| Chapter 9 |

Soviet-type Nationalization in East Central Europe

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ABSTRACT

Following the Second World War, a significant transformation occurred in private law under the Soviet-type dictatorial regime. Suppression – akin to abolition – of private property, wide-scale nationalization, and collectivization are presented in this chapter through the legal norms by which the socialist transfiguration of the national economy was meant to be achieved. The chapter presents the general East Central European trends and, to provide specific details, uses Romanian and Hungarian historical and legal evolutions as a case study.

KEYWORDS

civil law, communism, state property, nationalization, collectivization, East Central Europe, Hungary, Romania.

1. Context

The aim of the current chapter is to present a framework for the analysis of nationalization in East Central Europe. For this purpose, it uses Hungary and Romania as a case study, but the theoretical background is universal for this region, although every state also has its specificities. Therefore, the chapter provides a context for a general interpretation of the indicated legal phenomena. The content of the chapter is based on the results of the author's ongoing research project, which aims to analyze the legal history of nationalization and reprivatization in East Central Europe in a comparative legal monograph in the following years.

We can see property as a cultural system, an organization of power, and sets of social relations, statically and dynamically.[1] This approach is suitable to analyze the transformation of property regimes in the Soviet-type dictatorships of East Central Europe.

1 Verdery, 2003, p. 48.

Veress , E.(2023) 'Soviet-type Nationalization in East Central Europe' in Sáry, P. (ed.) *Lectures on East Central European Legal History (Second, Enlarged Edition).* Miskolc-Budapest: Central European Academic Publishing. pp. 281–310. https://doi.org/10.54171/2023.ps.loecelh_10

2. Nationalization

East Central Europe fell into the Soviet sphere of influence after the Second World War. This meant not just simple dependence, but the forced importation of Soviet ideology. A radical social experiment began. Its fundamental component was the elimination or at the very least severe limitation of private property. The Soviet-type legal and economic regime constituted an isolated system until the end of the Second World War; however, in the post-war period, the Soviet Union extended its policies of nationalization, forced industrialization, collectivization, megalomaniacal public works, and the institution of centralized economic planning to the states in its sphere of influence.[2]

The state under single-party rule, in addition to direct control of the political, administrative, and military apparatus, also became the master of the economy. The imposition of this system meant at the same time the establishment of an economy dominated by the state.[3]

After the Second World War, most of the companies and certainly every middle-sized and significant company experienced the radical transformation of the economic order, based generically on Karl Marx's theories but more directly on the Soviet practice. This economic transformation was achieved with different means and arrangements, nationalization being one of the most essential methods. Nationalization also encompassed urban buildings in private property as well as movable property.[4] Nationalization and collectivization have been described as the greatest theft in history.[5]

A legal theory of nationalization was constructed, but this theory had a convenient and limited purpose: to legitimize nationalization. As it was specified, the attitudes of communist legal theorists were

> *so much imbued by their belief in the correctness of Communist doctrine that they not only completely fail to conceive that possibly other points of view could also be held outside the Communist fold, but they even fail to accept facts as facts.*[6]

Therefore, we need to re-evaluate this legal theory in order to understand the fundamental nature of nationalization and also its present consequences. To understand the logic behind nationalization, we must start with the negation of capitalism and of the economic foundation of capitalism, namely the market economy. In Marxism, private property is the basis of class exploitation; therefore, private property must be eliminated or severely limited. Private property with respect to value-producing

2 Berend, 2008, p. 152.
3 Berend, 1999, p. 104.
4 For a general overview regarding nationalization, see Katzarov, 1964.
5 Verdery, 2003, p. 40.
6 Seidl-Hohenveldern, 1958, p. 541.

assets in the Marxist view is an anathema: If these assets are owned by a class who engrosses them, namely the bourgeoisie, the automatic conclusion is that this class exploits the masses of workers for their own interests.

Workers' interests are antagonistic toward those of the bourgeoisie. The workers' purpose must be to eliminate private property over the means of production and therefore eliminate the bourgeoisie, which is supposedly a revolutionary act that will lead to a much fairer, egalitarian society. On the other hand, this transformation is also a historical necessity, the inevitable course of history. I do not want to endeavor to criticize Marxist theory; the goal is just to analyze its effects on private property.

Marx and Engels stated in the Communist Manifesto (*Das Kommunistische Manifest*, 1848):

> *In this sense, the theory of the Communists may be summed up in the single sentence: Abolition of private property.*
> *We Communists have been reproached with the desire of abolishing the right of personally acquiring property as the fruit of a man's own labor, which property is alleged to be the groundwork of all personal freedom, activity and independence.*
> *Hard-won, self-acquired, self-earned property! Do you mean the property of petty artisan and of the small peasant, a form of property that preceded the bourgeois form? There is no need to abolish that; the development of industry has to a great extent already destroyed it, and is still destroying it daily.*
> *Or do you mean the modern bourgeois private property?*
> *However, does wage labor create any property for the laborer? Not a bit. It creates capital, i.e., that kind of property which exploits wage labor, and which cannot increase except upon conditions of begetting a new supply of wage labor for fresh exploitation. Property, in its present form, is based on the antagonism of capital and wage labor. Let us examine both sides of this antagonism.*
> *To be a capitalist, is to have not only a purely personal, but a social status in production. Capital is a collective product, and only by the united action of many members, nay, in the last resort, only by the united action of all members of society, can it be set in motion.*
> *Capital is, therefore, not only personal; it is a social power.*
> *When, therefore, capital is converted into common property, into the property of all members of society, personal property is not thereby transformed into social property. It is only the social character of the property that is changed. It loses its class character.*[7]

The abolition of the 'dominant' bourgeoisie class – in addition to the physical elimination of actual or potential opponents – included the economic eradication of people perceived as bourgeois, and this policy's primary tool was nationalization. According to Marxist theory and Soviet-type practice, the working class, or more precisely the

7 Elster, 1986, p. 260.

revolutionary vanguard of this class, takes over political power. It is a revolutionary act to rush and enforce something already determined by historical necessity. The takeover and concentration of political power is just a first step because the exploiting social class in the Marxist–Leninist view still keeps hold of important economic, industrial, commercial, and agricultural positions (in Lenin's own words the 'commanding heights in the sphere of means of production'). These positions must be overrun in order to create the desired ideal society, and nationalization is the principal means for achieving this objective. State ownership must replace private ownership of companies through a takeover called nationalization.

3. Constitutional and legal basis for nationalization in Romania

Preparation for nationalization in Romania started in 1947. Between October 15 and 24, 1947, a confidential inventory of industrial, commercial, and financial enterprises was compiled. This inventory contained 56,315 enterprises, of which 47,479 were private and 6,836 were state-owned. The labor force was comprised of 976,171 persons, 649,188 employed in the private sector and 326,983 persons working at state-owned enterprises. This means an average of 47 persons per state-owned enterprise and 16 persons per private enterprise.[8]

At the end of December 1947, King Michael I abdicated, and the republic was proclaimed. The communists gained full political power. In the opening months of 1948, the first Soviet-type constitution of Romania was adopted. According to its provisions, the Romanian People's Republic was founded by the people's struggle, led by the working class against fascism, reaction, and imperialism.[9] This marked a totally new era compared to all previous periods of history, and the constitution points to these changes. Here, we are interested in the economic transformations this fundamental law predicted.

This fundamental law provided the legal basis for nationalization. Article 11 of the new constitution specifies that "*when the general interest requires, means of production, banks and insurance companies that are owned by private individuals or legal entities may become State property, namely property of the people, subject to the conditions provided by law.*"

What can we observe from analyzing the text of this constitution? There are some mentions of private property, but the legal text has a prognostic value regarding state ownership. The constitutional text signals the basic change in optics, and we have to underline the essential auguring elements.

a) Instead of a market economy, a planned economy (or command economy) is envisaged. In concordance with the basic law, the state directs and plans the national economy to develop the country's economic strength, ensure a good status for the

8 Giurescu, 2013, p. 56.
9 Article 2 of the 1948 constitution.

people, and guarantee national independence.[10] Annual plans were drawn up for 1949 and 1950,[11] and then, beginning in 1951, 5-year plans were implemented. The goal was to transplant the Soviet model: a forced march toward industrialization. Propaganda reported tremendous success: It glorified competition in socialist work and the over-achievement of planned production targets. This economic organization led to development and certain advantages in the short term, but it proved to be dysfunctional in the long run. Regarding the plan for 1949, the following was written:

> *In the middle of enthusiastic work, under the leadership of the Romanian Workers' Party and with multilateral assistance received from the Soviet Union, the workers of our country have completed the plan in a proportion of 108% and 20 days before the closing of the year.*[12]

By highlighting the latest achievements on a daily basis, propaganda became part of everyday life under the Soviet-type dictatorship.[13]

b) Private property is mentioned several times in the text of this constitution, but the forthcoming importance of state ownership ('property of the whole people') is anticipated. As the basic law states, in the People's Republic of Romania, the means of production belong to the state as the property of the whole people, or to cooperative organizations, or to particular individuals and companies.[14] The people's common goods render the material foundation of economic prosperity and the national independence of the People's Republic of Romania.[15] Any kind of mineral resources, mining facilities, forests, waters, natural energy sources, means of rail, road, water, and air transport, the postal services, telegraph, telephone, and radio belong to the state, as the common property of the people.[16] According to the text of the of the fundamental law, an act will determine how to pass into state ownership the goods listed here that were in private hands at the moment at which the constitution entered into force. The previously mentioned Article 11 can also be included here because it provides the basis for the nationalization of any means of production not included on the constitutionally itemized list.

c) According to the 1948 constitution, work is the underlying factor of the state's economic life[17] (in contrast with capital or with property in general, characteristic for

10 Art. 15 of the 1948 constitution.
11 Zoltán Hajdu (1924–1982), a Hungarian poet from Transylvania (part of Romania since 1920), in its poem dated 1949, wrote: "*The plan is only for one year, / but a decade it prepares… / The plan is just a plan, if we dream, / if we realize it, it is life! / Comrades – life is now going / according to the plan!*"
12 Roller, 1952, p. 811.
13 For further details about state economic planning, see Katzarov, 1964, pp. 246–282.
14 Art. 5 of the 1948 constitution.
15 Art. 7 of the 1948 constitution.
16 Art. 6 of the 1948 constitution. Television programs started in Romania in 1955. On December 31, 1956, Romanian Television was founded.
17 Art. 12 of the 1948 constitution.

capitalist systems). Work is the duty of every citizen. The state supports all those who work to protect them from exploitation and raise their living standards.

d) Furthermore, as the fundamental law outlined, internal and external trade is regulated and controlled by the state and is exercised by state-owned, private, and cooperative trading enterprises.[18] The focus is again on the state-owned trading enterprise, first in this enumeration.

The 1948 constitution marks the starting point of a mandatory economic transformation. The Communist Party's principal goal before 1948 was the acquisition of power. Nevertheless, once power was fully seized, they started to implement their program in practice. The constitutional basis for nationalization was established. Nationalization itself is a propagandistic term, meaning seizure and confiscation.

The law of nationalization was passed at the velocity of light. In the course of just one morning, on June 11, 1948, this law was adopted by the Central Comity, the government, and the Grand National Assembly. This is Act 119 of 1948 for the nationalization of industrial, banking, insurance, mining, and transport enterprises. The official newspaper, *Scânteia* (*The Spark*) indicated that "*the nationalized enterprises belong to the state, the state belongs to the working people, therefore the factories belong to the working people*."[19] As a result of the act, 8894 enterprises, among which 3,600 were of local interest, were immediately nationalized. After nationalization, a new economic inventory was conducted. In 1948, there were 18,569 state-owned companies, of which 193 were so-called Sovroms,[20] with 911,071 employees, an average of 50 employees per enterprise. The private sector was seriously reduced: 110,036 private entities, with 161,222 people employed in their labor force, an average of just 1.46 persons per entity.[21]

On July 2, 1948, the State Commission of Planning (Comisiunea de Stat a Planificării) was created. It operated until December 1989, when the communist regime was overthrown. As shown before, 1-year plans were adopted for 1949 and 1950, and starting from 1951 and continuing until 1989, the foundations of the economic cycles were determined by 5-year plans.

Act 119 of 1948 was just the first step, followed by other legal instruments on nationalization. The most important are the following:

— Decree No. 197/August 13, 1948 – nationalization of banking and credit enterprises;
— Decree No. 232/September 9, 1948 – nationalization of nine railway companies;
— Decree No. 302/November 3, 1948 – nationalization of private sanitary institutions;
— Decree No. 303/November 3, 1948 – nationalization of the entire film industry, including 409 cinemas, 37 film studios, and 7 film laboratories;

18 Art. 14 of the 1948 constitution.
19 *Scânteia*, June 19, 1948, No. 1149.
20 Joint Romanian–Soviet ventures, technically serving Soviet interests in exploiting natural resources.
21 Giurescu, 2013, p. 57.

— Decree No. 61/February 18, 1948 – abolition of the Stock Exchange;
— a new wave of nationalization in February 1949 – 1,858 business entities that were not nationalized under the Act 119 of 1948 were taken over by the state;
— Decree No. 134/April 2, 1949 – nationalization of 1,615 pharmacies, 121 medical drugstores, 198 laboratories, and 95 medicines storage facilities;
— Decree No. 92/April 20, 1950 – nationalization of immovable goods of other exploiters, including hotels;
— Decree No. 418/May 16, 1953 – nationalization of private pharmacies.

The Stock Exchange (Bursa de Valori) was no longer necessary because there were no more joint-stock companies (*societăți pe acțiuni*) remaining.[22] They were replaced by state-owned enterprises. The period of nationalization of companies ended in 1953, when all the remaining productive entities were nationalized.[23] The process was quite similar in other East Central European countries under Soviet influence.

4. Constitutional and legal basis for nationalization in Hungary

The peculiarity of the nationalizations in Hungary is that, unlike in Romania, which traditionally had written constitutions (1866, 1923, 1938, 1948), the whole process began under the historical, unwritten constitution, before the adoption of the Constitution of the People's Republic (Act XX of 1949). Thus, the Soviet-style nationalization is contrary to and in violation of the historical constitution, a process that disrupts the constitutional order, without any semblance of legality, unlike in Romania. Nationalization began in certain sectors of the economy, and in this context, the following should be mentioned:

— Act XIII of 1946 on the nationalization of coal mining;[24]
— Act XVI of 1946 on the authorization of the Government of the Hungarian Republic to issue decrees, which authorized the Government, to pay war reparations, to take over the Rimamurány-Salgótarján Ironworks company, the Ganz & Company Electricity, Machine, Wagon and Shipyard company, and the Weiss Manfréd Steel and Metal Works company into State administration as of December 1, 1946 and for the duration of the country's reparation obligation, to promote the payment of reparation obligations, economic reconstruction and the preservation of the balance of public finances;[25]

22 *Aktiengesellschaft* in Germany, *société anonyme* in France, *società per azioni* in Italy. In common law terminology, there is no perfect match for these types of companies.
23 Bucur, 1994, pp. 313–321.
24 This legislation was prepared by Decree 12200/1945 of January 1, 1946 on the control of the price of coal and its ancillary industries, which, in addition to the justified control of the price of coal in the post-war period, served as the basis for taking into State administration the coal mines.
25 Cf. Decree 23550/1946 on the State management of certain heavy industry enterprises; 2990/1948 (March 13) Government Decree supplementing Decree 23550/1946 on the state administration of certain heavy industry enterprises and on the state administration of the Hungarian Building Construction Company.

— Act XX of 1946 on the State ownership of certain power stations and transmission lines of electric power plants and other provisions relating to the management of electricity;
— Act XXX of 1947 on the nationalization of the Hungarian National Bank and the shares of financial institutions organized as joint-stock companies belonging to the First Curia of the Center for Financial Institutions;
— Act XIII of 1948 on the nationalization of bauxite mining and aluminium production.

The first measures preserved the capitalist form of organization, for example, coal mining was controlled by the Hungarian State Coal Mining joint-stock company. State-controlled companies retained their corporate form, and in this phase, at least theoretically, state control also implied the temporary nature of the measure (but the end of the process was not the restoration of the status quo ante, but nationalization).

After the first rounds of nationalization, the basic nationalization law in Hungary became Act XXV of 1948 on State Ownership of Certain Industrial Enterprises.[26] The justification for this law was that "*a significant part of economic life cannot be maintained under the economic and political influence of the big capitalists*". The experience of the first Soviet-style economic plan, the so-called Three-Year Plan (1947–1949),[27] also indicated, according to the explanatory memorandum of the act, that private ownership jeopardized the achievement of the tasks set out in the plan: "*The investment and production results of the plan cannot be guaranteed as long as state ownership of important enterprises does not exclude the possibility of a number of industrial enterprises continuing their investment and production contrary to the plan*." Another argument in favor of full nationalization was that the large capital companies had requested unjustified loans from the State, which "*the State administration could not refuse because the operation of each plant was indispensable because of its links with other industries*". However, this had to be understood in the context of the class struggle, since "*the owners of the private companies that had applied for loans, in their opposition to the present system, withdrew their own capital from their companies, used it elsewhere or put it in reserve, with the result that otherwise profitable companies were forced to be supported by the State through loans, without there being sufficient guarantee that these would be repaid to the State*".

The criterion for nationalization under Article XXV of the 1948 Law was if a company was classified as 'crucial'. The crucial classification was essentially determined by the number of employees: nationalization applied to all privately owned industrial, transport, mining, and metallurgical enterprises and public electric power stations in which the total number of employees in any job category reached 100 at any time between August 1, 1946 and the entry of the Act into force. Other enterprises forming an economic unit with such enterprises were also nationalized,

26 For details see Világhy and Benárd, 1948.
27 See Act XVII of 1947 on the three-year economic plan.

including "*any enterprise or plant leased, rented or used by the enterprise*".[28] In addition, the nationalization covered companies forming an economic unit and having a total number of employees of 100 or more during the above mentioned interval, all electricity distribution companies, and industrial companies listed in the Annex to the Law (the Annex listed 47 companies). In May 1948, the Budapest Stock Exchange was closed.

The National Enterprise Act XXXVII of 1948 introduced a specific socialist form of enterprise.[29] The creation of the sui generis state-owned enterprise form was completed later by Decree-Law No. 32 of 1950.[30]

Thus, at the time of the entry of the Soviet-style Constitution into force, the legal framework for nationalization had already been adopted and, to a significant extent, implemented. The Constitution of the Hungarian People's Republic (Act XX of 1949), in the framework of the general provision on the social order, had already stated in the present tense that "*in the Hungarian People's Republic, the majority of the means of production are owned by the state, public authorities or cooperatives as social property.*" According to the constitution, "*the working people shall gradually displace the capitalist elements and consistently build the socialist order of the economy.*" As the property of the people as a whole, the state owned

> "*the mines, the important industrial plants, the means of transport – railways, land, waterways and airways – the banks, the postal services, the telegraph, the telephone, the radio, the agricultural enterprises organized by the state: state farms, machine stations, irrigation works, etc. The state's enterprises supply foreign trade as well as wholesale trade; the state controls the whole commercial flows.*"[31]

The nationalization was continued in December 1949 by Decree-Law No. 20 of 1949 on the State ownership of certain industrial and transport enterprises, which nationalized all privately owned industrial, transport, mining, and metallurgical enterprises in which the total number of employees in any job at any time between September 1, 1949 and the entry into force of the Decree-Law reached 10. Nationalization applied to electricity generation and distribution companies and printing companies, irrespective of the number of employees, and to units such as mills with a daily grinding capacity of 150 q[32] or more, garages and car repair units with a floor area of 100 m^2 or more, and so on. The annex to the Decree-Law listed a further 230 companies to be nationalized in addition to the general criteria mentioned above. What passed the first law was now doomed to nationalization.

28 1. § b).
29 Ernő György argued that the commercial form of company should also be used for state-owned enterprises. György, 1948, pp. 37–45.
30 This decree-law also repealed Act XXXVII of 1948.
31 6. §.
32 150 quintals equals 15,000 kilograms, 15 tons, or 33,000 pounds.

5. A realist theory of nationalization

A comparative approach is needed to elaborate a realistic (not ideologically limited) theory of these nationalizations. Nationalization is not simply a measure for transforming the economic order; it is a legal institution as well. As a legal institution, nationalization is very different compared to two similar legal techniques: nationalization in capitalist market economies, where it is an extraordinary and exceptional measure, and by reason of public utility (also called the eminent domain in some jurisdictions, but, as we will see, this difference is only apparent in my view). Their common denominator is that a particular asset is transferred from private property into state property, without the genuine consent of the (former) owner. However, the differences are essential, and it is necessary to discuss these contrasts.[33]

The nationalization that constitutes our focus differs also from property acquisition methods by means of private law, for example, through a contract of sale, an exchange contract, or even a donation. A contractual relationship is based on the principle of equality between the contracting parties, so any transfer of property is not possible without mutual consent, for example, of the seller and the buyer. The consent of the (former) owner is indispensable for the valid formation of such a contract. These means of private law had only a very subsidiary and limited role in creating the new social order based on state ownership. There are some cases where state property was acquired by way of donation, but the grantor's free will remains more than questionable in these cases.

We have to differentiate nationalization from agricultural cooperativization as well. In the case of agricultural property, the basic aim – to be achieved by employing the specific means available to an oppressive dictatorship – is the setting up of agricultural cooperatives. This was ostensibly done based on the peasantry's apparently free will to associate, due to their steadfast belief in the superiority of this form of agriculture, which motivated them to transfer their private property willingly into common, cooperative property. In reality, the agricultural transformation was made based on oppression and on the use of (para)military force,[34] as well as punitive measures against the '*kulaks*' (relatively well-off smallholder farmers)[35] and crushed

33 For details regarding the distinction between nationalization and expropriation, see Katzarov, 1964, pp. 142–147.

34 Communist activist bands, organized as paramilitaries, were sometimes involved in coercing peasants to join the cooperative.

35 As Katherine Verdery documented, kulaks were persecuted even before the courts or sometimes just lynched: "*[L]ocal authorities sought to compel villagers to donate their land by arresting, beating, or even killing them; by deporting people from their homes to some distant place, often for no clear reason; by huge requisitions and taxes beyond people's ability to pay; by confiscating some land to smooth the way for further donations; and by repeated harassing and fines. Villagers bearing old grudges denounced others, bringing them hardship and ruin; authorities used kin to apply pressure, threatening to throw one's child out of school or factory work if one did not join. Especially vulnerable to humiliation were the most influential villagers, those tied in to wide networks of kin or those whose*

peasant uprisings. A definite legal basis for collectivization was not necessary because the dictatorship possessed all the means to openly say that the peasants wanted and requested a transformation, and in parallel, to impose these goals by force. We need not forget that there was no longer any rule of law. In the words of Gheorghe Gheorghiu-Dej, leader of 'communist' Romania between 1947 and 1965:

> *Marxism-Leninism teaches that the peasantry has no other way to escape exploitation, need, and privation than the union of smaller households into the cooperative. The only way to train small and medium households on track of socialism is the belief. Marxism-Leninism condemns any attempt to use violence against smallholders. Conducting a wider persuasive activity in relations with peasants regarding the superiority of socialist agriculture, we will strengthen the idea of collective agriculture*.[36]

Cooperativization is a different process in scope, methods, and outcomes when compared to nationalization. Cooperativization also reveals one of the fundamental differences between the states that came under Soviet control after the Second World War: Poland and Yugoslavia practically abandoned the collectivization of agriculture early.[37]

A legal analysis of nationalization must concentrate on several elements. Perhaps we can define the main characteristics of nationalization in the Central and Eastern European context and especially in Romania and Hungary through six questions and answers:

a) What were the legal means of nationalization? Any legal instrument requires a manifestation of will. In the case of nationalization – as shown before – the private owner's consent is not required, but the will of the state must be expressed in a particular form to produce legal effects. These instruments in Romania were the laws and the decrees of the Presidium of the Grand National Assembly, approved later – and by virtue of that, transformed into law – by the Grand National Assembly. Nevertheless, if we analyze these acts, we can identify a wide variety.

In some cases, these means of nationalization determine their scope only in an abstract manner. They do not name certain enterprises but define general categories. In other cases, there are no categories but an actual listing of the nationalized enterprises. The law in those cases acts through individual provisions. There are also mixed solutions, as is the case of Act 119 of 1948, where there existed general categories defined by the law (e.g., all private slaughterhouses with a daily cutting capacity of at least 100 heads of cattle or 150 pigs), but there are also enterprises listed

wealth or occupation made them employ others' labor. Labeled chiaburi, or exploiters (the kulaks of Soviet collectivization), they were assigned impossible quotas or tasks – to plow their entire ten hectares in a single day, for instance – being imprisoned if they failed." Verdery, 2003, p. 44. For further details, see Kligman and Verdery, 2011.

36 Gheorghe Gheorghiu-Dej was the leader of communist Romania between 1947 and his death in 1965. His successor was Nicolae Ceaușescu (1918–1989).

37 Verdery, 2003, p. 43.

for nationalization. At first sight, there is another version of the mixed type, but in reality, we are in the presence of the second category when there are general conditions set, although there follows a complete enumeration of the companies determined on the basis of the general categories. In practice, such listings were conceived just exemplifying the general categories, and by individual administrative acts, these lists were subsequently extended. In the situation in which only general categories are determined, nationalization became effective through individual acts issued by the state administration.

In Hungary, such lists often proved to be only illustrative of general categories; they were extended in the application of the nationalization legislation if it was considered that a company was not specifically mentioned met the general criteria. This practice was indirectly opposed by a contemporary jurist when he wrote the following:

> *Do you not admit that we live in a rapidly advancing law? Do you not know that what there is no rule for today may be tomorrow or in a year or two? Can you not set the direction yourself? And does it not follow that you must apply the rule that is to be laid down tomorrow to the specific case in hand? The point, then, is that, to make progress, it is absolutely essential not to stay within the line set by the legislator, but to go beyond it. In the case of industrial nationalization, for example, the advocate of this view maintains that it is not, of course, a question of not taking over an asset designated by law as to be nationalized, but it is a question of taking over certain assets that are clearly outside the scope of the law for the same purpose. The politically correct answer to this question, which no doubt arises from the revolutionary spirit and is not untimely, is that – without prejudice, of course, to the political exigencies which the correct application of the law, possibly with the aid of an extensive interpretation, satisfies – it is not right in principle to go beyond the line of the law... The government knows why a law or regulation goes to a certain point and no further; anyone who tries to push the application of the law beyond that point, for his own reasons, inevitably creates uncertainty, unevenness of transmission and unrest. Discipline can also be a revolutionary quality...*[38]

When compared to nationalization in a capitalist context, these measures are vastly different. In Western Europe, the nationalization act is in general a law enacted by parliament, and that law makes an individual determination regarding which enterprise is nationalized. The administrative authorities have no power of decision regarding the formal initiative (we do not mean the legislative initiative here, but rather the initiative to determine which specific company is to be nationalized based on a set of rules given by the law).[39]

38 Barton, 1948, p. 494.
39 Duez and Debeyre, 1952, p. 883. In France, the act of August 11, 1936 was an exception, which made the government's nationalization of war industries possible.

Another difference compared to 'capitalist nationalizations' is that there is no judicial remedy against nationalization. In Romania, the Supreme Tribunal decided that an appeal against an administrative act exists only in cases where the law establishes such means. If there is a supervising administrative authority, one can complain to that authority but not to the courts.[40] Hence, if a particular company was nationalized by an administrative act, but that company did not meet the conditions set forth by the law, the courts had no authority to review the nationalization.

b) What were the objects of nationalization? As in Romania, the 1948 constitution determined means of production based on Marxist terminology, and it refers to productive (value-producing) assets. The text of this fundamental law envisaged all immovable or movable property used directly or indirectly in production. A commission subordinate to the Council of Ministers interpreted the notion as follows:

> *The means of production also include the offices, warehouses, retail stores, canteens, worker homes, and union halls, not just the immovable or movable property directly used in production, because these all serve the enterprise. The title under which a means of production served economic purposes was itself insignificant. For example, if an enterprise only rented a certain building, it was the object of nationalization because it served the enterprise's activity.*

In conclusion, the object of nationalization is the *organized totality of the means of production*, namely the enterprise as a legal entity and all of its assets.

The solution adopted in Hungary by Act XIII of 1946 was the same, which provided for the state ownership of installations and property subject to the General Mining Act of 1854, nationalizing also 'means of production' such as industrial railways, cableways and suspension railways solely in the management of the company, or those assigned in whole or in major part for the use of the said companies. In the case of Act XXV of 1948, the legislator seems to have reverted to a solution that is also in line with civil law doctrine: nationalization was achieved by the State acquiring the shares in the case of a company in the form of a joint-stock company[41] and acquiring the participations in the case of limited liability companies and the members rights in the case of general partnerships or limited partnerships. [42] In fact, this nationalization technique did not preserve the original legal essence of the company either, as the nationalized joint-stock company or limited liability company was soon transformed into a state-owned company, a *sui generis* form of organization.

Decree-Law No. 4 of 1949 clarified the situation, supplementing Act XXV of 1948, and clearly stipulated that

40 Decision No. 2215 from October 31, 1955 of the Supreme Tribunal of the People's Republic of Romania. Published in *Legalitatea Populară,* 1/1956, pp. 111–113.
41 3. § (1).
42 5. § (1).

> *together with the state-owned company* [...] *the immovable property assigned exclusively or predominantly to the company shall also become state property, regardless of whether it is owned by the former owner of the company or by a third party. If the part of the immovable property used for business purposes is separable in kind from the rest of the immovable property, the competent Minister may divide the immovable property.*
> *Thus, in effect, the Hungarian legislator has also applied the means-of-production concept by extending nationalization to property owned by third parties but used for the purposes of the company. As regards to movable property, Act XXV of 1948 had previously provided similarly: All movable property which serves the proper purpose of an enterprise taken over by the State under this Act shall be taken over by the State together with the enterprise, even if it is owned by a third party.*[43]

This provision could not be applied to movable property owned by a person or company engaged in the business of supplying such movable property for consideration. The resulting imbalance was essentially resolved by the nationalization of the activity of the latter person or company. In conclusion, this is why it has been stated that "*in a number of cases, however, the seizure nevertheless extends to the property of a third party who is not otherwise seized, which is economically connected with the property primarily seized, useful or even indispensable for its proper functioning.*"[44]

In a capitalist context, nationalization generally envisaged the shares of a company and not the means of production. Another primary difference is an issue of scale because in a capitalist context, nationalization is a relatively isolated act. On the contrary, as a Soviet-type policy, nationalization was universal and inclusive, affecting the economy as a whole, not just specific and limited sectors. Nationalization in East Central Europe was a social engineering tool that extended beyond certain strategic assets and also affected, for example, local cinemas or pharmacies.

c) What were the effects of nationalization? The effect of nationalization is the transfer of property from the private owner to the state. In Central and Eastern Europe, the transfer took place free of any encumbrance. For example, if a mortgage guaranteed a bank loan, the transfer erased the mortgage. According to the Romanian Act 119 of 1948, the transfer operates regarding company shares and stock as well. Nevertheless, the consequence will be not a commercial company owned by a new sole shareholder, the state, but rather a new type of economic and also political and administrative organization: the state-owned enterprise. Consequently, there was not just a simple transfer of ownership but also a transformation of the legal entity into a new organizational form. A certain legal institution "*formerly regarded without question*

43 7. §. According to the explanatory memorandum of the law, "*nationalization considers companies as economic and not legal entities. It was therefore necessary to include in the proposal a provision providing for the State ownership of the movable property assigned to the business of the company concerned, even if the movable property was owned by a third party. This provision is also likely to frustrate attempts to circumvent the State's ownership and deliberately reduce the company's assets.*"
44 Barton, 1948, p. 487.

as coming under private law, they became institutions of a mixed or doubtful nature…"[45] The nationalization of housing meant that former owners could, if they were lucky, stay on as tenants in part of the apartment, sharing their former property with other tenants. Public housing stock and regulated rent led to a nation of tenants.

Thus, in the case of nationalization, we are faced with an original way of acquiring property, which is not based on the ownership of the previous owner, on the transfer of ownership, but creates a new right.[46] According to Gyula Eörsi, "*the transfer of property to the State in the case of nationalization of industrial enterprises cannot be called a transfer of property in rem*."[47]

In Hungary, in many cases the shares or participations have also been nationalized, but the consequence is not the survival or continuity of the company, where only the identity of the shareholder or member is changed, and the new sole shareholder is the state. Instead, as previously discussed, a new type of economic organization has been created: the state-owned company or, for short, the state enterprise. As a result, not only was there an acquisition of ownership, but the legal entity was also transformed and a new organizational form was created. This solution did not in fact lead to a succession, but to the dissolution of the original legal entity and the creation of a new legal entity. The company, as a legal institution, "*previously considered without question to be subject to private law, has become an institution of a mixed or dubious nature…*"[48]

Professor Tamás Sárközy captured the essence of the state enterprise as follows:

> *The state enterprise was a legal entity of a type similar to a foundation – the Soviet-style nationalization abolished the commercial company form. The sole owner of the enterprise is the state, and the state in socialism is not just any owner, it is a unit of public power and ownership at the same time, which, in a system of planned economy, controls the enterprise hierarchically through sectoral economic ministries, using discretionary instruments specific to state administration, and, if necessary informal techniques. The state enterprise is the technical economic unit at the end of the planning process, which, despite its legal personality, has no status as owner. State ownership is unitary and indivisible; the enterprise only manages the assets allocated to it by the state administration and manages them operationally. The single responsible management function of the company director fits logically into this system, as the Russian terminology of the time suggests: the director is a mere administrator at the head of the company's work organization*.[49]

45 Katzarov, 1964, pp. 95–96.
46 In fact, it is possible to imagine an original method of acquisition that reserves the rights of a third party. Therefore, the contemporary view was correct that "*in fact, the question of whether burdens are transferred as a problem of real importance must be decided independently and primarily, independently of the conceptual classification of the mode of acquisition, which is rather a theoretical, didactic, secondary question*." Barton, 1948, p. 491.
47 Eörsi, 1951, p. 284.
48 Katzarov, 1964, pp. 95–96.
49 Sárközy, 2010, p. 3.

Professor Gyula Eörsi viewed nationalization as a cause for the transfer of property. However, unlike a private contract, which does not in itself ensure the transfer of property, the nationalization law triggered this legal effect, that is, it created the most intense, highest level of obligation. In contrast to the private contract, the cause of nationalization is so intense that it overrides the land registry order and the principle of public trust. [50]

In Hungary, the Act XXV of 1948 provided that claims against a state-owned enterprise in favor of a Hungarian citizen or a domestic legal person arising under a private law contract prior to August 1, 1946 ceased to exist upon the entry of the Act into force. [51] A claim against a state-owned enterprise arising under a private law contract after August 1, 1946 may be enforced only if the consideration for the claim has increased the assets of the enterprise. The purpose of this provision was to ensure that the assets to be nationalized on the basis of sham transactions entered into by the owner of the company up to the date of nationalization could not be diverted. Claims against the company by former owners, co-owners, members of the company, shareholders, members of the board of directors or supervisory board, spouses, ascendants, descendants, or first-in-laws of such persons were also extinguished. In these cases, the date on which the claim arose shall not be counted.[52] In other words, a sort of partial succession was achieved under the law, but continuity was broken, as many otherwise valid claims were simply extinguished.

Nationalization in the capitalist context is very different. Nationalization is not a transfer of property in all cases; it can just be public management of the company or the limiting of profits or of activity in general. Another difference is that in such context, nationalization also transfers the company's liabilities.[53] Only shares or stock are nationalized, not the means of production, and not necessarily totally: The state may simply act as one of the shareholders or as a majority shareholder.[54] Nationalization in a capitalist context can also take the form of nationalization of certain assets without nationalizing the shares or the company, which remain in private hands.

d) Who was the beneficiary of nationalization? It was stated that property belongs to the whole people, which was a new kind of owner created by ideology and the effective beneficiary was the state. All means of production belong to the state, so the state-owned enterprise only has a right of use regarding such means of production.[55]

50 Eörsi, 1947, p. 105.
51 9. §. This rule also applies to claims against individual firms under § 5.
52 These provisions did not apply to claims arising from 'employment relationships'.
53 Duez and Debeyre, 1952, p. 885.
54 For example, the French aircraft manufacturer *Gnome et Rhône* was nationalized in 1949.
55 It is interesting that the legislation regarding nationalization made it possible for a foreign state, according to the Peace Treaty or based on compensations, to keep their shares in a Romanian company. Hence, there was the possibility of having joint ownership of a company with the Romanian state and especially the Soviet Union. The situation in Hungary was similar: for example, the shares of the German state and citizens were taken over by the Soviet Union as war reparations: therefore, before nationalization there were companies in which Hungarian counts, burghers and the Soviet Union were shareholders at the same time. See Veress, 2020b, pp. 48–54 for a detailed discussion of this question.

In a capitalist context, the beneficiary can be another public entity or another state-controlled company as well. In the Marxist concept, the indirect beneficiary, of course, is the people.

e) What was the purpose of nationalization? This question leads us back to the ideological backgrounds of nationalization. As Katzarov wrote, "*nationalization is reflected not only in the conversion of given property into State property, but also in the conversion of a private economic activity into a social and collective activity.*"[56] The purpose of nationalization is to achieve a socialist economic order, the abolition of exploitation, and the abolition of the exploiting classes. In the case of nationalization in the Soviet context, this unique purpose exists. In a capitalist context, creating a new economic order is, of course, not within the scope of nationalization.

For example, the Renault company in France was nationalized punitively because Louis Renault collaborated with the Nazis during the Second World War.[57] Other reasons can be military or even social imperatives. Moreover, in de Gaulle's own words, there is no reason Renault should remain nationalized forever, once Louis Renault is dead.[58] Finally, a new undertaking conducted the same activity.[59] Soviet-type nationalization was intended to last forever, being a revolutionary activity, with the aim of fundamentally transforming the social and economic spheres.

f) Was there any compensation? Article 10 of the 1948 Romanian Constitution envisages just compensation in the case of expropriation by reason of public utility. Article 11 on nationalization does not impose such a rule. There was no constitutional requirement to give compensation, and the nationalization act is decisive regarding compensation. (The necessity of compensation is one of the distinctive characteristics of expropriation in comparison to nationalization, and this is an issue that is left for future discussion). As stated, "*nationalization results in the conversion of private property into collective property with a view to its utilization in the general interest. Expropriation makes it possible to correct the effects of the absolute character of private property.*"[60]

In Romania, a set of nationalization acts contain a general rule that the state will provide compensation, but no further rules were established. In 1948, a mechanism was designed but never put into practice. According to this mechanism, the Nationalized Industry Fund was created, organized through a decision of the Council of Ministers in the form of an autonomous fund.[61] Theoretically, this structure was to issue bonds, which could subsequently be redeemed and paid out from a share of the benefits of nationalized enterprises.

At this point in the research, there is not sufficient data on whether this mechanism was only meant for signaling to the former owners that they would be compensated, without any genuine desire to give compensation, or if a genuine intention to give a

56 Katzarov, 1964, p. 141.
57 Ordinance of January 16, 1945.
58 Jacquillat, 1988, p. 16.
59 Katzarov, 1964, p. 181.
60 Ibid., p. 147.
61 Decision No. 1421/1948. Published in *Monitorul Oficial* of October 14, 1948.

certain amount of compensation existed at the outset. In practice, compensation was generally not given. The rules on compensation had only a declarative effect, not a normative one, and we can view them today as very easily being just a premeditated policy to create a reassuring but misleading appearance in the form of law. Law itself can be a method of manipulation in a dictatorship to ease the nationalization process.

The law excludes some categories of persons from the benefit of (non-existent) compensation, for example, those who left the country clandestinely or fraudulently or who failed to return before the expiry of travel documents issued by the Romanian authorities. Another set of nationalization acts provide that nationalization should take place without any compensation (e.g., Decree No. 92/1952).

In Hungary, according to the Act XXV of 1948, state property may be acquired against compensation, but the latter should have been provided for by a separate law.[62] If the State, or a body acting on behalf of the State, had purchased a company (or part of a company) which would have been state-owned before the entry of the Act into force, the claim for the unpaid purchase price could only have been enforced in the course of the compensation procedure. In a particularly equitable case, where the taking of public ownership would endanger the livelihood or the maintenance of the former owner (shareholder, partner, associate) or of its relatives, the General Economic Council could authorize the payment of an advance on the compensation.[63] However, the anticipated compensation law was never adopted.

A more rational group of contemporaries were already feeling the uncertainty of the compensation promised by the legislation. It was highlighted that

> *compensation, however, is not simultaneous with the forfeiture, but will be provided in the future, usually under separate laws. Its amount will obviously not only depend on the assets transferred, but also on the capacity of the State to bear the burden. In addition to the financial aspect, there may of course be other considerations of state policy... In general, therefore, the problem of compensation is at present pending.*[64]

The explanation for the implicit or explicit rejection of compensation is simple: compensation is a measure that would have led to a return to capitalism. Replacing the loss of property caused by nationalization with compensation would have meant the survival of the exploiting class, the rescuing of the economic status and privileges of the members of that class. Therefore, compensation was in fact impossible in the given ideological context. From the viewpoint of the Marxist dialectic, there is no

62 Article 6 of Act XIII of 1946 or Article 8 of Act XXX of 1947 contained a similar provision.
63 However, this rule has been interpreted as precluding the possibility of bringing a claim for compensation before the Compensation Act was enacted. See Barton, 1948, p. 492.
64 Ibid., pp. 491–492.

damage at all, since the 'exploiters' could also have benefited from the rights and opportunities granted to all by the state. [65]

In a capitalist context, nationalization is generally based on compensatory mechanisms, based on the principle of protection of private property. For example, in the case of the Renault nationalization, all shareholders were compensated, except those who collaborated with Nazi Germany.

The legal analysis of nationalization must take several problems into account. In the above, I have attempted to identify the main features of Soviet-style nationalization in the East Central European context. At the time, it was impossible to argue against nationalization, and any legal objections could only be implied. For example,

> *a position which, while emphasizing the inviolability of acquired rights and the sanctity of property, would view nationalizations, confiscations and requisitions of various kinds of property as contra rationem iuris and explain them as exceptions in a restrictive manner, would serve the 'selfishness of law' and thus hinder the ongoing transformation. On the contrary, nationalization is today one of the main lines of development and is therefore the ratio iuris itself.*[66]

In addition to such theoretical impossibility, the lawyer who questioned nationalization at the time risked his personal safety and that of his family members.

In conclusion, on the one hand, it can be argued that from a legal-historical viewpoint, Soviet-style nationalization was a unique and specific institution in Eastern Europe, which can only be linked to the nationalization that took place in the Soviet Union. In this brief overview, I have sought to provide an insight into the basic legal problems raised by nationalization, focusing on why interpretations of legal reality that have been deformed by purposive ideologies and thus lack a solid scientific basis should be rejected. Referring to capitalist nationalization and socialist 'socialization', Gyula Eörsi stated that

> *in both cases, we are talking about property transfers. In the first case, the right of ownership is transferred from the individual capitalist to the state of the capitalist class; in the second case, the right of ownership is transferred from the individual capitalist to the state of the working people.*[67]

However, he identified a decisive qualitative difference between the two transfers of ownership: with capitalist nationalization "*there is no change in the basis of the*

65 Foreign shareholders received some compensation as a result of decades of intergovernmental negotiations. On the relationship between nationalization and compensation after the change of regime in Hungary, see Constitutional Court Decision 27/1991 (May 20, 1991), for example. For a debate on whether compensation is necessary for foreigners under international law, see Seidl-Hohenveldern, 1958, pp. 543–552, and Katzarov, 1964, pp. 283–368.
66 Barton, 1948, p. 493.
67 Eörsi, 1951, p. 42.

socio-economic order, the expropriation of unpaid external labor is maintained, capitalist property relations are preserved", while with Soviet-style nationalization "*the socio-economic order is fundamentally changed, the abolition of exploitation begins.*"[68] In fact, Soviet-style nationalization was exactly what the legal literature of the time vigorously denied repetitively and out of necessity. Soviet-style nationalization was nothing more than the legislative embodiment of a new form of exploitation.[69]

On the other hand, and in the author's opinion, nationalization is in fact nothing more than expropriation. However, not just any expropriation, but an illegal form of it: expropriation without prior compensation, expropriation on a mass level based on false public utility, affecting the entire society. Ultimately, it is a vile form of abuse of power and coercion, ideologically justified by utopian arguments.

6. Collectivization (cooperativization)

According to the communist ideology, in addition to state-owned enterprises active in agriculture (called *sovkhoz* in the Soviet Union), collective-owned farms based on the Soviet *kolkhoz* model also had to be set up and operated under the name of 'collective farms' (later renamed agricultural production cooperatives).[70] As Stalin stated,

> *The agricultural commune of the future will be realized when in the farms of the production cooperative plenty of seeds for planting, animals, fowl, fruits, and any other produce will be found; when production cooperatives will arrange and operate mechanized laundries, canteen kitchens, modern bread factories; when the member of the kolkhoz will see that for him it is more advantageous if he receives meat and milk from the farm than to raise farm animals and breed cattle; when the female members of the kolkhoz will see that it is much more to their advantage to have lunch in the kolkhoz canteen and to buy bread from the bread factory and to receive laundry washed from the common laundry than to toil with such things. In this way, members of the agricultural communes of the future will no longer develop auxiliary private labor, but not because the law would prohibit this; instead because, as was the situation in previous communes, it will no longer be necessary to do so.*[71]

The basis of the agricultural production cooperative is, in theory, a voluntary association, a collective socialist farm established and run by the working peasants. In reality, however, collectivization was state policy, and for this reason, the state carried out extensive propaganda activities in favor of the transfer of private property

68 Ibid.
69 According to Eörsi, the socialist state's social legislation and nationalization "*are no longer the legal means of legislating a form of exploitation, but the legal means of abolishing exploitation, of building a new, socialist, free society.*" Ibid., p. 260.
70 Veress, 2020a, pp. 368–371.
71 See Farkas, 1950, p. 463.

to collective farms. Those who refused to join the collective were qualified as *kulaks* (large-holders) and persecuted (through violence, hostage-taking, and executions, and those who manifested in any way against collectivization were often condemned to prison).[72] 'Voluntary accession' was, in fact, extorted by state violence.

The realization of collectivization in Romania took place between 1949 and 1962[73] and presumed the transfer of privately-owned lots of agricultural land to the collective farm, thus affecting the population of rural Romania in its entirety (at that time, 12,000,000 people out of the total population of about 16,000,000 lived in the countryside).[74] In agricultural production cooperatives, one of the conditions for acquiring membership was to transfer ownership of all agricultural land to the collective farm.[75] These provisions were interpreted as follows:

> *The obligation exists to transfer ownership of lands extended over all lots of land owned by the prospective member of the cooperative as well as those in the property of all family members living in the same household with him, regardless of the destination of the land in question. This interpretation of the subjective side of the assignment obligation of land ownership was necessary because only this interpretation is found to be consistent with the intended goal of the socialist transformation of agriculture, its significance being the abolition of small farms and the creation of the foundations of socialist agro-industrial production cooperatives. Hence the interpretation of legal norms in the sense that whichever spouse adheres to the cooperative all lands owned by the family had to be ceded to the CAP [the cooperative] because of the awkward situation in which one of the spouses was a member of the CAP and the rest of the family members who lived in the same household would carry out agricultural activities in the conditions of the small peasant household was inconceivable.*[76]

A strong reason in favor of collectivization was small farms' inefficiency. However, ideological rather than economic reasons proved to be decisive: As long as private property constantly regenerates capitalism – a system that it was desirable to overcome – collective management was the proper form for agriculture. According to Gheorghiu-Dej, socialism can be built only if all the essential means of production in cities and villages alike are transferred to public ownership, that is, state-owned or cooperative.[77]

Decree No. 83/1949 expropriated estates with an area larger than 50 hectares. Opposition to expropriation was punished with between 5 and 15 years of forced labor

72 For details regarding persecutions during collectivization, see Kligman and Verdery, 2011.
73 For details, see Gheorghiu-Dej, 1962; Dobrincu and Iordachi, 2005; Oláh, 2001; Kligman and Verdery, 2011.
74 Comisia Prezidențială pentru Analiza Dictaturii Comuniste din România, 2007, p. 238.
75 Lupán, 1972, p. 445.
76 Ibid., p. 446.
77 Gheorghiu-Dej, 1955, p. 213.

and confiscation of property (Art. 4). Previous owners were often forcibly relocated or required to reside at a domicile chosen by the authorities.

The implementation of the cooperative agrarian policy was achieved through the State Council's Decree No. 133/1949.[78] This norm provided the general framework for organizing various forms of cooperatives in the agricultural sector.[79] In 1949, the first model statute of collective farms was elaborated and later replaced a new statute adopted by peasant delegations in 1953 (the latter being adopted by the Joint Decision of the Central Committee and the Cabinet No. 1650/1953), followed by the adoption of another statute in 1966. Agricultural production cooperatives established during the Soviet-type dictatorship cannot be considered civil law companies or associations as the cooperatives existing in the capitalist environment, the former being specifically socialist organizations with a distinct socioeconomic nature. Subsequently, multiple special legal rules were adopted in the field of cooperatives, as follows: Act 14 of 1968 on the Organization and the Functioning of the Cooperation of Craftspeople or Act 6 of 1970 on the Organization and Functioning of Consumer Cooperation (the former cooperatives for the production, purchase, and sale of goods).

The definite principle of establishing collective farms and other enterprises was free initiative and voluntary accession (Decision of the Council of Ministers No. 308/1953), but in fact, the process was characterized by forced collectivization.

Decree No. 115/1959, which had as its object of regulation the liquidation of the remnants of any form of exploitation of man by his fellow man in agriculture, in order to continuously raise the material standard of living and the cultural development of the working peasantry and the development of socialist construction, it prohibited the partial cultivation or leasing of agricultural land lots, and lots that a single family could not cultivate were nationalized. Lots of agricultural lands thus 'liberated' were handed over for the use of collective farms or other socialist organizations.

Cooperative ownership (of land) was a form of socialist property on par with public property, but it was also a form of communal property with a narrower object. Agricultural production cooperatives were considered to be collective enterprises based on the notion of socialist property. The owners of properties transferred to the cooperative were all cooperating members, and they had a theoretical right to dispose of the collective property. However, the right to dispose of the cooperative property could not infringe upon the general social interest so that any veritable right of disposal was non-existent.[80] Cooperatives could also receive state-owned land for use.

With the establishment of collective farms, small holdings and peasant agricultural production were abolished. Land ownership in favor of collective farms was

78 See Lupán, 1971, p. 1025; id., 1974, p. 563.
79 Lupán, 1987, p. 85.
80 See Lupán, 1971, p. 1025; id., 1974, p. 563.

acquired primarily through the process of collectivization itself, which was considered an original means of acquiring socialist property. Following collectivization, lands thus socialized were passed into the ownership of the collective farm without any encumbrances, and thus, the collective farm could no longer be required to comply with obligations that had arisen in connection with land that had been socialized in this way.[81] (Obligations arising toward the state based on contracts of acquisitions were exempted under this provision, of course.)

At the end of the collectivization process in Romania, 96% of the total area of arable land and 93.45% of the land area intended for agricultural production were transferred to state-owned enterprises or collective farms (agricultural production cooperatives). However, collectivization was not accomplished in the mountainous areas unfavorable to factory farming. In general, as it was stated:

> *What emerged from the process everywhere was that the tie between peasant households and their land was broken; kinsmen and co-villagers had been used against one another, rupturing earlier solidarities; the influential members in each village had been humiliated and dispossessed; the former poor now held political advantage; and land was no longer the main store of wealth or the means for villagers to manifest their character, skill, or diligence.*[82]

Cooperative law has become an autonomous source of law in Romania and a distinct branch of law.[83]

In Hungary, the changes were similar. The 1945 land reform created viable smallholdings, small farms based on family labor, which were economically rational. However, forced collectivization began in 1950. Mátyás Rákosi, leader of Communist Hungary until 1956 announced as early as 1948 that

> *there are two paths for the Hungarian working peasantry. One is the old, familiar, exaggerated individual farming, where everyone looks out for himself, where the principle prevails that whoever can grind must grind. The inevitable, legitimate consequence of this principle is that the big fish eat the small fish, the big kulak farmers continue to get stronger, get richer, and destroy the weaker working peasantry.*[84]

The 1956 revolution temporarily halted collectivization, and the communists who returned to power after the revolution was crushed eased the pace and violence of collectivization, seeking to consolidate their power. The more vigorous organization of agricultural cooperatives took place between 1959 and 1961. Here too, the membership was given a much greater role than in Romania.

81 Lupán, 1972, p. 446.
82 Verdery, 2003, p. 46.
83 Lupan, 1977; id., 1980, p. 875.
84 *Hírlap*, August 22, 1948.

7. Personal property under Soviet-type dictatorship

Given that in the Soviet-type dictatorship, the notion of private property elicits negative connotations, the primary forms of property consisted of state property (of the whole people) and collective property. Civil law, instead of using the stigmatised concept of private property, introduced the notion of *personal property*.[85] For example, in Romania Decree No. 31/1954 recognized the civil rights[86] of natural persons for the purposes of satisfying their personal needs, and thus civil rights – as well as the right to personal property – were restricted to the extent necessary to meet their own (personal) needs. The sphere of state and private property was distinguished as follows:

> *According to the most spectacular interpretation of the socialist property, by its nature, its object should be a means of production, while it is the nature of the personal property that its object is a means of consumption. [Only] of their nature, because in both cases we find exceptions: most often the means of production are initially (until the completion of the process of distribution) objects of socialist property, and, on the other hand, only in some instances does (household) property constitute a non-essential means of production which is the object of personal property.*[87]

In Romania, in the case of immovables, the object of personal property could be composed of the house and the lot occupied by the household. Cultivation of the lots attributed to households was mainly achieved using methods reminiscent of those used in the Middle Ages, even if these tiny plots provided staple food for many families.[88] In the case of members of agricultural production cooperatives, after the 1965 constitution recognized their right to personal land ownership, the statute of agricultural production cooperatives – adopted in 1972 – contained a particular provision: The land area occupied by the house, the outbuildings, and the yard cooperating members' property could not exceed 800 square meters. The agricultural production cooperative could sell – for the purpose of erecting houses – an area not exceeding 500 square meters to the cooperating members or to its employees. For locative purposes (houses or apartments owned as personal property):

> *Within the meaning of Art. 60 of Act 5 of 1973, the owner and his family members, may retain only residential areas that are justified by their needs in their property. When establishing these needs, the following must be considered: for each family member, one room must be available, and in excess of this number at most, two*

85 Veress, 2020a, pp. 372–375.
86 I use the notion of civil rights in the European sense, as in the rights provided by private law norms, not in the sense attributed to this notion in the US context especially, as in political rights (fundamental rights).
87 Lupán, 1975, p. 268.
88 Berend, 2008, p. 155.

other rooms for the entire family. These provisions are applicable only to dwellings in urban areas.[89]

Incidentally, in the case of real estate rented from state enterprises that managed the national housing inventory, the standard housing area allocated to each person was 10 square meters, and if the building's structure made this impossible, only 8 square meters (Act 5 of 1973, Art. 6). Any residential building, found in personal property and located in an urban settlement, that the owner and his family members did not use, could be rented out by the state.

Act 59 of 1974 regarding land management provided that the land constitutes the property of the whole people. Thus, all lots of land located in the territory of the Socialist Republic of Romania, regardless of destination and owner, constitute the unitary national land inventory, which can be used and must be protected in accordance with the interests of the whole people. The law completely stopped any transfer of agricultural land via *inter vivos* instruments: The right of ownership over agricultural lands could be acquired exclusively through legal inheritance (Art. 44), but if constant use – for the purpose of agricultural production – was not ensured by the legal heirs, the land was taken over by the state, and if within 2 years of this takeover, the heirs did not request restitution and did not initiate agricultural production, the land was passed on to state property.

Land of any kind owned by persons who established themselves abroad would become the property of the Romanian State without any means of compensation (the rule being applied with retroactive effect, that is, the landed property of persons who had left the country before the entry into force of the law was also nationalized). The same procedure was to be followed if the land was inherited by any persons who were Romanian citizens not domiciled in Romania (Art. 13). Ownership of dissidents' buildings (those of persons who emigrated in a manner considered illegal, including those who left the country in compliance with official formalities but did not return) was transmitted to the state by law and without any compensation, while those who emigrated in accordance with legal formalities were obliged to sell to the state any buildings they owned at a price set by law (Decree No. 223/1974 regarding Regulation of the Situation of Some Properties).

Act 58 of 1974 on the Systematization of the Territory of Urban and Rural Localities[90] stopped the legal circulation of land located in the built-up areas of localities, and following the new regulations, obtaining the property right over such lands was made possible only by legal inheritance (Art. 30). Practically,

Every natural person may retain the right to personal land ownership, but his right of disposal over this property is extinguished as of 1st December 1974. In the case of alienation of real estate, the land related to it becomes the state's property in exchange

89 Lupán, 1975, p. 268.
90 For details, see Pop, 1980.

> *for adequate compensation. So, the new owner of the building will no longer be the landowner but will receive the land necessary for personal use from the state.*[91]

The law provided for the construction of blocks of flats in urban localities for housing (Art. 8), stating that:

> *In new housing estates, depending on the average height regime applicable for the buildings, the following living areas per hectare will be ensured: up to 3 levels, 4,000 m²; between 3 and 5 levels, from 4,500 m² to 7,000 m²; between 5 and 9 levels, from 7,000 m² to 10,000 m², and over nine levels will aim to achieve about 12,000 m² of living space per hectare.*

The appearance of entire neighborhoods of overcrowded blocks of flats in which no areas were provided for greenery, playgrounds, or proper parking space is the direct result of this regulation, which, to this day, contributes to the overcrowding of new urban housing developments and to problems that have appeared as a result of a low standard of living and the degradation of urban planning. In communes, plots of land between 200 and 250 square meters could be handed over for use, with an opening to the street that does not usually exceed 12 meters in length, while in urban areas, this figure was set to between 100 and 150 square meters, in both cases in exchange for an annual fee. As a result of Act 58 of 1974:

> *In principle, the circulation of land property ceased, and personal land ownership had lost its previous significance. These objects of personal land ownership gradually became state property, and the socialist state, in exchange for a small fee, gave them over for the use of individuals during the existence of the buildings erected on them. In case of the subsequent alienation of the residence or holiday home, the right to the use of the given land is transferred to the new owner of the building as a result of the conclusion of the contract of sale (or of another type).*[92]

The concept of property in accordance with Marxist principles and the transformation of private property into the mystical property of the whole people have largely contributed to the bankruptcy of the socialist economic model. The model was summarized as follows:

> *The single-party state based on Marxist ideology replaced the private owners with the entirety of society. Although members of communist society ceased to be private owners, they never became the owners of any social property. The confiscated and concentrated property right appeared floating over the heads of mortals as a mystical*

91 Lupán, 1975, p. 270.
92 Ibid., p. 271.

> *right, the right of state property, and as such became a mystified plaything to the interests of the bureaucratic élite and the powerful.*[93]

In Hungary also, nationalization was also not satisfied with the takeover of companies. Decree-Law No. 4 of 1952 took over certain types of residential property (houses, villas, condominiums, commercial buildings, factory buildings, warehouses, etc.). The basic criterion was that the housing estate must be used in whole or in part by renting it out. However, nationalization also extended to the housing estates of capitalists, other exploiters and oppressive elements of the overthrown social system. In this context, exploitation by renting was not a condition for nationalization. In the case of Hungary, the private property regime was radically transformed within a short period of time under state coercion.

8. Basic questions raised by the change in the concept of property as a result of nationalization and collectivization

The Soviet-type dictatorship operated on the principle (fiction) of the right of socialist property, that is, of public property. The quasi-totality of the means of production was in socialist ownership (the majority in the property of the whole people and a relatively minor part in the property of cooperatives). In this conception,

> *the state is just a tool in the hands of the working class and the whole people to achieve in an organized way economic and social development based on socialist property. The state exercises control; it watches over how the people's property is managed not to be wasted but amplified and developed. The subject of socialist property rights is therefore not the state but the whole working people.*[94]

In reality, the state was – as far as possible – the subject of property rights, while the fiction of socialist property (of public property) played only a legitimizing role, meant only to show that the system works in the people's interest.

However, state-owned companies operated with low efficiency, extensive staff, limited productivity, contradictory objectives due to political interference, poor resource allocation resources, inflexibly, under conditions of technological backwardness (decrepit machinery, outdated methods, and products), with a severely limited capacity to innovate, with frequent theft and widespread corruption, and to the detriment of the environment due to pollution.[95] In general, it can be established that the market economy, based on competition, which operates under adequately regulated conditions (i.e., capitalism), resulted in a more efficient form of economic

93 Pécsi, 1991, p. 365.
94 Lupán, 1986, p. 172. For similar reasoning with regard to lots of lands, see id., 1988a; id. 1988b.
95 Savas, 1993, p. 287.

organization than the planned state-owned economy implemented under Soviet-type dictatorships. The latter had the stated purpose of abolishing capitalists' exploitation of the proletariat but in reality replaced capitalist exploitation with exploitation by the authoritarian state.

In addition to nationalization, as a result of collectivization, private property was abolished as a motivating factor, the peasants were degraded to the status of proletarians in the agricultural sector, and economic efficiency achieved the expected results only in the pompous statements of political propaganda.[96]

After the collapse of the Soviet-type regimes in East Central Europe, a crucial question was raised: is it possible to restitute nationalized and collectivized property to the former owners? The answers were complex, contradictory, and different from one legal system to the other. Compensation or partial restitution has been achieved but restoring righteousness has proved impossible. However, this forms a subject for different research.

96 Veress, 2020a, pp. 371–372.

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