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Executive Power and the Concept of
Provovoe Gosudarstvo

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2. EUGENE HUSKEY, "From Legal Nihilism to Pravovoe Gosudarstvo: Soviet Legal Development, 1917-1990."

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Executive Power and the Soviet Concept of a Pravovoe Gosudarstvo

Ger P. van den Berg

Executive Summary

The key theoretical development in this area involves the doctrine of the separation of powers. Although this concept has been imperfectly achieved in recent developments in the Soviet Union, the general recognition of its importance is significant.

The 1988 and 1989 constitutional amendments loosened the grip of the Politburo and the Party apparatus on policy-making. But they also left a void with regard to executive power. This was addressed in the March, 1990 amendments, which created the USSR presidency. The December, 1990 amendments strengthened the hand of the President, most importantly by subordinating the Cabinet (formerly Council) of Ministers to him.

One of the unresolved problems of the new structures is the power of the president to issue edicts. The relationship of these edicts to legislative acts of parliament has yet to be worked out. And principles regarding control over such edicts, by, for instance, parliament or the Constitutional Oversight Committee, are still in their infancy.

One of the hallmarks of earlier Soviet legal practice was the presence of a vast body of secret legislation. The ills of this system are now widely-recognized and acknowledged. But though the volume of secret legislation has apparently diminished recently, the problem still clearly exists. Another practice that has largely disappeared, however, is the issuance of joint government-Communist Party decrees. This is another sign of the diminution of Party influence on policy-making.
Several recent court cases (most particularly the various aspects of the Kalugin case) show that the courts still do not possess sufficient authority to constitute an effective check on executive power.
Executive Power and the Soviet Concept of a Pravovoe Gosudarstvo

By Ger P. van den Berg

With regard to the executive branch of the Soviet state, the most important aspects of a pravovoe gosudarstvo are the problems of the separation of powers, the related question of the decree-making power of the executive, and the question of judicial control over the executive branch of the government. In the federal Soviet state, the question of the relationship between the executive branch at the central level and at the republic or lower levels is also of importance.

In this paper we will concentrate primarily on the law of the USSR (federal legislation) and legal relationships as they are conceived therein. Relations between the highest agencies of state power at the USSR level have developed in the direction of the traditional concepts of the rule of law, but the situation is less clear at republican or lower levels. This is partly the outcome of Gorbachev’s original idea to build a pravovoe gosudarstvo with the Communist Party in power. In those republics where the party is no longer in power, politicians are less inclined to create a system in which their power would be restricted by law.
The Presidency

The Separation of Powers: The Past Record

Under the constitutional amendments of March 14, 1990, the post of USSR President was created in order to concentrate the formal and actual powers of various political agencies--the Politburo and Secretariat of the CPSU, the Chairman of the Supreme Soviet, and the Presidium of the Supreme Soviet--in the hands of a single person.

Before 1990, the formal power system was based on the Soviet concept of a system of soviets. All power in society and in the state was, theoretically speaking, concentrated in the hands of the people united in the soviets. All agencies of state power derived their power from the people. The apex of the system of soviets, the Congress of People's Deputies (hereinafter: Congress), created in 1988-89, was seen as an agency of state and society, to which all state organs and public organizations were subordinate. Since the soviets united all power, each state organ was an agency of this unitary state power. However, each agency of state power was considered to be an agency of a soviet, endowed with all powers except those specifically reserved to the soviet or to the electorate, which created the former. For instance, the Supreme Soviet had all power with the exception of the exclusive powers of the Congress (e.g., adoption of the Constitution). Similarly, the Presidium of the Supreme Soviet and the Council of Ministers had all power, except those powers reserved to the Supreme Soviet.

By virtue of the constitutional amendments of December 1, 1988, most (formal)
powers invested in the Presidium of the Supreme Soviet (hereinafter: Presidium) were transferred to the Supreme Soviet, the standing parliament. The Presidium retained a number of ceremonial powers, including, at least formally, the power to issue edicts and decrees. Moreover, it preserved its role as defender of the USSR Constitution and laws.²

These relationships were quite similar to those set forth in the original text of the 1936 Constitution. According to that document, as Stalin had explained in his speech on the draft Constitution, there should be one legislative agency (the Supreme Soviet) in order to bring an end to the confusions of the revolutionary past. However, the Supreme Soviet’s power to issue laws did not deprive lower agencies of their power of legislation. Moreover, even if a given question was within the exclusive jurisdiction of the Supreme Soviet, an escape clause was available allowing the Presidium to issue edicts (ukazy). This clause was frequently used to issue new laws or to amend the Constitution and laws adopted by parliament.

In practice (and also on the basis of Article 6 of the Constitution), the Politburo and not the electorate stood at the apex of the whole system. It was the real nucleus of all Soviet organs. Officially, however, the Politburo could not, and usually did not, act on its own behalf but only through state bodies.³

Under the constitutional arrangements of 1988, the newly created Congress was the highest agency of state power, which could consider and decide any question. The subordinate Supreme Soviet was described as “the legislative, administrative and controlling agency of state power.” The new position of the Presidium was unclear, because it still could issue edicts and decrees. However, in a speech to the Supreme Soviet in July 1989,
Deputy Chairman of the Supreme Soviet Anatolii I. Lukianov remarked that the Presidium “will not use any and all mandates to adapt and amend the laws of the USSR. The Constitution in its new wording does not provide for this function” (emphasis added).  

Under the 1936 and 1977 Constitutions, the Presidium could not only amend a law, but it could also issue decisions in the form of decrees (postanovlenija). These decrees could run counter to the law in force and no remedy was available, as is shown in the case of Rokotov and Faibyshenko.

In 1961, currency speculators Rokotov and Faibyshenko were sentenced to death when their case was reconsidered by the criminal chamber of the RSFSR Supreme Court on the basis of an edict issued by the USSR Presidium on July 1, 1961. This edict, which provided for the death penalty for the crime they were convicted of, was promulgated after the sentence had been handed down by the court of first instance.

The Presidium could also order that pre-trial detention last longer than nine months, although this was the maximum period established by law. And some incidents since Gorbachev came to power illustrate that (republican) Presidia have not felt bound by the Constitution or the law.

A general rule, derived from Article 121 (4) of the original 1977 Constitution, held that the Presidium alone exercised control over the observance of the Constitution. This meant that only the Presidium could decide whether its own edicts or decrees were in conformity with the Constitution or with the law in force. This despotic power of the Presidium was based on a formal interpretation of the wordings of Article 123 of the 1977 Constitution: “The Presidium of the Supreme Soviet of the USSR issues edicts and adopts
decrees.' Of course, the Supreme Soviet could have reversed such decisions, since it was empowered "to decide all questions assigned to the jurisdiction of the USSR" (Article 108). However, under the political situation existing before the issue of a pravovoe gosudarstvo became prominent, conflicts between parliament and other higher agencies of the state or the Communist Party simply did not occur.

As the successor to the Presidium, the new Supreme Soviet could also adopt decrees running counter to the law in force. It did so, for example, in June 1989 in a decree empowering the USSR Procurator General to extend the period of pre-trial detention in various criminal cases in which the prosecution could not be finished in the statutorily established period. Thus, the Supreme Soviet and its Presidium have long acted as the highest executive and they have not been bound by law.

Until December 1990, the Constitution described the Council of Ministers as the highest executive and administrative agency of state power. It had a kind of general mandate to issue decrees and resolutions on the basis and in pursuance to the USSR laws. Many laws also contained the clause that the Council could resolve "specifics [osobennosti] regarding the application of the law in individual branches of the economy." This clause has even been interpreted as giving the Council the power to decide that a statutory rule should not be applied in a certain branch of the economy. Under this clause, the Council, for example, revoked the statutory right of enterprises in the communications fields to leave that branch of administration, as embodied in the 1987 law on the state enterprise.

The main difference from the new system and the one existing before 1988 at the USSR level was that the Presidium had lost many of its powers to the Supreme Soviet and
the Supreme Soviet, in turn, had lost some of its powers to the Congress. Moreover, due to glasnost, and the changes in electoral laws and practices, the members of parliament started to behave rather independently of the Politburo. There were even clashes between the Supreme Soviet and the Chairman of the Council of Ministers over the appointment of a number of ministers. However, since the government always yielded to the wishes of the Supreme Soviet, serious conflicts were avoided. One could argue that in 1988-89 the system described by Lenin in his *State and Revolution* was revived: no separation of powers, a parliament as a working body combining legislative and executive power, but also acting as a real parliament, with rather free debates. Soviet authors have also analyzed the 1988 system in these terms. Thus, as late as November 1989, it was stated that the principles of separation of powers and of bureaucratic centralism are typical of the exploiters’ state. But in a socialist state the principle of democratic centralism reigns, because in a socialist state all power has been transformed into social self-government, and the state has withered away and become a non-state.\(^{10}\)

**The 1990 Constitutional Amendments**

Under the 1988 and 1989 constitutional amendments parliament had been given considerable power and the Politburo had lost its grip on policy-making. Politicians were called to account by parliament (e.g., in connection with the events in Tbilisi in April 1989). The parliaments of the republics were chosen in rather free elections in the first half of 1990 and are still operating as the highest agencies of state power. However, they function
essentially as arenas for emotional debates and decisions rather than for reflection and for deciding on the policies which should be followed to save the country from chaos. The February 1990 Platform of the CPSU Central Committee for the 28th Party Congress called for the creation of a presidency. The question of the presidency was also raised earlier, but the creation of this post had been rejected, apparently to preserve the powers of the Politburo as the guarantor of unity in the system. The Politburo (along with the party in general) could no longer play the unifying role it once had, because it was no longer the monolithic nucleus of the system. Gorbachev wanted to reform the system by convincing the party and his colleagues that the ideals of socialism could be preserved only if the party (and also the Politburo) voluntarily gave up its monopolistic power. Instead of the Politburo, a new unifying power was necessary. The only alternative was to create a presidency, with a communist as president.¹¹

The creation of this post made a certain power redistribution necessary: the Politburo did not have any formal power, while the President needed formal powers. This was achieved by endorsing the progressive doctrine of separation of powers, but at first not in the usual meaning of the term. The Platform called for a separation of power functions. Under this slogan, the administrative (executive) power of the Supreme Soviet was transferred to the President. The Presidium was turned into an inner body of parliament and its real powers also went to the president. This was done in order to strengthen the efficiency of government, which shows that Montesquieu's doctrine was not applied. The doctrine has nothing to do with efficiency, but is aimed at restricting the possibility of despotic power.

Lukianov expressed the role of the President quite clearly:
with the institution of the presidential office, the Congress of People's
Deputies will remain the highest organ of state power, the USSR Supreme
Soviet becomes the legislative power, and the government the executive and
administrative power. The President will be the stable link (prochnoe zveno)
connecting legislative and executive activity. As a result, the system of unitary
Soviet state power will receive a new organizational consolidation at the
highest level, a new additional guarantee for the implementation of the laws
and other decisions of the representative agencies. The institution of the
Presidency has a consistently democratic, soviet nature. . . The President is a
special person within the system of the omnipotence of the soviets. He
symbolizes the unity of power in the country and he unites the representative
and executive agencies. It is a triangle.\textsuperscript{12}

Even some prominent party members did not agree with this construction of the Presidency.

They proposed as early as March 1990 the introduction of a real separation of powers.

According to the jurist Sergei S. Alekseev, such slogans as “all power to the soviets” had
been quite effective against the provisional government in 1917 and against the monopolistic
position of the Communist Party in 1989. But a pure parliamentary system of power would
lead to dictatorship, as it had done in the past. The idea of separation of powers as a
separation of power functions amounts to a primitive interpretation of the concept. It is meant
for an organization of state power in which the basic institutions of the state have equal
power.\textsuperscript{13}

Veniamin E. Chirkin made an attempt to rationalize the system which had evolved by
considering the Congress of Peoples' Deputies as the people's assembly of Jean Jacques
Rousseau and applying the theories of Montesquieu to the other agencies of power.\textsuperscript{14} This is
also the basis of the ideas included in the Programmatic Declaration adopted by the 28th
Party Congress in July 1990. This declaration stressed the position of the Congress as the
agency of organized society, which creates the agencies of state power according to the
principle of separation of powers. The latter idea was advocated almost in the language of
Montesquieu:

The separation of powers into legislative, executive and judicial will create guarantees against the usurpation of unrestricted powers and against abuse of power, and it will allow a clear demarcation of the spheres of competence and responsibility.

At the same time, however, the principle of people’s sovereignty is also advocated: the sovereign will of the people is the sole source of power, with the state being subordinated to society. The latter idea resulted in maintaining the existence of the Congress and also in the adoption in December 1990 of a USSR law on referendum.

Under the laws of March 14 1990, therefore, the presidency amounted to a combination of parliamentary and presidential forms of government. It bears several similarities to the system existing in France. De Gaulle had created this system as a compromise between a strong president and a strong parliament. In the USSR, it was only a transitional solution, introduced in what was seen as an emergency situation due to the loss of power of the Politburo and the party machine.

Most republican declarations of sovereignty enacted in the summer of 1990 also called for a division of state power into legislative, executive and judicial branches. In the Central Asian republics, the office of president was instituted in 1990, and in 1991 similar action was taken in the RSFSR, Georgia, and other republics. The Baltic republics, however, have maintained the former system. At the local level, separation of powers is gradually gaining momentum. The soviets of Moscow and Leningrad have created genuine mayors, who will head the executive.

Under the constitutional amendments of 1988 and 1989, the newly- created Committee on Constitutional Oversight was empowered to judge the constitutionality and
legality of presidential edicts. It could, however, do this only at the demand of the Congress or the Supreme Soviet. This suggests that the presidential office forms a part of the soviet system. However, the committee also has the power to rule on any decree issued by agencies elected by the Congress. Since Gorbachev was not elected by the population, but appointed by the Congress, the Committee considers itself empowered to issue opinions on the legality of presidential edicts.

The Committee put on its agenda the question of the legality of a presidential edict of April 20 1990, regulating demonstrations in the center of Moscow. Under the edict the USSR Council of Ministers, and not the Moscow City Soviet, would have the power to issue permits for demonstrations in the center of Moscow. In its opinion of September 13 1990 the committee ruled that the presidential edict was illegal because it restricted the statutory powers of the Moscow Soviet. The impact of this clash between the guardian of the new 
pravovoe gosudarstvo and an institution which represented the old unitary Soviet system was the first victory for the idea of a pravovoe gosudarstvo over the soviet concept for the organization of the state.

However, within two weeks the Supreme Soviet restored the old order. Under a rather vague law of September 24 1990, the President received explicit powers to issue edicts of a normative character in a number of fields until March 31 1992. The Supreme Soviet may override the effect of an edict by establishing other rules, or it may recommend that the USSR President amend or annul his decision. This law was said to have been adopted to deal with the economic and political crisis in the country. But it demonstrated as well that the Supreme Soviet can change the constitutional relations between the highest agencies of
The constitutional amendments of December 1990 are a new stage in the developments towards a presidency as chief executive. As a result of the amendments, the Council of Ministers lost its position as the highest agency of state power. To signify this change, the Council was renamed the Cabinet of Ministers and was subordinated to the President. He is their chief, assisted by the Prime Minister. Following the United States model, the President cannot appoint and discharge the ministers without the consent of parliament. In the United States tradition, the Congress of People’s Deputies may not dismiss the President for political reasons. This is possible only through an impeachment process, if the President has been found guilty of violating the Constitution and laws, taking into account the conclusions of the Constitutional Oversight Committee. The decision has to be adopted by a two-thirds majority of the members of the Congress.

In the draft version of the amendments, the President was charged with coordinating the highest agencies of state power and state administration, which put him in a position above parliament. But in the final text this reference to the former Soviet model disappeared. A similar redirection of power occurred with regard to the Council of the Federation. During the debates it lost its position as the coordinating power between the agencies of state power of the center and the republics. It now only coordinates the executive agencies at these levels.

Nevertheless, the USSR presidency still retains some traits of a soviet-type agency, since its power to issue edicts has not changed. At first it was envisaged that the Supreme Soviet or the Congress could annul all presidential edicts and decrees, unless they were
issued on the basis of a specific mandate of parliament. But this was rejected. Giving this power to the Congress would mean that the President was not bound by acts of the Supreme Soviet. This would have meant the end of the Supreme Soviet. In the end nothing was said about the power of the Congress or the Supreme Soviet to annul presidential edicts and decrees. It is still true, however, that the Supreme Soviet can initiate such action by petitioning the Committee on Constitutional Oversight (Article 124). Thus, under the Constitution the powers of parliament are restricted, but so are the powers of the President.

Lukianov characterized the new system as

a synthesis of the institutions of President and the Soviet system, of the presidential and the parliamentary republic: it is a presidential republic of the Soviet type, i.e., a presidency, as a system of administration, subordinated to the soviets of people’s deputies.

It must be said, however, that the constitution does not necessarily determine the President’s real powers. The new constitutional definition of his position should have affected his legislative power. But even if he does not have the power to issue laws (to change existing laws) under the constitution, he can exercise this power under the previously-quoted law of September 24 1990. Thus, when he became head of the executive in December 1990, his constitutional legislative powers were somewhat limited, but not his actual legislative powers.

One could also argue that the Committee on Constitutional Oversight had already transformed the President from a soviet agency into the head of the executive branch. As indicated above, the presidency has real legislative power on the same footing as parliament, based on an explicit delegation of powers by the parliament.

In practice the President began to use his legislative powers in 1991. For example, on March 22 1991, he established new tax rates "until the USSR Supreme Soviet has amended
the legislative acts concerned." In addition, on May 16 1991, he changed the procedures for the settlement of disputes between enterprises and administrative agencies, and restricted the right to strike in a number of sectors of the economy. Gorbachev did not cite any legal basis for these extraordinary steps.

If the powers of the President are based on the law of September 24 1990, they are not absolute, since the Supreme Soviet may change these edicts under the same law. According to Iurii Kalmykov, the Chairman of the Legislative Committee of the USSR Supreme Soviet, this clause provides that the President does not have the power to amend the law. This interpretation is questionable, however. If this were the case, then the additional powers granted to the president would make no sense.

Kalmykov's remarks are valid when applied to the RSFSR, however. The President of the RSFSR received additional powers by a decree of the RSFSR Congress of April 5 1991. But under this act, the President was empowered only to issue resolutions, binding on the territory of the RSFSR, "within the framework of the legislation of the RSFSR." Thus, he may only issue podzakonnye akty (sub-statutory acts), and he cannot change the law. However, the Presidium of the RSFSR Supreme Soviet still has the power to change the law (by decree--postanovlenie--rather than edict--ukaz--as was the case in the past).

*Presidential Powers*

Under the Constitution, the President has certain legislative powers. He may issue edicts on the basis and pursuant to the Constitution and laws, which are binding throughout
In his role as chief executive, the President issues edicts which are then executed by the Cabinet of Ministers. In this capacity, he may also give instructions to ministries and state committees (Articles 133 and 135 of the Constitution) and apparently also to governments of union and autonomous republics. At least he did so in the edict of July 25, 1990 "On Banning the Creation of Armed Formations, Not Provided in USSR Legislation". ²³

The President also has judicial powers. He derives these powers from his role as defender of the observance of the rights and freedoms of the Soviet citizens under the USSR Constitution and laws. One of the traditional roles of the old Presidium of the Supreme Soviet was ensuring the observance of the USSR Constitution. This rule did not provoke any open conflict under the political conditions prevailing prior to 1988. This changed in the fall of 1988, when the republics started to issue acts running counter to the USSR Constitution and laws. Although the Presidium was not specifically empowered to annul such acts, it declared some Estonian laws null and void.²⁴ The constitutional provision on which this power was based had not been included in the draft amending the Constitution. But it reappeared in the final text, apparently because it seemed to be a useful weapon against republics which were behaving more independently.

During the discussions in December 1989 on the Law on Constitutional Oversight, a hotly-debated question concerned the Committee's power to check whether the constitutions and/or laws of the republics were in accord with the laws of the USSR. A parliamentary majority found that this question came under the jurisdiction of the Committee. However,
pending the revision of the federal structure, the Committee could not assume this role until
the new federal system was provided for in the Constitution. During the discussions,
Gorbachev warned that if the Committee did not receive the power of supervision over
repUBLICAN acts, he would continue the Presidium's practice of checking their legality. After
the creation of the presidency, Gorbachev assumed this role, justifying it on the basis of his
constitutional role as defender of the Constitution.²⁵

Under Article 127 (3) of the Constitution the President may award orders and medals
and confer honorary titles. Under an edict of July 3 1979, this power includes the right to
deprive a recipient of his awards. The President may do this upon the recommendation of a
court in the case of a conviction of a serious crime, or for committing an act that discredits
an honored person.²⁶ Gorbachev used the latter power in the case of Oleg Kalugin. This case
is discussed further at the end of this paper.

Presidential edicts are subject to review by the Committee on Constitutional
Oversight, as demonstrated by the Committee's opinion of September 13 1990, which was
quoted above.

The role of the President cannot be described in the terms of separation of powers.
He has the potentially omnipotent power of the Politburo without its actual power. Moreover,
he is no longer the real leader of a political force which backs the President. Therefore,
while Gorbachev has more formal power than the American president, he in fact has less
power.
The USSR Cabinet of Ministers

When the USSR President became the head of the executive, the Council of Ministers became the Cabinet of Ministers. This change was made to signify its diminished position and its subordination to the President. The Cabinet is no longer described as the highest agency of state power and state administration, but as the highest executive and administrative agency of the USSR, subordinate to the President (Article 128, Constitution).

In addition, the term government (правительство) has disappeared from the Constitution. Therefore the term Cabinet will be used to denote this agency.27 It might be pointed out that the Constitution did not really affect the enumerated powers of the executive. These powers had already been restricted to some extent by the introduction of the concept of a правовое государство.

The General Legislative Mandate of the Council/Cabinet of Ministers

Under the law, as was the case with the Council of Ministers, the legislative powers of the Cabinet are restricted only to a limited extent. One may argue that the constitutional clause stating that the Cabinet may issue decrees and resolutions “on the basis and in pursuance of laws of the USSR, other decisions of the USSR Supreme Soviet and edicts of the President” provides some constraint. However, as was the case in Europe in the 19th century, the Cabinet derives its mandate from its constitutional position as the executive power. This means that one of the principles of the traditional concept of the rule of law,
that the executive may issue a decree only when it is based on a specific law, is not observed. In fact, Articles 128 and 133 of the Constitution provide for a general mandate to issue decrees in all fields. This rule is also enshrined in Article 131, which states that the Cabinet is empowered to resolve all questions of state administration insofar as they do not, according to the Constitution, come within the jurisdiction of the Supreme Soviet and the Council of the Federation.

In the past, even when parliament had provided that in a certain branch of law a statute should or at least could be issued, the Council of Ministers was competent to issue that "law." Thus, the Principles of Civil legislation of 1961 provided that citizens "may, in conformity with the law, have property in individual ownership, . . ., [and] choose their occupation and place of residence" (Article 9). If the clause "in conformity with the law" had not been inserted, citizens would have had a legal guarantee of freedom of residence. However, by including this clause, the rule defining the legal capacity of the citizen was in fact deprived of any real content, and the USSR Council of Ministers was, in effect, empowered to issue any rule it wished to in this field. The term "law" did not provide a constraint on governmental power. On the contrary, it legalized all enactments issued by the government and its agencies restricting freedom of movement, particularly restrictions included in the rules on the passport system and on residence permits (propiski).

The ambiguity in terminology became the object of debate after the enactment of governmental restrictions on cooperatives in December 1988. The government defended its power to issue these restrictions by referring to the statutory provision that allows specific matters (особенности) in the application of the Law on Cooperatives to be established "by
legislation.' The proponents of the cooperative movement argued that this clause meant that only the legislature could introduce restrictions. On the basis of past practice, this argument was not persuasive. But the 19th Party Conference had proclaimed the principle of a pravovoe gosudarstvo and had endorsed the idea that anything not prohibited by law was permitted.

Particularly after this discussion, federal lawmakers began to use more careful terminology. At first, an attempt was made to distinguish between Law with a capital L and law with a small l. Later, one finds a somewhat more clear expression of ‘‘law’’ (zakon) and ‘‘legislative acts’’ (zakonodatel'nye akty) to denote acts of parliament (Congress, the Supreme Soviet) and ‘‘legislation’’ (zakonodatel'stvo) as the general term for binding rules.

An example of this practice may be found in the USSR enterprise law of June 4 1990, which provides that

state enterprises shall be guided by this Law and other legislation. . ., and enterprises based on other forms of ownership by this law, other legislative acts. . ., and in instances provided for by these acts also by decrees of the Council of Ministers (Article 4).

This language seems to deprive the Council (Cabinet) and the ministries of their power to issue binding rules with regard to private enterprise, unless these rules are based on a law (or decree) issued by parliament. This formulation is still not totally clear, however, since it is uncertain whether presidential edicts belong to the category of legislative acts (edicts of the Presidium belonged to this category, since they had the same status as formal statutes).

Another restriction on the powers of the executive has been laid down by the USSR Committee on Constitutional Oversight. In its opinion of October 26, 1990, on the system of residence permits, the Committee stated that citizens ‘‘may, in conformity with the law,
choose their occupation and place of residence," indicating that freedom of movement only may be regulated, but not restricted, by law. In this way, a legal expression was transformed from a mandate to the government to issue rules concerning the freedom of movement into a legal norm which (together with norms of international treaties) allows an examination of the legality of the governmental decrees in this field.

Lower Agencies

Traditionally, relations between higher and lower agencies were dominated by the principle of democratic centralism, enshrined in the statute of the Communist Party and also in the 1977 Constitution. Since democracy did not exist, its main feature was that the central institutions were all-powerful. One may distinguish some special rules which have been developed in the post-Stalinist era.

All powers of lower agencies were defined in a negative way, and a higher agency could always usurp the powers of a lower agency unless it was stated that a particular power was exclusive to a certain agency. Even in that case, the higher agency could influence the decision of the lower agency by political means, e.g., through Communist Party influence. This was one of the consequences of the tenet of democratic centralism that "decisions of higher organs are binding on lower agencies."

The Constitution and the Law on the Council of Ministers simply stated that "the execution of decrees and resolutions of the USSR Council of Ministers is obligatory throughout the territory of the USSR." One of the consequences of this principle was that
citizens and organizations could always be deprived of the legal protection which they were accorded against acts of a lower agency, since a decision of this lower agency could be replaced by a higher agency which was exempt from judicial control. Thus, one may find in the 1950s a number of procuracy protests against acts of lower soviets to make the right to work dependent upon a residence permit. But the result was that the decisions connecting the right to work to the residence permit were thereafter promulgated by the USSR Council of Ministers, which was exempt from control by the procuracy or the courts.

Under the present-day system, the possibility of exempting certain acts from judicial control by pushing them up the hierarchical ladder of democratic centralism still exists. But the RSFSR Supreme Court has ruled in the case of a cooperative that it may no longer be used arbitrarily to deprive someone of judicial protection. Under the Law on Cooperatives of 1988, the decision to liquidate a cooperative is made by the executive committee of a local soviet. The cooperative may challenge this decision in court. Since the executive committee is a lower agency of the local soviet, the soviet itself may also take the decision. And its decisions are still largely exempt from court control. However, the RSFSR Supreme Court has ruled that judicial protection against such decisions is afforded by statute, and that only a statute may deprive a cooperative of judicial protection. Consequently when the decision to liquidate the cooperative is made by the full soviet, the cooperative may go to court. Whether the same reasoning will be applied if a decision is made by the Cabinet or the president is uncertain, but in any case a model for such a decision is available.

Another feature of democratic centralism was the principle of dual subordination. Governed by this principle, any decentralized agency was not only directly subordinated to
the local soviet but also to the appropriate higher or central agency (Article 150, Constitution). Under the USSR law of April 9 1990, "On the General Principles of Local Self Government and the Local Economy in the USSR," the executive agencies of local soviets are subordinate only to the soviets that create them. Higher agencies, and apparently also the USSR and republic Cabinet (Council) of Ministers, no longer have the power to annul a decision of a lower agency. This may be done only by a court (or an arbitration court), and then only when the decision is contrary to the law. Thus, within state administration legal relationships are replacing hierarchical relationships.

Dual subordination was also applied in the relationship between USSR ministries and republic ministries, but the republic cabinets (councils) of ministers are no longer replicas of their central counterpart. Moreover, in the Baltic republics the parliaments created their own ministries, without any consultation with Moscow. Later other republics followed this example.

Under the USSR law of April 26 1990 "On the Demarcation of the Powers of the USSR and the Members of the Federation," republics received more power to challenge centrally-adopted decisions. In fact, most republics, including those that have not declared themselves to be independent, are going much further by including in their constitutions or other acts a republican right of nullification of any federal act. An exception seems to have been made in an economic agreement of April 18 1991 between the USSR and the union republics for the year 1991. In this case disputes are to be settled by the interrepublic committee for the execution of this agreement, headed by a First Deputy Prime Minister of the USSR (Doguzhiev).
Under the 1936 and the 1977 Constitutions, the procuracy could not lodge protests against acts of cabinets (councils) of ministers, although it could do so against acts of ministries. The procuracy could notify the cabinet of existing violations of the law and then propose the elimination of the violations (Article 23, Section 9, Law on the USSR Procuracy of 1979). For example, in 1960, the procuracy proposed that the Lithuanian Council of Ministers change a recommendation sent to local soviets which contravened USSR regulations. During the Brezhnev era only one such proposal was published, this one directed against an Azerbaidzhanian decree on buying goods on credit under which pensioners did not have the opportunity to buy on credit.

These powers of the procuracy with regard to the cabinet (council) of ministers have been rather ineffective in practice. For instance, in February 1990, Procurator General Aleksandr Sukharev requested that the USSR Council of Ministers abolish some of the obligations of servicemen in connection with bringing in the harvest. He further asked for restrictions on the use of construction battalions. In practice, servicemen and reservists have long been obligated to assist in the transport of the harvest. The government of the USSR, however, did not act on Sukharev’s request. The problem of the construction battalions was also raised by Sukharev in November 1989. He proposed that either a law on the subject be issued or that they be abolished. This issue was sidetracked by a Deputy Chairman of the USSR Council of Ministers. Only in the fall of 1990 did the USSR President issue an order decreeing the abolition of the construction battalions in civilian industry ministries by 1992, with certain exceptions for the defense-related ministries.
In 1970, Andre Loeber published the results of his study on the existence of legal rules "for internal use only." This analysis examined the subject in general and looked at the Soviet Union in particular. He showed that under the 1936 Constitution, most legal rules adopted by the Presidium of the Supreme Soviet which had a normative character were published. But most legal rules emanating from the USSR government remained unpublished. Only the laws issued by parliament had to be published and were, in fact, always published.

Regulations regarding the publication of legal rules, enacted in 1958-5, provided for the possibility of withholding norms from publication, though the general rule was that edicts of the Presidium had to be published if they were of general significance or had a normative character. Under these regulations, decrees enacted by the Council of Ministers could remain unpublished, even if they had a normative character. The Council's resolutions (rasporiazheniia) were never published, although many of them contained legal norms.

The 19th Party Conference adopted a resolution on legal reforms which subscribed to the idea a socialist pravovoe gosudarstvo. Since one of the cornerstones of the rule of law is that generally-binding rules should be published, the question of the secrecy of such rules has become of principal importance.

In 1988, for the first time in the Soviet Union, a disclosure was made of the actual extent of the phenomenon of secret lawmaking. Vladimir K. Kudriavtsev stated that "in the years 1985-1986 only 32.5% of all decrees with a normative character issued by the USSR government were published [in the official gazette]." The total number of normative acts
passed by the government is low. Most norms will deal with enterprises and other organizations. In the traditional, centrally-planned and managed Soviet economy, such norms may be seen as genuine "rules for internal use." State enterprises were always an integral part of the state apparatus, although they received a certain degree of independence from their superior ministries under the 1987 law on the state enterprise. It would seem reasonable to consider a rule that is binding on a certain number of enterprises to be a normative act in the genuine sense of the term. But from the standpoint of the rule of law, I doubt whether it is necessary to take the same approach to rules that apply to individual state enterprises. The traditional concept of the rule of law is related to the legal position of natural persons and of (formally and/or actually) independent organizations (e.g., the cooperatives in their new form or foreign companies operating in the USSR). This situation should have changed under the 1990 laws on ownership and enterprises, and there should be no different treatment for enterprises, as opposed to natural persons, under these laws. However, up to the present time all general laws on judicial protection against administrative acts apply only to natural persons (or citizens). Organizations (legal persons) enjoy judicial protection only if it is specifically provided for in a law, a practice occurring more frequently now than in the past. One finds the same dichotomy (between natural persons and organizations rather than between private persons and state organizations and agencies) in the draft of the RSFSR Constitution. This draft regulates "civil society" (grazhdanskoe obshchestvo) separately from human rights. Only the chapter on human rights grants full judicial protection as a constitutional principle. And the draft urges the publication of all legislation concerning citizens.
In the past, a large number of unpublished normative decrees issued by the USSR government directly concerned citizens. One notorious example was the regulations regarding residence permits (propiski). The general rules on this subject were issued in 1974, but in fact only a part of the official decree was published, and all articles dealing with administrative banishment of convicts from major cities were excluded from the Official Gazette. This omission has not been corrected in the Collection of Legislation in Force and the Digests of the Laws (Svod zakonov). Moreover, special rules with regard to residence permits still exist, for example, for Moscow. These remarks applied only to decrees, just one of the types of Cabinet decision. Under the law, the publication of other types of decisions (resolutions, protocol decisions) is not necessary. Every year two to three thousand Cabinet resolutions are enacted. Sometimes these resolutions are so important that under the new relationship prevailing between center and the republics, the republics deem it necessary to attach their own special decrees to them. A recent phenomenon is that courts have started to refer openly to resolutions in their decisions. Thus in a decision of the Presidium of the Kaluga Provincial Court, a resolution of the RSFSR Council of Ministers, regarding the purchase of dwelling houses in the countryside, was quoted.

Currently one can find more examples of secret decrees than several years ago. Prior to March 11 1990, the Lithuanian government openly referred to such documents in decrees ratifying USSR decisions. There is even a reference to a secret decree issued by the USSR President in a list of USSR decrees ratified by the Presidium of the Moldovan Supreme Soviet. This list refers to the unpublished edict of the USSR President of November 12 1990 No. VII-1011 “On Imposing the Duty to Coordinate Mobilization Activities on Executive
and Administrative Agencies of Soviets of People’s Deputies.” After the creation of the presidency in March 1990, norms on the publication of presidential decrees were not enacted.

The problem of secret legislation was partly resolved by an opinion of the USSR Committee on Constitutional Supervision of November 29, 1990 “On Rules That Allow the Application of Normative Acts Concerning the Rights, Freedoms and Duties of Citizens.” This judgement restricted the powers of the executive. It deprives of legal force all legislation that has not been published affecting the fundamental rights, freedoms and obligations of citizens. But it does not expressly restrict the powers of the executive in the economic field.

**Joint Party-Government Decrees**

For more than 50 years a number of the decisions issued by the USSR Council of Ministers have appeared as joint decrees of the Council and the CPSU Central Committee. Neither the Constitution nor any other formal regulation provides for enacting such decrees. They have received some attention from scholars, but their legal and political significance has been unclear.

Data concerning the number of joint decrees issued at the federal level have never been published. The number of joint decrees which we have traced has varied considerably in recent decades. Especially during the reign of Stalin, there were significant variations in the number at the central level: only 312 joint decrees are known for the years between 1944 and
1952, but more than 100 have come to our attention for the years 1935, 1940, and 1941. After 1954, the variations have been much smaller: the lowest number was for 1964 (23), the highest for 1986 (65), and the typical number was about 40. During Gorbachev’s first years in power, the number (for three consecutive years) was at the highest level since 1942. Since not all decrees are known about (particularly when they do not have a normative character), the actual number of joint decrees was undoubtedly higher.

Joint decrees were usually issued if the question was deemed to be politically important, although many decrees seem to have only minor importance. The prevailing opinion was that from a legal point of view, joint decrees did not differ from simple governmental decrees. Therefore, the USSR Council of Ministers could amend or repeal a joint decree by a simple decree. In practice, such events did occur. Several authors, nevertheless, have attached special significance to these joint decrees, in line with Andrei Vyshinskii’s statement that they were “a remarkable phenomenon in our state law practice which constitutes a merger of the will of all workers of the USSR with the will of the entire Soviet people and which gives them a perfect expression.” Others have argued that joint decrees do not differ from simple decrees but that they nevertheless have special “legal authority.” In line with these authors, a number of Western authors deemed the joint decree not only a peculiar form of party involvement in decision making, but also a special form of legislative activity based on Article 6 of the original 1977 Constitution.

The argument that joint decrees had a higher force than a law did not recognize the all-embracing role of the party in the drafting of all laws. Joint laws of the Supreme Soviet and the party have never been issued, but this does not mean that laws adopted by parliament
have less legal force than joint decrees. The only logical reason for the existence of joint decrees seems to be that they demonstrated openly the subservient role of the government to the party and to its Politburo or Secretariat. In this sense, joint decrees expressed the ideas incorporated in Article 6 of the Constitution. This is also the main reason why the enactment of such decisions was not in agreement with the ideas of a pravovoe gosudarstvo.

The Central Committee’s executive decree of July 30, 1988, on the implementation of the decisions of the 19th Party Conference, ordered party committees and executive agencies of soviets to cease adopting joint decrees. This decree, however, was not implemented. Even after the disappearance of the leading role of the CPSU from the Constitution and Gorbachev’s appointment as President, a joint decree was issued, signed by Gorbachev as “Secretary of the Central Committee of the CPSU” and by Prime Minister Ryzhkov. This act amended a number of previously adopted joint decrees. During the whole of 1990, however, only three joint decrees were published.

The gradual disappearance of joint decrees affirms that, from a formal point of view, the separation of powers between the Communist Party and the state, which was one of the aims of perestroika, was successful. However, it should be noted that this separation between party and state is still not complete in the eyes of many republics and politicians, primarily because the head of the state and of the executive is still leader of the Communist Party.

The Courts and Executive Power

One of the major questions connected with the creation of a pravovoe gosudarstvo is
whether a citizen or an (non-governmental) organization may sue agencies possessing executive power. For example, can they sue the President, the Cabinet or a minister under the 1989 law on judicial review of administrative acts or on any other basis when their interests have been violated by the state?

Under this 1989 law, any citizen may bring a suit against illegal acts of agencies of state administration (organy gosudarstvennogo upravleniia) and officials. These terms have not been defined. They clearly exclude parliament from judicial control, but the status of the Cabinet/Council of Ministers and the President is less clear. Soviet specialists in administrative law usually consider councils of ministers and ministries to be agencies of state administration. However, until the end of 1990, the Constitution described the Council of Ministers as the highest executive and administrative agency of state power, as the government. Therefore, the council could not be sued in court. The same reasoning applies to the President.

Local soviets are described in the Constitution as “agencies of state power.” Their decisions are not subject to court control. But executive committees of local soviets (being “executive and administrative agencies of local soviets”) are considered to be agencies of state administration, and their decisions are subject to court control.

The 1989 law also allows citizens to bring suits against individual officials. There are no exceptions in this provision, even for the highest official of the state (the Chairman of the Supreme Soviet was described as the highest official of the state under the constitutional amendments of 1988). But in practice, challenging a presidential decision in court would no doubt be a fruitless exercise. In June 1990 retired KGB Major General Oleg D. Kalugin
made a number of statements concerning his former employer. In reaction thereto, a special presidential edict, issued at the request of the KGB, stripped Kalugin of his government awards for actions discrediting the honor and dignity of a state security officer. The USSR Council of Ministers stripped him of the rank of major general. The KGB chairman withdrew Kalugin's title of honorary security officer and other KGB decorations. Later, he was accused of divulging state secrets. In July 1990 Kalugin filed a suit in the Moscow City Court against Gorbachev, Ryzhkov and Kryuchkov, asserting that the decrees stripping him of his military rank, his orders and medals, and his pension were illegal.\textsuperscript{52}

From a legal point of view, the case against the KGB holds little interest. The court was authorized to consider the case under the forerunner of the law of 1989 (the latter became effective on July 1, 1990, two days after the contested decisions were made). Until July 1, 1990 the courts were only empowered to consider cases against officials. Because the President is an official, the court could have ruled that it was within its authority to consider any complaint against the President. However, by May 1991 the complaint against Gorbachev had still not been considered by the court.

At the time of this writing, four or five courts have considered the case filed against Ryzhkov. A problem is whether Ryzhkov's decision, formulated as a decree of the USSR Council of Ministers, could be considered an "act of an official," which would allow the court to consider the case. The first court argued that it was a decree of the Council. But on appeal Kalugin's lawyers presented the court with statements from various ministers that they did not know of a meeting of the Council where the question had been decided. On this basis, the appeal courts concluded that it was in fact a decision of Ryzhkov and that the court
was authorized to consider the case.

The problem is, of course, that although some ministers declared that there was no meeting of the Council, the Council's Presidium can meet "as the council," and ministers may not attend such meetings. Moreover, the Chairman of the Council has traditionally been empowered to issue decrees in the name of the USSR Council of Ministers.

The Plenum of the USSR Supreme Court considered the protest of the acting USSR Procurator General in March 1991. It ruled that the courts were not authorized to consider the case, since the decree had the required form. The courts were only empowered to consider complaints against officials. Therefore, Kalugin's claim against Ryzhkov had to be dismissed. Apparently, the Plenum also concluded that even if the law of November 1989 would have been in force, the case still would have had to be dismissed, since the council was an organ of state power, and not an agency of state administration. This situation, however, has been changed by the constitutional amendments of December 1990: the newly-organized Cabinet is only an agency of state administration and it is no longer a soviet organ. However, it still seems very unlikely that a court would consider a suit filed against the President.

As a result of perestroika, the executive power of the Soviet state is no longer completely exempt from judicial control. This was achieved partly by redefining the executive power and partly by making the President the head of the executive. Under the laws in force, however, the President is still exempt from court control as long as parliament does not institute an impeachment procedure.

At the April 1991 Plenum of the CPSU, Gorbachev remarked: "The work of state
agencies and officials, and the behavior of citizens, as well as their rights and duties, are determined in the law and they have a legal basis. Thus, there is quite a different situation now in society.\textsuperscript{53} This is certainly true, but this analysis shows that the Soviet Union is only at the beginning of a long road toward a genuine pravovoe gosudarstvo.
NOTES


2. This was done after the first clash between the USSR and a republic (Estonia) on the issue of the priority of the USSR Constitution and laws over republican enactments.

3. Proposals to give the Politburo legislative powers had been rejected during the discussions on the 1977 Constitution.

4. Izvestiia 25 July 1989, 3. The interpretation of Lukianov’s statement is rather tentative. One could read also as “the Presidium will not use the mandates to issue normative edicts which are contained in current legislation.”


7. In 1986, the Lithuanian Presidium appointed a second First Deputy Chairman of the Council of Ministers, although the Lithuanian Constitution provided for only one such First Deputy, Chetvertaia sessiia Verkhovnogo soveta Litovskoi SSR (odinnadtsatogo sozyva) 5 iiulia 1986 g. Stenograficheskii ochet, Vilnius 1986, 154 ff. The Constitution was amended three months later. In the beginning of 1988, the RSFSR Presidium permitted the provincial Soviet of Cheliabinsk to elect a new chairman, although he was not a deputy to the Soviet as was required under the Constitution, Izvestiia 11 February 1988, 4. The only difference from the Lithuanian example is that the unconstitutional decision was attacked in the press.

9. *SP SSSR* 1990 No. 10, item 56. When the 1989 coal miners' strike was over, the Council of Ministers decreed that the procedure for the election of enterprise directors by the workers of the enterprise should be suspended for all mines.


11. According to Boris Lazarev, the post of President was also included in the abortive attempts to enact a new Constitution in the Khrushchev era. B. Lazarev, *Prezident SSSR*, in *Pravo v nashei zhizni* 1991 No. 1, 7.


15. See, e.g., Iurii Kalmykov in *Izvestiia* 27 February 1990, 2.

16. The edict was published in *Ved.SSSR* 1990 No. 17, item 301. A 1988 edict (turned into a law by the Supreme Soviet) had ruled that executive committees of local soviets regulate the demonstrations, but under the presidential edict it was stated that the Council of Ministers should regulate demonstrations in the center of Moscow. See also on the legality of this edict E. Ametistov, “Pravovaia oshibka ili opasnyi pretsedent?”, *Moskovskie novosti* 6 May 1990, 4; *Izvestiia* 22 June 1990, 2; 25 June 1990, 1.

17. See V.N. Kudriavtsev at the fourth USSR Congress, *Izvestiia* 26 December 1990, 5. See also Aleksandr M. Iakovlev: the President is subject to the law, in his position as head of state and as chief of the executive. Therefore, all provisions, under which he should have coordinating powers vis-a-vis parliament have been abolished, *Izvestiia* 23 December 1990, 4.

18. See Lukianov in *Izvestiia* 26 December 1990, 6. Vladimir Ia. Stadnik proposed to create a balance between parliament and the President by giving a minority of one third of the members the right to veto any presidential decree. Kudriavtsev argued that parliament attempted to unravel legislative and executive power and therefore the
executive has to carry full responsibility for its own decisions. Vadim F. Nikolaichuk and Aleksei I. Kazannik stated that the President should have de facto legislative powers if parliament should not have the right of confirmation (or to veto) of presidential decrees. Georgii M. Koshlakov argued that the merger of legislative and executive power of the past had caused many injustices: "we try to unravel them, but Stadnik's proposal makes the executive powers wholly dependent on the legislative power. It is not necessary for the Supreme Soviet to have the power to annul decrees, that run counter to the law, since this can be done through the Committee on Constitutional Oversight." Moreover, as Iurii Golik argued, the Supreme Soviet always may overrule a decree by adopting a law, because the juridical force of a law is higher than that of a decree. Gorbachev argued that the executive power would be buried if each edict needed ratification. An edict may not contravene the law, he said. If this happens, there is a mechanism which protects the Constitution and the law.

Vladimir A. Zubanov stated that parliament usually takes only popular decisions and this means that frequently nothing happens. Another proposal aimed at also restricting the powers of the Supreme Soviet vis-a-vis the Cabinet of Ministers, but this was rejected. For the debates see *Izvestiia* 27 December 1990, 3; V.A. Giro in *Izvestiia* 27 December 1990, 3.

19. *Izvestiia* 24 December 1990, 6. Also Kudriavtsev called the new system a presidential republic (federation).

20. *Ved.SSSR* 1991 No. 13, item 390. The President also sends messages (*poslaniiia, obrashcheniiia*), e.g., to the USSR Supreme Soviet on the position of women and children, or to republican authorities, *Ved.SSSR* 1990 No. 14, item 246; 244 and 245. He also issues resolutions (*rasporiazheniiia*).


22. See, e.g., some decrees on taxes of 19 April 1991, *Ekonomika i zhizn_'* 1991 No. 21, supplement. Also the First Deputy of the RSFSR Presidium issues resolutions, see *Ved.RSFSR* 1990 No. 28, item 381. The only guarantee against abuse of this power was that all decisions had to be adopted in actual meetings of the Presidium. Regulations on the RSFSR Supreme Soviet already had empowered the Presidium to execute other mandates, provided by the RSFSR Constitution and the RSFSR laws. *Ved.RSFSR* 1990 No. 26 item 320.

23. The edict quotes as its basis Article 73 of the USSR Constitution and the USSR Law "On the Demarcation of the Powers of the USSR and the Subjects of the Federation," which renders exclusive power to the USSR. Therefore, any act of other organizations or agencies is illegal, independent of its aims. This edict also is an attempt to resolve the question of the legality of republican laws allowing the creation of republican army formations. *Izvestiia* 26 July 1990, 1. In fact, the law only
provides rules for the Armed Forces of the USSR, without touching on the rights of
the republics to have their own armed forces.


25. *Ved.SSSR* 1990 No. 21, item 369, 370; the Law of 16 May 1990 met the same fate,
*Ved.SSSR* 1990 No. 21, item 390.

26. *Ved.SSSR* 1979 No. 28, item 479 (Article 40). Under this law, the Presidium still
may do this.

27. However, the term is still used in practice.

28. Conclusion No. 11 (2-1) “On Legislation on propiska of Citizens’” of 26 October

29. *BVS RSFSR* 1990 No. 4, 11.

30. See G. Barabashev in a discussion on The Soviets and Power in *Pravda* 29 June
1990, 5. These rules are not valid in the Baltic states and Georgia, where the
principles of centralism in the organization of local government prevail.

31. However, it took the RSFSR considerable time before it could create its own KGB.

32. See, for the agreement, and also on a conflict concerning the agreement *Svobodnaia

33. *Sots.zak.* 1960 No. 10, 83; No. 11, 85 (Azerbaijan); 1961 No. 2, 90 (resolution of
the Kazakh Prime Minister); 1963 No. 8, 89 (Kazakhstan).

34. *Sots.zak.* 1982 No. 6; see also G.B. Smith, *The Soviet Procuracy and the Supervisio
of Administration*, Leiden 1978, 80, 92-93.

35. V. Prishchep, “General_’nyi prokuror i riadovye vedomstva,” *Argumenty i fakty*
1990 No. 15, 7.

36. Presidential edict of 15 November 1990 “On Measures to Realize the Proposals of
the Committee of the Soldiers’ Mothers,” *Ved.SSSR* 1990 No. 47, item 1037.

37. D.A. Loeber, “Legal Rules ‘for Internal Use Only’ A Comparative Analysis of the
Practice of Withholding Government Decrees from Publication in Eastern Europe and
in Western Countries,” *The International and Comparative Law Quarterly* January
1970, 70-98.


40. Even the amendments in Soviet legislation as a consequence of this enactment were not published. A number of them have been included in the 1987 supplements of *Svod zakonov SSSR*.


42. *BVS RSFSR* 1990 No. 10, 14; see also a resolution of the RSFSR Council of 13 January 1988, issued on the basis of a mandate (*poruchenie*) of the USSR Council, quoted in a verdict of the Civil Chamber of the RSFSR Supreme Court, *BVS RSFSR* 1991 No. 4, 13-14.


44. A new development in this field is that in the USSR Regulations on the Congress and the Supreme Soviet of 23 December 1989 the rule was included that the USSR Presidium could only adopt decisions at its meetings and with a majority of the members of the Presidium; under the amendments of 1 December 1988 all committee chairmen of the Supreme Soviet became members of the Presidium. Moreover, all people’s deputies have access to the minutes and stenographic reports of the meetings of the Presidium. However, prior to the 1990 constitutional amendments one still could find decrees of the Presidium not included in the Official Gazette, e.g., the standard regulations on the Presidium of a local soviet, which also contains provisions on salary scales. *Sovety narodnykh deputatov* 1989 No.12, 11. A reference to a secret decree of the Presidium is also contained in *Demokraticheskaia Rossiia* 5 April 1991, 9. The decree contains Rules on Handling Secret Information by USSR People’s Deputies.

45. See also the statement of 15 February 1991, *Ved.SSSR* 1990 No. 40, item 800; No.


SP SSSR 1990 No. 10, item 49; No. 16, item 83; the secret decree “No. 139-23” of 8 February 1990, which contains some rules on state dachas, is mentioned in Iu. Feofanov, “Privatizatsiia pod grifom ‘sekretno’,” Izvestiia 2 July 1991, 3. See also Vedomosti Verkhovnogo soveta i pravitel’stva Estonskoi SSR 1990 No. 5, item 87. Other types of joint decrees have also been adopted in the past, e.g., together with the trade unions. Such decisions are still adopted. Joint decrees have been adopted also by the Chairman of the RSFSR Supreme Soviet and the RSFSR Council of Ministers. See Rossiiskaia gazeta 8 June 1991, 1.

Unless there was a clearly defined civil law relationship, e.g., a person employed directly by the Council of Ministers may go to court to lodge a labor dispute. This happened in 1986.

See also Iu. Feofanov, “Poddannyi rezhima ili grazhdanin otechestva?” Izvestiia 2 August 1990, 1.

Summary of World Broadcasts SU/0798; 0800; 0805; 0828; 0831 of 1990. A. Zhankin in Rossiiskaia gazeta 28 March 1991, 4; see also O. Kalugin, Vid s Lubianki Moscow 1990; Iu. Feofanov, “Otkaz ot pravosudiia,” Izvestiia 1 April 1991, 6; Iu. Feofanov, “Chto stoit za ‘delom’ generała Kalugina?” Rossiiia 1991 No. 18 (26), 6. Also the Moscow city Soviet seems to have asked the USSR Committee on Constitutional Oversight to rule on the constitutionality of the President’s edict (Report on the USSR 31 August 1989, p. 2), but this Soviet is not empowered to do so and the Committee may not rule on the legality of non-normative acts.