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THE PERSONAL FARMER IN SOVIET LAW

ALBERT KIRALFY*

The result of the massive collectivization of Soviet agriculture after the Russian Revolution, and the forced collectivization in the 1930's, was the elimination of the system of private ownership of land, including agricultural land, and its replacement with a system of nationalization. The use of land was allocated to State farms, State industrial enterprises, and to collective farms (*Kolkhozy*). These collective farms consisted of groupings of local peasantry who formed members of the farm and were in no sense employees or co-owners but rather were governed by a special code as part of Soviet agrarian law. Use of the land was, in principle, perpetual and gratuitous and remains so today,¹ land having been regarded as outside economics until the later Lieberman reforms and in a curious phrase of N.S. Krushev "given by God to all."

In theory, collective farms will not persist perpetually but their conversion into State farms will take a long time. Workers on State farms are employees of the farm and are closer to industrial workers. Collective farms, which carry on the principal agriculture of the Soviet Union, are given legal personality² and may enter into contracts, in particular, for the delivery of their produce to official procurement agencies under the State economic plan (*Gosplan*).³

At the opposite pole, a few individual peasant economies⁴ survive in some regions. A single family may be allocated land for exploitation outside the collective sector⁵ and may own a limited amount of livestock and farm equipment,⁶ but this land has no legal personality.

Between these two extremes a growing class of "personal farmers"

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1. *Vedomosti RSFSR (Land Code) [Ved. RSFSR] No. 28, item 581, arts. 10, 11 (1970), reprinted in THE SOVIET CODES OF LAW 872 (1972).*

2. *Grazhdanskii Kodeks RSFSR (Civil Code) [GK RSFSR] art. 24 (1964), reprinted in THE SOVIET CODES OF LAW 123. See also LAW IN EASTERN EUROPE 399 (1980).*

3. *See id.* arts. 267, 268.

4. The Russian translation is "yedinolichnoye syelskoye khoziaistvo."

5. *See Ved. RSFSR, supra note 1, arts. 9, 79.*

6. *See GK RSFSR, supra note 2, art. 134.*

exists, which carries on subsidiary farming⁷ and makes a major contribution to the Soviet population with animal products, principally milk and meat. According to an article in a Soviet legal journal,⁸ thirty-four million families in the Soviet Union were carrying on some subsidiary husbandry. Of these, over thirteen million were families of members of collective farms, ten million were families of workers on State farms and ten million families of other employees of the State. They owned nearly twenty-three million cattle, fourteen million pigs and twenty-nine million sheep and goats, and produced large quantities of eggs, fruit and vegetables.

Although the products of subsidiary husbandry on collective farms no longer dominate this field, the history of this form of husbandry is important and the law is well developed. The personal plot was a limited area of land allotted to a family or household (*dvor*) and included the farmstead and an orchard or kitchen garden.⁹ A rural village will thus have undergone little change, the collective farm replacing former private landlords with regard to the main cultivable area. The rationalization of land holdings and the concentration of some of the farmers in new complexes at a distance from the main farmland, however, is beginning to make changes in the topography.¹⁰

In the past, it was not unusual in troubled times for farmers to encroach on collective land to extend their personal plots. If this was done, however, the land was retaken by the collective farm without compensation for any crops or improvements.¹¹

The collective farm household is the old peasant household or extended family. It enjoys preferential rights to allocations of land for its use¹² but has no civil legal personality. The model charter of the collective farm regulates the plot's maximum size (e.g. half a hectare) and the actual size in a specific case is decided by the collective farm general meeting.¹³ Land can be lost for failure to make use of it.¹⁴

Whereas the household plot is enjoyed but not owned, the household may civilly own movables as joint owners.¹⁵ These may include ordinary furniture and household goods¹⁶ and monies pooled volunta-

7. The Russian translation is "lichnoye podsobnoye khoziaistvo."

8. Kozur, 8 SOVIET STATE AND LAW 37 (1981).

9. A personal plot is known in Russian as "Priusadebny uchastok."

10. See Ved. RSFSR, *supra* note 1, art. 60. It is required that half of the plot be situated away from the dwelling. *Id.*

11. See *id.* art. 138, pt. 42. See also MODEL COLLECTIVE FARM CHARTER, *infra* note 20.

12. See Ved. RSFSR, *supra* note 1, arts. 44, 60.

13. See *id.* art. 60.

14. See *id.* arts. 32, 50, 52.

15. See GK RSFSR, *supra* note 2, arts. 116, 126.

16. See *id.* art. 105.

rily by its members, for example, out of their earnings.¹⁷ The farmstead or dwelling house is not regarded as a fixture as it is under the common law, and Soviet frame buildings have in fact been moved at times, as happens in the United States. Today, some younger farmers live in rural flats but the law does not appear to regard this differently.¹⁸

In order to prevent the growth of private husbandry there are limits placed on the type of agricultural equipment that may be civilly owned.¹⁹ The same applies to farm animals, except poultry, rabbits and bees.²⁰ Thus, only one cow and its young may be owned, one sow and its farrow, and ten sheep and goats.²¹ A household may be fined for exceeding these limits.

Within the area of subsidiary husbandry, the household is treated as a legal person, though for no other purpose.²² Some aspects of juridical personality are conferred by a special rule that the "head of the household" may act in the household's name in household matters,²³ making him or her an authorized agent under civil law.²⁴ The members of the household would have to agree on the appointment of the "head" from time to time.²⁵

Not all members of the household work on the collective lands, though clearly some of them must. The group will include the very young, the very old, the disabled, and busy housewives. The number of members actively working on the collective land, however, is taken into account when the size of the household plot is fixed. Some of those not actively working may be able to grow things or tend small animals on the plot, and in fact do so. Of course no hired labor may be used from outside the household,²⁶ but, if no able-bodied members survive, the plot is not immediately lost.²⁷ No assignment or other disposition of the plot is lawful, as it is for the collective farm to do this. And when a

17. See *id.* art. 126, para. 3.

18. See Kozur, *supra* note 8, at 37.

19. See GK RSFSR, *supra* note 2, art. 126, para. 2.

20. MODEL COLLECTIVE FARM CHARTER (adopted by the Third All-Union Congress of Collective Farmers and Confirmed by Decree of the Central Committee of the Soviet Union and the USSR Council of Ministers on Nov. 28, 1969) [MODEL COLLECTIVE FARM CHARTER] reprinted in THE SOVIET LEGAL SYSTEM 197-213 (W. BUTLER ED. & TRANS. 1978) pt. 43.

21. See ASHCHEULOV, FUNDAMENTALS OF COLLECTIVE FARM LAW 255 (1979).

22. See MODEL COLLECTIVE FARM CHARTER, *supra*, note 20, pts. 42, 43.

23. See GK RSFSR, *supra* note 2, art. 128, para. 1.

24. See *id.* art. 62, para. 1.

25. See *id.* art. 127, para. 1.

26. Kiralfy, *The History of Soviet Collective Farm Legislation*, in RUSSIAN LAW, HISTORICAL AND POLITICAL PERSPECTIVES 193-214, 212 (Butler ed. 1977).

27. See Ved. RSFSR, *supra* note 1, art. 62; see also MODEL COLLECTIVE FARM CHARTER, *supra* note 20, pts. 43, 44; ASHCHEULOV, *supra* note 21, at 108, 253.

collective farm does re-allocate land for use, this allocation will not automatically pass with a disposition of buildings.²⁸

Within the household all members share equally, whether or not they work on the collective land or the household plot. If an able-bodied member does not work on the plot or contribute money or other assets, however, his or her share in its profits may be reduced.²⁹ If no contribution of any kind is made for three years, the right to a share is lost, except in case of illness, absence for military service or for the purpose of education.³⁰

The homestead and certain quantities of permitted livestock, as well as the seed and fodder needed for the operation of the farm, are protected from being taken in satisfaction of the claims of creditors of the household.³¹ A member's share is privileged in a similar way,³² although his share may be seized to satisfy his own debts and for property unlawfully acquired.³³

The ordinary rules of inheritance of property do not apply to the assets of a collective farm household until the sole survivor of the household dies,³⁴ because the property is held in joint tenancy and shares of deceased members vest in the survivors.³⁵ Similarly, the ordinary rules of community property belonging to spouses do not apply.³⁶

If a member of a household wishes to withdraw permanently from it (for example, to work in a town), he is entitled to receive his share of the assets. If the withdrawal of concrete articles would prevent the subsidiary household from being viable, he is paid the equivalent in money.³⁷

If a household is completely dissolved its property will generally be equally divided among its current members.³⁸ If it splits into two or more households, for example, if the children marry and want their own new household, the collective farm will usually allot a fresh per-

28. See Ved. RSFSR, *supra* note 1, art. 62, para. 4.

29. See GK RSFSR, *supra* note 2, art. 129.

30. See *id.* art. 132.

31. Grazhdanskii Protessualnii Kodeks RSFSR (Code of Civil Procedure) [GPK RSFSR] Schedule 1, paras. 1-4, 6 (1964) *reprinted in* SOVIET CODES OF LAW, 674 (Simons ed. 1980) (23 LAW IN EASTERN EUROPE).

32. *Id.* at para. 10.

33. See GK RSFSR, *supra* note 2, paras. 2, 3.

34. *Id.* art. 560.

35. *Id.* arts. 126, 116.

36. Kodeks Zakonov o Brake, Seme i Opeke RSFSR (Code of Laws on Marriage, Family and Guardianship) [KZoBSO RSFSR] art. 24 (1969) *reprinted in* SOVIET CODES OF LAW, 770-819. See also GK RSFSR, *supra* note 2, arts. 126-133.

37. See GK RSFSR, *supra* note 2, art. 130.

38. *Id.* art. 133.

sonal plot to them.³⁹ The movables of the household will be split equally or in proportion to the children's needs, with an application to the court in case of a disagreement.⁴⁰ If there is a disagreement on such matters, or there is a problem with the management of the household's assets, the matter is heard by the local civil court and the rules of civil procedure are followed.⁴¹ As the group has no civil personality, the individual members bring and defend such cases themselves, and are considered to be the parties of record.⁴² Because the rules of civil procedure authorize the participation of a representative, this enables one member to bring an action or defend against an action on behalf of other members of the household.⁴³

The encouragement of the use of personal subsidiary husbandry has been a theme of the Soviet five-year economic plans and of Party speeches.⁴⁴ The two-way traffic between the collective farm as a whole and the household is highly organized and lawyers have begun to view the household as so integrated into the general overall production of the farm that it is, in effect, a sub unit.⁴⁵ Of course, personal farmers can dispose of produce by using the so-called collective farm markets in various centers, just as the collective, as a whole, may dispose of some surpluses in the same way; dealing directly with consumers within various price limitations. This method is particularly applicable to perishables and is generally tolerated because it helps supply consumer needs, which are not met because of bureaucratic systems and lack of refrigeration. Also, this method avoids wasteful movements of produce.

The collective farm household owes some direct obligations to the State and thus, in a sense, has an economic legal personality. Moreover, it may have to pay any number of taxes. These taxes include: farmland tax on the land it uses, subject to various exemptions; local taxes for roadworks and the upkeep of schools; and premiums on State compulsory property insurance which underwrite the farm buildings and young livestock.⁴⁶

39. See Ved. RSFSR, *supra* note 1, art. 61.

40. *Id.* art. 131.

41. See GPK RSFSR, *supra* note 31, art. 1, para. 2, arts. 113, 119.

42. See GK RSFSR, *supra* note 2, art. 127, para. 2; see also GPK RSFSR, *supra* note 31, art. 32.

43. See GPK RSFSR, *supra* note 31, art. 35 and art. 44, para. 6.

44. See, e.g., Speech of Leonid Brezhnev to the Plenum of the Executive Committee of the Soviet Communist Party of July 3, 1978. M.S. Gorbachov encourages this policy and he is an expert on the law and agriculture.

45. See Kozur, *supra* note 8, at 39. This view has been stated at an international conference of East Bloc lawyers.

46. See ASHCHEULOV, *supra* note 21, at 258-60.

There is a growing tendency, however, to divorce personal farming from the traditional household. This trend is reinforced by another trend to turn collective farms into State farms, and, thereby, extend State farming. The result is the creation of only partially formulated legal situations. For example, plots have been allocated to professional workers on farms employees of State farms and rural residents mainly employed in non-agricultural work, creating a sort of rural cottage industry of farming and resulting in a retreat from "broad acres."⁴⁷

The conditions for such allocations are somewhat different from those for collective households. For instance, the approval of the local government authority, the village Soviet, is required, and the maximum size of the allotment varies, so that, in some cases, an industrial worker will receive a smaller allotment than a worker in another vocation.⁴⁸

There are detailed provisions for the allocation of grazing land for pasture. This must be provided out of State reserves or non-agricultural land in the first instance and supplemented, if appropriately approved, by allocations of lands of the State and collective farms.⁴⁹ The question of legal personality in this instance is not very clear. The allotment is referred to as made to an individual citizen, not a household,⁵⁰ though there is also a reference to grants for "families" in connection with the size limits of such plots.⁵¹

The law referring to grants outside the collective farm household is contained in chapter XVI of the Russian Land Code, whereas grants to such households are dealt with in chapter XV of that Code. This distinction is clearly deliberate and is maintained. This is borne out by the difference in language in a decree of the Presidium of the Supreme Soviet (legislature) of January 15, 1981 in its amendments to article 25, paragraph 5 and article 27, after paragraph 6, of the Fundamentals of Soviet Land Legislation of 1968.⁵² The first still refers to collective farm households and the second to the various categories of citizens. The question is, will members of households gradually replace the household unit and be treated as citizens, or will citizens come under the special household laws of inheritance, joint ownership and commu-

47. See Ved. RSFSR, *supra* note 21, arts. 64-73 (particularly arts. 64 and 65) reprinted in SOVIET CODES OF LAW 889-92 (1980).

48. *Id.* art. 66.

49. *Id.* art. 70.

50. *Id.* arts. 64, 65, 70.

51. *Id.* art. 66.

52. Sobranie Postanovlenii Pravitelstva SSSR (Collected Decrees of the Government of the USSR [SP SSR], art. 25, para. 5, art. 27, para. 6, (Published by the USSR Council of Ministers, Moscow 1969).

nity of property?

A resolution of the Council of Ministers of the USSR and the Central Committee of the Soviet Communist Party of September 14, 1977 contained several recommendations to help local rural residents with their personal plots, including provisions to enable them to pay to graze personal livestock on the collective lands and to receive fodder for their animals from State farms, as well as to obtain credits for the purchase of cows and calves.

The importance now attached to the personal farmer is reflected in a resolution of the Full Court (Plenum) of the Soviet Supreme Court of July 9, 1982,⁵³ wherein the courts are admonished to deal promptly and correctly with disputes over the use of personal plots for orchards, kitchen gardens, haymaking and growing fodder by citizens. The stimulation of production is stressed in the interests of meeting the needs of consumers. The courts were told to add special riders to their judgments to draw attention to any official deficiencies in this respect.⁵⁴

An interesting recent development in the Soviet law on personal plots is a new form of contractual relationship between the collective farm and its members. State procurement of farm produce has for some years taken the form of a special type of contract (*kontraktatsiya*) between the procurement agency and the whole collective farm.⁵⁵ A model detailed form of contract has been worked out for this purpose.⁵⁶ The new contract, on the other hand, is entered into by the collective farm and a member of the farm or a local resident who plays a part in local production, for example, on a State farm or as an agronomist.⁵⁷ The work of pensioners, housewives and young people is sought to be so utilized but the household unit is not used.⁵⁸

The aim of the new procedure is to supplement production of animal products. State farms are required to enter into contracts with citizens to raise livestock and poultry, and produce more milk. Collective farms are urged to do the same.⁵⁹ A model contract was drafted for this purpose and approved by the Soviet Ministries of Agriculture,

53. Bulletin Verkhovno Suda RSFSR (Decree of the Plenum of the USSR Supreme Court of July 9, 1982) [Bull. Verkh. Suda RSFSR] No. 4, para. xi, reprinted in 8 SOCIALIST LEGALITY 63 (1982).

54. Under the RCCP, this is a general procedure. See GPK RSFSR, *supra* note 31, art. 225.

55. See GK RSFSR, *supra* note 2, arts. 267, 268.

56. Approved on October 22, 1970; see 1 REVIEW OF SOVIET LAW 53-65 (1975).

57. Resolution of the Council of Ministers of the Soviet Union and Central Committee of the Soviet Communist Party, November 8, 1981 [hereinafter Council Resolution].

58. V. Romanov, 2 SOCIALIST LEGALITY 55-57 (1983).

59. Council Resolution, *supra* note 57, pt. 2.

Supply and Finance on March 12, 1981.⁶⁰ This contract may be described as one for agistment, or for the rearing and fattening of livestock, plus keeping milk cows, (*Dogovor na Vyrashchivanie (Otkorm) Skota*).

The obligations of the "customer" are twofold. The collective farm supplies poultry and young animals, as well as fodder and necessary grazing land. It also pays for the services of a "minder" who brings the animals up to sale condition to the State. The animals remain the property of the collective farm so far as they exceed the statutory limits on the number of animals which may be personally owned. They are taken into account as part of the farm's inventory and are included in the farm's production plan for supply to the State agency.⁶¹ As many animals as the minder can legally own become his property and can be disposed of by him as he would his own animals. Therefore, he has an incentive to extend his efforts to produce more meat and milk.⁶²

In order to enable the collective farms to carry out this plan, the State supplies them with both extra land, usually around industrial areas, and more young livestock. Unused land on collective farms is also to be used.⁶³ The State bank must advance up to half the sums payable by the collective farm under the contract.⁶⁴ The collective farm is to maintain horses and other working livestock and equipment as well as supply fodder and transport for the purposes of the scheme.⁶⁵ Detailed arrangements are made as to the price system for payment by the farm for the rearing of the animals and for fodder by the personal farmer.

There is a significant *coda* to the contract,⁶⁶ which reminds the personal farmer that he is to regard his role as a valuable act for the Soviet State in producing meat, milk, fruit and vegetables. Although participation is purely voluntary, it seems unlikely that a farmer would object to taking part in the scheme. Moreover, social pressure may encourage more and more farmers to participate. The warning may also be the product of Party hard-liners, who may fear that this system, to use the current cliché, is "thinly disguised capitalism."

It has been left to the courts to decide that this system creates a civil law relationship and is not part of agrarian law.⁶⁷ The courts have

60. Decree of March 12, 1981. (Bulletin of Normative Acts) [BNA SSSR] No. 3, at 30-33 (1982). *Translated in REVIEW OF SOCIALIST LAW*, XI, 173-79 (1985).

61. Council Resolution, *supra* note 57, pt. 3.

62. *Id.* pt. 4.

63. *Id.* pt. 7.

64. *Id.* pt. 12.

65. *Id.* pt. 21.

66. *Id.* pt. 25.

67. Resolution of the Full Court [Plenum] of the Soviet Supreme Court, July 9, 1982,

not made it clear, however, what type of civil law relationship is constituted. It appears that in practice the procurators in actual litigation regard this relationship as governed by the law of tort.⁶⁸ This interpretation is open to serious question as it is a voluntary contract between two persons under the civil law. Kozur thinks that it is a new type of contract *sui generis* and that legislation should make specific provisions for it, rather than leaving it up to the model contract.⁶⁹ After all, the other type of contract, between the collective farm and the State agency, is incorporated into the written law.⁷⁰

Romanov would apply the rules of a contract for the execution of work (*locatio operis faciendi*) because the statutory definition of this contract would cover the relationship. This contract (*podryad*) applies to repair work and such small types of manufacture as would occur between individual citizens.⁷¹ A customer might, for example, entrust a watch to a watchmaker to repair. Either side might supply materials under such contracts and work would be paid for on completion.⁷² The craftsman would be liable for failure to use proper care⁷³ but the risk of accidental loss would fall on whichever party supplied the material.⁷⁴ In this latter event, however, no fee would be payable to the craftsman.⁷⁵ A full measure of damages would be recovered, including expenses and loss of expected profits, under both contract and tort principles.⁷⁶

Clearly the contract for rearing livestock could fit into these rules. The collective farm would be the customer and the personal farmer the craftsman. The rule that the farmer forfeits his fee in the case of the accidental loss of an animal, which appears to be applied,⁷⁷ is more consistent with the works contract than with the law of tort. If the farmer disposes of stock or meat belonging to the collective farm he would naturally be liable in tort, as in contract.⁷⁸ Tort law, however, presumes fault on the part of a person causing loss or damage,⁷⁹ and

No. 4, 8 SOCIALIST LEGALITY pt. xi, at 63.

68. Romanov, *supra* note 58, at 56. GK RSFSR, *supra* note 3, art. 444. Article 444 would consequently apply.

69. See Kozur, *supra* note 8, at 42.

70. See GK RSFSR, *supra* note 2, arts. 267, 268.

71. *Id.* art. 350.

72. *Id.* art. 362.

73. *Id.* art. 356.

74. *Id.* art. 357.

75. *Id.* art. 353, para. 1.

76. *Id.* arts. 219, 356, 364.

77. Romanov, *supra* note 58, at 57.

78. See GK RSFSR, *supra* note 2, art. 473.

79. *Id.* art. 444.

this appears to create a difference.

Romanov questions the role of the chairman of the village Soviet executive committee, who joins to sign the contract, as well as the personal farmer and the collective farm chairman.⁸⁰ This may be a form of public control, however, of which there are many varieties in Soviet law.⁸¹

80. Romanov, *supra* note 58, at 57.

81. See GK RSFSR, *supra* note 2, arts. 52, 57, 65 (land allocation), art. 45 para. 2 (foreign trade contracts), art. 141 (neglect of dwelling), arts. 337-341 (evictions from hotels).