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**CORRUPTION: LEGAL LABYRINTHS  
IN HEAVENLY HELL**

**RIGHT TO PRIVATE PROPERTY:  
CONSTITUTIONAL EVOLUTION**

**LEGAL RELATIONS ON THE INTERNET**

**SOCIALIST PRIVATE LAW:  
OXYMORON OR SPECIAL MODEL?**

**THE INTERPRETIVE APPROACH  
TO INTERNATIONAL LAW: A POSITIVIST VIEW**

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Dear readers,

You are holding in your hands the third volume of the *Kutafin University Law Review* (KULawR). The main objective of this periodical is to spread legal knowledge generated by leading Russian scholars all over the world, especially among English-speaking auditoria. We are making all possible efforts to present it for you in actual, modern and innovative form.

Previous two volumes of the KULawR were published in September and December 2014. They were dedicated to different issues in the fields of constitutional, international and contractual law, international private law as well as theory and history of law. We tried to present them to a wide range of lawyers in Russia and abroad.

The content of this new volume consists of several sections. They cover issues in areas of constitutional law, private law, international law, theory and history of law as well as problems of law and technology. A separate section “Forum” is dedicated to scientific discussions. What’s more, in the third volume we have introduced some new sections concerning role-play and conference review. The new volume has traditionally united authors from different countries.

We hope you will enjoy this new volume of the Kutafin University Law Review. We are looking forward to welcoming you as authors of our periodical. The KULawR is equally open for submissions from well-known scholars as well as talented newcomers. It’s always a good opportunity to make a step together to contribute and share our common ideas.

The best ideas are always welcomed!

All additional information you may find on the web page of the journal at <[www.kulawr.ru](http://www.kulawr.ru)>.

kindest regards,  
Co-editors-in-Chief  
Irina Alebastrova, PhD, Associate Professor  
Paul Kalinichenko, Doctor of legal science, Professor

ARTICLE

## **DEVELOPMENT OF PRIVATE (CIVIL) LAW IN CENTRAL AND EASTERN EUROPE AFTER WORLD WAR II**

*By Gábor Hamza (Hungary)*

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### **Abstract**

*The article analyses peculiarities of civil law in socialist countries. The author also considers problems of adaptation of Central and Eastern European law systems in the conditions of modern market economic reality after socialism upset. The author believes that a Roman-law tradition in the mentioned countries used to be and still is presented at both legislative and theoretical level. Romanist (Pandectist) influence can be observed in civil codes of all socialistic states. There were three different types of civil law codification in those countries. The first of them (USSR, Czechoslovakia, Poland and Hungary) is characterised by adoption of socialist civil codes. The second type (Bulgaria and Albania) is characterised by adoption of several laws relating to the law of property, law of obligations, law of succession, etc. The third type (e.g. Romania) is characterised by conserving its former “bourgeois” Civil Code. Nowadays a major contribution to the development of private/civil law is the ongoing process of European harmonisation of law in those countries of Central and Eastern Europe which became member states of the European Union. Private Law of the Community is increasingly coming to the fore. Today the most “Europeanized” area of private law is a corporate law. But a significant modern trend in the mentioned countries is also so-called re-implementation of the pre-socialistic legislation. In the author’s opinion, the main*

*reason for this phenomenon is the intention to maintain a relative autonomy.*

**Keywords**

*Central and Eastern Europe, private law, civil law, socialist law, legal families, legal traditions, codification of law*

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## I. INTRODUCTION

In the countries of Central and Eastern Europe, legal traditions that are based in substance either on Roman law or Pandectist school have to be taken into consideration. It should be emphasised that in legal literature this aspect has been largely neglected until recently. Koschaker in his work *Europa und das römische Recht (Europe and the Roman Law)* and Franz Wieacker in his *Privatrechtsgeschichte der Neuzeit (History of Private Law in Europe)* completely omitted the development of private/civil law in Central and Eastern Europe. They did not relate this part to Europe.

This approach is even more troubling since a Roman-law tradition of the mentioned countries used to be and is still presented at both legislative and theoretical level. This observation is particularly true in relation to the period after political and economic changes, which took place in 1989/1990. One could consider, for instance, Russian Civil Code of 1922 similar – in various respects – to the draft of Russian Civil Code promulgated prior to an outbreak of World War I based on both German Civil Code (BGB) of 1896 and Swiss Code of Obligations of 1881.

Romanist (Pandectist) influence is also observed in civil codes of other countries of Central and Eastern Europe. The countries of this region can be basically divided into three main groups according to their legal traditions. Group “A” comprises countries of former Soviet Union (USSR), former Czechoslovakia (currently Czech Republic and Slovakia), Poland and Hungary, which are characterised by adoption of socialist civil codes. Group “B” is characterised – like Bulgaria and Albania (until a promulgation of the Civil Code in 1981) – by having adopted special laws relating for instance to the law of property, law of obligations, law of succession, etc. Group “C” (e.g. Romania) is characterised by conserving its former “bourgeois” (i.e. non-socialist) Civil Code.

A major contribution to the continuity of private/civil law is an ongoing process of harmonisation of law in the countries of Central and Eastern Europe that became member states of the European Union on May 1, 2004. The harmonisation process started in the early 1990s. Special attention must be paid to the Maastricht Treaty on European Union which was signed on February 7, 1992 and entered into force on November 1, 1993. It significantly extended the competences of the

European Union in the field of legal harmonisation. Like environmental, labour and tax law, 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, law of agency (commercial 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 regulations and directives have a binding effect on legal systems of Central and Eastern European countries.

According to articles 67 and 68 of the Europe Agreement (Association Agreement) signed by the European Communities and eight new member states from Central Europe, those states have to bring their legal systems into compliance with the European Communities/European Union law (*acquis communautaire*).

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 for Czech Republic, Hungary and Poland had both in their structure and legal regulations a return to Roman Law Tradition. In this process, a return to Pandectist legal traditions is of particular significance. The same applies to all four parts of the new Civil Code of the Russian Federation promulgated between 1995 and 2006.

## **II. SOCIALIST LAW AS A SEPARATE LEGAL FAMILY**

### **A. INTRODUCTION**

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 a co-founder and Director of the Institute of