CONTINUITY AND DISCONTINUITY OF PRIVATE/CIVIL LAW IN EASTERN EUROPE AFTER WORLD WAR II

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Introduction

In the countries of Central and Eastern Europe, the legal traditions that are in substance based either directly on Roman law or on Pandectist legal traditions have to be taken into consideration. It should be emphasised that in legal literature this aspect has until recently been largely neglected. Suffice it to think of Paul Koschaker's work *Europa und das römische Recht* and Franz Wieacker's *Privatrechtsgeschichte der Neuzeit*. The authors of these works completely omitted the development of private/civil law in Central and Eastern Europe as though such regions did not exist in Europe.

This approach is all the more troubling since the Roman-law tradition of these countries was and is present at both legislative and theoretical level. This observation is particularly true in relation to the period after the far-reaching political and economic changes which have taken place after 1989/1990. One should consider, for instance, the 1922 Russian Civil Code that from a legal-dogmatist viewpoint is similar in various respects to the Russian Draft Civil Code promulgated prior to the outbreak of World War I, based on both the German Civil Code (BGB) of 1896 and the Swiss Code of Obligations of 1881.

Romanist (Pandectist) influences may be observed also in relation to civil codes of the other Central and Eastern European countries. Various types of civil law codification may still be observed in this geographical region of the European Continent. The countries of this region may be divided basically into three major groups according to their own legal traditions. Group "A" comprises countries like the former Union of Soviet Socialist Republics (USSR), the former Czechoslovakia, at present the Czech Republic and Slovakia (after the demise of Czechoslovakia on 1 January 1993), Poland and Hungary which are characterised by adoption of socialist civil codes. Group "B" is characterised – like Bulgaria and Albania (until the promulgation of the Civil Code in 1981) – by having adopted special laws relating for instance to the law of property, the law of obligations, the law of succession, etcetera. Group "C" (eg Romania) is characterised by conserving its former "bourgeois" (ie non-socialist) Civil Code.

A major contribution to the continuity of private/civil law is the ongoing process of harmonisation of law of the Central and Eastern European countries which became member states of the European Union on 1 May 2004. The harmonisation process started in the early 1990s. Special mention must be made of the Maastricht Treaty on European Union which was signed on 7 February 1992 and entered into force on 1 November 1993. It extended considerably the competences of the European Union in the field of legal harmonisation. Like environmental, labour and tax law, the so-called Community Private Law is increasingly coming to the fore in the harmonisation of law in the countries of Central and Eastern Europe. Today the most Europeanised area of private law is company law. Even in this field, however, several elements of continuity may be observed. In Hungary, for instance, the Commercial Code of 1875 – which became largely inefficient in the aftermath of World War II – still governs some legal institutions. Another important example is the re-implementation of the *Company Law Act* of 1934 in Poland after 1990. As to the other aspects of private/civil law, a wide range of European Communities directives cover, for instance, product liability, commercial agent law and software copyright law. In the field of labour law the relevant directives concern employer-insolvency, equal employment opportunities and transfer of undertakings. All these Council regulations and directives have binding effect on the legal systems of Central and Eastern European countries.

In compliance with articles 67 and 68 of the Europe Agreement (Association Agreement) signed by the European Communities with the eight new European Union member states in Central Europe, these countries have to bring their legal systems into compliance with the European Communities/European Union law (*acquis communautaire*). In view of the accession to the European Union, a number of other countries in Central and Eastern Europe, in particular Bulgaria, Romania and Croatia, also avail themselves of the experience of the harmonisation of law of the twenty five member countries of the European Union.

In most countries of Central and Eastern Europe, after the demise of the communist system, new civil codes were promulgated or are currently being drafted. The draft civil codes in the Czech Republic, Hungary and Poland reflect both in their structure and in the regulation of a large number of legal institutions a return to Roman-law traditions. In this process, the return to Pandectist legal traditions is of particular significance. The same is holding true for the new Civil Code of the Federal Republic of Russia, promulgated between 1995 and 2002.

I "Socialist law" as a separate legal family

a) The well-known assertion of Petr Ivanovič Stuchka (1865-1932), the leading figure of Soviet legal philosophy in the early 1920s, influential President of the Supreme Court of the Russian Soviet Republic between 1923 and 1932 and also co-founder and since 1931 Director of the Institute of Law of the Academy of Sciences of the Soviet Union, deserves particular attention:

> Communism means not the victory of socialist law, but the victory of socialism over law, since with the abolition of classes with their antagonistic interest, law will die out altogether.

As a consequence of this idea, which prevailed until the early 1920s, the Court system and the Bar were both immediately abolished in 1917. All efforts were made to break with Russia's legal past. The nihilistic attitude towards law was quite general after the Bolshevik Revolution. This attitude which in many aspects resembled that of the French revolutionaries underwent major changes in the early 1920s. In lawmaking the Russian tradition became, in essence, Soviet tradition. Work on codification began even prior to 1921.[1] In 1918 the Russian Socialist Federated Soviet Republic (RSFSR) Code of Laws on Acts of Civil Status, Marriage and Guardianship and its Labour Code were promulgated. In 1919 the RSFSR Principles of Criminal Law were adopted. Before that period Soviet Russia operated under a system of judge-made laws. The basis of law was the so-called revolutionary consciousness of the people's judges. Soviet law revised the legal tradition of pre-revolutionary Russia to the extent that it was compatible with the new traits of the Soviet-style society. The framers, in other words the chief architects of the Soviet legal system, were trained in the Romanist (Pandectist) or civil-law tradition. As a result in devising a supposedly entirely new legal system they drew heavily upon the traditions of Roman (civil) law.[2]

b) The concept of "civil law" needs some clarification. From a historical point of view the term "civil law" refers to the legal system applicable to citizens of the Roman Republic and Empire. The "civil law" was compiled in the *Corpus Iuris Civilis* essentially in the sixth century AD (528-534) by Emperor Justinian who reigned from AD 527 to 565. He commissioned the collection and revision

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1 The beginning of the New Economic Policy (*Novaja Ekonomičeskaja Politika*).

2 The well-known assertion of Johann Wolfgang Goethe regarding Roman law deserves mentioning in this regard. He speaks of Roman law "as something continuously living that, like a duck diving under water, is hidden from time to time but is never completely lost and reemerges again and again alive" (*Entengleichniss*) in Eckermann *Gespräche mit Goethe in den letzten Jahren seines Lebens* Vol 1 & 11 (1836) Vol III (1848).

of the Emperors' constitutions[3] and the jurists' writings.[4] Justinian also compiled a basic law manual for students.[5] These efforts preserved much historical Roman law[6] and served as the basis for subsequent legal systems throughout Europe. Later this term gained a rather narrow meaning in terms of the legal system of the so-called civil-law countries. Recently the term "civil law" has become even more limited according to the perception of continental European lawyers. Consequently "civil law" is a more restricted concept than "private law" and does not include the entire legal system of a country. Large parts of private law are regulated by other codes or compilations. In the legal systems of the Central and Eastern European countries considerable areas of traditional "civil law" are covered by codes.[7] As a result of the essential political and economic changes in a number of these countries the importance of civil law, in the traditional sense of the term, has increased considerably.

c) The Romano-Germanic legal tradition has undoubtedly been influential in the legal systems of Central and Eastern European countries. The early development of Soviet law was guided and shaped mostly by the legislator, unlike the centuries' old experience of the law of the countries governed by common-law traditions. The legislative influence still remains strong although the role of the judiciary is constantly growing. Recently, the role of legal scholars has increased contrary to the common-law tradition where the role of legal scholarship is rather negligible. The wide-scale reception[8] of Roman law which was called *ratio scripta* ("written reason") in many countries of Europe had an impact on Russian law as well. The major channel of the reception of Roman law in Russia was the education of lawyers at universities.

d) Regarding the continuity in law it should be noted that there is considerable autonomy in the various legal phenomena which are generally independent of the economic-political structure of society. This continuity manifests itself basically on two levels, namely first in the use of certain legal terms (eg sale, lease, property, contract etc), and secondly in the use of certain concepts, schemes and legal institutions (eg the concept and structure of ownership, methods of acquisition of ownership, the concept of possession, the concept of contract etc).

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3 The *Codex Iustinianus*.
4 The *Digesta* or *Pandectae*.
5 The *Institutiones*.
6 *Ius Romanum* or *ius Romanorum*.
7 Code of Family Law, Code of Labour Law, Code of Farmers' Cooperatives Law etc.
8 *Receptio in complexu*.

As far as legal traditions are concerned Central and Eastern European countries may be divided into two groups:

A Countries where the Romano-Byzantine legal tradition was (is) strong[9]

The essential characteristics of the legal systems of these countries are as follows:

1 The State is strongly in favour of the reception of Roman public law *(ius Romanum publicum).*

2 The ideology of the Roman Empire (*imperium Romanum*) prevails.[10]

3 There is no clear separation between secular law and ecclesiastical law – thus, for example, the *nomocanon* which has been the major source of law throughout centuries combines both ecclesiastical and secular law.

4 The language of legal acts is the national vernacular (the Slavic one); in the Danubian (Romanian) principalities (Moldavia and Valachia) many statutes were promulgated in Greek even during the first half of the nineteenth century.

5 During the nineteenth and twentieth centuries civil codes patterned after the various Western European civil codes were promulgated.[11]

6 Promulgation of commercial codes in the nineteenth and twentieth centuries followed the model of Western European commercial codes.[12]

7 There were no universities in the medieval period.[13] The University of Dorpat (presently Tartu, in Estonia) was founded in 1632 by the Swedish in a time when the Baltic territories were not part of the Russian Empire. A number of universities were established during the first two decades of the nineteenth century on Russian territory.

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9 Tzarist Russia, Soviet Union, after the demise of the Soviet Union in 1991, Russia, Ukraine, Belarus, Moldova, Romania, Yugoslavia (Serbia and Montenegro), Macedonia, Bulgaria and Albania.

10 The idea of the so-called Third Rome = Moscow, in Russian: *Tret'ij Rim.*

11 The French Civil Code (1804), the Austrian General Civil Code (1811), the Saxon Civil Code (1863), the Portuguese Civil Code (1867), the Swiss Code of Obligations (1881), the Swiss Civil Code (1907), the Italian Civil Code (1865), the Spanish Civil Code (1889) and the German Civil Code (1896).

12 The French Commercial Code (1807), the Spanish Commercial Code (1829), the General German Commercial Code (*Allgemeines Deutsches Handelsgesetzbuch*) (1861), the Italian Commercial Code (1865), the Italian Commercial Code (1882), the Spanish Commercial Code (1885), the Portuguese Commercial Code (1888) and the German Commercial Code (1897).

13 The first university in this geographical area was that of Moscow founded in 1755.

B Countries where the Roman (civil) law tradition was (is) influential[14]

The most important characteristics of the legal systems of these countries are as follows:

1 The State is basically against the reception of Roman public law *(ius Romanum publicum).*

2 The reception of Roman private law *(ius Romanum privatum)* is carried through in large areas of law.

3 The Roman Catholic Church is basically in favour of the reception of Roman private law.

4 Latin is the language of the legal sources, in particular of the legislation throughout many centuries.

5 Universities play a considerable role in legal development.[15]

6 There was a substantial reception in the nineteenth and twentieth centuries of the civil codes of Western European countries.[16]

7 There was a substantial reception in the nineteenth and twentieth centuries of the commercial codes of Western European countries.[17]

II Codification of private/civil law in Western Europe and its influence in Central and Eastern Europe

Codification of law is one of the most important traits of the civil-law systems, that is, jurisdictions, and is one of the main differences between civil-law and common-law jurisdictions. The codification of civil law in modern Europe began in the late eighteenth and early nineteenth centuries. The Bavarian Civil Code[18] was the first code. The Prussian General Code[19] is an all-encompassing

14 Poland, Hungary, Czech Republic, Slovakia, Slovenia, Croatia, Estonia, Latvia and Lithuania.
15 The first universities were those of Prague (1348), Cracow (1364) and Pécs (1367), founded by the middle of the fourteenth century. The Dorpat (Tartu) University founded by the Swedish in 1632 with German as language of instruction, must be mentioned here too.
16 The French Civil Code, the Austrian General Civil Code, the Saxon Civil Code, the Italian Civil Code of 1865, the German Civil Code, the Swiss Code of Obligations and the Swiss Civil Code.
17 The French Commercial Code, the Spanish Commercial Code, the General German Commercial Code, the Italian Commercial Code, the Spanish Commercial Code, the Portuguese Commercial Code and the German Commercial Code.
18 *Codex Maximilianeus Bavaricus Civilis* (1756).
19 *Allgemeines Landrecht für die preussischen Staaten* (*PALR*) (1794).

legislative act consisting of 19,187 articles. Its main feature is the extremely detailed regulation of various legal matters. The first modern civil code in Europe is the Civil Code for Western Galicia[20] promulgated in 1797. It also came into effect four months later in Eastern Galicia under the name Civil Code for Eastern Galicia.[21]

The French Civil Code of 1804, that is the *Code Napoléon*, may be regarded as the first modern civil code. It had a large influence both on the European Continent and in a number of countries outside Europe. In civil-law countries codes are undoubtedly the primary pieces of legislation. They have a unitary nature which differentiates them from legislation also called "codes" in the countries of common-law tradition – including the United States of America.

Commercial law, that is business law (law of corporations), was not integrated into civil codes. The first code which incorporated commercial-law related articles into the text of the code was the Prussian General Code.[22] This was due to the fact that the drafters of this Code attempted to regulate legal relations comprehensively. The first civil code, strictly speaking, to encompass business organizations (corporations), was the 1820 Civil Code of the Duchy of Parma, Piacenza and Guastalla in Italy. In this Code, the then existing various forms of corporations are to be found in the specific part of the law of obligations (along the *societas*) under the title *Delle Società.* The 1851 Civil Code of Modena also contains, in its last (fourth) book, the various forms of business organizations. In Switzerland the 1881 Code of Obligations entails regulations with regard to business organizations as well as commercial contracts. The 1911 revised version of the Swiss Code of Obligations was included (as Book Five) in the 1907 Swiss Civil Code. Thus the Swiss Civil Code became fully "commercialised" since Book Five of this Code unified the regulation of all activities and relations that generally fell under the headings of law of contract and business law, including negotiable instruments. The advantage of this solution is undoubtedly its simplicity and clarity. Its disadvantage is that this system invokes the danger of an internal imbalance or assimetry in the integrated code.

The "codes" in the countries of common-law jurisdiction as a general rule do not have organic unity. Nor do these "codes" contain generally-binding legal principles. These legislative acts are rather a compilation of separately enacted statutes.

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20 *Westgalizisches Gesetzbuch*.
21 *Ostgalizisches Gesetzbuch*.
22 *Allgemeines Landrecht für die Preussischen Staaten* (*PALR*).

The Austrian General Civil Code[23] was a product of the School of Natural Law and deserves special attention. The Saxon Civil Code which came into effect in 1865 was the first Code to include a "General Part" (*Allgemeiner Teil*). It was also the first to follow the Pandectist system.

The civil-law systems of the countries of continental Europe are frequently categorised into four major groups: Codes patterned after the French and Spanish Civil Codes; Codes following the Swiss Code of Obligations of 1881/1883[24] and the Swiss Civil Code of 1907/1912; Codes patterned after either the drafts or the final version of the German Civil Code of 1896/1900; and Codes drawing upon the Italian Civil Code of 1865 and the Italian Civil Code of 1942.

The impact of the Austrian General Civil Code was generally limited to the territory of the Austrian Empire and later – after the Austro-Hungarian "Compromise" (*Ausgleich*)[25] – to the Austrian-Hungarian Empire. The Austrian Civil Code consists of 1502 sections (paragraphs) and is divided into three books: I On Personal Rights; II On Real Rights – rights arising from things – encompassing both property and obligations (contracts and torts); and III On Provisions Common to Personal and Real Rights. The Austrian General Civil Code also has a short Introduction consisting of fourteen sections. It was substantially modified by means of regulations (*Notverordnungen*) during World War I. The Austrian General Civil Code had a large influence on the Serbian Civil Code of 1844 which contained only 950 sections. The Serbian Civil Code of 1844 showed several divergences from the Austrian General Civil Code, mainly in family law and the law of succession.

Each of the above-mentioned codes has distinctive features. The French Civil Code[26] may be described as episodic with solutions for important questions. The Swiss Code of Obligations and Civil Code are characterised by their simple language. The German Civil Code resembles – in many respects – a philosophical system with its general and special parts. Book One of the German Civil Code bears the title "General Part", that is "General Provisions", following mainly the General Part of the Saxon Civil Code. The paragraphs of

23 *Allgemeines Bürgerliches Gesetzbuch* (*ABGB*) (1811).
25 *Sächsisches Bürgerliches Gesetzbuch* or *Bürgerliches Gesetzbuch für das Königreich Sachsen* (1863).
24 Revised substantially during the preparation of the Swiss Civil Code.
25 Enacted in Hungary by Statute XII of 1867.
26 From 1807 until 1815 and from 1852 till 1870 *Code Napoléon.*

the General Part are applied to all provisions located in the other parts of the Code. Book 1 of the German Civil Code is preceded by the *Introductory Act to the Civil Code*.[27] This book is followed by books on obligations, property, family law and succession.

It must, however, be emphasised that no continental civil lawyer relies exclusively upon a civil code since it may not deal with all the subjects to be regulated by civil law. There are civil-law countries in which civil law has not been codified. Besides a code there are other sources of civil law too. The main source is legislation adopted by the legislature. The decrees of the government may also contain regulations concerning civil law. The same refers to custom and usage. To some extent legal texts (jurisprudence and doctrine) and commentaries are also relevant. The judiciary may furthermore play a role although the role of the courts as lawmaking institutions is the subject of some controversy. It is generally accepted that court decisions cannot be regarded as a formal source of law. As a result case law generally does not have binding force. A distinction must be drawn between the *de iure* and *de facto* influence of court decisions. These remarks apply to the law of Central and Eastern European countries as well.

III The process of codification in Soviet Russia and the Soviet Union

The codification of law in the Soviet Union took place in different stages. The first period began with the seizure of power by the Bolsheviks ("Bolshevik Revolution") in 1917 and covers the so-called Bridge Years as well as the New Economic Policy period (1921-1928). The second period begins with the first Five-Year Plan in 1929/1930 and runs until the mid-1950s. The third period begins in 1957-1958 with the enactment of a number of federal (all-union) principles of legislation.

a) Codification process in Soviet Russia and later in the Soviet Union:

1 The first two Soviet codes of law were enacted in 1918. During the following years no further codes were adopted. The introduction of the New Economic Policy in 1921 provided a major stimulus to codification in the RSFSR. It resulted in the enactment of five codes in 1922.[28] The Civil Code of 1922 is largely based on the German Civil Code and to some extent on the

27 *Einführungsgesetz zum Bürgerlichen Gesetzbuch* (*EGBGB*).
28 The RSFSR Criminal Code, the RSFSR Land Code, the RSFSR Labour Code, the RSFSR Statute on Court Organisation and the RSFSR Civil Code.

Swiss Civil Code – in particular on the revised version of the Swiss Code of Obligations.

Following the tradition of the Western European civil-law countries Soviet codes are divided into a General Part, containing the general provisions, and a Special or Specific Part. A particular feature of Soviet legislation is that in some cases the general provisions are enacted separately. In 1919 the Principles of Criminal Law and the Principles of Civil Procedure of the RSFSR were enacted; both containing solely the general principles of a particular branch of law. The first Soviet Constitution of Soviet Russia, the RSFSR Constitution, was adopted on 10 July 1918.

The first Constitution of the Soviet Union[29] was adopted on 31 January 1924 and established a division between the federal and union Soviet republics government concerning competence in the field of legislation. The all-union government was authorised to enact general principles of legislation applicable throughout the entire territory of the Soviet Union. The union Soviet republics were empowered to adopt detailed acts in accordance with the general principles.

2 As a result of the end of the New Economic Policy and the beginning of the first Five-Year Plan a centrally planned, command economy was introduced into the Soviet Union. It seemed very logical to expect that the introduction of the centrally planned and commanded economic system would result in the enactment of new codes in the country. However, no new civil code was enacted. The most important legislative enactment was the second Constitution (so-called Stalin Constitution) of the Soviet Union adopted on 5 December 1936. To some extent, the central government urged the all-encompassing codification work. A number of Commissions were set up to draft new codes. A new Land Code and a new Water Code of the RSFSR were drafted. Furthermore, several drafts of all-union civil and criminal codes were circulated. In 1938 the *Act on Court Organization* was promulgated at all-union level. However, throughout the remaining period no other acts were adopted.

3 Due to the outbreak of World War II the codification process came to a standstill. Codification was further delayed in the immediate aftermath of World War II. Only in 1958 were new Federal Principles, also called Fundamentals Relating to Codification, promulgated. The Federal Principles were legal rules meant to be implemented directly by the courts.

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29 Promulgated on 30 January 1924.

The USSR Principles of Criminal Legislation, Principles of Criminal Procedure and Principles of Court Organization were adopted. In 1961 the USSR Principles of Civil Legislation and the Principles of Civil Procedure were promulgated. A thirty-year gap had to be bridged. Throughout the 1960s and 1970s the codification of Soviet laws both at federal and union-republic level continued. In 1977 a new Constitution, the so-called Brezhnev Constitution, was adopted. In 1978 every Union Soviet Republic enacted its own constitution. In 1972 the USSR Ministry of Justice began the preparation of a Systematic Collection of Legislation in force in the Soviet Union.[30] The *Sobranie* was supposed to serve as a basis for compilation of a Digest of Laws of the Soviet Union[31] scheduled for publication in 1981-1985, and for the Digest of Laws of the fifteen-member Soviet Republics planned for the period 1982-1987.

b) Constitutional regulations concerning the enactment of codes in Soviet Russia and after 1922 the Soviet Union:

1 The Constitution of 1918 (subsection 49/n) empowered Parliament to deal with the question of state legislation comprising judicial, civil and criminal legislation.

2 The Constitution of 1924 introduced the Soviet-style federal system of government. A distinction was made between the competence of the federal and union-republic government in the field of legislation. According to article 1 of the Constitution the federal (central) government was empowered to issue guiding principles of legislation containing the general basis and provisions relating to a particular branch of law (civil law, criminal law, law of civil procedure, law of criminal procedure). On the basis of these principles the Constitution of the union-republics provided for the enactment of the various codes. For example, article 17(h) of the Constitution of the RSFSR provided for the enactment of the codes of the RSFSR.

A number of areas of legal regulation remained the exclusive competence of the federal (central) government. For instance, all-union codes regulated customs, merchant shipping, benefits to servicemen and air. Exclusive federal authority to legislate over foreign trade, transport and the armed forces was maintained.

30 *Sistematicheskoie Sobranie djeistvujuschego zakonodatelstva SSSR*.
31 *Svod Zakonov SSSR*.

According to the Constitution of 1936 the exclusive competence of the federal government was widened to include authority to enact all-union civil and criminal codes.[32] This provision, however, had no practical effect. The Constitutions of the union-republics enacted after the Constitution of 1936 no longer specifically mentioned codes.[33] At that time the idea prevailed that all-union codes had to replace those of the Republics.

In 1957 an amendment to the Constitution of 1936 was adopted. According to this amendment the federal (central) government had to provide only for the general principles of civil and criminal legislation.

The Constitution of 1936 did not introduce major changes. The Constitutions of 1924 and 1936 contained an exhaustive list of those branches of law in which federal principles could be enacted. The Constitution of 1977 mentions only the federal authority to "establish fundamental principles of legislation of the USSR and the union-republics".[34]

The federal authority to legislate remained in certain fields. For instance, foreign trade was a field explicitly mentioned. But there were also "other questions of all-union importance".[35]

c) Similarities between Western European countries and the Soviet Union regarding codification:

1 There was a division between the General Part and the Special Part of the codes (technical similarity).

2 Some areas remained uncodified (eg most areas of administrative law).

3 There was supplementary legislation (special acts, statutes concerning those fields not covered by the codes).

d) Differences between Western European countries and the Soviet Union in relation to codification:

1 In the Soviet Union there was no commercial code, although the idea of a two-sectorial law[36] prevailed since 1927.

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32 A 14[m].
33 A 19 of the Constitution of the RSFSR.
34 A 73[4].
35 A 73[12] of the Constitution of the RSFSR.
36 *Dvuchsektornoje pravo*.

2 There were several branches of law.[37] The traditional division between public law and civil law was ignored. This division, however, was rather artificial.

3 In the Soviet Union the decisions of the Supreme Court, that is the highest ranking tribunal, were considered binding on all lower courts. There were also "guiding explanations"[38] binding on all lower courts.

4 According to the Constitution the Supreme Court was empowered to initiate legislation in the Supreme Soviet of the USSR.

5 There were differences concerning the social content of the text of the codes. For example, article 16 of the Criminal Code of the RSFSR invalidated any transactions effected against socialist state and public interests.

6 The preambles of the codes in the Soviet Union had a decidedly ideological flavour. For example, the Code on Marriage and the Family of the RSFSR included a phrase referring to the basic task of the Code to "strengthen the Soviet family based on the principles of communist morality" and "the children's preparation to actively participate in the construction of a communist society".

e) Causes of similarities between Western European countries and the Soviet Union in relation to codification:

1 The legal tradition of pre-revolutionary Russia was basically part of the Western European legal traditions. That is why Soviet law – on the surface at least – displays many similarities to that of Western Europe.

2 The Russian Code of Criminal Procedure of 1864 was mostly an imitation, that is a Russian version, of French and English criminal procedural law.

3 The Judicial Reform of 1864 established a new legal ethos in Russia. The professional judiciary became independent of the executive branch of power. A professional Bar and a modern system of judicial procedure, including trial by jury in criminal cases, were established.

4 Some Russian lawyers were trained at Western universities. Worth mentioning are close contacts with the Law Schools of Edinburgh and Glasgow

37 Family law, labour law, law of the farmers' cooperatives etc.

Universities in Scotland, a country whose legal system is based on civil law. During the first half of the nineteenth century a number of outstanding young Russian lawyers were trained at several German universities, in particular Berlin, Heidelberg and Leipzig. The German Historical School of Jurisprudence (*Historische Rechtsschule*) was particularly influential in the training of Russian lawyers. Friedrich Carl von Savigny, Georg Friedrich Puchta and Karl Adolf von Vangerow deserve special mentioning in this regard.

In the second half of the nineteenth century a special institute for training Russian lawyers was established in Berlin which became affiliated with the Berlin University Faculty of Law. The Draft Civil Code of 1905 as well as the Draft Law of Obligations[39] of 1913 was the work of lawyers trained in Berlin in the "Imperial Russian Seminar of Roman Law" established in 1887 which was affiliated with the Berlin University Faculty of Law. Many influences, in particular of German and Swiss legal thinking, could be perceived in the Soviet Union. These influences are still strongly present in the new Civil Code of the Federal Republic of Russia.

On 31 May 1991 the Federal Principles (Fundamentals) of Civil Legislation were promulgated in the Soviet Union. These Principles remained in effect after the demise of the Soviet Union in the Federal Republic of Russia. They served as basis for the new Russian Civil Code. The new Russian Civil Code was, like the new Dutch Civil Code, piecemeal legislation. The first part (book), governing the General Part, the law of property (including other real rights – *iura in re*) and the general part of contracts, was promulgated on 21 October 1994 and put into effect on 1 January 1995. The second part, regulating special contracts and delictual liability, was promulgated on 22 December 1995 and came into effect on 1 March 1996. The third part, relating to the law of succession and private international law, was adopted in November 2001 and became effective on 1 March 2002. The Russian Civil Code of 1964 is still to some extent (eg as far as intellectual property is concerned) in effect. The new Russian Civil Code, like its predecessors, follows Pandectist traditions with regard to both structure and terminology. The Code contains in its General Part, among the various legal entities, the basic regulations relating to business associations. As a result, the authors of the Code followed the monistic concept to a limited extent. The detailed regulations regarding corporations are to be found in separate laws.

38 *Rukovodjashchije razjasnenjia*.
39 The revised Fifth Book (*Pjataja Kniga*) of the Draft Civil Code.

IV Characteristics of private/civil law

In the domain of legal phenomena, a measure of autonomy may be observed that is due to the relative independence of these phenomena from the given socio-economic formation. This autonomy is also partially due to the survival or continuity of old legal traditions.

a) The above-mentioned autonomy of legal phenomena may be observed substantially on two levels. On the one hand, there is continuity, that is a process of historical continuity – at least along general lines – of several legal institutions and constructions (one thinks, eg, of the concept of property). The Civil Code of the RFSFR[40] defines, for example, an owner's rights as follows: "An owner may be in possession of a thing and make use of it and dispose of it within the limits specified by the law." The same definition relating to an owner's rights may be found both in article 19 of the General Principles of the Civil (Law) Legislation of the Soviet Union promulgated in 1961 and in article 480 of the new Civil Code of the Federal Republic of Russia. The similarities between the socialist concept of the contents of property and that of the outstanding Roman jurist Ulpian, are obvious.[41]

b) On the other hand, one may speak of continuity in the use of a number of legal terms (eg various types of contracts). In substance this continuity is based on two factors: First, socialist civil law was also substantially a law based on commodity-money relationships, and secondly private property[42] also existed (certainly with substantial limitations) in the legal system of the former socialist countries. The existence of personal property or in other terms – in a concept adapted more from the legal-dogmatist viewpoint – the existence of a citizen's property, falls within this domain. The basic characteristic of the concept of personal property or that of a citizen is the fact that the goods constituting the category of property of the socialist type directly serve or favour the satisfaction of the personal and family (economic) needs of the citizens.

c) In the countries of Central and Eastern Europe, the legal traditions that are in substance based on Roman law should not be neglected. To date in legal literature and on a doctrinal level this aspect has nonetheless been largely neglected. Suffice it to think of Paul Koschaker's *Europa und das*

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40 1964 (a 92).

41 *Plena in re potestas* – whose elements are as follows: *uti* (the use of, or extraction of all useful qualities from, the thing (*res*), *frui* (the collection of fruits, both natural and economic), *habere* (having the thing in patrimony), *possidere* (the possession of the thing, that is the actual or economic holding of a thing) and *abuti* (the capacity to sell, donate, consume, or destroy the thing).

42 *Častnaja sobstvennostj.*

römische Recht,[43] Francesco Calasso's *Medio Evo del diritto*[44] and Franz Wieacker's *Privatrechtgeschichte der Neuzeit.*[45] The authors of these extremely important works completely omit the development of law in Central and Eastern Europe as though such regions did not exist. This "negative" approach is that much more troubling in that Roman-law traditions of former socialist countries were and are present at legislative level – and not only at, for example, the theoretical (doctrinal) or jurisprudential level.

d) One should also consider the socialist-type RSFSR Civil Code.[46] From a legal-dogmatic viewpoint it is, in various aspects, similar to the Russian Draft Civil Code.[47] The Russian Draft Law of Obligations[48] was submitted to the State Duma on 13 October 1913. It should be noted that the Russian Draft Civil Code strongly resembles both the German Civil Code of 1896[49] and the second, revised version of the Swiss Code of Obligations of 1911, which became effective with the Swiss Civil Code on 1 January 1912. This is due in particular to the fact that a significant number of outstanding Russian legal experts studied in Berlin, where the Russian Imperial Seminar of Roman Law,[50] which was affiliated with the Berlin University Faculty of Law, was established in October 1887 and existed until 1896.

e) The Civil Code of 1922 of Soviet Russia – the Soviet Union was established two years later, in 1924 – promulgated during the New Economic Policy, encompassing the period between 1921 and 1928/1929, is of importance too. Alexej Grigoriević Gojkhbarg (1883-1962) was the principal compiler of the first socialist Civil Code. A new draft of the Civil Code was prepared by Gojkhbarg two years later in 1924.

It is worth mentioning that Stuchka and Amfiteatrov also prepared a draft Civil Code in 1931. Both drafts aimed at re-codification of civil law at federal level. The union Republics were supposed to have their own civil codes since their former competence to codify had been transferred to the Federation by virtue of the 1924 Constitution with regard to the Basic Principles of Legislation. It needs to be mentioned that the Soviet Union at federal level had no civil code.

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43 1947.
44 1954.
45 1952 (2nd rev ed) 1967.
46 *Grazdanskij Kodeks*. It was promulgated on 31 October 1922 and became effective on 31 January 1923.
47 *Grazdanskoje ulozenije – Proiekt*.
48 *Grazdanskoje ulozenije – Proiekt, Kniga pjataja* (*Objazat'elstvennoe pravo*).
49 Effective 1 January 1900.
50 *Kaiserlich-Russisch Romanistisches Seminar*.

The Civil Code of Soviet Russia served as a model code for all union Republics. The 1936 Constitution included a section on the necessity of drafting codes. Ginzburg drafted an Economic Code in 1933. Amfiteatrov drafted a Law of Contracts in 1934. Amfiteatrov and Krylenko drafted a modified version of an Economic Code in 1936. Mikolenko drafted a Civil Code in 1938. The 1947 and 1948 drafts of a Civil Code, as well as the completely-revised 1951 draft, were also prepared on the basis of the 1940 concept. Pre-codification was removed from the agenda in 1952.

The general view of leading Soviet authorities on the first post-war draft of the Civil Code was that it will not only reflect the civil law of victorious socialism, but will also be an example to the countries of people's democracies progressing from capitalism towards socialism.

The 1922 Civil Code influenced the 1961 Principles (Fundamentals) of Civil Legislation of the Soviet Union and in consequence also influenced various codes of the fifteen constituent Republics – one thinks, for example, of the 1964 Civil Code of the RSFSR. The Civil Code of 1922 containing 435 sections was prepared in a record time of less than four months. The Code is subdivided into four parts. The General Part (General Provisions) of the Code encompasses such topics as legal capacity, (natural) persons, juristic persons (corporations), legal acts (transactions) and the statute of limitations. Part Two (Real Rights) deals with ownership, mortgage and other *iura in re aliena*. Part Three deals with obligations, namely contracts and torts, and Part Four with succession. A separate statute enacting the Code contains transitory provisions in nine sections.

f) The Fundamentals[51] were adopted at union level in 1961. These Fundamentals had normative character since they were implemented by the courts.

g) The Civil Code of the RSFSR of 11 June 1964, consisting of 569 articles and following substantially the Pandectist system, has eight parts: General Principles, Law of Property, Law of Obligations (including general principles of obligations and specific types of obligations), Copyright Law, Right to Discoveries, Law of Inventions, Law of Succession and finally Legal Capacity of Aliens and Stateless Persons, the Application of Civil Legislation of Foreign States and International Treaties and Agreements. Romanist

51 Also called General Principles of Civil Legislation (*Osnovy Zakonodat'elstva Graždanskava Prava*).

influences are naturally also observed in relation to civil codes of the other former European socialist countries.

V Various types of private/civil law codifications in former socialist countries

In this section I would like to point out in a more or less schematic way the variety of codification efforts regarding the civil law of former socialist countries. Legislation on civil law may be divided into four essential groups:

a) Socialist civil codes: USSR, Czechoslovakia (1950 and 1964), Poland (1964), Hungary (1959) and Albania (1981). The promulgation of the 1950 Czechoslovak Civil Code was necessary because of the existence of different legal systems and traditions within Czechoslovakia. For many centuries the Czech (and Moravian) part of the country was under the influence of the Austrian General Civil Code[52] of 1811, whereas Slovakia, being part of Hungary until 1918/1919, was dominated by Hungarian customary law. However, commercial law was codified in 1875. Substantial parts of civil-law matters, like tutorship and curatorship, parts of family law and intellectual property, were also regulated by legislation.

b) Socialist special laws – no comprehensive civil code: Bulgaria. This country, which had no comprehensive Civil Code prior to World War II, had the following special laws: Law of Succession (1949), Law of Persons and the Family (1949), Law of Obligations and Contracts (1950), Law of Property (1951), Law of Economic Organizations (1970) and Law of Citizens' Property (1973).

c) Old codes: In Romania the 1864 Civil Code, which was patterned after the French Civil Code (1804) and the Draft of the Italian Civil Code of 1865, has uninterruptedly been in force, at least in theory, with various modifications[53] throughout the entire socialist political and economic period. Moreover, the 1865/1900 Code of Civil Procedure and the 1887 Commercial Code also remained in force, the latter, in particular, with significant modifications. Since, obviously, the Romanian Commercial Code of 1887[54] was designed to regulate the commerce of a capitalist state, it could no longer regulate the planned economy-related legal relations arising between socialist economic organizations (state owned enterprises). Thus, to give only one typical

52 *ABGB – Allgemeines Bürgerliches Gesetzbuch*.
53 Of special importance are the 1948 and 1954 modifications.
54 MO no 31 of 10 May 1887.

example, the Code was unsuited to state and cooperative trading since its aim was to satisfy the needs of workers and to raise their standard of living. During the socialist period such trading was consequently regulated by civil law since its basic principle of state ownership of the means of production was peculiarly appropriate to it.

Nevertheless, certain portions of the Commercial Code were still applicable even though their socio-economic content had been changed: for example, the Code's provisions for contracts of transport as supplemented by the legal rules on railways;[55] and road transport is mainly dealt with by the Decision of the Council of Ministers and air transport by the Air Code of 1953. The provisions of the Commercial Code also apply to maritime trade and navigation in so far as they have not been amended by Decree 40 of 1950[56] relating to the merchant marine and by Decree 41 of 1950[57] dealing with the policing of the sea and river navigation.

In the German Democratic Republic the German Civil Code was partly in effect until 1 January 1976. In 1965 a new socialist Family Code was promulgated. It should also be noted that the *Vertragsgesetz* (Law on Contracts) of 1965, which was replaced by a revised *Act of Contracts* in 1982, regulated the socialist economic sphere. In this respect it is worth mentioning that outside Europe, in Cuba, a new socialist Civil Code entered into force on 12 April 1988. It has 547 articles.[58]

d) Particular legal systems: In Yugoslavia, for historical reasons, there was no civil code either at federal level or at the level of the national (constituent) republics. It should be taken into consideration that in Croatia and Slovenia the Austrian General Civil Code was in force, in Serbia the 1844 Civil Code of Austrian inspiration and in Montenegro the 1888 General Code of Property consisting of 1031 articles also assumed the function of a Civil Code.[59]

After 1946 the following basic laws, having significance also in the field of Private/Civil law, were promulgated:

1 The 1974 Constitution (comprising 406 articles), relevant also in the field of civil law.

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55 Regulations for Railways 1929 as subsequently modified.
56 BO no 11 of 14 Feb 1950.
57 *Ibid*.
58 The Spanish *Código Civil* of 1888/1889 still substantially in effect in Spain has 1975 articles.
59 The Code drafted by Baltazar Bogišić (1834-1908).

2 The 1976 Law on Associated Labour, that is the "Code of Self-management", comprising 671 articles.

3 The 1978 Law of Obligations. This law was based on the Draft Law of Obligations and Contracts published in 1969, authored by the Mihailo Konstantinovic. The draft was drawn upon in particular the Swiss Law of Obligations and Book IV (On Contracts) of the 1942 Italian Civil Code.

4 The 1980 Law of Basic Property Law Relations.

5 Legislation regarding family law and law of succession came within the authority of the six constituent republics.[60]

6 The 1988 *Act on Economic Relations* was the first attempt to introduce a market-oriented economy.

In Yugoslavia there was a trend to bring about a unified legal system only at the initial phase, that is during the interwar period (between 1919 and 1941). Along the lines of the decentralised political system, Yugoslavia became a federal state in 1974 in the real sense of this term. It has to be noted that the previous 1963 Constitution had lain down the legal bases of the federal government. Yugoslavia tried to decentralise its legal system. As a result it became necessary to establish a set of interlocal norms of conflict of law within the country.

e) All socialist civil codes are concerned with civil law in its most restrictive sense. These codes exclude family law, labour law, relations regarding incorporeal goods, land law and cooperative agricultural law from their domain. However, a great part of the so-called economic relations are regulated by Civil Codes, with the exception of the Czechoslovak Civil Code of 1964 and that of the German Democratic Republic of 1975.

VI The problem of property rights

a) The success of privatisation depends, to a considerable extent, on the reform of property rights in the countries of Central and Eastern Europe. The well-known difficulties relating to joint ventures with Western participation were linked, in particular in the countries of the former Soviet Union, to the fact that

60 Serbia, the only republic comprising two autonomous regions, namely Voivodina and Kosovo, Croatia, Slovenia, Montenegro, Bosnia-Herzegovina and Macedonia.

there was no clear concept of property rights in these countries. In the then existing Soviet Union the amendments to the 1977 Constitution did not solve that problem. In some of the countries of the Commonwealth of Independent States there remains a reluctance to adopt private property[61] as the most important form of ownership. The relationship between public and private property is still by no means clear. As long as the debates relating to the cooperatives and the local units of government have not been solved satisfactorily, the issue will not be settled.

In the Federal Republic of Russia there was much debate whether to insert trust ownership,[62] patterned after the Louisiana Civil Law Trust, into the text of the Civil Code.

b) The reform of property rights in Central and Eastern Europe includes: First, the regulation relating to the ownership system in a normative way (adoption of declarations is not viable); secondly, the definite recognition of the idea of pluralism of the various forms of ownership including equal protection of all forms of property; and, thirdly, a set of substantial guarantees against state interference.

c) The comprehensive reform of property rights is an essential part of the general overhaul of the legal system of the countries of Central and Eastern Europe. The relationship between public law (*ius publicum*) and private law (*ius privatum*) has to be the object of comprehensive reconsideration. Emphasis needs to be laid on the German experience (State Treaty). Some remarks on the "socialist" antecedents relating to this relationship: The origin of the restriction concerning property rights in the Soviet Union (Soviet Russia) dates back to the instruction of Lenin to the compilers of the Civil Code of 1922.[63] This heavily ideologically-tainted concept of law should be avoided in Central and Eastern Europe. Section 1 of the Russian Civil Code of 1922 which was intended as a kind of "Damocles' sword" over property rights, cannot be

61 *Častnaja sobstvennost*.
62 *Doverit'ialnaja sobstvennost*.
63 "We do not recognise any 'private' thing; with us, in the field of economics, there is only public, and no private law. The only capitalism we allow is that of the State … . For this reason, we have to widen the sphere of state interference with 'private' legal relations, and to enlarge the right of the State to abolish 'private' agreements. Not the *corpus juris Romani*, but our revolutionary consciousness of Justice ought to be applied to civil law Relations" (letter written by Lenin in 1918, addressed to Kursky, the then Deputy People's Commissar of Justice of Soviet Russia).

restored.[64] This approach would once again lead to the victory of totalitarian ideas over law.[65]

d) Property rights need an appropriate environment enabling owners to dispose freely of their property. The mere recognition of equal protection of private property by law is by far not enough. The concept of ownership as known in Roman law must be reintroduced in terms of a right encompassing *plena potestas* as opposed to the enumeration of the elements of ownership (possession, disposal etc). The traditional concept and structure of property must be (re)estabilished. If the above-mentioned requirements are met, the transformation process from a command economy to a market-oriented economy can be carried out.

VII The question of codified economic law

a) In the Soviet Union the issue of having a separate economic code has been discussed since 1927, that is after the New Economic Policy started to wither away. Stuchka, President of the Supreme Court of the RSFSR between 1923 and 1932, launched the idea of the creation of a two-sectorial law.[66] In terms of this concept an independent economic law (ie economic-administrative law)[67] was to be created in order to emphasise the contrast between the "old", "bourgeois", "abstract and unequal" civil law and the new tendentially "concrete and equal" socialist law. The idea of the promulgation of an autonomous economic code was definitively rejected in 1961, the year in which the Fundamentals of Civil Legislation was promulgated. The rejection was due to the prevailing concept of adopting civil-law regulation for all ownership relationships. The same civil-law regulation should govern property relationships between citizens as well as between citizens and different types of economic organizations, most of which was state run. Nonetheless the economic contract[68] was usually used in practise. One may define economic contracts as contracts which are planned or unplanned and concluded only by soviet organizations, and directed towards economic goals.

b) An Economic Code in the proper sense of the term entered into force on 1 July 1964 in Czechoslovakia. The new Czechoslovak Civil Code, which

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64 "Civil rights are protected by the law unless they are exercised in a sense contrary to the economic and social purposes for the sake of which they have been established" (a 1 of the 1922 Civil Code).

65 Cf Stuchka's well-known view that communism means not the victory of the socialist law but the victory of socialism over law.

66 *Dvuchsektornoje pravo.*

67 The term *khozjajstvennoe pravo* was in use after 1931.

68 *Khozjajstvenny dogovor.*

replaced the Civil Code of 1950, entered into force on 1 April of the same year. Czechoslovakia was the only socialist country where the idea of a separate economic code prevailed. The International Trade Code of 1964 regulated foreign commerce-related economic relations. The 1950 Civil Code[69] the first socialist Czechoslovak Civil Code, regulated "economic contracts" in a general way. According to this Code a special act was to regulate the legal aspect of relations between socialist economic units (mostly state enterprises). A distinct codification regarding the economic law was foreseen by the Constitution of 1960, providing the constitutional framework for this particular type of regulation.

c) In the German Democratic Republic the situation in this domain was slightly different. From 1969 to 1970 the East German doctrine abandoned the idea of giving life to an independent economic code. It is, however, obvious that there was some autonomy in this sector of the legal system. There have also been some doctrinal views with an official character.[70] The chief theoretician of the concept of the autonomy of economic law was Heinz Such (1910-1976), Professor of Civil Law and Economic Law at the University of Leipzig. The *Vertragsgesetz*[71] of 1965 was, in practice, an Economic Code. In 1982 the *Vertragsgesetz* was replaced by a new, largely revised Act. As a result, in the German Democratic Republic, commodity exchange (*Warenverkehr*) between citizens, commodity exchange between state enterprises, and foreign trade[72] were regulated separately.

VIII Principal characteristics of the Hungarian Civil Code of 1959

Hungarian civil law was not codified, and consequently court practice was very important. Judges often took into consideration foreign, in particular Austrian, rules when deciding cases.

The Hungarian Civil Code[73] of 1959, which entered into force on 1 May 1960, had the following important characteristics:

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69 *Obcansky zakonik*.

70 Eg, Walter Ulbricht's proclamation to the VII[th] Congress of the East German Communist party (*Sozialistische Einheitspartei Deutschlands*) held in April 1967.

71 *Gesetz über das Vertragssystem in der sozialistischen Wirtschaft* (Law on Contracts, ie Law on Contractual System in the Socialist Economy).

72 See the *Gesetz über internationale Wirtschaftsverträge* (Law on International Economic Contracts) of 1976.

73 *Polgári Törvénykönyv* abridged *Ptk*.

a) It followed a unified concept of civil law.

b) Regulation regarding socialist property was very detailed.

c) It contained few definitions and programmatic, aspirational norms, or in other words policy declarations, in contrast with the 1975 Civil Code of the German Democratic Republic. Another characteristic feature of the legislation of the German Democratic Republic was the abundance of preambles added to laws. Almost one fifth of the text of laws adopted in the German Democratic Republic consisted of preambles. This *per se* underscored the ideological nature of the legislation of the defunct German Democratic Republic.

d) The operative norms tended to regulate all legal relations in detail. This was in contrast with the 1964 Polish Civil Code[74] which more substantially regulated the legal relations that fell within the domain of civil legislation.

e) The Hungarian Civil Code did not adopt the notion of the juridical act (*Rechtsgeschaft*) which is one of the basic notions of the German Civil Code. The Hungarian Civil Code also disregarded the General Part of the Pandectist model viewing it as too abstract. This also held true for the Draft Hungarian Civil Code[75] of 1928.

f) The Hungarian Civil Code implicitly accepted the category of "real rights" (*iura in rem*). The Book on Ownership devoted a separate chapter to the rights of utilisation. This chapter regulated the classic real rights of enjoyment, namely usufruct, use and servitude as well as the new forms of use.

The Hungarian Civil Code underwent various modifications[76] due to the economic reforms initiated on 1 January 1968. The Code was "depoliticised" after far-reaching political and economic changes commenced in 1990.[77]

74 *Kodeks cywilny*.
75 *Magánjogi Törvénykönyvjavaslat* abridged *Mtj*.
76 In 1967, 1977, 1981, 1984, 1985, 1986, 1987, 1988 and 1989.
77 The most important changes took place by means of statutory modification of the Civil Code in 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 2000, 2001, 2002, 2003, 2004 and 2005.

IX The question of economic contracts

The union of central direction and local initiative was achieved by means of economic contracts (*Planverträge*) concluded by socialist economic organizations (predominantly state enterprises) which had to implement the five-year plan imposed on them by the state.

Decree 265 of 1949[78] dealt with the obligatory character of written contracts and regulated payment between enterprises and economic organizations. Decision 524 of 1951 of the Council of Ministers dealt with the measures necessary to regulate the performance of contracts. Inland contracts of supply were also regulated by binding conditions of contracts and binding administrative regulations which were laid down in 1955. Other matters were dealt with by special administrative regulations of an obligatory nature. The aim was to improve these contracts by making them easily adaptable to economic needs so as to ensure a speedier and more effective achievement of the five-year plan's objectives.

On the one hand, if a planning act imposed on named socialist organizations a particular task to be accomplished, the duty to enter into and perform a contract and the period within which the contract was to be performed, it was called a "planned contract". On the other hand, if the parties themselves decided upon the task to be accomplished in the light of the relevant part of the state plan which fixed only global data, such as the value or the quantity of goods or services to be produced by them, then the contract freely entered into by them was known as a "regulated contract".

The principal aim of economic contracts was to provide a detailed and concrete means of carrying out the plan in accordance with the specific needs and capabilities of the parties. The plan was thus put into action by these contracts and at the same time the parties were associated with the plan.

Chapter XXXV of the Hungarian Code − formally abolished in 1977 but ineffective from 1 January 1968 − referred to economic contracts. This chapter figured in the special part of obligations, but from a legal-dogmatic viewpoint should have been included in the general part of obligations.

Prior to 1968 the economic plan was a fundamental and obligatory law. Socialist economic organs had to regulate themselves strictly according to the plan and the directives issued by superior state-authority. After the introduction

of the new system of economic direction, called the "New Economic Mechanism", the State Economic Plan became, in practice, a general and comprehensive directive. State enterprises and the other organs of state enterprise activity obtained an important measure of independence. The recipients could consequently give life to their relations according to their own evaluations.

From a legal point of view before 1968 (a) the unity of contracts was very superficial; and (b) the ordering of contracts adopted in practice was (i) commodity-money relations, and (ii) relations not based on mercantile exchanges.

After 1977 the logical and traditional ordering of the various types of contracts was re-established. Contracts are no longer generally related to a particular form of property. Parent subsidiary relations between state enterprises have the character of mercantile relations.

Hungarian civil law knew the following forms of contracts relative to socialist economic organs: supply contracts, contracts for acquisition of warehouses, project contracts, enterprise contracts, construction contracts and contracts for development. This peculiar model was due to the particular requirements of relations among state enterprises and contracts between them.

The most important consequences of economic reform in the legal field were the re-establishment of legal equality between the contracting parties on the one hand and the large measure of freedom of contract on the other hand. Due to the modification of the Civil Code a wide degree of autonomy in contractual relations, basically along the lines of sections 1104 to 1134 of the French Civil Code, was acknowledged. It must be stressed that the economic contract, the most typical legal institution of the command economy, was not a contract in the proper sense of the term, given the lack of consent (*consensus*) between the contracting parties. The economic contract was rather an administrative act.

X Concluding remarks

One of the most important tasks facing the European Union today is the harmonisation of law within the member states. The Maastricht Treaty on European Union considerably extends the competences of the European Union in the field of legal harmonisation. Like environmental, labour and tax law, the

78 BO no 40 of 25 June 1949.

so-called community private law is coming increasingly to the fore. The most Europeanised area of private law is company law. As to other aspects of private law a wide range of European Communities directives cover, for instance, product liability, commercial agent law and software copyright law. In the field of labour law the relevant directives concern employer-insolvency, equal employment opportunities and transfer of undertakings.

In compliance with articles 67 and 68 of the Europe Agreement signed by the European Communities with the eight new member states geographically located in Central and Eastern Europe, these countries had to bring their legal systems into compliance with the European Union law (*acquis communautaire*). In view of the accession on 1 May 2004 to the European Union these eight former socialist states avail themselves of the experience of the harmonisation of law of the present-day member countries of the European Union. This general trend is, however, in compliance with the trend of a return to historical legal traditions. This is the case in particular in Latvia, where the 1937 Civil Code was put into effect with some minor modifications.

At the beginning of the 1990s most Central and Eastern European countries started taking cognisance of the various attempts to harmonise civil/private law in Europe. These efforts were strengthened after 1 May 2004, the day on which the eight former socialist States in the European Union gained full membership. As a result, various ways to harmonise civil/private law in Europe, and not only in the 25 member states of the European Union, are mentioned.

A resolution[79] of the European Parliament of the European Communities required that Member States take steps toward the codification of European private law. Pursuant to this resolution the European Communities established a Commission whose task was to develop a framework for the codification of European law of contract. In 1994, another resolution of the European Parliament[80] called on the Member States to standardise certain sectors of their private law to provide for a uniform internal market. On its 1999 Tampere (Finland) Conference, the European Council discussed the question once again. Conclusion 39 of the Declaration accepted by the European Council in Tampere emphasises the necessity of the harmonisation of the Member States' private law regulations. The European Parliament passed another, third

79 EC OJ C 158.400, 26 May 1989.
80 EC OJ C 205.518, 6 May 1994.

resolution,[81] relating to the approximation of the civil and commercial law of the Member States.

In 1980 a working group, the Commission on European Contract Law, led by Professor Ole Lando, was formed. It was sponsored by the European Council and undertook the task of developing the principles of European contract law. The *Accademia dei Giusprivatisti Europei* in Pavia comprising also Roman law experts, is currently drafting the Code of European Contract Law. The Draft Code is modelled after the Fourth Book of the 1942 Italian *Codice Civile* and the Contract Codes drafted in the 1960s and 1970s in the United Kingdom.

These lengthy efforts of harmonisation, although hopefully not doomed to failure, are not likely to be completed in the near future. This is, at least partly, due to the insistence of the countries to maintain their autonomy in the field of legislation that is to preserve their legal traditions.

81 EC OJ C 255.1, 15 November 2001.