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Prospects for the Development of Economic Legislation of the Russian Federation

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Abstract: The authors analyze the main legal schools that have developed in Russian legal science, pointing out their features and shortcomings, and propose to consider the development of Russian economic legislation. Accordingly, the authors reveal possible scenarios for reforming the Russian economy analyzing its public and private sectors legal support, while noting the mixed sector of the economy that has developed in Russia, which also needs to be substantiated by the corresponding body of legislation. Attention is drawn to the reform of market legislation and the privatization of state property, with an indication of the objective laws violations within the legal regulation of the economy public sector. The authors substantiate the need to create a three-sectoral model of legal regulation of economic relations, which involves the formation of three separate arrays of legislation in the private, public and mixed sectors of the economy. It is supposed that they are justified within the framework of the methodology of the Theory of Economic Law, which is the main goal of this article.

Keywords: economic legislation; development prospects; legal regulation theory; state property; privatization policy; reforming legislation; Russian Federation

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Contents

I. Introduction

The study of the USSR and post-Soviet states' economies legal support, primarily of Russia, led us to the conclusion about a deep theoretical error in the economic theory, which considers the public and private sectors of the economy from the general positions of the law of supply and demand, from the standpoint of cost theories, *etc*. Private and public sectors of the economy have different psychological and economic motivators and principles of state (economic and legal) regulation. If the psychological and economic basis of relations in the private sector of the economy is "a sense of ownership" and a "sense of benefit," which create a competitive environment, then public sector of the economy is based on the principles of social policy and involve a planned socialized economy.

It is easy to see that the fundamental principle of market and planned economies is different, and, accordingly, their strengths and weaknesses are different. As a result, *the theories of public and private sectors of the economy are* also *different*. Thus, to talk about the shortcomings of the socialist economy through the prism of "Economic Theory", as well as to point out the shortcomings of the private sector of the economy through the prism of "Political Economy," is no more valuable than, for example, to evaluate the effectiveness of an aircraft construction from the point of view of a designer of diesel locomotives.

The assessment of the state economy is based on the quantity of goods produced in its physical terms, where finance has an auxiliary function, while the private sector has long since shifted to finance as a "thing in itself" (Kant, 1907), dictating the development of products and generating a financial assessment of those things that for the state sector do not matter. Indeed, for the state, the valuation of land and real

estate that belongs to it is not so significant; services do not have such a wide range that they have in a market economy. It is only in the private economy where there is a "stock market," "soap bubbles" in the form of "right for the right;" options, brokers, jobbers and other "intermediary speculators" appear. And they are basically meaningless for the state.

The collapse of the Soviet Union put on the agenda the issue of replacing union legislation and resolving the fate of "perestroika," since it was a failure, which resulted in massive economic corruption, and was exacerbated by the creation of private enterprises at the expense of state property. As the reforms of the times have shown, the so-called "Perestroika" led by Mikhail Gorbachev, the heads of state-owned enterprises began to pose the main danger to the Soviet (Russian) economy, since they acted in their own (and not the enterprises led by them) interests through the mechanisms of the withdrawal of property of state enterprises through cooperatives and rental enterprises. At the same time, in the last period of the existence of the USSR, the state still held the "pillars" of the Soviet economy — the strategic state sectors of the economy (the military-industrial complex, the oil and gas sector, metallurgy and a number of other industries) (Eliseev and Velento, 2019, pp. 378–399).

Therefore, of particular interest is the analysis of the Russian legislation development through the prism of the "Theory of Economic Law," which is based on the theoretical substantiation of optimal models of legal support for economic models and their comparison with the current ones.

II. An Analysis of the development of economic legislation in Russia and the corresponding theoretical views

Since the early 1990s, with the beginning of the statehood of the Russian Federation, the following scenarios for the movement of the country's economy were theoretically possible:

1) rejection of reforms as a way to restore the socialist economy and the directive market;

2) substantially opposite to the first Eastern European way that was based on total privatization and removal of state property alongside with the construction of a classical market;

3) the way of building a mixed economy based on a combination of state and private forms of ownership;

4) building a two-sector economy — in fact, the Chinese way of development, as a kind of combination of state and private property;

5) some other way, which should take into account the specifics of the Russian economy.

To understand the reform processes, it is important to consider the historically established debate between representatives of schools of economic law (primarily civil law and business law) on the relationship between the branches of law, as it does not subside at the present time (Sergeeva and Tolstoy, 2002, pp. 65–72; Laptev, 1993; Bykov, 1993; Puginsky, 2002, pp. 9–17; Dozortsev, 1994; Andreev, 1996; *et al.*). At the same time, the legal regulation of the public sector of the economy always remains the main stone of disputes.

These disputes went beyond a purely scientific approach, acquired a political connotation, which is not surprising, since the legal support of the economy largely determines the efficiency of the economy.

Business lawyers' discussions following the debates about the need for government intervention in the economy that take place among economists, to a certain extent, reflect them. At the same time, economic disagreements boil down to two main positions. On the one hand, supporters and followers of the John Maynard Keynes' theory (1993) believe that an effective economy can only be the result of active government intervention in the economic sphere (Yadgarov, 1998, pp. 187–189). On the other hand, the theory of Adam Smith (1993) and his followers, expressed in neoliberalism (Yadgarov, 1998, pp. 189–194), one of the leaders of which is Milton Friedman (Blaug, 1994, p. 640), advocate the minimization of state influence on the economy.

Nevertheless, both schools investigating the market economy leave apart the directive (socialist) economy, the creation of which was advocated by Karl Marx (1960), Friedrich Engels[1] and their followers,

[1] There is no doubt that volumes 2 and 3 of "Capital" by Karl Marx are posthumous. Their content was extracted by Engels from K. Marx's voluminous manuscripts, which were far from complete. *See*: Aron, R., (1992). Stages of development of sociological thought. Moscow: Progress-Politics. P. 164. (In Russ.).

and this approach should be considered as an independent economic position.

It should be noted that Milton Friedman himself understood the term "socialism" as the public sector of the economy, and "capitalism" as the private sector (Burlatsky, 1996, p. 398), indicating that the public sector always needs special economic regulation, different from the private sector.

But his problem as a representative of the American school of economics is that the public sector is viewed through the prism of "market" economic theories, which in advance puts the state in a losing position, since all the criteria for assessing the effectiveness of the economy are developed precisely in the economic science serving the market economy.

It is important to note that the market itself does not provide an abundance of goods, but only equalizes supply and demand for it by setting a threshold for the unavailability of goods for those segments of the population that are lower than the others in the pyramid of demand, *i.e.,* have the least amount of money. In other words, the socialist "scarcity of goods" is transformed into a capitalist "shortage of money."

Economic theory also does not give proper assessments of the "junction" in the economy public and private sectors, which results in corruption, evaluating this as a drawback of the exclusively state side, and is also a delusion: corruption is a product of market behavior that has been unreasonably introduced into the public sector. Failure to understand this at the state level leads to economic mistakes when the fight against corruption is viewed through the prism of privatization, which in fact means a refusal to fight it, since from the moment of privatization corruption is legalized and transformed into monopoly abuses and does not disappear.

All views on the legal regulation of economic relations inherent in the modern understanding were formed in the USSR:

1) private commercial law covers all areas of the national economy (unifying and harmonizing role);

2) private commercial law regulates socialist production relations (the state sector of the economy) (Lieberman, 1931);

3) denial of private commercial law as an independent branch (civilistic understanding of private commercial law) (Wolf, 1928; Stuchka, 1931).

During the pre-revolutionary period in Russia, the basis of the legal support of economic relations was made up of the works, first of all, of the civilists Konstantin P. Pobedonostsev (1896), Dmitry I. Meyer (1915) and other authors (Shershenevich, 1994). At the same time, complex codified documents were adopted, such as, for example, the Trade Charter, the Charter on Industry, the Charter on Bills, *etc.* (Worms, 1914).

Tsarist Russia had a fairly powerful state sector of the economy, the budget revenues from it were significant, and its management as a whole was based on the administrative scheme of legal regulation, in accordance with the Manifesto "On the General Establishment of Ministries" dated June 25, 1811 (Russian legislation of the 10–20th centuries, 1988, pp. 92–134).

Inna V. Ershova, exploring the economic law of that period, notes that "private entrepreneurs were primarily focused on making a profit from their activities, in the state economy the satisfaction of public interests prevailed" (Ershova, 2001, p. 11). Speaking about the effectiveness of the public and private sectors of the economy, she gives the following example: "The construction of railways in Russia was started by the treasury. In the seventies of the 19th century, they were transferred to private capital. This led to a lack of system in the construction of roads, a focus on commercial purposes to the detriment of national economic interests, inconsistency between individual societies, low quality construction at high prices. For these reasons, in 1978 the state again engaged in railway construction, bought out the most important roads, and established their more successful operation. However, during the tenure of Sergey Yu. Witte as Minister of Finance (1892–1902), private capital again took its position in the railway industry, not freed from its vices. Buying back the roads built by private companies to the treasury in the future, the state had to complete and rebuild them" (Ershova, 2001).

The above example shows that in pre-revolutionary Russia, the legal regulation of public and private sectors of the economy was carried

out on the basis of various principles, which corresponded to the logic of the legal regulation of economic relations in general.

After the October 1917 events, the situation changed radically: in connection with the nationalization of private property and the formation of the socialist sector of the economy, civil law was leveled in the direction of public legal regulation. Leadership is taken by economic law, although the term itself was often used instead of the term "civil law," in fact, no different from the latter (Asknazy, 1926).

The *"two-sector theory"* of Peteris I. Stuchka attracted particular attention in the 1920s (Stuchka, 1931), which coincided with the state's New Economic Policy. The key idea of this theory was to recognize the simultaneous coexistence of the public and private sectors that should be regulated in different ways: the private sector — based on civil law, and the public sector — in the order of planning and subordination.

The oppression of the private sector by the state implied, over time, a transition from a two-sector theory of legal regulation of economic relations to a one-sector theory, which was expressed in the emergence of a *"school of unified economic law"* associated with the names of Leonid Gintsburg and Evgeny Pashukanis (Pashukanis and Gintsburg, 1935).

In fact, it was an attempt, firstly, to mix in one economic code mainly administrative and civil methods of legal influence, and secondly, to combine the state and the remnants of the private sector, which implied a gradual ousting of the latter, more precisely, its regulation on the basis of administrative law.

This theory had two main drawbacks. Firstly, the collective-farm-cooperative movement at that time was already so nationalized that, according to the principles of management, it actually did not differ in any way from the public sector, and this position was reinforced by the "single school." Secondly, regulation of all relations with the participation of a citizen was provided for in the system of unified economic law, which presupposed the suppression of civil law relations.

In the mid-1930s, a *"dualistic concept"* appeared, formed under the influence of Andrey Vyshinsky, in which it was decided to concentrate the regulation of economic relations in the branches of administrative

(vertical relations) and civil law (horizontal relations). The school of commercial law was sharply criticized (Vyshinsky, 1939, p. 22).

The post-war period was characterized by a number of areas of economic and legal thought. Thus, Sergey N. Bratus and Sergey S. Alekseev put forward the *concept of economic and administrative law* in 1963 (later the latter refused of it and switched to the position of market legal regulation of economic relations). They believed that the administrative-legal regulation, when it comes to the legal regulation of economic activity "in depth," breaks off and a "dead zone" is formed. Therefore, it is necessary to close this gap with a special sub-branch of legal science — economic and administrative law (Bratus and Alekseev, 1963, p. 45). The conclusions of this concept concerned the existence of various complex branches of law, which should be distinguished not based on expediency, but based on objective prerequisites for the differentiation of law (Bratus and Alekseev, 1963).

In the post-war period, "operational management" model was of great importance for the Anatoliy V. Venediktov legal thought on the development of the property right, and it is still the most significant one for the public sector of the economy (Venediktov, 1948).

The *third school of private commercial law*, associated with the names of Vladimir Laptev (1969) and Valentin Mamutov (1982), was formed in the late 50s of the 20th century. The representatives of the school argued that the legal regulation of private commercial law relations, on the one hand, had a monistic character (they adhered to the unity of private commercial law regulation). On the other hand, it had a dual public-private character, where the regulation of vertical relations presupposes an administrative nature, and the regulation of horizontal relations — civil law. Despite the duality of vertical and horizontal, authors noted the unity of private commercial law relations and their homogeneity (Theoretical problems of commercial law, 1975, p. 28). The idea was to adopt the Commercial Code, which had never been adopted. The authors of this concept excluded economic relations with the participation of the population from the influence of the proposed Commercial Code and referred only to the subject of civil law.

It must be said that Valentin Mamutov, who headed the Ukrainian school of private commercial law, managed to achieve the adoption of

the Commercial Code of Ukraine[2], which no other country of the former USSR succeeded.

The emergence of the *modern (fourth) school of private commercial (business) law* is associated with the name of Valentin S. Martemyanov and his followers, primarily, representatives of the Department of Business Law of Kutafin Moscow State Law University (MSAL) (Martemyanov, 1994; Ershova, 2006). The Department of Business Law of Lomonosov Moscow State University (MSU) is also in these positions (Gubin et al., 2004). At the same time, it should be noted that the term "private commercial" law has actually been removed from circulation, at best, it is perceived as a "tribute to tradition," but not more.

Despite all the variety of schools of private commercial (business) law, *the civilistic concept of business law*, formed under the influence of the works of the leading civil law scientists of the USSR, and subsequently Russia (Bratus, 1963, p. 143; Dozortsev, 1994), undoubtedly dominates. According to it, business law loses its independence and is considered a part of civil law, clarifying the operation of civil law in relation to certain areas of economic activity.

The civilistic concept has always existed, but only in the Russian Federation it was adopted at the level of economic and legal policy, which was reflected:

1) in the elimination of the legal specialty 12.00.04 (containing formulation "private commercial law") by renaming it into "business law" under the auspices of "Civil law";

2) the refusal to separate "business law" from civil law in 2017;[3]

3) the consolidation of academic specializations in 2021, which poses an insurmountable obstacle to even raising the issue of the

[2] State Code of Ukraine. *Vidomosty Verkhovnoyi Radi*. 2003. No. 18. Art. 144. Available at: https://antiraid.com.ua/news/108-gospodarskij-kodeks-ukrayini-vid-16012003-436-iv/. (In Ukranian). [Accessed 19.07.2021].

[3] Order of the Ministry of Education and Science of the Russian Federation No. 1027 dated 23.10.2017 "On the approval of the nomenclature of scientific specialties for which academic degrees are awarded". (In Russ.). ATP "ConsultantPlus", 2021. [Accessed 21.07.2021].

separation of private commercial law into a separate field of legal science.[4]

In the last decade, *the concept of "economic law"* has developed as a "mega-branch of Russian law" — "an integral and comprehensive system of forms of law (international, national), implemented in the state and regulating relations associated with economic activity" (Ershov, Ashmarina and Kornev, 2015, pp. 7–9).

Finally, it is important to note such a direction of legal science (considered as a section of the Theory of Law) as the *"theory of economic law,"* which is understood as the objective laws of the legal support of economic relations, reflecting the processes inherent in all branches of law, which in one way or another relate to the economy (Eliseev and Velento, 2019). The theory of economic law itself is based on the postulate that the relationship between economics and law is one-sided: "Effective law does not interfere with the economy, but ineffective law can destroy any sound economy."

Returning to the "scenarios for the movement of the country's economy" in the early 1990s, it is important to note that the path of "restoring the directive economy" at that moment was a doomed path, since the "political bomb of capitalism" has already exploded in the minds of the Russian people, when the overwhelming majority of the population regarded Europe as "the mantra of a bright life."

At the same time, one cannot fail to note the growth at that moment of the protest movement of workers who were losing jobs and, accordingly, sources of livelihood. However, the new liberal government seeing this danger, carried out an accelerated privatization in order to create a stratum that owns tangible assets (transferred from the state) and will defend its interests to the end: "every plant sold is a nail in the

[4] Order of the Ministry of Education and Science of the Russian Federation No. 118 dated February 24, 2021 "On the approval of the nomenclature of scientific specialties for which academic degrees are awarded and amending the Regulation on the Council for the Defense of Dissertation for the Degree of Candidate of Science, for the Degree of Doctor of Science, approved by the Order of the Ministry of Education and Science of the Russian Federation No. 1093 dated 10.11.2017. (In Russ.). ATP "ConsultantPlus", 2021. [Accessed 21.07.2021].

coffin of communism," and "Privatization in Russia before 1997 was not an economic process at all."[5] All this made the processes irreversible.

The scenario of the transformation of the Russian economic legislation of the post-Soviet period *along the version of the Eastern European path*, which was based on privatization and disposal of state property with the construction of a classical market, was chosen as a basis.

To understand the processes of this period, it is enough to pay attention to the most significant laws: the Law of the Russian Soviet Federative Socialist Republic (RSFSR) "On Property in the RSFSR,"[6] the Law of the RSFSR "On Enterprises and Entrepreneurial Activity,"[7] the Law of the Russian Federation "On the Privatization of State and Municipal Enterprises in the Russian Federation,"[8] the Law of the Russian Federation "On Insolvency (bankruptcy) of enterprises"[9] and others, which created opportunities for appropriation of state property under the guise of privatization. Subsequent legislation is adopted as part of the development of these processes.

Mechanisms for enhancing the negative opportunities of heads of state-owned enterprises served as a basis: if in the last period of the USSR's existence they had only the opportunity to "pinch off" part of the state financial flow from state-owned enterprises through cooperative institutions and rental enterprises, then here there is a possibility of appropriating enterprises entirely. To this end, state-owned enterprises got market powers, formations on the basis of private enterprises gained

[5] Livejournal page of Sergey Reshetnikov. Available at: https://sm-reshet.livejournal.com/103994.html. (In Russ.). [Accessed 03.07.2021].

[6] Law of the RSFSR No. 443-1 dated 12.24.1990 "On property in the RSFSR". Bulletin of the SND of the RSFSR and the Supreme Council of the RSFSR. 1990. No. 30. Art. 416. (In Russ.).

[7] Law of the RSFSR No. 445-1 dated 25.12.1990 "On enterprises and entrepreneurial activity". Bulletin of the SND and the Supreme Council of the RSFSR. 1990. No. 30. Art. 418. (In Russ.).

[8] Law of the Russian Federation No. 1531-1 dated 03.07.1991"On the privatization of state and municipal enterprises in the Russian Federation". Bulletin of the SND and the Supreme Council of the RSFSR. 1991. No. 27. Art. 927. (In Russ.).

[9] Law of the Russian Federation No. 3929-1 dated 19.11.1992 "On insolvency (bankruptcy) of enterprises". Bulletin of the SND and the Armed Forces of the Russian Federation. 1993. No. 1. Art. 6. (In Russ.).

the "green light," and various controlling links, in particular, such as "labor collectives," were eliminated.

So, for example, paragraph 3 of Art. 2 of the Law of the RSFSR "On Property in the RSFSR" established a private, state, municipal form of ownership, as well as the property of public associations (organizations). At the same time, clause 2 of the same norm introduced a single market legal regime of the owner's property for all owners (regardless of the form of ownership), when "the owner at his own discretion owns, uses and disposes of the property belonging to him." At the same time, he (the owner) could "transfer his powers to own, use and dispose of property to another person, use the property as a subject of pledge or burden it in any other way, transfer his property into ownership or management to another person, and also have the right to commit with this property any actions that do not contradict the law," could "use the property for any entrepreneurial or other activity not prohibited by law." The law directly emphasized that "the establishment by the state in any form of restrictions or advantages in the exercise of property rights, depending on the location of property in private, state, municipal property and the property of public associations (organizations) is not allowed" (part 2, paragraph 3, Article 2 of the Law).

The property of state (municipal) enterprises was assigned on the right of "full economic management," for which the range of rights and freedoms was the same as for the owner (clause 2, Article 5 of the Law), which together with the possibility "to unite the property being in private, state, municipal property and the property of public associations (organizations)" (clause 1, Article 3 of the Law) secured the mechanism of transfer of funds from state to private sector of economy.

Finally, Article 25 of the Law explicitly stated that "enterprises, property complexes, buildings, structures and other property in state or municipal ownership may be alienated into the private ownership of citizens and legal entities."

Distinguishing is the *1992 Law of the Russian Federation "On insolvency (bankruptcy) of enterprises,"* which created an opportunity to bankrupt not only private, but also state-owned enterprises. The practice of that time showed that state bodies basically initiated

bankruptcy, *i.e.*, the state "destroyed" state property: in particular, the tax authorities often initiated bankruptcy.

This process was significantly accelerated by the *Law of the Russian Federation "On the privatization of state and municipal enterprises in the Russian Federation,"* which defined the privatization of state and municipal enterprises as "the acquisition by citizens, joint-stock companies (partnerships) from the state and local Councils of People's Deputies into private ownership of enterprises, workshops, productions, sites, other subdivisions of these enterprises, separated into independent enterprises; equipment, buildings, facilities, licenses, patents and other tangible and intangible assets of enterprises (operating and liquidated by the decision of bodies authorized to make such decisions on behalf of the owner); shares (stocks, participatory interests) of the state and local Councils of People's Deputies in the capital of joint-stock companies (partnerships); shares (stocks, participatory interests) owned by privatized enterprises in the capital of other joint-stock companies (partnerships), as well as joint ventures, commercial banks, associations, concerns, unions and other associations of enterprises" (Article 1 of the Law).

The analysis of privatization legislation can, of course, be continued, but the meaning of what was happening is very clear: there was a deliberate "destruction" of state property in order, as one of the aforementioned authors of perestroika put it, to drive as many nails as possible "into the lid of the coffin of communism."[10]

These processes have sharply raised the negative activity of the population in the form of organized and general crime, *i.e.*, enrichment through illegal redistribution, including state (municipal) property, was considered permissible in the minds of the population.

When the President of the Russian Federation instructed the Accounting Chamber in 2011 to analyze the activities of 1,500 large, privatized enterprises for efficiency, the conclusion was the following:

[10] Interview of Anatoly Chubays. Available at: https://topwar.ru/19976-a.chubays-privatizaciya-voobsche-ne-byla-ekonomicheskim-processom.-ona-reshala-glavnuyu-zadachu-ostanovit-kommunizm.html?ysclid=l7snd2wgun261829676. (In Russ.). [Accessed 08.09.2022].

none of them became more efficient than during the period when they were state-owned.

At the moment, the Russian Federation has implemented a *liberal market model of the economy and relevant legislation*, where the central link is the Civil Code of the Russian Federation, which plays the role of an economic constitution, which, in turn, refers to various federal laws that supplement its provisions. Moreover, the changes that have occurred recently do not change the essence of *civil law regulation*, but only supplement and clarify individual institutions of legal support of economic relations.

At the same time, measures are being consistently carried out aimed at putting in order the public sector of the economy, among which the following measures should be highlighted to improve the economy and economic legislation, such as:

1. The state sector of the economy has increased due to the acquisition by the state, primarily by the Russian Federation, of controlling shares (stakes) in a number of organizations in strategic sectors of the economy (fuel and energy complex, military-industrial complex, space industry, *etc*.). This gave the right for the state (as an owner, stakeholder, owner of a share) to set tasks for the relevant enterprises, as well as to influence the formation of pricing in them.

2. Within the framework of antimonopoly legislation, the state began to influence pricing: in particular, prices for energy resources in the wholesale market are set by the Market Council, and in the retail market — by regional energy commissions, which include government representatives.

3. Elements of strategic planning of the economy have appeared: in this regard, the Federal Law "On Strategic Planning in the Russian Federation,"[11] Presidential Decree No. 400 dated July 2, 2021 "On the National Security Strategy of the Russian Federation"[12], *etc*.

[11] Federal Law No. 172-FZ dated 28.06.2014 "On Strategic Planning in the Russian Federation". SZ RF. 2014. No. 26 (part I). Art. 3378; 2020. No. 31 (part I). Art. 5023. (In Russ.).

[12] Decree of the President of the Russian Federation No. 400 dated 02.07.2021 "On the National Security Strategy of the Russian Federation". SPS "ConsultantPlus", 2021. (In Russ.).

4. Creation of legislation on state (municipal) procurement of goods (works, services), which is, in particular, an anti-corruption mechanism: Federal Law "On the contract system in the field of procurement of goods, works, services to meet state and municipal needs"[13], *etc.*

5. Creation of elements of a directive market through the formation of links between organizations that are part of the system of State corporations and State companies (for example, the "Rosatom" State Atomic Energy Corporation, the "Roscosmos" State Corporation, *etc.*).

In fact, this indicates the formation in Russia of elements of a two-sector model of economic legislation based on the two-sector theory of legal regulation of the economy. At the same time, during the privatization period, an independent sector of the *mixed economy* was formed, which received support from the academician Sergey Yu. Glazyev:[14] it relies on the convergence (combination) of capitalist and socialist mechanisms of economic development, using the "Chinese way" as a basis.

However, the study of China's economic legislation makes it possible to speak not about mixing legislation, but about the formation of separate arrays of legislation in the public and private sectors of the economy, *i.e.*, on the formation in China of a *"two-sector model of legal support for the economy."*

As for the mixed sector of the economy formed in Russia, *i.e.*, legal support (school of common economic law), it is the least effective, because when mixing different motivations (a sense of ownership and a sense of benefit, on the one hand, and the principle of priority of social and public interests, on the other), there is an unjustified extraction of profit by private individuals due to the redistribution of public funds, the directive market will receive a powerful corruption component. Thus, instead of the classical market, there will be monopoly and criminal markets.

[13] Federal Law No. 44-FZ dated 05.04.2013 "On the contract system in the procurement of goods, works, services to meet state and municipal needs". SZ RF. 2013. No. 14. Art. 1652; 2021. No. 24 (Part I). Art. 4188. (In Russ.).

[14] Glazyev, S.Yu. Nations behave like people. *Vzglyad: Delovaya Gazeta*. Available at: http://vz.ru/opinions/2015/7/8/754999.html. (In Russ.). [Accessed 09.07.2021].

On the other hand, it is not possible to distribute the entire Russian economy under the influence of two independent arrays of legislation (for the public and private sectors of the economy) due to the established Russian legal system and the state's position on this issue.

There is one more point: part of economic relations cannot be divided under the specified arrays of legislation. In particular, we are talking about the mechanism of public-private partnership, about concession agreements between the state and private business, about production sharing agreements. And finally, in ordinary contracts, where the state (municipality) acts as one party, and the second party is private individuals, it is impossible to break the state and private property interests. This also includes state support for business entities, since state funds need strictly targeted use.

Also remarkable are organizations that have a block of shares (or a share) in a public entity: this is a huge sector of the economy, since the privatization of large state-owned enterprises was basically reduced to corporatization, in particular, this fully concerns the fuel and energy complex (FEC), military-industrial complex (MIC), the space industry and other important sectors of the Russian economy. But if the block of shares in a public entity is sufficient to manage the relevant enterprise, then we are talking about the state sector of the economy and the directive market of relations. With regard to the mixed sector, the disputable question is about cases when a block of shares (share in the authorized capital) is insufficient for the state management of the organization.

Relations in the mixed sector of the economy cannot claim to build fully effective legislation, but negative processes in it can be minimized.

III. Conclusion

Therefore, Russian economic legislation objectively needs the development of a three-sector model of legal regulation, when it is required to form separate arrays of legislation on the private sector of the economy, legislation on the public sector of the economy and

legislation on the mixed sector of the economy, *i.e.*, legal doctrine requires the recognition of the three-sectoral theory of legal regulation of economic relations. As for the place of the "Theory of Economic Law" in legal science, its task is to fill in the theoretical gap in the legal support of economic relations.

References

1. Andreev, V.K., (1996). Civil Code of the Russian Federation and the latest legislation. *State and Law*, 4, pp. 110–116. (In Russ.).

2. Aron, R., (1992). *Stages of development of sociological thought*. Moscow: Progress-Politics. (In Russ.).

3. Asknazy, S.I., (1926). *Essays on economic law in the USSR*. Leningrad: Priboy. (In Russ.).

4. Blaug, M., (1994). *Economic thought in retrospect*. Moscow: Delo. (In Russ.).

5. Bratus, S.N. and Alekseev, S.S., (1963). On the development of legal issues of national economy management. *Jurisprudence*, 4, pp. 43–50. (In Russ.).

6. Bratus, S.N., (1963). *Subject and system of Soviet civil law*. Moscow: Gosyurizdat. (In Russ.).

7. Burlatsky, F.M., (1996). *Russian sovereigns. The era of the reformation*. Moscow: Shark. (In Russ.).

8. Bykov, A.G., (1993). Entrepreneurial law: problems of formation and development. *Bulletin of Lomonosov Moscow State University*. Ser. "Law", 6, pp. 3–10. (In Russ.).

9. Dozortsev, V.A., (1994). One code or two? (Do we need an economic code along with a civil one?). Legal problems of a market economy in the Russian Federation. In: *Proceedings of the Institute of Legislation and Comparative Law under the Government of the Russian Federation*. Moscow. Issue 57, pp. 115–143. (In Russ.).

10. Eliseev, V.S. and Velento, I.I., (2019). *The theory of economic law: the theory of branches of law that provide economic relations*. Moscow: Prospekt. (In Russ.).

11. Ershov, V.V., Ashmarina, E.M., and Kornev, V.N., (2015). Economic law as a mega-branch of Russian law: its subject and system. *State and Law*, 7, pp. 5–16. (In Russ., abstract in Eng.).

12. Ershova, I.V., (2001). *Problems of the legal regime of state property in the economic turnover: theoretical foundations and ways of improvement*. Moscow: Jurisprudence. (In Russ.).

13. Ershova, I.V., (2006). *Business Law: Textbook*. 4th edition. Moscow: Jurisprudence. (In Russ.).

14. Gubin, E.P., et al., (2004). Science and teaching of economic and business law at the Moscow State University. M.V.Lomonosov. In: *Entrepreneurial law in a market economy*. Moscow: New legal culture. Pp. 11–53. (In Russ.).

15. Kant, I., (1907). *Criticism of Pure Reason*. Transl. from German and foreword by N. Lossky. SPb.: Typography of M.M. Stasyulevich. (In Russ.).

16. Keynes, J.M., (1993). General theory of employment, interest and money. In: *Anthology of economic classics*. In 2 volumes, V. 2. Moscow: Ekonov. (In Russ.).

17. Laptev, V.V., (1969). *Subject and system of commercial law*. Moscow: Legal literature. (In Russ.).

18. Laptev, V.V., (1993). Commercial law is the law of entrepreneurial activity. *State and Law*, 1, pp. 33–38. (In Russ.).

19. Lieberman, S., (1931). The last stage of the NEP and economic law. *Problems of Marxism*, 5–6, pp. 18–20. (In Russ.).

20. Mamutov, V.K., (1982). *Improving the legal regulation of economic activities*. Kiev. (In Russ.).

21. Martemyanov, V.S., (1994). *Commercial law:* Course of lectures. In 2 vol. Moscow: Bek. (In Russ.).

22. Marx, K., (1960). *Capital.* 2nd ed. Vol. 23. Moscow: State publication of political literature. (In Russ.).

23. Meyer, D.I., (1915). *Russian civil law*. Ed. by A.I. Vitsina. Edition 9. Petrograd. (In Russ.).

24. Pashukanis, E.B. and Gintsburg, L.Ya., (1935). *Course of Soviet private commercial law*. In 2 vol. Vol. 1. Moscow: Soviet legislation. (In Russ.).

25. Pobedonostsev, K.P., (1896). *Civil Law Course: Compositions*. In 2 vols. St. Petersburg: Printing house of the Ministry of railways (A. Behnke). Parts 1–3. (In Russ.).

26. Puginsky, B.I., (2002). *Commercial law of Russia*. Moscow: Yurayt-M. (In Russ.).

27. *Russian legislation of the 10–20th centuries,* (1988). Vol. 6. Legislation of the first half of the 19th century. Moscow: Legal literature. (In Russ.).

28. Sergeeva, A.P. and Tolstoy, Yu.K., (2002). *Civil law*. Volume 1. A Textbook. 6th ed. Moscow: TK Welby. (In Russ.).

29. Shershenevich, G.F., (1994). *Textbook of Commercial Law* (after the edition of 1914). Moscow: Spark. (In Russ.).

30. Smith, A., (1993). Research on the nature and causes of the wealth of peoples. In: *Anthology of economic classics*. In 2 volumes, Vol. 1. Transl. from English. Moscow: Ekonov. (In Russ.).

31. Stuchka, P.I., (1931). *The course of Soviet civil law*. Vol. 1. Moscow: State socialist economic publishing. (In Russ.).

32. Theoretical problems of commercial law. Moscow: Nauka, 1975. 413 p. (In Russ.).

33. Venediktov, A.V., (1948). *State socialist property*. Moscow-Leningrad: Academy of Sciences of the USSR. (In Russ.).

34. Vyshinsky, A.Ya., (1939). *The main tasks of the science of Soviet socialist law*. Report by A.Ya. Vyshinsky, debate and closing remarks at the 1st meeting on the science of soviet state and law on 16–19 of July 1938. Moscow: Soviet state and law. (In Russ.).

35. Wolf, V.Yu., (1928). *Fundamentals of Business Law*. Moscow: Financial publishing house of the NKF of the USSR. (In Russ.).

36. Worms, A.E., (1914). *Sources of Russian commercial law*: Collection of extracts from the Code of Laws, statutes, policy conditions and contracts. Moscow: Higher education. (In Russ.).

37. Yadgarov, Ya.S., (1998). *History of economic doctrines*: Textbook for universities. Moscow: Infra-M. (In Russ.).

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