LEGAL CONTRACT ENFORCEMENT IN THE SOVIET ECONOMY *

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The *arbitrazh* courts appear to be one of the most successful and respectable institutions of contract enforcement in contemporary Russia. This is surprising given that the Soviet state arbitration was viewed as a purely administrative organization and that its lack of adequate experience represented an obstacle to the contemporary system of legal contract enforcement. My examination of the Soviet arbitration system's operation, however, shows that its activity increased in the periods of liberalization during which enterprises gained a greater independence, and diminished during periods of centralization. This suggests that the Soviet system of arbitration courts was relatively well equipped to serve market-type relationships between economic agents and had accumulated the valuable experience that provided the basis for its successful performance in the 1990s.

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1. INTRODUCTION

Recent studies of legal contract enforcement in Russia provide an optimistic prognosis of the impact of legal institutions on economic performance. (Pistor, 1996; Johnson et al., 1997; Hendley et al., 1999; 2001). The trend toward the rule of law in post-Soviet Russia is supported by evidence that law and legal institutions are widely used when disputes are hard to resolve. The contemporary *arbitrazh* courts are superior to private methods in terms of competence, cost, and confidentiality. The caseload of *arbitrazh* courts is increasing over time, from some two hundred thousand cases in 1994 to nearly four thousand cases in 1998 (Hendrix 2001).[1]

It is known that the system of arbitrazh courts, *Gosarbitrazh,* existed under the Soviet rule.[2] Nevertheless the literature offers conflicting interpretations of the relationship between *Gosarbitrazh* and the modern *arbitrazh* courts. Some scholars maintain that a wide gap separates the old system, that operated in the command economy, and the new pro-market *arbitrazh* courts (Greif and Kandel, 1995; Hendrix 2001, Lee and Meagher 2001). According to Berman (1963), *Gosarbitrazh* was effectively a system of economic

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[1] It is not to say that informal solutions through personal relationships are abandoned (Hendley et al., 2001).

[2] See, for example, the volume *Assessing the Value of Law in Transition Economies* edited by Peter Murrell (2001).

courts with judicial and administrative powers.[3] It existed separately from the regular courts, was closely linked to the government, and immediately subordinate to the supreme administrative bodies of the regions in which they operated.[4] Similarly, departmental courts of arbitration were subordinate to the industrial ministries. While economic plans provided the guidelines for judges, regional and/or state leaders reserved the right to intervene through arbiters' appointments, supervision of their activity, reversal or modification of arbiters' decisions, and retrials. These characteristics are partly responsible for shaping an image of *Gosarbitrazh* as a highly dependent and largely insignificant institution whose practice had nothing to do with the new market-oriented economy.

Others suggest that the success of the modern-day *arbitrazh* courts is due to the reforms that transformed an old institution, rather than creating an entirely new one. Hendley et al. (2001) argues that the reforms were "much more driven by the concern of professionals within the legal system than politicians." According to Hendrix' (2000) estimate, roughly 30 percent of judges working in the first tier courts in contemporary Russia are former arbiters in *Gosarbitrazh*.

This paper studies the following questions: Is *Gosarbitrazh* so distant from the contemporary *arbitrazh* courts that we should view them as an entirely new institution?

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[3] Territorial courts of arbitration, affiliated with the central and local governments, settled disputes between the enterprises subordinated to different ministries. Disputes between the enterprises within a single ministry were handled by departmental courts (Pomorski, 1977).

[4] Jurisdiction of regular civil courts was restricted to cases, where one or both parties were individuals, or when both parties were cooperative enterprises and the claims were small.

To what extent did *Gosarbitrazh* provide the contemporary *arbitrazh* courts with essential expertise that has allowed them to develop into a well-regarded institution?

The Soviet economic system was not immune to fundamental problems of agency and of exchange (Belova and Gregory 2001). We still know relatively little about institutions that facilitated exchange in the past and under different political-economic regimes (Greif, 2000). In particular, contract enforcement in highly regulated economies, of which the Soviet economy is the most prominent historical example, is not a well-studied theme. This subject did not draw the attention it deserved because it was considered trivial. Traditionally, plans and direct descending orders were viewed as governing resource allocation in a Soviet-type economy; therefore, there was no need for institutionalized inter-enterprise relations. The State Planning Committee *(Gosplan)* allegedly produced all contracts between state enterprises. *Gosarbitrazh* would therefore be a relatively unimportant executive agency.

This line of argument has several flaws and is at odds with the literature and archival evidence. Joseph Berliner (1957), in his study of Soviet enterprises, discovered the importance of inter-enterprise contracts. Janos Kornai (1980:66) emphasizes the continuing role of contracts in the planned economy where "official rationing [plan] determines only relatively aggregate quotas. Rationing is anyway completed by the 'business contract' between buyer and seller in which they agree on the specific quantity, price, time of delivery." The Soviet archival records provide numerous indications of bilateral relations between enterprises. The relationships between Soviet enterprises were regulated by contracts, and each year the government issued decrees on "the contracting

campaign" for the year. While *Gosplan* did allocate resources at the aggregate level, it had no intention to be involved in the actual implementation of transactions at the micro level. The latter remained, to a great extent, at the discretion of enterprise managers (Belova and Gregory, 2001). Finally, against the backdrop of other Soviet institutions, *Gosarbitrazh* may indeed give an impression of being an unimportant and subordinate institution. The hypothesis of *Gosarbitrazh*'s triviality, however, remains to be explored. Comparing the dynamics of caseloads and policy changes allows us to elicit the role of *Gosarbitrazh.* In this paper, I examine whether *Gosarbitrazh* was an alternative to administrative enforcement using anecdotal evidence along with numerical data on the number of cases filed with *Gosarbitrazh* (the caseload) of the Soviet Union and Russia drawn from archival sources and various publications. Had *Gosarbitrazh* simply been an extension of administrative enforcement, periods of tout planning and tight governmental control over enterprises should coincide with increases in *Gosarbitrazh*'s caseload. Concurrently, decreasing caseloads should match the periods of liberalization associated with lower administrative pressures. I find the exact opposite. Specifically, *Gosarbitrazh*'s caseload activity grew during periods of liberalization (mid 1930s, the late 1950s, mid 1960s, and mid 1980s), while it clearly shrank as the government tightened the screws (the early and late 1930s, the late 1940s – early 1950s, and the 1970s).

The rest of the paper proceeds in three steps. Section 2 outlines the creation of *Gosarbitrazh* in the context of institutional change in the 1920s and the 1930s. In Section

3, I examine the interplay between administrative and legal contract enforcement throughout the 1930s – the 1980s. A conclusion follows.

2. THE CREATION OF GOSARBITRAZH

Russia was not a stranger to arbitration procedures prior to the creation of the Soviet state. The first regulation on arbitration tribunals for conflict resolution among business firms was approved in 1831 (Yaresh, 1954: 139). According to an 1864 law, arbitration procedure required a written agreement prior to the submission of a commercial dispute. In the beginning of the twentieth century, arbitration commissions worked at all commodity exchanges and had a permanent stuff of arbiters. Yaresh (1954) argues that "the rulings of those commissions had binding force, wherever the contesting parties, when submitting a case to arbitration, had given their written consent to that effect."[5] The development of legal institutions was a subject of much controversy during the first twenty years of the Soviet regime. Periods of legal nihilism alternated with periods of legal revival, but by mid 1930s, the political leadership recognized law as an important instrument of authority (Huskey, 1992). The history and development of *Gosarbitrazh* reflects both the fate of the Soviet legal system and the history of contractual relations in the Soviet economy.

[5] Yaresh (1954) refers to a pre-revolutionary publication on commercial arbitration courts by Volkov, A. (1913) *Torgovye Tretieskye Sudy*, p.134.

2.1. The period of naiveté, the 1920s – the early 1930s

Nationalization of all industrial enterprises during War Communism (1918-21) left virtually no room for direct "horizontal" relations between producers and consumers. Governmental decrees were to regulate all the production in the economy. As the New Economic Policy replaced the disastrous War Communism in 1921, sales representatives for production enterprises (*syndicates*) took over industrial distribution. Syndicates were organized on a voluntary basis so that participating enterprises and trusts were free to market their output through other organizations, if they felt syndicate prices were too high. Normally syndicates and trusts sought dispute resolution in the Arbitration Commissions, the predecessor of *Gosarbitrazh*, while government contracts were enforced by administrative means.

The first years of central planning (1928-30) were marked by the Soviet government's naive presumption that no agent in a socialist economy would act opportunistically and that state plans would be automatically fulfilled. Thus contracts for transactions would no longer be necessary. This vision led to the abolition of Arbitration Commissions, routinely accused in the official press of "misunderstanding the guidelines of centralized planning."

By 1931, it became clear that the attempt to create an "ideal" planned economy had failed. Several important changes were introduced to mitigate the disastrous consequences of the period of naiveté, of which the following three are the most important: First, banks started to require officially approved contracts in order to authorize credits (SZ 1931). The banking system therefore became an important asset in

Gosarbitrazh's contract enforcement tools. The State Bank was the major carrier of Gosarbitrazh's orders, such as orders to transfer funds to the wronged party, or more importantly, to freeze the accounts of a contract violator. Second, the distinction between "planned" and "extra-plan" contracts was introduced. Planned contracts were subject to price regulation by state agencies, while extra-plan contracts allowed negotiated prices. Third, all plans were to be broken down into actual contracts during contract campaigns in the beginning of each year. *Gosarbitrazh* was both to facilitate these campaigns and to seek resolutions in cases of breaches of contract.

2.2. Further development of *Gosarbitrazh,* the 1930s

After the failure of idealistic planning, contracts remained an integral part of the Soviet economy, although contract law and practice changed frequently. *Gosplan* sought to avoid any detail in allocating even the most basic products when confronted with the complications of distribution planning (Lazarev and Gregory, 2002; Belova and Gregory, 2001). Actual distribution was left to buyers and sellers working through supply agencies and direct contracts. Such bilateral transactions remained below the radar screen of central authorities, which only arbitrarily could influence transactions by indirect regulation and by direct interventions. The high cost of collecting and processing information in a single center ultimately forced the Soviet government to delegate certain decision-making rights to the legal system (Kroll, 1986).

The *contract campaign* was considered the final stage of planning. Its main objective was to match buyers and sellers and thus transform planned quotas into actual transactions. Administrative decrees set general rules and deadlines for contract

campaigns, while economic agents engaged in peer-to-peer negotiations. One of the tasks of the contract campaign was to resolve pre-contract disputes, an additional constraint imposed on the enterprise by planning. Soviet enterprises were, in many cases, entering negotiations with a predetermined "target" constraint. Therefore, they could not simply walk out if the potential partner was offering unacceptable terms but had to file a pre-contract complaint with *Gosarbitrazh*. Pre-contract disputes could arise due to insufficient information and uncertainty about targets (quotas, funds, time of delivery, etc.) at the time of the contract campaign. One of the *Gosarbitrazh*'s responsibilities was to expedite pre-contract negotiations between buyers and sellers so that the contract campaign would end on time, and the risk of breach of contracts would be minimized in the future.[6]

The formation of the multilevel system of arbitration courts had been completed by mid 1930s, and a hierarchy of *general, local,* and *direct* contracts had been established. Higher-level courts considered larger and more important contracts. Departmental courts within industrial ministries specialized in inter-enterprise disputes to speed up contract campaigns and handle dispute resolution between the enterprises of

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[6] Often contract campaigns evolved into a near chaotic process that appeared to have little correspondence to the aggregate plan on which they were supposedly based. This is illustrated by a 1935 *Gosarbitrazh* report: "…the organs of supply and distribution are set up in such a fashion that we have a significant impediment of product exchange and an extremely incorrect regulation of our material wealth. Sometimes, due to the mistakes [of distribution organizations], a whole series of factories are closed while suppliers and distributors bear no responsibility to their customers…" (GARF 8424.1.1,8). In 1935, delays in the approval of distribution balances were such that the government agreed to extend the duration of the contracting campaign (*Biulleten Gosarbitrazha* (4), 1935).

common affiliation. The 1934-36 period marks *Gosarbitrazh*'s peak prewar caseload. Arbitration courts of different levels of jurisdiction resolved some 95 percent of cases submitted annually at all levels. In particular, the 1933 numbers demonstrate that *Gosarbitrazh* was able to resolve about 80 percent of nonpayments and price-related disputes within one year (GARF 8424.1.5:71), while administrative enforcement had evidently failed to deal with the problem.[7]

The state had two major objectives in creating the arbitration system. The first was to provide economic agents with incentives to follow a well-defined procedure for in-court dispute resolution instead of breaking or renegotiating contracts in a disorderly fashion. The second objective was to relieve the administrative hierarchy of the burden of petty

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[7] Even when all conditions were set in a contract, a seller could still neglect regulations. For example, in violation of a governmental decree, the Union-Wool trust gave the order to its supply bases to increase contract prices on average by 60 percent. (GARF 5446.16.4308: 19; April, 1935). The deadlines for contract completion were often missed because of the late release of "funds" by central organizations, the late distribution of general contracts, disagreements between production programs and supply plans, and insufficient information on direct contracts. Producers/suppliers often refused to enter contract negotiations at all in the early stages of the contract campaign when plan targets were not yet known. Confusion about prices and nonpayments caused over 60 percent of all disputes in 1932-34 (GARF 8424.1.2:2; 1933 GARF 8424.1.5:71; 1934 GARF 8424.1.8:1-2). Such disputes were particularly common because price monitoring was too burdensome, even if the government made specific pricing-policy provisions. Most prices could not be found in pricing catalogs; and if they were, the actual product could be claimed to have different qualities from the one found in the catalog. Mark Harrison (1998; 2000) argues that plan prices were inflated due to the producer's desire to achieve a planned gross value of output with less effort. In many cases producers managed to conceal these inflated prices from the government. For instance, contracts in the Soviet defense industry make evident that prices were often set "provisionally" and subject to review "in the light of actual costs" (Harrison and Simonov, 2000). Even when a supplier received a direct order to make a planned delivery, there was no assurance of actual delivery. Suppliers were inventive in finding legal ways to avoid contract fulfillment, for example, by dredging up ambiguous state decrees.

decision-making, while reserving the superiors' right to use discretionary power when needed. To facilitate low-cost dispute resolution, ministries and regions subsidized arbitration courts from their budgets (*BFKhZ,* 1935, 2). In many cases, disputing parties did not bear any litigation costs except for submission fees, which in the 1930s, constituted on average less than one percent of claimed amounts. For example, in 1933, the standard fee in all arbitration courts in the USSR was two percent for small clams (hundred thousand rubles and less), and 0.1 percent for claims exceeding ten million rubles (Panferov, 1941). In 1935, the arbitration court of the timber industry charged 40 rubles for filing claims under twenty five thousand rubles and 125 rubles for claims over one hundred thousand rubles. In 1938, the fee in the same arbitration court lowered to only 35 rubles irrespective of the size of the claim. Starting in the late 1930s, practically all departmental courts used flat rates (*BFKhZ* 1936, 1937, 1938; Panferov, 1941).

According to Ramney and Watson (1999), low costs of legal enforcement may cause two consecutive effects. In the first phase, an exchange-improving outcome may be attained since sufficiently low costs stimulate in-court dispute resolution. Second, in-court dispute resolution may become preferable over a renegotiating process, given that verification of information is costly and individual costs do not rise. This line of argument can be applied to the Soviet arbitration system in the 1930s. Evidently, the ability of *Gosarbitrazh* to resolve cases expeditiously combined with its low costs ensured that agents would seek dispute resolution, rather than sever their relations. For example, in November 1936, the deputy minister of the light industry reported that, in the course of ten months, the departmental arbitration court considered 14,410 cases

(BFKhZ, 1937, 11). Eventually, however, lawsuits began to overwhelm *Gosarbitrazh*. To stop the avalanche of lawsuits, ministries put forth substantial efforts to internalize disputes via administrative contract enforcement such as increasing regulations and significant penalties for filing trivial suits. These efforts provided a slight reduction in caseloads, but clearly suboptimal costs of arbitration resulted in rent-seeking by agents filing ungrounded claims or claims for minuscule damages.

Despite its relative success, *Gosarbitrazh* became a subject of the vigorous criticism by the top managers and administrators of its "unchecked authority" and exclusive decision-making powers. Although experts and managers might be invited to hearings, customarily disputing parties were not represented by attorneys or mediators and had little influence over judges. Top managers and administrators opposed such practices and demanded transferring *Gosarbitrazh*'s functions to regular courts (SOT, 1936:6; 1937:1), where they could exert greater control over the process. These demands did not find much support in the central government, which had a vested interest in "quick justice" and had not questioned *Gosarbitrazh*'s loyalty.

Gosarbitrazh had little power to oppose governmental interventions into the dispute resolution procedure since the dictatorial government was, naturally, above the law. Nonetheless, *Gosarbitrazh* initiated several reforms that produced a visible effect on the ability of enterprises to establish direct bilateral relations. These reforms addressed the division of responsibilities between "general contractors" (typically, ministries) and "local contractors" (mid-level economic administrators) and thus shifted the emphasis to the short-term contracts to allow more precise contract term specification. Starting with

the 1936 contract campaign, contracting guidelines routinely called for increasing the role of *direct short-term* contracts between enterprises (*BFKhZ,* 1936, 7).[8] *Gosarbitrazh*'s boldest reform initiative aimed at creating a level field. In 1934, *Gosarbitrazh* proposed to tighten the deadlines for completing contract negotiations and to align the rights of "general contractors" and "local contractors." This change allowed a lower-rank enterprise to sue higher-rank organizations, such as trusts or ministries. This provision, totally at odds with the logic of a hierarchical command system, was not applied in practice, but it shows that *Gosarbitrazh* was committed to the idea of establishing the rule of law within its jurisdiction.

3. ADMINISTRATIVE AND LEGAL CONTRACT ENFORCEMENT IN THE 1930S - THE 1990S

The history of arbitration courts in the USSR from the 1930s to the end is a reflection of continuous interplay between administrative and legal contract enforcement. The relative importance of legal enforcement increased during periods of liberalization and diminished during periods of expansion of central power.

The statistical data on *Gosarbitrazh* throughout the Soviet period is fragmentary and does not support a thorough statistical analysis. Appendix 1 presents all the available numbers of cases filed with *Gosarbitrazh* of the USSR drawn from archival sources and various publications.[9] However, we can relate changes in *Gosarbitrazh*'s caseload to

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[8] Before this, long-term (normally, annual) general and local contracts played the decisive role. The sphere of direct contracting was restricted to cooperative unions, and short-term contracts were allowed mostly in cases of seasonal goods deliveries.

[9] The State Archive of the Russian Federation (GARF). Fond 5446, Council of Ministers of the USSR (*Sovnarkom*); Fond 8424, State Arbitration courts of the USSR (*Gosarbitrazh*). References to

policy changes. If *Gosarbitrazh*'s main function was to enforce the execution of plans, then it was merely an appendage of the administrative system, technically, a complement to administrative enforcement. Alternatively, if it was in essence an institution for "normal" contract enforcement, although restricted in its jurisdiction by the administrative hierarchy, then it was a "substitute" for administrative enforcement (from the perspectives of both the government and enterprises).

We can test these hypotheses by examining variations in the activity of enterprises in filing cases with arbitration courts, recorded as *Gosarbitrazh's* caseload, in connection with policy changes that affected the degree of centralization. If the "substitute" hypothesis is valid, then moves toward liberalization should be accompanied with increases in *Gosarbitrazh*'s caseloads. Then the relative importance of legal contract enforcement would increase as enterprises were gaining a greater freedom in establishing business relationships. This, in turn, should have formed the *Gosarbitrazh*'s experience of handling a greater variety of disputes. At the same time, increasing centralization and tighter control should bring administrative enforcement to the foreground causing the numbers of cases filed with *Gosarbitrazh* to decrease.

I shall focus on several policy changes that are well described in the literature on the Soviet period. Namely, I am interested in comparing periods of decentralization (or liberalization) – mid 1930s ("Stalin's neo-NEP"), the late 1950s (*sovnarkhozy* reforms), 1966-70 (Kosygin reforms and *khozraschet*), and the mid 1980s – with periods of

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archival material are given in the following notation: Fond.Register.File:Page.

"tightening the screws," such as the late 1930s, the late 1940s – early 1950s, and the mid 1970s.

The first period of liberalization in mid-1930s is characterized by a rapidly growing number of disputes filed with the courts of arbitration that reached a peak in 1936, with some four hundred thousand new cases. Subsequently, the move to overwhelming reliance on direct administrative controls that extended from the late 1930s through the second world war, and into the early 1950s is characterized by lower caseloads.

The reforms initiated by *Gosarbitrazh* in mid 1930s improving the status of local contractors did not take hold until the 1950s. In the early 1950s, enterprises started to participate on a more equal footing to ministries in determining the terms of general and local contracts. The period of most rapid increase started in 1957, with Khrushchev's replacement of narrowly specialized industrial ministries by territorial regulatory bodies (*sovnarkhozy*). The *sovnarkhozy* reform increased the number of contracts crossing administrative boundaries, and enterprises had to use legal enforcement more intensively. Although *sovnarkhozy* were eliminated by mid 1960s, reforms that granted more independence to the enterprises continued, causing further expansion of legal enforcement. After 1957, direct contracts became the dominant form of commercial transaction. An increase in the number of disputes in *Gosarbitrazh* mirrors this process. Caseloads were 14 percent higher than 1957 in 1958, 40 percent higher in 1964, and 40 percent higher in the early 1970s.

The second half of the 1960s saw the elimination of the *sovnarkhozy* and restoration of the system of industrial ministries. In 1965, a reform was adopted which increased

managerial powers and independence. Enterprises were allowed to retain a greater percent of their profits while contributing less to the central budget. The ratio of profits retained by the enterprises to their assets can be viewed as a rough "index of liberalization" reflecting the state enterprises' incentives to seek a resolution instead of renege on the contract, should a dispute arise. Appendix 2 demonstrates the co-movement of the ratio of retained profits and the caseload of *Gosarbitrazh*. In the second half of the 1960s, the retained profit/asset ratio increased by nearly 60 percent while the caseload of *Gosarbitrazh* increased by 33 percent.

Reinforcement of the centralized ministerial system in the early 1970s was marked by a decrease in the number of disputes brought to *Gosarbitrazh* as managerial powers granted by the 1965 reform disappeared (Nove, 1992: 384). In 1974, the *Gosarbitrazh* system itself was pushed toward a greater centralization. Specifically, local and republican arbitration courts lost their autonomy to the supreme arbitration court under auspices of the USSR Council of Ministers and the supreme arbitration court became responsible for monitoring all the local courts' decisions. By the late 1970s, the caseload dropped down by some 13%, from 760,000 cases in 1970 to 650,000 cases in 1979 as the ratio of retained profits dropped by 40 percent. Additionally, in the 1970s, the number of disputes filed with *Gosarbitrazh* are positively correlated with the number of enterprises and negatively correlated with the number of ministries (see Appendix 3). Regression analysis shows that roughly a one percent increase in the number of enterprises led to a one percent increase in the caseload. At the same time, the growing number of ministries

reflects increasing centralization and rising power of administrative enforcement. Altogether such changes should have undermined the legal contract enforcement.

The Constitution of the USSR of 1977, provided, for the first time, a legitimate basis for *Gosarbitrazh* (Article 163). In 1980, the USSR Supreme Council passed a new law on *Gosarbitrazh*. Shortly after that, several amendments to the law were adopted that spelled out the functions of the republican and local arbitration courts and essentially sanctioned a return to liberalization. This liberalization resulted in a 10 percent increase in the caseload, from 620,000 cases in 1978 to 690,000 cases in 1980.

By the late 1980s, the caseload grew dramatically (by some 40%), due to the fact that republican and local arbitration courts increased their independence and Soviet and international enterprises were allowed to seek dispute resolution in *Gosarbitrazh*.

Summing up, policy changes toward liberalization correspond to increases in the activity of *Gosarbitrazh*. Hence, the hypothesis of *Gosarbitrazh* being an alternative to administrative contract enforcement cannot be rejected. In the first years of post-communist transition, legal contract enforcement experienced a sharp decline along with the economy as a whole. In the first half of the 1990s, under the conditions of endemic arrears and barter, relational contract enforcement based on the personal relationships came to the foreground replacing fading administrative enforcement and chaotic legal enforcement. However, the period of economic and institutional stabilization, in the second half of 1990s, brought about reconsolidation of legal contract enforcement and resulted in the steady increase in the number of appeals to the arbitration system

(Appendix 4). By 1998, the number of cases filed with Russian *arbitrazh* courts constituted nearly 70 percent of the mid 1980s level.

4. CONCLUSIONS

Despite fundamental distortions, bilateral contracts remained an important component of the economic development in the Soviet Union. An autonomous *Gosarbitrazh*, which, by design, treated all parties equally, endorsed universal accessibility to courts and reduced transaction costs, increased the stability and integrity of the regime, while limiting the discretionary power of the dictatorial government. The archival data indicate that since the mid 1930s the prompt dispute resolution at a relatively low cost stimulated economic agents to seek legal remedies for the breach of contracts and relieved the government of the burden of trivial decision-making.

Gosarbitrazh's status, however, as well as its performance, was by no means independent. It was subordinate to the Council of Ministers, instead of being a part of the justice system. Its decisions were subject to various regulations and numerous interventions by the central government.

The main question posed in this paper stems from the fact that contemporary legal contract enforcement in Russia, as well as other countries of the former Soviet Union, demonstrates a remarkable success after experiencing a rather superficial modernization. The analysis of the changing operation of the Soviet arbitration courts against the backdrop of major policy changes shows that they accumulated a positive experience relevant to arbitration issues in Russia's contemporary economy. *Gosarbitrazh*'s activity

increased during periods of economic liberalization and decreased during the policy turns toward greater centralization. This result certainly does not imply perfect substitutability between administrative and legal means of contract enforcement. The main problem with producing more definite results is the lack of detailed data on the relative costs and performance of alternative enforcement mechanisms needed to measure the elasticity of substitution. Circumstantial evidence, such as positive correlation between caseloads and the number of enterprises in the 1970s, however, corroborates the "substitute" hypothesis. Taking all the available evidence together suggests that *Gosarbitrazh* was not a mere "bolt" in the Soviet administrative system but rather resembled a "normal" legal contract enforcement institution, typical of a market economy. This may explain its relatively fast and smooth transition and increasing success in the post-Soviet period.

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(***SOT***) *Sotsialisticheskaia zakonnost'*. 1936, 1937.

*(**SS**) Sovetskoe stroitelstvo* (1935). Various issues.

*(**SZ**) Sobranie zakonov SSSR* (1931). №10, article 109; №18, article 166.

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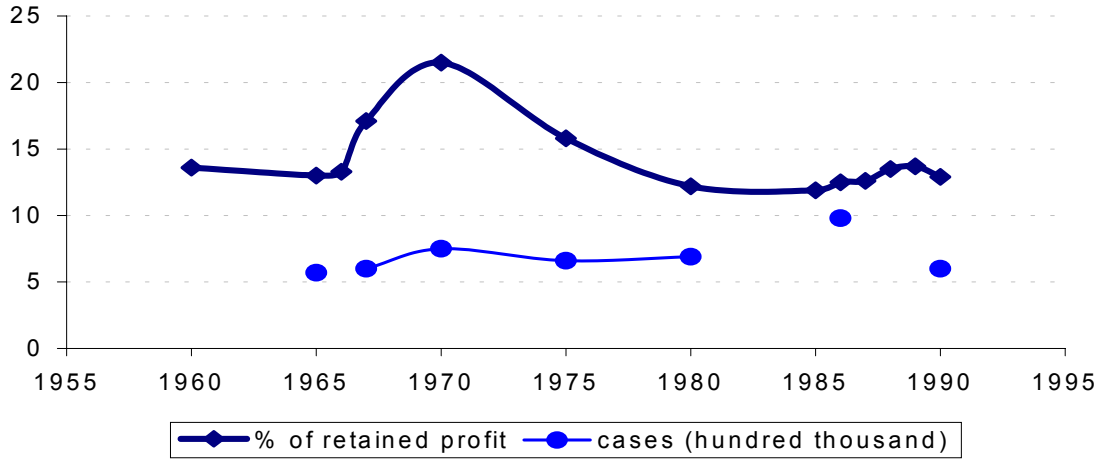
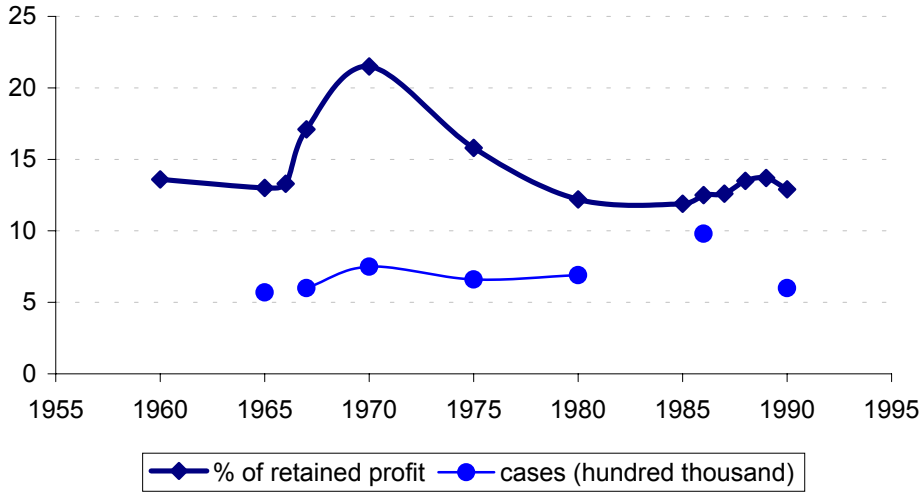
Appendix 1. The caseload of *Gosarbitrazh* of the USSR, the 1930s – the 1980s



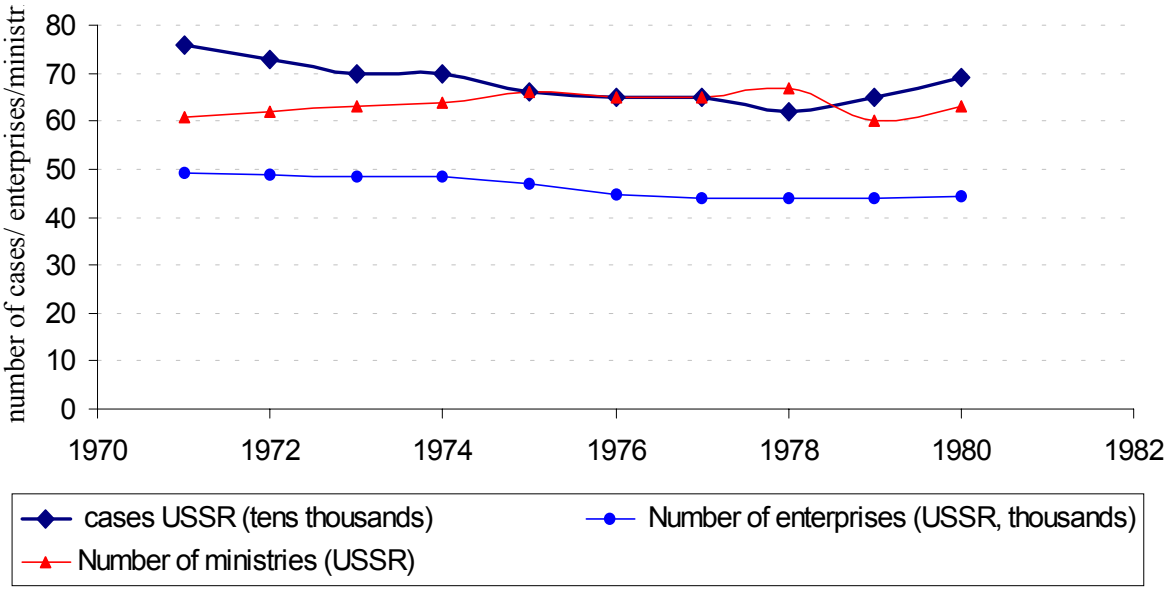
Sources:
1932-4: GARF 8424.1.8,11(I);
1935-1980: Van der Berg (1985:170, 238).

Appendix 2. The ratio of profits retained by the Soviet enterprises to their assets, the 1960s – the 1990s.



Sources: *Narodnoe Khoziaistvo* 1967, 1922-1987, 1990.

Appendix 3. The caseload of *Gosarbitrazh* of the USSR vs. the number of state enterprises, the 1970s.



Sources:

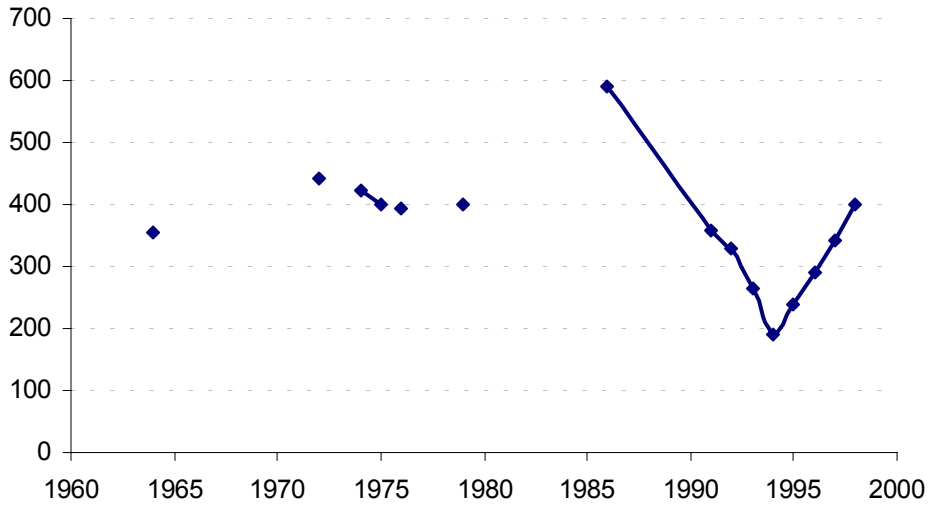
SUMMARY OUTPUT, ANOVA, 1970-1980
Dependent variable: Log of the caseload

Regression Statistics	
Multiple R	0.912529
R Square	0.832708
Adjusted R Square	0.784911
Standard Error	0.028851
Observations	10

	Coefficients	*Standard Error*	*t Stat*	*P-value*
Intercept	3.682667	1.614855	2.280494	0.056595057
Log of the number of ministries	-0.683958	0.289153	-2.36539	0.049943962
Log of the number of enterprises (USSR)	0.881094	0.200382	4.397063	0.003168122

All coefficients are significant in 95% confidence interval.

Appendix 4. The caseload of *Gosarbitrazh* of Russia, the 1960s – the 1990s.



Sources:

1979: Shakarian
1986: Abova and Puginski
1991-4: Pistor (1996)
1997: Hendley et al (1999b, ftn.40)
1995-8: Glenn P. Hendrix (2001)