

LAW OF THE UKRAINIAN SSR IN THE PERESTROIKA PERIOD (1985–1991)



V. HONCHARENKO
*Doctor of Legal Sciences, Professor,
Member of the National Academy
of Legal Sciences of Ukraine,
Head of Chair of History of State and Law
of Ukraine and Foreign Countries
(National University
«Yaroslav Mudryi Law Academy of Ukraine»)*

On 11 March 1985 an extraordinary Plenum of the Central Committee of the Communist Party of the Soviet Union elected M. S. Gorbachev to the post of General Secretary of the Central Committee of the Communist Party of the Soviet Union.¹ The implementation of a new political course in the USSR during the years 1985 to 1991 is connected with his name, the principal essence of which was to attempt at the initiative of the leading Party-Soviet Kremlin leadership to effectuate a fundamental modernization of the leading spheres of the vital activity of Soviet society, especially the economy, domestic and foreign policy, the social sphere, and ideology.² Thus, the April (1985) Plenum of the Central Committee of the Communist Party of the Soviet Union, at which on 23 April the General Secretary of the Central Committee of the Communist Party of the Soviet Union, M. S. Gorbachev, delivered a Report «On the Convocation of the Extraordinary XXVII Congress of the Communist Party of the Soviet Union and the Tasks Connected with the Preparation and Holding Thereof», the conception and strategy was put forward for the socio-economic development of the country, the course towards the renewal of socialism, which then «was deepened and enriched in the decisions of the XXVII Congress of the Communist Party of the Soviet Union, XIX All-Union Party Conference, plenums of the Central Committee and the general line was formed for a revolutionary restructuring of all spheres of the life of Soviet society».³ Perestroika was a revolution «from above».⁴ The strikingness of the reforms commenced required proper legal provision.

¹ *Материалы* внеочередного Пленума Центрального комитета КПСС. 11 марта 1985 г. [Materials of the Extraordinary Plenum of the Central Committee of the Communist Party of the Soviet Union, 11 March 1985] (Moscow, 1985), p. 4.

² See V. P. *Horbatenko*, «Перебудова» [Perestroika], in Iu. S. Shemshuchenko, et al. (eds.), *Юридична енциклопедія* [Legal Encyclopedia] (Kyiv, 2002), IV, p. 478.

³ *Коммунистическая партия Советского Союза в резолюциях и решениях съездов, конференций и пленумов (1985–1988)* [Communist Party of the Soviet Union in Resolutions and Decisions of Congresses, Conferences, and Plenums of the Central Committee (1985–1988)] (9th ed.; Moscow, 1989), p. 5.

⁴ V. S. *Kulchytskyi*, *Історія держави і права України* [History of State and Law of Ukraine (Kyiv, 2007)], p. 518.

In early 1985 intertwined all-union and fully conforming republic legislation was in force in the Ukrainian SSR. It was called upon to ensure the functioning of the administrative command system of management of the planned economy. During the years of perestroika, legislation was reformed. Numerous changes and additions were made to laws and other legal acts. In addition, new legislative acts were adopted. There was virtually not a single branch of law in which material changes were not made. All this was conditioned by the processes occurring in society.

An especially active process of renewal of legislation was to be observed in the branches of law regulating economic relations. A number of legal acts were adopted to ensure the transition of the economy of the USSR to a system of market relations.

The change of the economic foundation of society connected with the transition to a multi-tiered economy caused a reinforcement of the significance of civil law as the basic regulator of the forming of market relations. The principal acts regulating civil-law relations in the Ukrainian SSR during the period here considered were the Fundamental Principles of Civil Legislation of the USSR and Union Republic of 8 December 1961 and the 1964 Civil Code of the Ukrainian SSR, in which changes and additions were made. However, together with the said acts, new laws were adopted which made material changes in civil law. These were the USSR Laws of 4 June 1990, «On Entrepreneurship in the USSR» of 26 May 1990, «On Cooperative Societies in the USSR»; of 6 March 1990, «On Ownership in the USSR»; of 23 November 1989, «Fundamental Principles of Legislation of the USSR and Union Republics on Lease», and others. In the Ukrainian SSR important new laws in the domain of civil law were those of 17 February 1991, «On Ownership»,¹ and 27 March 1991, «On Entrepreneurship in Ukraine».²

In May 1991 new Fundamental Principles of Civil Legislation of the USSR and Union Republics were adopted which entered into force on 1 January 1992. They represented a serious, well thought out, workable law of a market type.³

Legal acts called upon to create favorable conditions for entrepreneurial activity were closely related to legislation in the domain of civil law. One was the Law of the USSR of 2 April 1991, «On General Principles of Entrepreneurship of Citizens in the USSR», which regulated the rights and responsibility of subjects of entrepreneurial activity. The Law emphasized that he was directed towards the creation of conditions for the extensive display of economic initiative and entrepreneurialness of citizens on the basis of the realization of the principle of equality of all forms of ownership, freedom to dispose of property, and choice of spheres of activity. The Fundamental Principles of Legislation on Investment Activity of 10 December 1990, and also the Law of the USSR of 11 December 1990, «On Banks and Banking Activity», providing for the possibility for commercial banks to exist side by side with State banks, were directed towards ensuring the effective functioning of the economy under conditions of market relations.

In the Ukrainian SSR, all-union legislation on entrepreneurial activity was duplicated in laws of the Ukrainian SSR of 7 February 1991, «On Entrepreneurship», and of 18 September 1991, «On Investment Activity».

¹ *Відомості* Верховної Ради УРСР (1991), no. 20, item 249.

² *Відомості* Верховної Ради УРСР (1991), no. 24, item 272.

³ See *E. A. Sukhanov*, «Преподавание гражданского права в современных условиях» [Teaching of Civil Law in Modern Conditions], *Вестник МГУ. Серия Право* [Herald of Moscow State University. Series Law], no. 4 (1992), p. 22.

One of the major legal acts called upon to regulate economic relations was the Fundamental Principles of the USSR and Union Republics on Land, of 28 February 1990.¹ They were to regulate land relations and create conditions for the rational use and protection of land, re-creation of soil fertility, preservation and improvement of the natural environment, and the development of all forms of economic management.

The transition to a market model for the development of the economy would have been impossible without the cardinal reformation of labor legislation. The early steps in this direction were made in early 1988, when the transition was commenced of virtually all enterprises to full economic accountability and self-financing. From that time a new procedure was established for the development and conclusion of collective contracts. A certain democratization of all collective contract work was the basis of the distinctiveness thereof.²

With a view to ensuring equality with males, labor legislation expanded privileges for women and granted them additional guarantees of labor rights. This was consolidated in the Law of the USSR of 22 May 1990, «On Making Changes in and Additions to Certain Legislative Acts of the USSR on Questions Concerning Women, Family, and Children» and the Decree of the USSR Supreme Soviet of 10 April 1990, «On Certain Measures to Improve the Status of Women».

Questions of labor relations were regulated in such laws of the USSR as «On Ownership in the USSR», «On Entrepreneurship in the USSR», and the Fundamental Principles of the USSR and Union Republics on Lease. The Law «On Ownership in the USSR» (Article 62), for example, consolidated that a citizen has the exclusive right to dispose of his capacity to work.

Other changes of a progressive character existed in labor legislation. Thus, the duration of a probation period when being hired for work came to be determined by agreement of the parties to the labor contract, unintelligent limitations on holding two jobs were abolished, and combining of vocations and offices was encouraged, and so on.

One may consider to be cardinal changes those in the institute of the labor contract with regard to the introduction by all-union legislation in 1990–1991 of the so-called contractual form of hiring. The inclusion in the plan for preparing draft legislative acts necessary for the legal provision of economic reform and the preparation of the draft law of the USSR on bringing the Fundamental Principles of Legislation of the USSR and Union Republics on Labor into conformity with the new principles of economic management is evidence that the need was understood for cardinal changes in the sphere of the legal regulation of labor.³

The Decree of the Supreme Soviet of the Ukrainian SSR «On the Economic Autonomy of the Ukrainian SSR» provided for drafting legislative acts on labor. The Law of the Ukrainian SSR of 20 March 1991 made individual changes in the Code of Laws on Labor of the Ukrainian SSR.⁴ To be sure, these changes might be described only as temporary measures to renew labor legislation. Other legislative acts were adopted that were devoted to individual institutes of labor law of Ukraine; for example, the Laws of the Ukrainian SSR of 1 March 1991, «On Employment

¹ *Ведомости* Съезда народных депутатов и Верховного Совета СССР (1990), no. 10, item 129.

² *Советское трудовое право* [Soviet Labor Law] (Moscow, 1991), p. 148.

³ I. V. Zub, «Реформа трудового законодательства в условиях перехода к рыночной экономике» [Reform of Labor Legislation under Conditions of Transition to a Market Economy], *Советское государство и право* [Soviet State and Law], no. 2 (1991).

⁴ *Ведомости* Верховного Совета УССР (1991), no. 23, item 267.

of the Population» and «On Fundamental Principles of Social Defense of Disabled Persons in Ukraine».¹

Thus, certain advances of a reform nature occurred in all-union and republic labor legislation. On the whole, however, labor legislation remained in a critical state and did not correspond to the requirements of the time. The material shortcomings in this branch of law were: erroneous orientation towards production, and not the toiler; unprotected amounts of earnings; low level of labor conditions; virtually complete absence of contractual principles between the worker and the administration of the enterprise, institution, or organization; weak defense of labor rights against mass violations (we refer to the limitation of the subject-matter and narrow sphere of the operation of law encompassing only workers and employees of State enterprises, organizations, and institutions); weak economic methods of regulation; inflexibility of law, as a consequence of which simplified decisions were taken when regulating labor relations; excessive centralization of law leaving no place for autonomous law-making by union republics.² Therefore, under conditions of economic reforms and the development of market relations it was necessary to have radical changes of all labor legislation reflecting the real processes of perestroika in various spheres of the life of society.³

Attempts were made to reform legislation regulating the socio-cultural sphere. These laws of the USSR were adopted: of 11 April 1991, «On General Principles of State Youth Policy in the USSR»;⁴ of 15 May 1990, «On Pension Security of Citizens in the USSR»;⁵ of 24 April 1990, «On the Languages of Peoples of the USSR»;⁶ of 1 October 1990, «On the Freedom of Conscience and Religious Organizations».⁷ Among the legal acts of the Ukrainian SSR of socio-cultural designation one may name the laws of 28 October 1989, «On Languages in the Ukrainian SSR»;⁸ and of 5 November 1991, «On Pension Security».⁹

Changes and additions were made to criminal legislation in the years of perestroika, the Ukrainian SSR being guided by these, conditioned by the processes occurring in the socio-economic and political spheres. Thus, in 1985 and 1986 criminal legislation changed in connection with the policy campaigning against drunkenness, and also non-labor revenues. In 1986 it was established in the Fundamental Principles of Criminal Legislation of the USSR and Union Republics that in the event of the replacement by way of pardon of the death penalty with deprivation of freedom, the last might be assigned for a term exceeding fifteen years, but not more than twenty years. In 1987 changes and additions were made to all-union legislation in con-

¹ *Ведомости* Верховного Совета УССР (1991), no. 21, item 252.

² See S. A. Ivanov, «Кризис советского трудового права» [The Crisis of Soviet Labor Law], Советское государство и право [Soviet State and Law], no. 7 (1990), p. 40.

³ For details see «Конференция. Реформа трудового законодательства в СССР: Обзор докладов и выступления. Рекомендации» [Conference. Reform of Labor Legislation in the USSR: Survey of Reports and Addresses. Recommendations], Советское государство и право [Soviet State and Law], no. 4 (1991), pp. 36–47; Z. Symorot, «Пребудовчі процеси у законодавстві про працю: досягнення, недоліки, пропозиції» [Perestroika Processes and Labor Legislation: Achievements, Failures, Propositions], Радянське право [Soviet Law], no. 6 (1990), pp. 10–14; P. Stavyskyi, [Ways to Improve Labor Legislation], Радянське право [Soviet Law], no. 8 (1990), pp. 7–10.

⁴ *Ведомости* Съезда народных депутатов и Верховного Совета СССР (1991), no. 19, item 533.

⁵ *Ведомости* Съезда народных депутатов и Верховного Совета СССР (1990), no. 23, item 416.

⁶ *Ведомости* Съезда народных депутатов и Верховного Совета СССР (1990), no. 19, item 327.

⁷ *Ведомости* Съезда народных депутатов и Верховного Совета СССР (1990), no. 41, item 813.

⁸ *Ведомости* Верховного Совета УССР (1989), Annex to no. 45, item 631.

⁹ *Ведомости* Верховного Совета УССР (1992), no. 3, item 10.

nection with the accession of the USSR to international conventions on narcotics, AIDS, and hostages.¹

The aggravation of the socio-political situation in the country, the activating of socio-political movements, the struggle for power of various groups, parties, and movements led to changes in and additions to the USSR Law «On Criminal Responsibility for Crimes against the State» and conditioned the adoption of USSR laws of 2 April 1990, «On Defense of the Honor and Dignity of the President of the USSR»; of 23 October 1990, «On Criminal Responsibility for Blocking Transport Communications and Other Illegal Actions Infringing the Normal and Safe Work of Transport». On 2 June 1991, the USSR Supreme Soviet adopted the Fundamental Principles of Criminal Legislation of the USSR and Union Republics.²

Reformist principles were to be noted in procedural legislation. On 30 June 1987 the USSR Supreme Soviet adopted the Law «On the Procedure for Appeal to a Court of Unlawful Actions of Employees Impinging upon the Rights of Citizens», which in form and content corresponded to the principles of the democratization of social life.³ This law also operated in the Ukrainian SSR. Pursuant to this legal act on the procedure for judicial appeal against unlawful actions of officials which violated the rights of citizens, during the first half of 1988 some 187 suits were considered in the Ukrainian SSR.⁴

Legislation in the perestroika era underwent a number of changes. A principle, new for the Soviet legal system, of the genesis of the institute of rights and freedoms of the individual began to emerge to a certain extent. In content it became more democratic and humane. However, legal acts, both all-union and republic (including the Ukrainian SSR), could not break the process of development of the country, stop, and with time overcome the critical phenomena. An integrated approach to legislation was clearly imperfect. The change of orientations and specific ideas, inconsistency and incompleteness of decisions, negatively affected the development of the legal system. «Blank spots», obsolete norms, were retained, lack of coordination of norms and their contradictoriness arose. Against this background, the flow of legislation could not provide the desired result, and its prestige declined. The increase in the «volume» at the expense of the quality of laws had considerable importance. The USSR Supreme Soviet only from 1989 to 1991 adopted more than 100 laws. There were many declaratory provisions in legal acts not underpinned by organizational and legal mechanisms for realization.⁵ Under conditions of unceasing weakening of the power of all-union structures, a genuine «wear» unfolded between union republic laws, especially tense after the proclamation by the republics of declarations on their State sovereignty. The situation did not improve after the adoption of the USSR Law of 24 October 1990, «On Ensuring the Operation of Laws and Other Normative Acts of Legislation of the USSR»,⁶ where it was provided that laws, edicts of the President

¹ For details, see *Сборник документов по истории уголовного законодательства СССР и РСФСР (1953–1991 гг.)* [Collection of Documents on the History of Criminal Legislation of the USSR and RSFSR (1953–1991)] (Kazan, 1992), I, pp. 11–12, 180–235.

² *Ведомости Съезда народных депутатов и Верховного Совета СССР* (1991), no. 30, item 862.

³ *Совершенствование законодательства СССР и союзных республик* [Improvement of Legislation of the USSR and Union Republics] (Minsk, 1990), p. 299.

⁴ V. Stefaniuk, «Судовий контроль за діяльністю органів державної влади» [Judicial Control over the Activity of Agencies of State Power], *Право України* [Law of Ukraine], no. 3 (1998), p. 4.

⁵ B. N. Topornin, *Разделение властей и государственная организация* [Separation of Powers and State Organization] (Moscow,), p. 24.

⁶ *Ведомости Съезда народных депутатов и Верховного Совета СССР* (1990), no. 14, item 918.

of the USSR, issued within the framework of the powers thereof, are binding upon all State and social agencies, officials, and citizens on the territory of the USSR. However, the union republics ignored this instruction. Moreover, on the same day, 24 October 1991, the Ukrainian SSR Supreme Soviet adopted a law on making changes in and additions to the Constitution of the Ukrainian SSR.¹ The Basic Law provided (Article 71) that «the supremacy of laws of the Republic shall be ensured on the territory of the Ukrainian SSR».

These opposed approaches to the operation of legislation in the State destabilized the sphere of legal regulation and deepened the crisis phenomena in legislation.

After the dissolution of the USSR, many Union legal acts lost force. But in accordance with the Decree of the Supreme Soviet of Ukraine of 12 August 1991, acts of legislation of the USSR might be applied on the territory of Ukraine with regard to questions which were not regulated by legislation of Ukraine provided that they were not contrary to the Constitution and laws of Ukraine.²

Honcharenko V. Law of the Ukrainian SSR in the Perestroika Period (1985–1991)

Abstract. In the paper the process of updating the legislation in perestroika period, particularly in the branches of law regulating economic relations is analyzed. It was noted that a number of legislative acts were adopted to ensure the transition of the Soviet economy to a system of market relations.

Key words: system of legislation, perestroika, economy.

Гончаренко В. Д. Право УРСР у період перебудови (1985–1991)

Анотація. У статті подано аналіз процесу оновлення законодавства в період перебудови, особливо в галузях права, що регулюють економічні відносини. Відзначено, що був прийнятий ряд правових актів, покликаних забезпечити перехід економіки СРСР на систему ринкових відносин.

Ключові слова: система законодавства, перебудова, економіка.

Гончаренко В. Д. Право УССР в период перестройки (1985–1991)

Аннотация. В статье дан анализ процессу обновления законодательства в период перестройки, особенно в отраслях права, регулирующих экономические отношения. Отмечено, что был принят ряд правовых актов, призванных обеспечить переход экономики СССР на систему рыночных отношений.

Ключевые слова: система законодательства, перестройка, экономика.

¹ *Відомості* Верховної Ради УРСР (1990), no. 45, item 606.

² *Ведомости* Верховного Совета УССР (1991), no. 46, item 621.