the manufacture of the relevant products in the absence of a single standardisation authority that could coordinate the relevant activities, resulted in numerous overlaps caused by the fact that standards for the same products were drafted by different agencies, to say nothing of numerous gaps and contradictions in the standardisation system. A situation was fairly common in which the people's commissariats that approved all-union standards, while defining the obligatory complete delivery set of products, failed to include in the product delivery set any items (accessories or spare parts) manufactured by other enterprises outside their jurisdiction. This made impossible, or at the very least, substantially complicated the use of products compliant with this standard for their intended purpose. For this reason, this approach was declared to be wrong via Resolution of the USSR Council of People's Commissars and the Central Committee of All-Union Communist Party (Bolsheviks) No. 1211 "On All-Union State Standards and the

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81 СЗ СССР, 1933, № 39, ст. 235 [Collected Legislation of the USSR, 1933, No. 39, Art. 235].

82 According to Art. 20 of this document, industry-specific standardisation committees were required to submit their standards to the All-Union Standardization Committee immediately after approval.

83 СЗ СССР, 1936, № 33, ст. 304 [Collected Legislation of the USSR, 1936, No. 33, Art. 304]. This document was revoked upon the enactment of the USSR Council of Ministers Resolution of 9 December 1968 No. 956 (СП СССР, 1968, № 23, ст. 168 [Collected Resolutions of the USSR, 1968, No. 23, Art. 168]).

Procedure for Implementing Them."[84] The same Resolution reestablished the All-Union Standardization Committee tasked with:[85]

– developing and approving all-union state standards concerned with product grades;

– establishing the mandatory time frame and procedure for enacting all-union state standards;

– maintaining a consistent numbering of all-union state standards and registering them in the prescribed manner;

– arranging research and experimental efforts associated with standard-setting;

– publishing all-union state standards, scholarly works, catalogs, collections, and other printed materials relating to standardisation.

Meanwhile, the "two-tiered" system of standardisation was preserved: "Particularly important standards" were still approved by the USSR Council of People's Commissars according to the list approved by the same Resolution of the USSR Council of People's Commissars of 23 August 1940.

It is important to mention that in the pre-war period, standardisation entirely revolved around the accomplishment of the primary economic goal: The creation of an industrial infrastructure in the shortest time possible. In light of this, standardisation in the Soviet Union acquired the features described above. These features drastically set it apart from standardisation in other countries. They included:

– an understanding (perception) of standardisation as a means by which the government implements its technical and economic policies as part of the system of the administration of the national economy;[86]

– the prevalence of imperative methods of legal regulation of relations in the field of standardisation. This is one of the reasons why the Soviet state instituted criminal liability for violations of product quality requirements (and subsequently, requirements of all-union standards) before instituting administrative liability;

– the binding nature of all-union standards, irrespective of the level at which they were approved.

World War II and the period of rebuilding of the national economy that followed seemed to prove this approach to be right.[87] A high level of interchangeability of

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[84] СП СССР, 1940, № 20, ст. 485 [Collected Resolutions of the USSR, 1940, No. 20, Art. 485].

[85] Положение о Всесоюзном Комитете по Стандартизации при Совнаркоме СССР, утверждено Постановлением Совнаркома СССР от 23 августа 1940 г. № 1523, СП СССР, 1940, № 22, ст. 545 [Regulation on the All-Union Standardization Committee under the USSR Council of People's Commissars, approved by Resolution of the USSR Council of People's Commissars No. 1523 of 23 August 1940, Collected Resolutions of the USSR, 1940, No. 22, Art. 545].

[86] Khalap 1969, at 5.

[87] According to expert estimates, the USSR had over 8,600 active state standards by the time World War II broke out; 35% of those standards applied to products of the mechanical engineering and

parts and materials was ensured, specifically thanks to competently organised standardisation efforts, a solid academic footing underlying the state standards, and methods of legal regulation of standardisation adequate for the wartime conditions. This made it possible to convert the manufacturing industry to the needs of the defence industry, evacuate enterprises from the country's east, and rebuild the economy in the post-war years.

Nonetheless, a new stage of reorganisation of the system of state administration in terms of standardisation had already begun in 1948, when the All-Union Standardization Committee was incorporated into the USSR Council of Ministers' State Committee on Advanced Technology Implementation in the Economy as the Standardization Directorate. After this committee was disbanded, the Standardization Directorate was subordinated to the USSR Council of Ministers (1951) and was incorporated into the USSR State Planning Committee in March 1953.[88] The Standards Committee was only recreated as an independent executive and administrative agency in 1954, following the enactment of Resolution of the USSR Council of Ministers of 13 August 1954 No. 1720 "On Improvement of the State Standard Drafting and Approval Procedure." These transformations, which reflected a more extensive ongoing process – a search for an optimal system of state administration of all the sectors of the Soviet society, received conflicting interpretations from the academic community. Some experts believed that the delegation of standardisation authority to the USSR State Planning Committee created conditions favouring the coordination of planning with standardisation efforts.[89] Others found that it would have been more appropriate to combine the metrology and standardisation management functions within a single government agency, as this would enhance the role of this activity in the accomplishment of economic development, technical and scientific progress objectives.[90]

The search for an optimum system of state administration of the economy continued after 1954. In the 1950s and 1960s, the Soviet state attempted a transition from the predominantly industry-specific principle to a predominantly territorial principle of administration of the manufacturing industry and construction. It was believed that this would help overcome

metals industries. *See* Чабан Е.А. Организационно-правовые основы стандартизации в Советском государстве (историко-правовой аспект): Автореф. дис. ... канд. юрид. наук [Evgeny A. Chaban, *Organizational and Legal Groundwork of Standardization in the Soviet State (Historical Law Aspect): Author's abstract of a thesis for the degree of candidate of jurisprudence*] 73–87 (Krasnodar, 2007).

88 *Cited from Id.* at 90, 93.

89 *See, for example*, Yakovleva 1954, at 58.

90 *See, for example*, Стандартизация в России. 1925–2000 [*Standardization in Russia. 1925–2000*] (G.P. Voronin (ed.), Moscow: Standards Publishing House, 2000); Савич Н.М. Развитие законодательства о стандартизации и качестве продукции за 50 лет, 25 Основные проблемы развития стандартизации и управления качеством. Научные труды 123 (1975) [Nikolay M. Savich, *Evolution of Standardization and Product Quality Laws over 50 Years*, 25 Fundamental Problems of the Development of Standardization and Quality Management. Scholarly Works 123 (1975)].

> numerous departmental barriers that stand in the way of continued development of specialization and cooperation in the manufacturing industry, and ensure that available reserves are utilized to the fullest.[91]

One of the key elements of this reform involved disbanding 10 all-union and 15 union-republican ministries of the USSR and the corresponding ministries of the Union republics, and substituting them with national economy councils tasked with managing industrial enterprises and organisations of union-republican subordination.[92] The reform of the system of state administration also affected the field of standardisation:

– the Committee on Standards, Measures, and Measuring Instruments under the USSR Council of Ministers lost its "monopoly" over the approval of state standards. In particular, the Regulation on the State Construction Committee of the USSR Council of Ministers, approved by USSR Council of Ministers Resolution of 15 July 1958 No. 752,[93] tasked the USSR State Construction Committee with approving state standards for construction materials, products, and utility equipment of buildings, as well as standards for construction tools;

– centralisation in the matter of approval of standards, specifications, recipes for food products and industrial goods manufactured for sale to the population by enterprises of union-republic ministries of the Union republics, enterprises of the local industry, and cooperative organisations was found to be superfluous. In light of this, the Councils of Ministers of the Union republics were authorised to make amendments and additions ("taking into account the local conditions") to the approved state standards for food products and industrial goods manufactured by enterprises of union-republic ministries of the Union republics, enterprises of the local industry, and cooperative and public organisations.[94] This provision was

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[91] Преамбула Закона СССР от 10 мая 1957 г. "О дальнейшем совершенствовании организации управления промышленностью и строительством," Ведомости ВС СССР, 1957, № 11, ст. 275 [Preamble to the Law of the USSR of 10 May 1957. On Continued Improvement of the Organization of Management of the Manufacturing Industry and Construction, Bulletin of the Supreme Council of the USSR, 1957, No. 11, Art. 275].

[92] *See* Law of the USSR of 10 May 1957 "On Continued Improvement of the Organization of Management of the Manufacturing Industry and Construction"; Закон СССР от 10 мая 1957 г. "О внесении изменений и дополнений в текст Конституции (Основного Закона) СССР," Ведомости ВС СССР, 1957, № 11, ст. 276 [Law of the USSR of 10 May 1957. On Amendments and Additions to the Text of the Constitution (Fundamental Law) of the USSR, Bulletin of the Supreme Council of the USSR, 1957, No. 11, Art. 276].

[93] СП СССР, 1958, № 13, ст. 105 [Collected Resolutions of the USSR, 1958, No. 13, Art. 105].

[94] Постановление Совета Министров СССР от 2 марта 1957 г. № 225 "О передаче на решение Советов Министров союзных республик вопросов, связанных с утверждением рецептур, технических условий, стандартов и розничных цен на продовольственные и промышленные товары," СП СССР, 1957, № 4, ст. 41 [USSR Council of Ministers Resolution No. 225 of 2 March 1957. On the Delegation of the Authority to Approve Recipes, Specifications, Standards, and Retail Prices for Food Products

slightly amended subsequently: According to para. 2 of Subclause (a) of Clause 2 of USSR Council of Ministers Resolution of 16 October 1959 No. 1185 "On Measures to Improve State Standardization and Normalization Efforts,"[95] deviations from the requirements of state standards, and amendments or additions to said standards became possible only with permission from the Committee on Standards, Measures, and Measuring Instruments;

– national economy councils were also vested with powers in the field of standardisation. They were entrusted with the functions of drafting state standards and submitting them for approval, as well as approving the recipes and specifications for manufactured products and the most critical process instructions within the scope of authority given to the national economy council.[96] USSR Council of Ministers Resolution of 17 September 1964 No. 817[97] broadened the scope of their functions and authority by establishing that national economy councils shall prepare drafts of not just state standards, specifications and process instructions for products made by enterprises of the national economy council, but also drafts of inter-republican and republican specifications. In addition, national economy councils were tasked with monitoring the application of state standards, specifications, and instructions.

During this period, the notion of a standard as the "aggregate of technical and other requirements applied by the state to products for which the standard was approved" became increasingly popular in the scholarly community, alongside the "normative concept" of the legal nature of a state standard, which stemmed from the works by Gleb Krzhizhanovsky and Boris Shlifer.[98]

However, this "dispersion" of standardisation functions and powers among government agencies at different levels predictably compromised the effectiveness of standardisation as a method of state administration of the national economy. The negative effects of the decentralisation of standardisation were documented in USSR Council of Ministers Resolution of 11 January 1965 No. 16 "On Improvement of Standardization Efforts in the Country."[99]

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and Industrial Goods the Councils of Ministers of the Union Republics, Collected Resolutions of the USSR, 1957, No. 4, Art. 41].

95 Legal Reference System "ConsultantPlus."

96 Положение о совете народного хозяйства экономического административного района, утверждено постановлением Совета Министров СССР от 26 сентября 1957 г. № 1150, СП СССР, 1957, № 12, ст. 121 [Regulation on the National Economic Council of an Economic Administrative District, approved by USSR Council of Ministers Resolution No. 1150 of 26 September 1957, Collected Resolutions of the USSR, 1957, No. 12, Art. 121].

97 Постановление Совмина СССР от 17 сентября 1964 г. № 817 "Об утверждении Положения о Совете народного хозяйства экономического района," СП СССР, 1964, № 17, ст. 115 [USSR Council of Ministers Resolution No. 817 of 17 September 1964. On Approval of the Regulation on the National Economy Council of an Economic District, Collected Resolutions of the USSR, 1964, No. 17, Art. 115].

98 Yakovleva 1954, at 57.

99 СП СССР, 1965, № 2, ст. 11 [Collected Resolutions of the USSR, 1965, No. 2, Art. 11].

> Sectors of the manufacturing industry, Union republics, and national economy councils have a large number of unsynchronized and overlapping regulatory documents that define product quality; there is no comprehensive standardization of feedstock, materials, and finished products. Standards in specific sectors of the economy, chiefly the light and food industries, are excessively detailed,

the document reads. Looking to reverse these negative trends, said Resolution of the USSR Council of Ministers:

– ordered that all state committees, ministries, and departments of the USSR, Councils of Ministers of the Union republics, and national economy councils take stock of their existing standards for the most important types of products and update them;

– broadened the functions and powers of the State Committee on Standards, Measures, and Measuring Instruments. In particular, it was tasked with coordinating standardisation efforts in the sectors of the economy and establishing a uniform system of technical regulations in the country. It also stipulated that industry-specific technical regulations were to be developed by state committees, ministries, and departments of the USSR only in accordance with the plan approved by the above-mentioned State Committee;

– approved a decision to establish a uniform state procedure for drafting, approving, formalising, and registering state standards and other standardisation documents. GOST 1.0-68 was the document that defined this procedure.

It should be emphasised that the above-mentioned negative trends are just one aspect of the problems caused by an abrupt transition to administration based on the territorial principle. This caused a gap between the industry-specific and territorial allocation of labour, disrupted the established inter-district industry ties, and promoted the development of elements of autarchism. As a result, in the latter half of the 1960s, the positive potential of the economic reform was already exhausted. The economy was reverting back to traditional sources of economic growth, and the administration of the economy returned to an equally traditional industry-specific principle of organisation, which included the disbanding of the national economy councils.

In the field of standardisation, the return to the industry-specific principle of administration was marked by the formation (finalisation) of the Uniform State Standardization System in the form in which it existed up until the collapse of the Soviet Union and the transition from "developed socialism to capitalism."

1) The types of standardisation documents had been defined by the end of the 1960s – early 1970s. According to clause 3.1.1 of GOST 1.0-68, standards in the Soviet Union were subdivided into the following categories: state standards of the USSR – GOST; industry-specific standards – OST; republican standards of Union republics –

RST; standards of enterprises (associations) – STP. They established the range of norms, rules, and requirements for the products subject to standardisation, defined the types, kinds, and grades of products, their quality parameters, the appropriate tests and testing techniques and methods; prescribed the requirements for product packaging and labeling, the procedure for product transportation and storage, as well as established general technical quantities, units of measurement, and symbols. Specifications that established the range of requirements for specific types, grades, or articles of products were an equally important element of the system;

2) A system of government and administrative agencies tasked with the implementation of standardisation was formed. Within this system, state standards were approved by the State Standards Committee, except for state standards subject to approval by the USSR Council of Ministers and the USSR State Construction Committee. The state pharmacopoeia and temporary pharmacopoeia monographs for medicinal products, which had the effect of state standards and established medicinal product quality requirements, were approved by the USSR Ministry of Health. Industry-specific standards were approved by a ministry (department) in charge of the manufacture of the given type of product depending on its industry-specific jurisdiction; republican standards were approved by the councils of ministers of Union republics or, if authorised by the latter, the state planning committees of the republics or the state construction committees of the Union republics (in respect of products within the product mix of the USSR State Construction Committee). Finally, the standards of enterprises (associations) were approved by the relevant enterprises (or associations). Depending on the type of product, specifications were approved by various entities ranging from all-union and union-republican ministries and departments of the USSR to city councils of people's deputies and enterprises, production associations, firms, groups, integrated enterprises, as well as collective farms and Soviet farms;

3) The standardisation procedure was defined, and liability for violations of mandatory standards was established.

Under the conditions of constant reforms of the standardisation system, the scholarly community developed several interpretations of the legal nature of state standards. Some scholars believed that a standard is a "technical regulation embodied in a legislative act,"[100] while others emphasised its dual (technical and legal) nature.[101] The "normative concept" of the legal nature of a state standard also remained relevant.[102] Moreover, in the late 1960s, this concept received a major boost

[100] Шелестов В.С. Правовые формы регламентации качества продукции: Конспект лекций (на украинском языке) [Vladimir S. Shelestov, *Legal Forms of Product Quality Regulation: Lecture Notes* (in Ukrainian)] 8 (Kharkiv, 1966).

[101] *See* Emelyanova 1967, at 65.

[102] *See* Яковлева Е.М. Вопросы качества продукции в договоре поставки [Elena M. Yakovleva, *Product Quality Issues in a Supply Contract*] 22 (Dushanbe, 1964); Халап И.А., Белахов А.Л. Правовое

in the form of GOST 1.0-68, which seemed to resolve the debate as to the legal nature of a standard. It stipulated that standards

> are normative and technical documents on standardization, which establish an assemblage of norms, rules, and requirements for the product subject to standardization, and have been approved by the relevant authorities.[103]

It yet again confirmed the above-mentioned distinguishing idiosyncrasies of the Soviet standardisation system: the binding nature of state or other standards, the leading role of government agencies, not just in shaping the legal space within which standardisation activities are undertaken, but also in drafting and approving the standards.

Nonetheless, the debate continued. Many scholars interpreted a standard as a normative act or a normative legal act,[104] which was generally consistent with the provisions of GOST 1.0-68. Yet there were also those[105] who harshly criticised both the "documentary" and "normative" concepts of the nature of a state standard, instead suggesting that the latter be viewed as "an aggregate of technical and other requirements applied by the state to products for which the standard was approved"[106] or as a system of legal provisions that govern social relations arising in connection with products subject to standardisation and that strictly separate a state standard proper from a normative legal act of the relevant authority through which this standard was approved. The proponents of the concept of a standard as a system of legal provisions pointed out the following specific features of a standard:

1) Standards occupy a special place within the mechanism of legal regulation; in and of themselves, standards do not give rise to any rights or obligations for the parties to the relations regulated by them. A standard always interacted with other legal provisions that could belong to different industries;

2) Standards did not incorporate legal sanctions in light of the above-mentioned circumstance: Virtually every GOST standard stated that violations of this standard were "punishable under law";

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регулирование деятельности предприятий в области стандартизации, 7 Советское государство и право 44 (1968) [Ilya A. Khalap & Alexey L. Belakhov, *Legal Regulation of Standardization Activities of Enterprises*, 7 Soviet State and Law 44 (1968)].

103 Clause 1.3 of GOST 1.0-68.

104 *See, for example*, Khalap 1969, at 23; Ogryzkov 1973, at 74.

105 *See* Замалин В.С. Стандарт – это ускоритель прогресса, 4 Стандартизация (1965) [Vladimir S. Zamalin, *Standard is an Accelerator of Progress*, 4 Standardization (1965)]; Красавчиков О.А. Государственный стандарт – система правовых норм, 5 Советское государство и право 72 (1977) [Oktyabr A. Krasavchikov, *State Standard is a System of Legal Norms*, 5 Soviet State and Law 72 (1977)].

106 Yakovleva 1954, at 57.

3) The content of standards could be drafted using not just linguistic forms of expression of the thoughts and will of the authority approving the standard, but also other methods of expression such as graphics or mathematical formulas.

The scholarly debate about the legal nature of a standard remains just as relevant in the post-Soviet era. In analysing the nature of standardisation documents, some scholars[107] have been discussing two independent phenomena: a standard in the sense of a technical regulation and a standard in the sense of a regulatory act of legislation. The concept of a standard as a system of legal (technical and legal) norms, which is not a normative legal act, was revived.[108] Although Federal law "On Technical Regulation," and subsequently, Federal law "On Standardization in the Russian Federation," have established that national standards are acts subject to voluntary application, a number of scholars still suggest that they should be treated as normative legal acts, or more precisely, as "normative legal acts subject to voluntary application." We believe that this approach cannot be considered correct.

The legal literature defines a legal act as a written document adopted by an authorised entity at law, which is official in its nature and has a binding force, expresses an order of the authorities or regulates societal relations,[109] as an external manifestation of the will of the state, its agencies, local government agencies, or specific individuals, and which incorporates the elements of society's legal system and is aimed at the individual and normative regulation of societal relations.[110] In other words, all scholars who have explored the nature of a legal act in general and a normative legal act in particular have emphasised its binding nature; it *must* be complied with by all individuals and legal entities to whom it is addressed. Meanwhile, a national standard is deprived of normative properties by the above-mentioned legislative acts and, as such, does not have the attributes of a legal (normative legal) act.

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[107] *See, for example*, Завьялова Н.Ю. Государственный стандарт России (теоретико-правовое исследование): Автореф. дис. ... канд. юрид. наук [Natalya Yu. Zavyalova, *State Standard of Russia (Theoretical Law Study): Author's abstract of a thesis for the degree of candidate of jurisprudence*] 15 (Krasnodar, 2005); Завьялова Н.Ю. Правовое регулирование обязательных и рекомендуемых требований к качеству продукции, работ и услуг [Natalya Yu. Zavyalova, *Legal Regulation of Mandatory and Recommended Requirements for the Quality of Products, Work and Services*] in Социальный порядок, толерантность и право: Материалы Международной научно-практической конференции, 29–31 мая 2003 г. [*Social Order, Tolerance, and Law: Materials of an International Research-to-Practice Conference, 29–31 May 2003*] (Krasnodar, 2003); Chaban 2007, at 81.

[108] Such a statement of the issue contravenes the position of the ISO, which believes that the document and its table of contents should be treated as a single whole. *See* Clause 3.2 of Guide 2:2004 "Standardization and Related Activities – General Vocabulary," *supra* note 23.

[109] Котелевская И.В., Тихомиров Ю.А. Правовые акты: Учебно-практическое и справочное пособие [Yury A. Tikhomirov & Irina V. Kotelevskaya, *Legal Acts: Educational-Practical and Reference Manual*] 14 (Moscow: Yurinformtsentr, 1999).

[110] Штыкова Н.Н. Электронный правовой акт: история и правовая природа, 1 Информационное право 17 (2015) [Natalia N. Shtykova, *Electronic Legal Act: History and Legal Nature*, 1 Information Law 17 (2015)].

An analysis of the provisions of the Federal laws "On Technical Regulation" and "On Standardization in the Russian Federation," taken together, makes it possible to identify the following attributes of a national standard:

– it is an official written document in respect of which a specific drafting and approval procedure has been established by law (Chapter 5 of the Federal law "On Standardization in the Russian Federation") and which is intended for repeated application by an indeterminate circle of persons;

– even though a standard is approved by the federal executive agency in charge of standardisation (the Federal Agency for Technical Regulation and Metrology),[111] whether or not the legal relationship covered by the standard will arise is determined by the will of two entities: the state, which approves the standard, and the legal entity that decides to conduct its business in accordance with the provisions of the standard, either at its own initiative or by agreement with its contracting parties;

– a standard is an act subject to voluntary application. This is one of the fundamental principles of standardisation in the Russian Federation. In particular, it is embodied in the provisions of Clause 4 of Art. 16.1 of the Federal law "On Technical Regulation," according to which the voluntary application of standards and/or codes of practice shall be sufficient for compliance with the requirements of the relevant technical regulations, and the failure to apply them may not be interpreted as noncompliance with mandatory requirements. In such case, the application of preliminary national standards, corporate standards, and/or other documents for assessing conformity to the requirements of technical regulations is allowed.

Accordingly, a standard (national standard) is a legal document whose provisions are applied repeatedly by an indeterminate circle of persons for an indeterminate period of time, and which is an act subject to voluntary application that does not contain any mandatory provisions. All the while, one cannot help but agree that

> national standards used in conjunction with technical regulations are regulatory tools that help the state implement its product safety assurance policy.[112]

This is specifically its essence and meaning in the context of the Russian legal system. This kind of interpretation of a standard is consistent with the paradigm of the optimisation of legal regulation of the economy, which is presently taking shape in the Russian Federation.[113]

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[111] Clause 5, Art. 2, Chapter 5 of the Federal law "On Standardization in the Russian Federation."

[112] Панова А.С. Об особенностях и современном состоянии национальных стандартов Российской Федерации, 3 Предпринимательское право 14 (2014) [Albina S. Panova, *On the Specific Considerations and Contemporary Status of National Standards in the Russian Federation*, 3 Business Law 14 (2014)].

[113] Khabrieva & Lukyanova 2016.

## Conclusion

To sum up the findings of the study, it is important to mention that the Soviet state devoted a great deal of attention to the development and improvement of its standardisation system throughout its history. The first regulatory legal acts were enacted in the Russian SFSR in the early years of Soviet rule. In many countries of the world, standardisation systems also started to form in the first several decades of the 20th century. For example, the British Standards Institution (BSI) was established in 1901, the German Committee for Norms for Mechanical Engineering in 1917, and the French Permanent Standardization Committee in 1918. Yet the standardisation system that formed in the USSR was substantially different. Specifically:

– a distinguishing feature of the Soviet standardisation system was that it was managed by the government. Standardisation served as one of the tools for managing the national economy and was interpreted by both the public authorities and the scholarly community as a consistent activity aimed at establishing and applying mandatory requirements in the interests of Socialist society as a whole. Many elements of the Soviet standardisation system, primarily state standards, were integral to the system of the legal regulation of a broad range of issues. Many legislative acts presently contain references to provisions of national standards when it comes to establishing certain requirements or procedures;

– a distinguishing attribute of the Soviet standardisation system is the binding nature of standards, which defined quality requirements from the technical, economic, and legal perspectives, as mentioned by the quoted authors. This feature of the Soviet standardisation system resulted from the predominant Soviet paradigm of state administration of the economy whereby all aspects of economic activity were strictly regulated by the government. This paradigm was in turn brought to life by both the patterns of our country's historical evolution and by ideological factors.

The mandatory nature of state and other standards had its pros and cons. The former includes the fact that the binding nature of standards turned them into legal guarantees of product quality. It is no accident that modern consumers prefer to buy products with "made to GOST" labels.

The negative effects are as follows:

– a situation in which all product requirements, without exception, are mandatory drastically limits the manufacturer's initiative and prevents him from upgrading products in a timely manner so as to keep up with the needs of consumers. Specific manufacturers and the entire economic system become unreceptive to innovation, which, in turn, undermines the adaptive mechanisms of the economic system and society at large;

– the binding nature of state and other standards in combination with an unstable system of the state administration of standardisation efforts has given rise to a wide variety of opinions on the legal nature of a standard. Scholars identified at least four concepts of the substance of a standard: the "resultant" concept, whereby a standard

was viewed as a result of specific standardisation efforts; the "documentary" concept, according to which a standard was interpreted as a technical regulatory document; the "normative" concept, which treated a standard as a normative legal act; and the "systemic" concept, which construed a standard as a system of legal norms. One proponent of the latter concept, Oktyabr Krasavchikov, who explored the legal nature of a standard, reached a paradoxical conclusion that there was no "watershed" between the technical provisions of standards and the "regular provisions" of the law. It is important to mention that other scholars uphold the "systemic" concept of the legal nature of a standard to this day, even though national standards are recognised as acts subject to voluntary application under Russian law. Overall, the debate regarding the legal nature of a standard is ongoing.

Further, a new paradigm of state administration of the economy (the optimisation paradigm) is taking shape in the Russian Federation. Its primary components should be a combination of public law and private law methods of state administration, along with a differentiated approach to using the tools of state administration of the economy depending on the specifics of the managed entity and factors that are external in relation to the given managed entity. As part of this paradigm, there is also a need to rethink the standardisation mechanism, and the opportunities and limitations for the application of standards in the accomplishment of the economic and social development tasks faced by Russian society.

There is a need for a new understanding of the legal nature of a standard, as the attributes of a standard laid out in the Federal laws "On Technical Regulation" and "On Standardization in the Russian Federation" make it possible to treat a standard exclusively as a legal document without normative properties. The interpretation of a standard as a recommendatory act does not make it possible to fully utilise the potential of standardisation as a regulator of the economic life of Russian society.

Detailed studies of the Soviet standardisation experience should therefore continue.

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## Information about the author

**Vlada Lukyanova (Moscow, Russia)** – Head of the Department of Legal Analysis and Forecasting, Institute of Legislation and Comparative Law under the Government of the Russian Federation (ILCL) (34 B. Cheryomushkinskaya St., Moscow, 117218, Russia; e-mail: vlada.lukianova@rambler.ru).