THE DOCTRINE OF UNJUST ENRICHMENT IN SOVIET LAW

Shortly after World War I, when compiling a new Civil Code for the Soviet Union, the draftsmen embodied in it provisions relative to unjust enrichment. In so doing they relied on the doctrine as expounded by Roman jurists and well established in the French, German and Swiss civil law.

The origin of the doctrine of unjust enrichment can be traced to Rome where it was based on quasi contract.[1] From there it spread over all Europe and with the codification of law in European countries found its way in the codes. All three codes which served as model to the Soviet Civil Code, the French, the German, and the Swiss, carry provisions on unjust enrichment which are based on Roman law.

The French law requires a person to make a refund of value received without a good ground, differentiates between a *bona fide* and a *mala fide* recipient and provides for compensation of a possessor for the value expended.[2] The relatively restricted scope of the French provisions

1. In Roman law, unjust enrichment falls within the domain of actions called *condictiones* which denote claims for readjustment of relations where a person was unjustly enriched at the expense of another. Those dealing with unjust enrichment are *condictio causa data causa non secuta, condictio ob turpem vel iniustam causam, condictio indebiti,* and *condictio sine causa. Condictio causa data causa non secuta* (D. XII, 4.) is a personal action *stricti iuris* arising out of quasi contract and available to the party who has given something or has performed on the ground of a future cause or counterperformance by the other party which has, however, not followed. *Condictio ob turpem vel iniustam causam* (D. XII, 5.) is a personal action *stricti iuris* by which something is reclaimed what has been given on account of an act involving baseness on the part of the recipient or on account of an act which although it did not involve any particular baseness is nonetheless disapproved of by the law. *Condictio indebiti (*D. XII, 6.) is an action *in personam stricti iuris* which enables a man who made payment in error in discharge of a non-existing obligation to recover the amount so paid. *Condictio sine causa (*D. XII, 7.) is a personal action *stricti iuris* for the recovery of what has been paid without legal ground.
2. The French Civil Code (Code civil 59. ed. Paris, Dalloz 1960) deals with unjust enrichment in six articles (arts. 1376-1381) under the heading of quasi contracts. It provides for the refund of what has been obtained knowingly or by mistake and has not in fact been due to the recipient (art. 1376), and for the recovery of money paid under the mistaken belief that it was due as a debt (art. 1377). If the recipient did not act in good faith, he must refund the capital together with interest or revenue from the day of payment (art. 1378). If title to real property was unduly transferred, or corporeal movable property was unduly obtained, the transferee or the recipient have to retransfer it or

may be contrasted with the detailed treatment of the subject in German law where the matter received very careful attention.[3] Similarly, the

return it in kind if it is still in existence, or its value if it was destroyed or if it has deteriorated. A person lacking good faith is liable even for its accidental loss (art. 1379). The French Civil Code further provides (art. 1380) that if a recipient in good faith of a given thing has sold it, he has to refund only the amount realized at sale. Also a provision for the protection of the possessor was included in the Code, namely, the person to whom the thing is returned must compensate even a possessor lacking good faith for all necessary and useful expenses made for its preservation (art. 1381).

3. The German Civil Code *(Bürgerliches Gesetzbuch,* 19. Afl. Palandt, Munchen, Beck, 1960) deals with the matter in considerable detail in eleven paragraphs (para. 812-822), stress being laid rather on reimbursement of value of the enrichment than on restitution of a particular property. A whole set of eventualities is envisaged. The Code provides (para. 812) that a person has to return all what he has acquired from another at the other's expense without legal ground. This is so also if a legal ground originally existing is later extinguished or if a result originally intended to be produced by an act of performance is in fact not thereby produced. Refund of the value of an act of performance done for the purpose of fulfilment of an obligation may be demanded even if there was a defence to the claim whereby enforcement of the claim was permanently barred (para. 813). But refund of the value of an act of performance may not be asked for if the person performing knew that he was not bound to perform, or if the performance was in compliance of moral duty (para. 814). No claim for refund may be made because of non-production of the intended result if the production of the intended result was impossible *ab initio* and the person performing was aware of it, or if the person performing has himself prevented the result from arising (para. 815). If a person not having title to a particular property, disposes of it so as to bind the true owner thereof, he is bound to refund the value so obtained to the true owner. And if there was no consideration, the one who acquired an advantage thereunder has to make the refund (para. 816). If the acceptance of an act of performance constitutes an infringement of a statutory prohibition or is *contra bonos mores,* the recipient is bound to make restitution. But no claim for restitution may be made if the person performing is *in pari delicto* unless he was bound so to perform. Whatever has been given in satisfaction of such an obligation cannot be reclaimed by either party (para. 817). As to the scope of the duty to make restitution, the German Civil Code provides (para. 818 1.) that the recipient has to return whatever he has received either by virtue of a right acquired by him or as compensation for the destruction of, or for damage done to the property obtained. He is also bound to refund all what he has received as compensation for having been deprived of the use of a given property. If the property itself cannot for some reason be restituted, the recipient has to make good its value (para. 812 2.). If at the time of acquisition the recipient knew he had no legal ground of acquisition, or if he subsequently became aware of it, he is bound to make restitution as if an action for restitution was commenced at that time (para. 819 1.). The same duty is imposed on a recipient who by the acceptance of an act of performance infringes a statutory provision or acts *contra bonos mores* (para. 819 2.). If a result was intended to be produced by an act of performance, and if the production of such a result was according to the nature of the juristic act regarded doubtful, the recipient is bound where the result is not produced to make restitution as if an action for restitution was commenced at the time of the receipt (para. 820 1.). The German Civil Code further provides (para. 821) that a person who incurs an obligation without a legal ground may refuse performance even if the claim for release from the obligation was barred by

Swiss law, well known for its precision of formulation, offers a comprehensive treatment of the subject.[4]

Contrary to the law of the other European countries, the Russian law as it stood before the Great October Revolution in 1917 contained no provision with respect to unjust enrichment. The Russian courts, however, by an extensive interpretation of article 574 of the Civil Code[5] established the principle that no one could enrich himself at the expense of another[6] and consistently held that whosoever enriched himself at the expense of another was bound to refund the full value of the enrichment.[7]

prescription. If the recipient of a benefit transfers it to a third party without receiving any valuable consideration, and if in consequence of it the obligation of the recipient to refund the benefit is extinguished, the third party is bound to refund it as if he had received it from the creditor without legal ground (para. 822).

4. The Swiss Civil Code *(Schweizerisches Zivilgesetzbuch, Obligationenrecht,* 25. Afl. W. Schönenberger, Zürich, Schulthess, 1958) discusses unjust enrichment in six articles (arts. 62-67). It declares the general principle that a person who has obtained a gain out of the property of another in an unjustifiable manner is bound to refund it (art. 62 1.). Restitution must be made where the gain was obtained without a valid ground, or on a ground which did not become effective, or which was later extinguished (art. 62 2.). A person who voluntarily discharged a non-existing debt cannot recover his payment unless he proves that he acted under mistake (art. 63 1.). But no recovery is allowed where the payment was made in order to discharge a debt, an action for the recovery of which would have been barred by limitation of time, or where the payment was made in the discharge of moral duty (art. 63 2.). As to the extent of the duty to make restitution, the Swiss Civil Code provides (art. 64) that restitution cannot be had to the extent to which the recipient can disprove enrichment at the time when the claim for restitution is made unless he parted with possession in bad faith or in anticipation of restitution. The recipient is, however, entitled to reimbursement of necessary and useful expenses but where the gain was not obtained in good faith, the reimbursement of useful expenses is limited to the surplus value existing at the time of restitution (art. 65 1.). The recipient cannot claim reimbursement of any other expenses but in default of an offer of reimbursement, he may, before returning the property, remove all what he has expended insofar it can be done without causing damaga to the property itself (art. 65 2.). The Code further provides for the prohibition of restitution of what has been given for the purpose of achieving an illegal or immoral end (art. 66). There is also a special time limit for the bringing of an action of unjust enrichment. Action must be brought within one year from the time when the injured party became aware of his claim but in any case within ten years from the time when the cause of action accrued (art. 67 1.).

5. *Svod Zakonov Grazhdanskikh,* 6th ed., I. M. Tiutriumov, David Gliksman Press, Riga, 1923, art. 574 reads as follows: "As no person may except by decision of court be deprived of his legal rights, any injuries, damages or loss caused to the property of a person create on the one hand the duty to make — and on the other hand the right to claim compensation."

6. *Ibid.* art. 574 para. 16.

7. *Ibid.* art. 574 para. 16 – 37.

THE SOVIET LAW

The Soviet provisions relative to unjust enrichment are embodied in the Civil Code of the Russian Soviet Federated Socialist Republic of November 11, 1922.[8] The Code is obviously in force only within the territory of the Russian Soviet Federated Socialist Republic yet its text has been closely followed by all the other Soviet republics so that in fact the Soviet law of unjust enrichment is uniform throughout the whole of the U.S.S.R.

It deals with unjust enrichment in four articles [9] and relies heavily on the relevant provisions in the French, German, and Swiss Civil Codes. It proclaims the general concept of unjust enrichment as understood in Soviet law [10] providing that whoever enriched himself at the expense of another without having a good legal ground was bound to make restitution this being so also if a good ground which originally existed was subsequently extinguished. Reliance on the relevant provisions of the French, German, and Swiss Civil Codes is evident. The Soviet Civil Code expresses the two salient points emphasized in the Swiss Civil Code [11] namely that a gain obtained without a legally valid ground must be restituted, and that restitution must be made even if a legally valid ground existing at the time of acquisition of the gain was later extinguished. As the same two points appear, though in more detail, in the German Civil Code,[12] and a similar construction is given to unjust enrichment in the French Civil Code,[13] the basic conception of unjust enrichment appears to be identical in all these four legal systems.

The Code then provides [14] that whosoever has been unjustly enriched is bound to restore or compensate for all profits which he gained or should

8. The Civil Code of the Russian Soviet Federated Socialist Republic was introduced on November 11, 1922 by resolution of the All-Union Central Executive Committee and became effective as from January 1, 1923 (Law Enacting the R.S.F.S.R. Civil Code, Svod Ustav 1922 No. 71, art. 904).
9. Grazhdanskii kodeks R.S.F.S.R., Moskva, Gosudarstvennoe izdatelstvo iuridicheskoi literaturi, 1957, art. 399–402.
10. Art. 399: "Whoever has been enriched at the expense of another without a good legal or contractual ground must restitute what he has so obtained. The duty of restitution arises also if the ground justifying the enrichment is subsequently extinguished."
11. *Obligationenrecht* art. 62, see footnote 4.
12. *Bürgerliches Gesetzbuch* para. 812, see footnote 3.
13. *Code civil* art. 1376, see footnote 2.
14. Art. 400: "Whoever has been unjustly enriched must restore or compensate for all profits which he gained or should have gained out of the unjustly acquired property from the time when he has learned or should have learned that the enrichment was unjust. From the same time, he is liable for allowing or causing the property to deteriorate. Until that time, he is liable only for intentional acts and gross negligence. On the other hand, he may claim reimbursement of necessary expenses incurred by him in connection with the property from the beginning of the period for which he must restore profits."

have gained from the unjustly acquired property from the time when he learned or should have learned that the enrichment was unjust. From the same time, he is responsible for allowing or causing the property to deteriorate. Until that time, he is responsible only for intentional acts and for gross negligence. Since this provision appears nearly verbally in the French[15] and the German[16] Civil Codes the Soviet lawyers cannot be credited with any contribution on this point.

The Code further declares[17] that a person having restituted the unjustly acquired property may claim reimbursement of necessary expenses incurred in connection with the property from the beginning of the period for which he is bound to restore profits, *i.e.*, from the time he learned or should have learned that the enrichment was unjust. This being so, the Soviet possessor is in a worse position than his French, German, or Swiss counterparts. Pursuant to the provisions of the French Civil Code, the person to whom property is restituted must compensate even a possessor lacking good faith for all necessary and useful expenses incurred for its preservation.[18] The relevant German provision is that a *bona fide* possessor may claim reimbursement of all necessary and useful expenses, and a *mala fide* possessor of all necessary and also such useful expenses by which the value of the property has been increased at the time of restitution.[19] In Swiss law, a recipient in good faith must be reimbursed for all necessary and useful expenses, and one lacking good faith for all necessary and such useful expenses which resulted in the property being more valuable at the time of restitution.[20]

The Code continues its treatment of unjust enrichment by providing that whoever performs an obligation which, though unenforceable, is not invalid in law, may not claim restitution of what he has paid.[21] This provision is not necessarily confined to unjust enrichment but contains the principle known to other legal systems, namely that whatever has been given in satisfaction of an unenforceable obligation cannot be reclaimed. This is so, *inter alia,* in cases of gambling and betting where anything given on that basis may not be reclaimed,[22] and also in cases of voluntary performance of an obligation if action for its performance had been barred by lapse of time.[23]

15. *Code civil* art. 1376, 1378, see footnote 2.
16. *Bürgerliches Gesetzbuch* para. 819 1., see footnote 3.
17. Art. 400, see footnote 14.
18. *Code civil* art. 1381, see footnote 2.
19. *Bürgerliches Gesetzbuch* para. 994, 996.
20. *Obligationenrecht* art. 65 1., see footnote 4.
21. Art. 401: "Whoever performs an obligation which though unenforceable is not invalid in law may not claim restitution of what he has paid."
22. *Code civil* art. 1967. *Bürgerliches Gesetzbuch* para. 762, 817. *Obligationenrecht* art. 514 2.
23. *Code civil* art. 2219. *Bürgerliches Gesetzbuch* para. 222. *Obligationenrecht* art. 63 2.

The Soviet Civil Code finally provides[24] that whoever has been enriched at the expense of another by reason of an act of the other which was contrary to law or prejudicial to the state, has to surrender to the state whatever he has unjustly obtained. This is a purely Soviet provision. It presupposes a governmental and economic structure entirely divergent from that prevailing in other countries.

The provisions of unjust enrichment in the Soviet Civil Code have been implemented by two rulings of the Supreme Court of the Russian Soviet Federated Socialist Republic.

The first[25] provides that any property or valuables improperly obtained whether under a contract or otherwise, by a person lacking legal capacity must be restored, and that articles 405 and 148 of the Civil Code which deal with minors and other persons lacking legal capacity are not to be applied in such cases.[26] The ruling it seems, does not state any new principle unknown to the law of other countries, and it may be assumed that the provisions contained in the French,[27] German,[28] and Swiss[29] Civil Codes ensure more or less the same result.

The second ruling[30] stipulates that where movables were sold in public auction, and where it was subsequently held that they were to be restored to the original owner, the original owner is entitled to the amount realized at sale but he cannot claim restitution of the movables themselves. If, however, the sale was tainted with some legal defect

24. Art. 402: "Whoever has been enriched at the expense of another by reason of an act of the other which is contrary to law or prejudicial to the State, is bound to surrender to the State whatever he has unjustly obtained."

25. R.S.F.S.R. Supreme Court, Plenary Session, Resolution of June 20, 1927, Protocol No. 11, Civil Code 1956, p. 203.

26. Art. 405: "A person incapable of entering into legal transactions is not liable for injury caused by him. The person who has the duty of supervision over him is responsible in his stead. Parents or guardians as well as the minors are jointly responsible for injuries caused by minors who are subject to the provisions of art. 9 of the Civil Code [November 25, 1935 (Svod Ustav 1936 No. 1, art. 1.)]."

Art. 148: "If a contract is invalid because it was made by a party incapable of entering into legal transactions (art. 31), each party has to restitute whatever he had obtained under the contract. The party who has capacity to enter into legal transactions is bound to make restitution to the party who is lacking such capacity for actual damage to property sustained by the latter as a result of the contract."

27. *Code civil* art. 1123–1125.

28. *Bürgerliches Gesetzbuch* para. 104–115.

29. *Schweizerisches Zivilgesetzbuch,* 25. Afl. W. Schönenberger, Zürich, Schulthess 1958, art. 11–19.

30. R.S.F.S.R. Supreme Court, Plenary Session, Resolution of January 26, 1931, Protocol No. 1, Civil Code 1943, pp. 216–217.

amounting to substantial violation of law so that in the opinion of court it cannot stand, the movables will be restored to the original owner and the purchase money refunded to the purchaser. But should restitution *in specie* be impossible, the injured party is entitled to their value only. Looked upon as a whole, the ruling does not seem to be confined to unjust enrichment but is wide enough to govern public sales in general. The principle expressed in the ruling, namely that the injured party was entitled to value if restitution *in specie* cannot be effected, is well established in law and consequently, it appears in the French,[31] German,[32] and Swiss[33] Civil Codes.

Another point of divergence appears to be that contrary to the provisions of the German[34] and Swiss[35] Civil Codes, the object of the Soviet Civil Code[36] is to provide for restitution in any event, even if the recipient was no longer benefited. Further, the Soviet provisions dealing with unjust enrichment[37] do not differentiate between a possessor in good faith and one lacking good faith.[38] This is not so in the French,[39] German,[40] and Swiss[41] Civil Codes where a possessor in good faith is given preferential treatment as compared with a possessor lacking good faith. Also contrary to the provisions of the French,[42] German,[43] and Swiss[44] Civil Codes, the Soviet Civil Code does not expressly bar recovery in the case of performance of a moral obligation. But apart from the above mentioned differences there seems to be little dissimilarity in the treatment of unjust enrichment in the Soviet Civil Code on the one hand, and the French, German, and Swiss Civil Codes on the other.

31. *Code civil* art. 1379, see footnote 2.
32. *Bürgerliches Gesetzbuch* para. 818, see footnote 3.
33. *Obligationenrecht* art. 62, see footnote 4.
34. *Bürgerliches Gesetzbuch* para. 818 3., see footnote 3.
35. *Obligationenrecht* art. 64, see footnote 4.
36. Art. 399, see footnote 10.
37. Art. 399–402.
38. But article 59 of the Civil Code may be relevant; see footnote 69.
39. *Code civil* art. 1378–1380, see footnote 2.
40. *Bürgerliches Gesetzbuch* para. 819, see footnote 3.
41. *Obligationenrecht* art. 64 – 65, see footnote 4.
42. *Code civil* art. 1235.
43. *Bürgerliches Gesetzbuch* para. 814, see footnote 3.
44. *Obligationenrecht* art. 63 2., see footnote 4.

Although the provisions and the terminology of the Soviet Civil Code are in fact nearly identical with those of the French, German, and Swiss Civil Codes, it is apparent from the treatment of the subject by Soviet jurists that the operation of the doctrine of unjust enrichment itself is completely divergent from that in the legal systems of the other countries and that a different meaning is given even to the very terms used.[45]

The teachers of the Soviet civil law have repeatedly pointed out that the doctrine of obligations arising out of unjust enrichment is not in agreement with the fundamental principles of socialist society.[46] The term "enrichment" and its meaning were intimately connected with transactions which presuppose private ownership. According to the Soviet point of view, the term connotes enrichment of one at the expense of another, and the appropriation of the product of the work of another which has not been paid for. Marx taught[47] that the capitalist becomes enriched in proportion to the quantity of labour-power which he exploits, and Stalin pointed out[48] that people and groups of people endeavour to enrich themselves for the purpose of subjugating and exploiting others. From the point of view of the law of the capitalist countries such type of enrichment was normal and justified, and consequently, the enrichment whereby the capitalists become enriched at the expense of workers was termed just. Soviet theorists further assert that in the Soviet Union

45. Among Soviet jurists dealing with the subject, the works of Agarkov, Riasentsev, Grave, Novitskii, Genkin, Fleishits, and Shkundin may be referred to. M. M. Agarkov: *Obiazatelstvo po sovietskomu grazhdanskomu pravu (grazhdanskoe pravo),* Moskva, Iuridicheskoe izdatelstvo, 1946. V. A. Riasentsev: *Obiazatelstva iz tak nazivaemogo neosnovatelnogo obogashchenia v sovietskom grazhdanskom pravie,* Moskva, Uchenie zapiski Moskevskogo gosudarstvennogo universiteta, 1949. And also: Sovietskoe grazhdanskoe pravo, Moskva, Vsesoiuznyi iuridicheskii zaochnyi institut, 1955. K. A. Grave i I.B. Novitskii: *Kurs sovietskogo grazhdanskogo prava,* Moskva, Gosudarstvennoe izdatelstvo iuridicheskoi literaturi, 1954. I. B. Novitskii: *Nedieistvitelnie sdielki, sbornik "Voprosi sovietskogo grazhdanskogo prava,"* Moskva, Izd. Akademii nauk S.S.S.R., 1945. D.M. Genkin: *Nedieistvitelnost sdielok sovershennikh s tseliu protivnoi zakonu,* Moskva, Uchenie zapiski Vsesoiuznogo instituta iuridicheskikh nauk, 1947. And also: *Voprosi sovietskogo grazhdanskogo prava, sbornik statei,* Moskva, Gos. izdatelstvo iurid. literaturi, 1955. E.A. Fleishits: *Obiazatelstva iz prichinienia vreda i iz neosnovatelnogo obogashchenia,* Moskva, Gos. izdatelstvo iurid. literaturi, 1951. Z. I. Shkundin: *Obiazatelstva iz neosnovatelnogo obogashchenia,* Grazhdanskoe pravo, pod red. prof. S.N. Bratusia, Moskva, Iurid, izd. ministerstva iustitsii S.S.S.R. 1947.

46. P. I. Stuchka: *Kurs sovietskogo grazhdanskogo prava,* Moskva, Izd. Kommunisticheskoi akademii, 1927-31, vol. 3, p. 163; E.A. Fleishits, *op.cit.* p. 209.

47. K. Marx: *Kapital,* Moskva, *Gosiurizdat,* 1949, vol. I, p. 599.

48. I. V. Stalin: *Voprosi leninisma,* Izd. 11. Leningrad, Gos. *izd. polit. literaturi,* 1952, p. 472.

there was no exploitation of man by man. This was so because of the introduction of the socialist economic system and the institution of socialist property. Economic life in the Soviet Union was determined and guided by economic planning with the object of raising both the material and cultural standard of living of its citizens. Higher standard of living promoted in turn an increase in private property which being derived from public-owned resources ensured that it was developed in harmony with the interests of socialist society. This explains why the enrichment of one at the expense of another is inherently impossible in the Soviet Union. Consequently, the notion of both just and unjust enrichment has no reason for existence in Soviet law.

It is therefore apparent that the doctrine of unjust enrichment as incorporated in the Civil Code of the Russian Soviet Federated Socialist Republic and that of the other Soviet republics has been developed and used in a special legal sense. Evidently, it would be more appropriate to substitute for it the term "unfounded acquisition" or "unfounded acceptance" of property. Taken in this sense, the fundamental principle of unjust enrichment embodied in article 399 of the Soviet Civil Code would cover cases where a person without a good statutory or contractual ground has acquired or retained some property at the expense of another.

The Soviet approach may be illustrated by the following examples of unjust enrichment which are likely to occur in the Soviet Union.

If *e.g.*, a purchaser pays the vendor a price which is higher than the value of the goods purchased, the vendor is unjustly enriched as to the surplus. Again, if the purchaser pays the vendor for goods which according to the contract of sale the vendor was not bound to supply, the vendor is unjustly enriched as to the amount paid. Also, if the purchaser by mistake instructs his bank to credit the vendor with the price of goods sold and delivered although he has done so before, the vendor is unjustly enriched as to the amount credited to him in error.

Unjust enrichment would also arise if one of the tenants sharing an apartment pays for services rendered by municipal organizations, *e.g.*, for the supply of electricity in excess of his own share. In such case, the amount paid in excess of his share is equal to that saved by the other tenants and consequently, the other tenants are unjustly enriched as to that amount at the expense of the former. Or again, let us assume that a flour mill forwarded a certain quantity of flour to a bakery by rail and sent an invoice. The bakery paid immediately, yet the flour has never been delivered. The bakery claimed compensation from the railroad for the loss sustained and the railroad settled the claim in full. Subsequently, it became known that the flour has actually been delivered to another bakery. In this way, the other bakery became unjustly enriched at the expense of the railroad.

THE DOCTRINE OF UNJUST ENRICHMENT, ITS FEATURES AND OPERATION

The basic feature of unjust enrichment of one at the expense of another in Soviet law is the increase in property or the saving up of property by the enriched party which on the other hand implies a corresponding decrease in property of the injured party. The increase in property may consist in the acquisition of goods or money, in the acquisition of a right to emoluments, or in the acquisition of a right to the services of another. The saving up of property may consist in a transaction whereby the enriched party becomes free of his obligation to the injured party or a third party, or whereby the enriched party is protected from an expenditure which would have otherwise been incurred. It may also consist in the transfer of a right from one person to another, or in the extinction of a right of one whereby another is directly benefited. Expressed in other terms, the saving up of property may result in enrichment within the meaning of article 399 of the Soviet Civil Code only in cases where the property of a given party was legally bound to be reduced but was not in fact so reduced. For there is a causal connection between the decrease in property of the injured party and the increase in property of the enriched party as both constitute one indivisible result of a definite act or event.

The enrichment of one at the expense of another is usually due to acts of the injured party himself. He paid more than he should have paid, or he paid off a debt incurred by another in the erroneous belief that he was legally bound to discharge it. But enrichment may also result from acts of the enriched. If *e.g.*, a public enterprise which shares its storerooms with another enterprise used by mistake some timber belonging to the other which was kept in the same storerooms, it had saved an expense equal to the value of the timber used. It is therefore bound to reimburse the other enterprise. Yet enrichment may also result from acts of a third person or entity. This is so when *e.g.*, a bank credits by mistake an enterprise with a higher amount than that shown by the drawer.

Unjust enrichment may further be distinguished from obligations which arise in connection with the infliction of injury to the person or the property of another. The chief point of difference consists in that unjust enrichment presupposes an enrichment of one at the expense of another which cannot be justified on any good statutory or contractual ground. [49] As used in both civil and arbitration courts, the term "good ground" has the same legal meaning as the term "legal ground", and legal grounds which may give rise to the acquisition or to the saving up of property are enumerated in the statute book.[50] They are mainly acts of administrative bodies and legal transactions of which contracts are the most important. Pursuant to the provisions of the Soviet Civil

49. Art. 399, see footnote 10.
50. Art. 66, 106-129, 180-235, 416-436.

Code,[51] anyone who is responsible for an injury to the person or property of another must repair the injury so caused. Responsibility for the infliction of the injury gives rise to the obligation to pay damages and provides a legal ground for the acceptance of a given sum as damages. If, however, because of some error, damages are paid by a person other than the person legally bound to make the payment, that person has saved the amount which was to be paid to the injured party. He is unjustly enriched to the extent of that amount at the expense of the one who actually made the payment and is consequently bound to surrender the money to that particular person.

Or again, title to goods passes on the strength of a contract made between the vendor and the purchaser.[52] If pursuant to a contract of sale or pursuant to an economic planning order the vendor supplies another with goods, the contract or the order provide the necessary legal ground for the acquisition of property. If the goods are individually identified specific goods, property in them passes to the buyer at the time when the contract is made, and if they are described by generic characteristics (number, weight, measure), title passes by delivery. If goods are supplied without a valid contract or order having been made, the party to whom goods are delivered does not acquire title to them nor the right to use or the right to dispose of them and the owner can repossess them. The title of the owner will, however, be extinguished if the goods have in the meantime been consumed or used up in the process of manufacture so that they cannot be restituted, or in any event if they were described by general characteristics (number, weight, measure). If in such case the recipient was not acting in good faith, *e.g.*, if his conduct amounted to fraudulent misrepresentation or deceit, the proper course is to bring an action for damages. If, however, the recipient acted in good faith, the owner can recover the value of the goods in an action based on unjust enrichment. The same applies in the case of acquisition of the right to use a given thing. The user of the thing in good faith is not responsible in damages but is bound to surrender all what he has unduly acquired.

The above illustrations make it clear that the object of the doctrine of unjust enrichment in Soviet law is to protect both socialist and private property in cases where no action for the restitution of property nor for damages can be brought.

51. Art. 403: "Anyone who causes injury to the person or property of another must repair the injury so produced. He is not liable if he proves that he could not have prevented the injury from arising, or that he was entitled to inflict the injury, or that the injury arose as a result of the intent or gross negligence of the injured himself."

52. Art. 66: "Title to property passes pursuant to a contract made between a person who alienates the property and the person who acquires it. Title to individually identifiable property passes to the acquiring party at the time when the contract is made, but with respect to goods described by generic characteristics (number, weight, measure) it passes by delivery."

The most common case of unjust enrichment, however, consists in the settlement of a claim which subsequently turns out to be unfounded. It may arise in the relations between socialist enterprises and organizations, between them and private citizens, or between private citizens themselves. Unjust enrichment may consist in the fulfilment of a non-existing obligation, *e.g.*, a purchaser pays by mistake for goods he did not order, or a beneficiary under a will who mistakenly believes that the testator was indebted to a given person pays the non-existing debt. It may also consist in the fulfilment of an extinguished obligation, *e.g.*, *a* tenant pays his rent twice over, or a vendor issues an invoice by mistake although he has been paid for his goods and the purchaser pays twice over. Again, it may consist in the fulfilment of an obligation which has subsequently been extinguished.[53] It may also arise when a sum of money has been paid pursuant to a court order and the case has later been reopened and the previous order reversed in the new proceedings. A claim of unjust enrichment may further be founded on the non-realization of the result envisaged by the performing party.[54] Or again, it may arise from the performance of a contractual obligation under a contract which is later held null and void *ab initio*. In all such cases the enriched is bound to make restitution. In some cases, however, the enriched party has to surrender to the state what he had unjustly obtained.[55]

Exceptionally, the enriched party is not required to make restitution.[56] This is so in all cases where a worker or an employee has been paid higher wages than he was entitled to. A refund must, however, be made if the money was paid because of miscalculation, or if it was acquired by an act of the worker or employee involving fraud.[57] In the event of overpayment by miscalculation of a sickness or accident benefit, no refund will be asked for if there was no fraud on the part of the recipient. This is so also if payment was made pursuant to a decision in a labour dispute and the decision has later been set aside except where the recipient was guilty of fraud in obtaining it.[58]

53. This may be achieved by statute or order with retroactive effect, *e.g.*, when the government provides for the reduction of prices of certain goods.

54. If, *e.g.*, a tenant pays his rent in advance and the premises are destroyed by fire, the landlord is unjustly enriched as to the rent for the unexpired term.

55. Art. 402, see footnote 24.

56. The provisions of art. 399 have no application in that case.

57. R.S.F.S.R., Supreme Court, Plenary Session, Resolution of June 5, 1926, Gazette of the People's Commissariat of Labour of the U.S.S.R., 1926 No. 36.

58. Rules with respect to settlement of Labour Disputes art. 44 and 61, Collection of Laws of the U.S.S.R., 1928 No. 56, p. 495; and the Code of Civil Procedure of the R.S.F.S.R. art. 254d. (Grazhdanskii procesualnyi kodeks R.S.F.S.R., Red. N.N. Boderskova, Moskva, Gos. izdatelstvo iurid. literaturi, 1957.)

The object of the above provisions is to avoid hardship in cases where money was received in good faith and was spent for necessities by the recipient. For the same reason there can be no refund of money paid for maintenance, and the otherwise applicable provisions of the Soviet Civil Code[59] have no application.

Soviet law[60] further provides that whosoever performs an obligation which though unenforceable is not invalid in law, may not claim restitution of what he has paid. It is so mainly in cases where action is barred by lapse of time. If the period of limitation has run, the action is barred, yet the obligation itself is not extinguished. If therefore payment is made in satisfaction of a claim arising out of such an obligation, the debtor cannot reclaim the amount so paid even if at the time of the payment he was not aware that the period of limitation had run.[61] Similarly, if a person has *e.g.*, applied some money toward the maintenance of a needy relative, he cannot reclaim it even if he was not legally bound to contribute such maintenance because the claim would run contrary to public policy of the socialist society.

In some cases, the Soviet law[62] provides for the surrender to the state of what has been unjustly acquired. Transfer of property to the state in these cases is regarded as a penal measure intended to punish the parties for their objectionable conduct. If therefore a person is enriched through the illegal practices of another, the lawbreaker cannot demand the surrender to him of the enrichment because he cannot plead his own wrong as legal ground for the acquisition of property. Equally, the law cannot afford the person so enriched any protection and cannot allow him to keep what he has unlawfully obtained. It is therefore provided for the surrender to the state of all what has been so acquired.[63]

59. Art. 399, see footnote 10.

60. Art. 401, see footnote 21.

61. Art. 401 is in full agreement with the provision contained in art. 47 which reads: "If the debtor has performed his obligation after the expiration of the period of limitation, he shall have no right to recover the amount paid even though he did not know at the time of payment that the period of limitation had run."

62. Art. 402, see footnote 24.

63. The above provisions must be considered in conjunction with the provisions contained in articles 147, 149, and 150 which deal with nullity of contract, fraud, duress, and undue influence. If a contract is declared null and void on the strength of these provisions, the party which was guilty of objectionable conduct or which knowingly acted in breach of law is legally debarred from claiming restitution.

Art. 147: "If the contract is invalid as being contrary to law or to the obvious prejudice of the State (art. 30), none of the parties shall have the right to claim from the other restitution of what such party had performed under the contract. Unjust enrichment shall be collected for the benefit of the State (art. 402)."

As mentioned above, both private persons and socialist organizations unjustly enriched at the expense of another are bound to refund what they have acquired.[64] In the majority of cases, the value of the enrichment is expressed in money and refunded. But there is no unanimity among Soviet jurists as to the point of time which is to be decisive for the determination of the value of enrichment. Possible eventualities are: the time of acquisition or the saving up of property, the time of initiation of proceedings, and the time of court decision. In practice, the time of acquisition or the saving up of property is invariably selected to determine the value of the enrichment.[65]

In addition to the sum due, the unjustly enriched is bound to surrender all profits which he gained or should have gained out of the unjustly acquired property from the time when he has learned or should have learned that the enrichment was unjust.[66] Also interest on the sum due is payable, and consequently, socialist organizations are liable for interest at the rate charged by the State Bank for the keeping of a current account, and private citizens at the rate paid by the State Savings Bank on deposits.[67]

> Art. 30: "A legal transaction made contrary to law or in derogation of law as well as a transaction directed to the obvious prejudice of the State is invalid."
>
> Art. 149: "If the contract has been declared invalid because of fraud, violence, threat, or fraudulent agreement between the agent of one party and the other party (art. 32), or where the contract is invalid because it was intended to take advantage of distress (art. 33), the aggrieved party may claim from the other party restitution of all what he has performed under the contract. The other party shall have no such right. Unjust enrichment of the aggrieved party shall be collected for the benefit of the State (art. 402)."
>
> Art. 32: "A person who entered into a legal transaction under the influence of fraud, threat, violence, or in consequence of a fraudulent agreement between his agent and the other party, or in consequence of a fundamental mistake, may bring an action to have the transaction declared invalid in full or in part."
>
> Art. 33: "Where a person under the pressure of distress, entered into a legal transaction obviously prejudicial to him, the court, on petition of the aggrieved party, the proper governmental agency or social organization may either declare the transaction invalid or bar its further operation."
>
> Art. 150: "Where a contract intended to take advantage of the distress of another (art. 33) is not declared void ab initio but its further operation is barred, the aggrieved party shall have the right to claim from the other party restitution of all what he had performed and for what he did not receive counterperformance up to the time of rescission of the contract. Unjust enrichment of the aggrieved party shall be collected for the benefit of the State (art. 402)."

64. Art. 399, see footnote 10.

65. E. A. Fleishits, *op. cit.*, p. 235.

66. Art. 400, see footnote 14.

67. E. A. Fleishits, *op. cit.*, p. 236.

The unjustly enriched is also liable for the deterioration of the property from the time he learned or should have learned that the enrichment was unjust.[68] Up to that time he is liable only for intentional or grossly negligent dealing with the property. On the other hand, he is entitled to reimbursement of all necessary expenses incurred by him in connection with the property from the beginning of the period for which he is bound to restore profits.[69]

UNJUST ENRICHMENT AND ITS RELATIONSHIP TO ACTIONS FOR RESTITUTION OF PROPERTY, BREACH OF CONTRACT (SPECIFIC PERFORMANCE), AND DAMAGES

Another interesting problem is raised by the relationship of actions of unjust enrichment to those for restitution of property, for breach of contract (specific performance), and for damages.

First, as to the relationship to and the distinction from an action for the restitution of property. An action based on unjust enrichment may be brought whenever a person acquired or saved up some property at the expense of another without having a good legal ground. By acquisition, the law means acquisition of property in or title to particular property. But if a person has acquired ownership in a particular property, an action for restitution of that property brought against him cannot succeed because it presupposes that title to that property has not passed. This is so because the action is based on the assertion of the claimant that someone else is detaining his property. Where therefore title has not passed, the proper course is to bring an action for restitution. This is so especially in all cases where the contract on which the transaction depended was held void *ab initio. As* title to the property could not have passed, the property may be reclaimed. In law, the recipient did not acquire the property, he is therefore not enriched[70] and

68. Art. 400, see footnote 14.

69. The provisions of art. 59 of the Civil Code are relevant here although they are applied only to bring about restitution of a particular property which has passed under a contract subsequently held void ab initio. Art. 59: "The owner is entitled to recover his property from the unlawful possession of another and to claim from a holder lacking good faith restitution of or compensation for all profits which he took or should have taken from the property for the duration of the entire period of conversion, and from a holder in good faith restitution of or compensation for all profits which he took or should have taken from the time he learned or should have learned that his possession was unlawful, or from the time he was served in a law suit instituted by the owner for the restitution of his property. The holder has in turn the right to recover from the owner compensation for all expenses necessary for the upkeep of the property incurred during the period of time for which the owner is entitled to the profits. The owner is entitled to claim discontinuance of any infringements of his rights even though such infringements do not deprive him of possession of his property."

70. Art. 399, see footnote 10.

consequently, an action of unjust enrichment may not be brought. Where on the other hand, title to the property has passed, the remedy of the injured party is unjust enrichment.

If the plaintiff is successful in an action for the restitution of property, he is entitled to the particular property so long as it has not been consumed or used up in the process of production. In that case, or where goods or items described by generic characteristics (number, weight, measure) have been delivered *e.g.*, banknotes, there can be no restitution *in specie* as the substance of the goods or items has changed, or because they are not satisfactorily identifiable. The plaintiff can, however, recover their value in an action based on unjust enrichment. This is so because pursuant to the provisions of the Soviet Civil Code,[71] title to goods or items described by generic characteristics (number, weight, measure) passes by delivery and no restitution can be had even if the contract is later declared void *ab initio.* It may be added that where a contract is declared invalid because it is contrary to law or to the obvious prejudice of the state,[72] or because it involves fraud, violence, threat or malice,[73] or because it takes advantage of the distress of another,[74] the value of the unjust enrichment must be surrendered to the state.[75]

As to the relationship to and the distinction from an action for breach of contract (specific performance), it may be observed that both actions are basically distinct. Whenever there is a contract in existence and one of the parties does not perform in pursuance of its terms, the party who did perform may bring an action based on the contract. So the purchaser who has not paid is not enriched at the expense of the vendor because he cannot be said to have saved up an amount of money equivalent to the purchase price as he is legally bound to pay the said amount to the vendor. In such case, the vendor can bring an action for breach of contract (specific performance) and the purchaser will have to perform his part of the contract. If on the other hand, the vendor does not perform, he will be ordered so to do, and should it for some reason be impossible, he will have to pay damages. In appropriate cases where the conduct of the party in default is particularly objectionable, he may also incur a fine.

As to the action for damages. An action for damages and that of unjust enrichment are mutually exclusive, and consequently, whenever

71. Art. 66, see footnote 52.

72. Art. 30 and 147, see footnote 63.

73. Art. 32 and 149, see footnote 63.

74. Art. 33, 149 and 150, see footnote 63.

75. Art. 402, see footnote 24.

an action for damages lies, an action of unjust enrichment cannot be brought. The action is based on fraud or deceit in the acquisition or the saving up of property and therefore whenever lack of good faith or fraud appears, an action for damages is the appropriate remedy.[76] An action of unjust enrichment on the other hand, presupposes that the enriched party acted in good faith. Further, unjust enrichment may arise in consequence of a transaction without any participation of the person or entity thereby enriched whereas an action for damages arises from the breach of a legal obligation.

An action of unjust enrichment may therefore be brought only in the event where there is no other remedy available to the injured party, and especially, where none of the actions above referred to *i.e.,* action for the restitution of property, action for breach of contract (specific performance), nor an action for damages can be brought.[77] Unjust enrichment is thus a remedy additional to the existing actions and is used only as means of the last resort.

CONCLUSION

The doctrine of unjust enrichment as it is understood and applied by Soviet jurists is remarkable mainly because of the emphasis laid on economic and social conditions. The doctrine which had been developed by Roman jurists and accepted by the draftsmen of the civil codes has been applied to govern the relations of a socialist society. Inevitably, it has undergone a certain degree of transformation, its basic features remained, however, constant. As in the countries of civil codes, it provides an important remedy for the recovery of values which would not otherwise be reached. Thus it performs a function which is indispensable to the proper operation of the economic and legal machinery.

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76. Art. 403, see footnote 51.

77. Z. I. Shkundin, *op. cit.*, p. 386.

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