| Chapter 9 |

Nationalization, Collectivization, Reprivatization, and Privatization in East Central Europe: Arguments for a General Theory

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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. Following the regime changes, a reversion to historical patterns of regulation and then the gradual evolution of civil law took place. We examine the legislative measures for achieving the transition to a market economy. We present in detail the private law implications of the (incomplete and imperfect) restitution of nationalized property and privatization. The chapter presents the general East Central European trends and, to provide specific details, uses Romania's historical and legal evolutions as a case study.

KEYWORDS

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

1. Context

The aim of the current chapter is to present a framework for the analysis of nationalization, reprivatization, and privatization in East Central Europe. For this purpose, it uses 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 property regimes in the Soviet-type dictatorships of East Central Europe.

1 Verdery, 2003, p. 48.

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2. Nationalization

East Central Europe fell into the Soviet sphere of influence after the Second World War. 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 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 notions of capitalism and 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

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.

value-producing 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 society. On the other hand, this 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 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 overachievement 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, 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] A law 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). Work is the duty of every citizen. The state supports all those who work to protect them from exploitation and raise their living standards.

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 31 December 1956, Romanian Television was founded.
17 Art. 12 of the 1948 constitution.

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, 8 894 enterprises, among which 3 600 were of local interest, were immediately nationalized. After nationalization, a new 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;
- 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;

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

- 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]

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. 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 expropriation by reason of public utility (also called the eminent domain in some jurisdictions). 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.[24]

The nationalization that constitutes our focus differs 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

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

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,[25] as well as punitive measures against the '*kulaks*' (relatively well-off smallholder farmers)[26] and crushed 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:

> *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.*[27]

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.[28]

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 through six questions and answers:

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

26 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 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.

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

28 Verdery, 2003, p. 43.

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 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.

When compared to nationalization in a capitalist context, these measures are vastly different. In Western Europe, in general, the nationalization act is 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).[29]

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.[30] 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.

29 Duez and Debeyre, 1952, p. 883. An exception was the act of August 11, 1936, which made the government's nationalization of war industries possible.

30 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.

b) What were the objects of nationalization? We have a general scope determined by the 1948 constitution: means of production. It is 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.

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 of it. 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 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 as coming under private law, they became institutions of a mixed or doubtful nature*…"[31] The nationalization of housing meant that former owners could, if they were lucky, stay on as tenants in part of the flat, sharing their former property with other tenants. Public housing stock and regulated rent led to a nation of tenants.

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 a capitalist context, nationalization also transfers the company's liabilities.[32] In a capitalist context, only shares or stock are nationalized, not the means of production, and not necessarily totally: The state may act simply as one of the shareholders or as a

31 Katzarov, 1964, pp. 95–96.
32 Duez and Debeyre, 1952, p. 885.

majority shareholder.[33] 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. This was a new kind of owner created by ideology. 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.[34] 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, "*nationalisation 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.*"[35] 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.[36] Other reasons can be military or even social imperatives. Moreover, in de Gaulle's own words, there is no reason why Renault should remain nationalized forever, once Louis Renault is dead.[37] Finally, a new undertaking conducted the same activity.[38] Soviet-type nationalization was intended to last forever, being a revolutionary activity, with the aim to fundamentally transform the social and economic.

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 regarding compensation, the nationalization act is decisive. (The necessity of compensation is one of the distinctive characteristics of expropriation in comparison to nationalization). As it was stated, "*nationalisation results in the conversion of private property into collective property with a view to its utilisation in the general interest. Expropriation makes it possible to correct the effects of the absolute character of private property.*"[39]

33 For example, the French aircraft manufacturer *Gnome et Rhône* was nationalized in 1949.
34 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.
35 Katzarov, 1964, p. 141.
36 Ordinance of January 16, 1945.
37 Jacquillat, 1988, p. 16.
38 Katzarov, 1964, p. 181.
39 Katzarov, 1964, p. 147.

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.[40] 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, we do not yet have 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 there existed at the outset a genuine intention to give a certain amount of compensation. In practice, generally, compensation was not given. The rules on compensation had only a declarative effect, not a normative one, and we can see 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 (nonexistent) compensation, for example, those who left the country clandestinely or fraudulently or who failed to return to the country before the expiry of travel documents issued by the Romanian authorities.

The explanation of this approach toward compensation is simple: Just compensation is a measure that would lead to a return to capitalism, essentially a revival of capitalism. Compensation has the effect of preserving the exploiting class. For this reason, real compensation is not possible.[41]

Another set of nationalization acts provide that nationalization should take place without any compensation (e.g., Decree No. 92/1952).

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.

5. 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).[42] As Stalin stated,

40 Decision No. 1421/1948. Published in *Monitorul Oficial* of October 14, 1948.
41 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.
42 Veress, 2020, pp. 368–371.

> *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.*[43]

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 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).[44] 'Voluntary accession' was, in fact, extorted by state violence.

The realization of collectivization took place between 1949 and 1962[45] 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).[46] In agricultural production cooperatives, one of the conditions for acquiring membership was to transfer ownership of all agricultural land to the collective farm.[47] 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*

43 See Farkas, 1950, p. 463.
44 For details regarding persecutions during collectivization, see Kligman and Verdery, 2011.
45 For details, see Gheorghiu-Dej, 1962; Dobrincu and Iordachi, 2005; Oláh, 2001; Kligman and Verdery, 2011.
46 Comisia Prezidențială pentru Analiza Dictaturii Comuniste din România, 2007, p. 238.
47 Lupán, 1972, p. 445.

> *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.*[48]

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.[49]

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 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.[50] This norm provided the general framework for organizing various forms of cooperatives in the agricultural sector.[51] 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

48 Lupán, 1972, p. 446.
49 Gheorghiu-Dej, 1955, p. 213.
50 See Lupán, 1971, p. 1025; Lupán, 1974, p. 563.
51 Lupán, 1987, p. 85.

> *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.[52]

Cooperatives could also exploit state-owned land.

With the establishment of collective farms, small holdings and peasant agricultural production were abolished. Land ownership in favor of collective farms was 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.[53] (Obligations arising toward the state based on contracts of acquisitions were exempted under this provision, of course.)

At the end of the collectivization process, 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.*[54]

52 See Lupán, 1971, p. 1025; Lupán, 1974, p. 563.
53 Lupán, 1972, p. 446.
54 Verdery, 2003, p. 46.

Cooperative law has become an autonomous source of law in Romania and a distinct branch of law.[55]

6. 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 notion of private property, introduced the notion of *personal property*.[56]

Decree No. 31/1954 recognized the civil rights[57] 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.*[58]

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.[59] 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*

55 Lupán, 1980, p. 875; Lupan, 1977.
56 Veress, 2020, pp. 372–375.
57 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.
58 Lupán, 1975, p. 268.
59 Berend, 2008, p. 155.

> *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 other rooms for the entire family. These provisions are applicable only to dwellings in urban areas.*[60]

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, i.e., 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[61] 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*

60 Lupán, 1975, p. 268.
61 For details, see Pop, 1980.

> *alienation of real estate, the land related to it becomes the state's property in exchange 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.*[62]

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, 4000 m²; between 3 and 5 levels, from 4500 m² to 7000 m²; between 5 and 9 levels, from 7000 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).*[63]

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*

62 Lupán, 1975, p. 270.
63 Lupán, 1975, 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.[64]

7. 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.[65]

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.[66] 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 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.

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.[67]

64 Pécsi, 1991, p. 365.
65 Lupán, 1986, p. 172. For similar reasoning with regard to lots of lands, see Lupán, 1988a, 1988b.
66 Savas, 1993, p. 287.
67 Veress, 2020, pp. 371–372.

8. Reprivatization

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 to this question varied.

Following the regime change, reparation for nationalizations accomplished during the Soviet-type dictatorship emerged as a vital issue. In the eyes of many, the ideal solution for reparation was dismantling the effects of nationalization and collectivization altogether through the return of nationalized and collectivized properties to their former owners or their heirs.[68] There were, however, many arguments brought against this position, starting with the impossibility of disregarding legal transformations (governed by *tempus regit actum*), the necessity for continuity, economic reasons, etc. Reprivatization was, at least to a certain extent, possible in the case of agricultural and locative property, and practically impossible in the case of industrial property.

The restitution of agricultural and forest lands took place gradually.[69] Act 18 of 1991 on Agricultural Lands allowed restitution of 10 hectares of land, at most, and no more than 1 hectare of forest between the years 1991 and 1997. Ideological descendants of the former Soviet-type regime wanted to create a transitional system between socialism and capitalism and would not have preferred in any form the restoration of the old, landed class, the 'Hungarian threat' being also often invoked in connection with the restitution of real property in Transylvania. These were the reasons for limiting returned areas. As a result of this measure, from the bodies (lots) of nationalized property with an area exceeding 10 hectares, the original owner (or their heirs) was entitled to the return of an area of a maximum of 10 hectares over the rest of the lot restitutions to other entitled persons also taking place. The Land Act was also meant to accomplish a minor agrarian reform,[70] for which property bodies greater than 10 hectares were utilized. Thus, the land situation described in the land

68 Veress, 2020, pp. 382–384.

69 For an overview, see Verdery, 1996, pp. 133–167.

70 Decree No. 42/1990 on Some Measures to Stimulate the Peasantry ceded to the member of the agricultural production cooperative the land adjacent to the house, which was the member's dwelling, the household annexes, the yard, and the garden. Before the regime change, the property right of the cooperating member was limited to an area of at most 250 m^2, this new norm extending the property right over the entire yard and garden up to an upper limit of 6000 m^2. The subsequent Act 18 of 1991 granted rights to: former cooperating members who had joined the cooperative without assigning land areas or assigning land areas smaller than 0.5 hectares to the cooperative upon joining; those who were not cooperating members but worked for the cooperative (at least for a period of 3 years before the entry into force of the Act) and did not own agricultural land; deportees who did not own farmland; persons who had entirely or partially lost their ability to work due to participation in the December 1989 Revolution and heirs of people killed during the Revolution as well as other people who participated in the Revolution. Upon request, these persons could be granted ownership free of charge of 10 000 m^2 of agricultural land.

books before nationalization was made irrelevant, and the application of subsequent, more permissive rules for restitution became excessively difficult. The principle according to which nationalized lands had to be returned, as far as possible, in the form of their previous lots (instead of granting other lots as compensation) could no longer be observed (there was also very little desire to do so).

The next phase of restitution was initiated by Act 169 of 1997, which extended the upper limit of the areas that could be returned to 50 hectares per family in the case of agricultural land and 30 hectares per family for forested land. Act 58 of 1998 regarding the Legal Circulation of Lands, in turn, provided that the total land area acquired *inter vivos* may not exceed 200 hectares per family. Application of this law has been hampered by the transformation of state agricultural enterprises (which coexisted with agricultural production cooperatives but were much better equipped and considered to be agro-industrial enterprises) into companies, the lands in their possession not being subject to restitution. This rule ensured, for the first time, regarding specific structures developed throughout history for the common management of lands – such as the commonages in the Szeklerland – the possibility of requesting the restitution of lands held jointly and commonly in a state of permanent indivision.

Adoption of Act 1 of 2000 constituted the third phase of restitution, which changed the upper limits set by previous rules: Each previous owner of nationalized (or collectivized) land or the heirs of each such owner acquired the right to the restitution of up to 50 hectares of agricultural land or 100 hectares of pasture located on the old lots initially nationalized (if they were still available). This act introduced the possibility of requesting compensations into the impossibility of restitution of lands in kind.

Finally, Act 247 of 2005 stated the principle of *restitutio in integrum*, although it could not be achieved due to the manner in which the rules of previous restitutions had been implemented. The closing of the restitution process of nationalized immovables was initiated by Act 165 of 2013 and subsequently by Act 168 of 2015, but this process is still ongoing.

Act 112 of 1995 started the process of the restitution of buildings located in the built-up areas of localities, especially in urban areas. This law, however, allowed only the restitution in kind of those residential buildings that were already leased to the previous owner (a Romanian citizen) or their heirs, or which were, at the time, not inhabited by other tenants (Art. 2). Nonetheless, the law allowed all tenants – not just those who were the victims of a measure of nationalization – to buy the nationalized real estate they had rented at an advantageous price (due to its effects, this process was perceived as being a measure to consolidate the benefits of nationalization by these persons, in fact, a re-nationalization in defiance of the previous owners). Clearly, the legislator was not interested in expanding the restitution process in 1995. Act 112 of 1995 prevented the full application of subsequent restitution measures, the end result being a legal quagmire similar to the result of restitution in the case of agricultural immovables. Restitution of nationalized buildings reached its peak in the form of Act 10 of 2001, which allowed a much wider scope of restitution in kind of nationalized buildings. The issue of payment of compensations owed by the state to the former

owners and their heirs for real estate that was impossible to return in kind remains unresolved to date (the state has already spent the equivalent of the price of the real estate purchased by the former tenants, and the cost of the state's behavior to prevent restitution in kind must now, as in the future, be borne by all taxpayers alike).

Resolution of the issue of the restitution of nationalized immovables in the case of churches and national minority organizations, or minority communities respectively, was regulated by special norms (e.g., Government Emergency Ordinance No. 21/1997 in the case of the Jewish Communities, Government Emergency Ordinances No. 13/1998 and No. 112/1998 adopted in the general interest of national minority organizations and churches, Government Emergency Ordinance No. 83/1999 in favor of organizations of national minorities, and Government Emergency Ordinance No. 94/2000 and Act 501 of 2002 for the modification of the latter emergency ordinance, which ordered restitution in favor of the churches). These measures were also only partially implemented. In many cases, the practice of administrative bodies and courts has hampered the application of these normative acts' generally permissive provisions.

In its entirety, restitution of immovables nationalized under different titles or without title resulted in hundreds of thousands of legal disputes, with Romania being repeatedly convicted before the European Court of Human Rights for the violation of property rights. Therefore, this liquidation of the dictatorial past is simultaneously both a success and a partial failure.

9. Privatization

In the case of companies, direct reprivatization was rare in the region. The former companies' assets were so radically transformed due to several decades of industrialization that the former company's essence disappeared. Therefore, it was not possible to restitute something totally different to what had been nationalized; eventually, a compensation mechanism was instituted. However, the economy of the Soviet-type dictatorship based on central planning, on state and collective property, had to be dismantled and transformed into a market economy based on competition and private property, organized according to the principles of a pluralistic, democratic society. The construction of political pluralism and the democratic institutional framework in itself was not easily accomplished, but the process of economic regime change and its central element, privatization, proved to be an even more complex process, with a duration now measured in decades.[71]

This process remains incomplete to this day. "*The central phenomenon of the general change of the socio-economic regime is privatization, for without the domination of private property neither the market economy nor civil society can exist.*"[72] Privatization can be

71 Veress, 2020, pp. 384–389.
72 Sárközy, 1997, p. 19.

considered an end in itself in systems theory and, in actuality, constituted the fire sale of an unimaginable amount of state-owned wealth.[73] Competition between former socialist states, oversupply of goods subject to privatization in the region, the unfavorable conjuncture prevalent in the world economy, lack of capital, legal insecurity that stopped investments, outdated technologies, and destruction of the environment all adversely affected the privatization process in Romania. Given the troubled economies of the Eastern Bloc countries, which have lost access to their markets in the east and were stricken by social problems, and in the midst of a fight against impending economic crisis, there was a tremendous and urgent need for the funds resulting from privatization.

In a more straightforward formulation, enterprises in state ownership had to be sold.

The privatization process in Romania was delayed compared to other Central and Eastern European countries, having been accomplished in several phases and under the sign of profound contradictions. The reasons for the delay can be summarized as follows:

> *The gap that can be seen by comparison with several Central European countries can be explained on the one hand by the fact that the regime change was impossible to prepare intellectually, economic reforms not having been implemented in the eighties. On the other hand, the population was less prepared for a radical regime change, and egalitarian views were still prevalent. The third reason was that the elite brought to power was not fully committed to the idea of a market economy based on private property and was too weak politically to complete such economic programs in a consistent manner.*[74]

In the summer of 1990, Act 15 of 1990 (on the Reorganization of State Economic Enterprises as Autonomous Companies) reorganized state-owned enterprises. For those to be kept in the property of the state, the form of *autonomous utility companies* (*regie autonomă* in Romanian – based on the French *régie autonome* model of companies providing public services and utilities) was provided, while those that were to be subjected to privatization were transformed into commercial companies. A proportion of about 47% of the assets of state-owned enterprises have been assigned to autonomous utilities, including the assets of strategic enterprises. In order to reorganize them, a 6-month deadline was set. Reorganization was the precondition to privatization:

> *The form of the socialist state enterprise was not suitable for the capitalization of private enterprises, this [former] being considered in essence a public law institution. The enterprise as an organization, in this way, was inalienable. Thus, socialist countries were forced to transform state-owned enterprises into joint-stock*

73 Sárközy, 1997, p. 19.
74 Hunya, 1991, p. 135.

> *companies (or companies with limited liability) in which the sole shareholder (or associate) became the state by using the technique of universal succession of rights copied from German reorganization law. This was the so-called formal privatization, privatization in the legal sense, the compatibilization of legal form with its desired marketing but without altering the property relationship [...]. Only this formal legal privatization can be followed by real privatization, carried out in the economic-social sense [...].*[75]

A proportion of 30% of the stock of joint-stock companies founded as a result of the transformation of state enterprises according to Act 15 of 1990 was scheduled to be attributed to the population.

The Companies Act, as a fundamental law of the market economy (Act 31 of 1990), only entered into force in December 1990. The law made substantial use of the chapter regarding companies in the Carol II commercial code draft. Based on the compulsory corporate form principle, it regulated five types of companies: the general partnership, the limited partnership, the partnership limited by shares, the limited liability company, and the joint-stock company. The procedure for registration, modification, and deregistration of companies and the rules regarding the Trade Register were regulated by Act 26 of 1990.

The first real privatization act was Act 58 of 1991, which regulated the privatization of companies resulting from the transformation of state-owned enterprises. After several amendments, it was repealed by Government Emergency Ordinance No. 88/1997, which introduced the rules on privatization that are still in force today. This emergency ordinance has, in turn, been changed repeatedly.

Based on Act 58 of 1991, privatization was carried out by selling a proportion of the state's stock and by awarding stock to the inhabitants. The law also allowed the direct sale or sale at auction of constituent parts of companies that were fit to function as independent units, as a particular means of privatization.

The State Property Fund was set up to organize the sale of state-owned stock. This property fund (a holding company by the proper name) took over a share of 70% of the stock packages of companies that were formerly state-owned enterprises and exercised the rights provided in favor of shareholders in the case of such state-owned enterprises accordingly. The sale of shares could take place by public subscription, open auction, or with participation based on invitation, by direct negotiation, or by the concomitant use of these means. If, following the capitalization of the shares, the State Property Fund would have lost control of the company subject to privatization, prior approval from the National Privatization Agency to complete the operation was a compulsory prerequisite. The law allowed employees and members of the former management of state-owned enterprises to acquire shares with priority over others (the so-called MEBO model, taken from the English name of the procedure: management and employee buyout). In the case of public subscription, these persons could

75 Sárközy, 1997, p. 20.

purchase, with a 10% discount on the initial offer price, a maximum amount of 10% of the share package subject to sale, being preferred in the case of sale by auction through legal provisions and being able to purchase shares with preference at a price 10% lower than the one established at auction, in this case, without any quantitative limit imposed on the number of shares that could be purchased. The law even allowed members of management, employees, and former employees whose work relationships ceased due to retirement to delay payment deadlines and possibly reschedule payment or receive preferential credit. Based on Act 77 of 1994, management and employees could even set up associations to acquire shares.

At the same time, five companies were set up, called private property funds, each established on a regional basis. A proportion of 30% of the shares issued by state-owned joint-stock companies in each geographical region was transferred to the private property funds, these becoming minority shareholders of the joint-stock companies. The contradiction between facts and reality was evident:

> *If we accept the Government's rhetoric, which is also present in the choice of the name of these private asset funds, then these organizations have been privately owned since their establishment. By the entry into force of the privatization act, all enterprises were automatically assigned in a proportion of 30% to private property. The state (through the State Property Fund) held the majority of the shares in each enterprise so that the private asset funds had very little influence over the management of the enterprise. Moreover, because the management of the private asset funds was chosen on political grounds and because shareholders were incapable in the practice of influencing the operation of the private asset funds, the private character of these businesses was questionable.*[76]

These private property funds distributed coupons called 'certificates of ownership' to the population for free; in reality, these were shares in the private property funds.

The coupons could be alienated, or they could be converted into shares of companies subject to privatization within 5 years, or, after this period had expired, they could be used as shares in the private property funds, which had transformed into financial investment companies (abbreviated as SIF in Romanian). The law forbade the alienation of these titles to foreign natural or legal persons.

In cases where investors wanted to buy 100% of the given company's shares, the negotiations were conducted by the private property fund, which had territorial jurisdiction, including in respect of the shares held by the State Property Fund.

Given that privatization did not go as smoothly as imagined, the parliament adopted Act 55 of 1995 to accelerate the privatization process. The act was also meant to conclude the free privatization program altogether. Inalienable coupons were issued in the beneficiaries' names (members of the general population), and these could be exchanged for shares, together with previously issued property

76 Earl and Telegdy, 1998, p. 481.

titles (coupons). This new set of coupons had a face value of 975 000 lei each, the coupons from the previous issue being devalued to 25 000 lei. It was estimated that each entitled citizen would receive a sum of 1 000 000 lei from the assets of state enterprises (in total, about 30% of the asset value of state-owned enterprises). In connection with the actual value of the assets of these enterprises, no accurate data were available. Mass privatization resulted in a dispersed shareholder structure that could not effectively influence the company's management. Coupons could also be deposited with the private property funds, in which case, the funds could use them regarding the subscription of shares, the coupon owner becoming a shareholder in the fund.

Pursuant to Act 133 of 1996, the five private property funds were transformed into financial investment companies (SIFs). Government Emergency Ordinance No. 30/1997 transformed some of the autonomous utilities into companies, thus extending – in theory – the scope of the companies subject to privatization.

Government Emergency Ordinance No. 88/1997 continued the series of normative acts on privatization. The Ministry of Privatization was set up, and the State Property Fund continued its activity. The new rule maintained the benefits system stipulated in favor of management and employees, keeping the possibility of setting up associations with a legal personality, with a view to the collective acquisition of shares. In the case of payment of an advance equal to at least 20% of the price of the package of shares purchased, the rule provided the association with the possibility of paying in installments within a period of 3–5 years and with an interest rate of 10%. In 2001, the State Property Fund was renamed the Authority for Privatization and Administration of State Participations. In 2002, a new act to accelerate privatization was adopted (Act 137 of 2002), which allowed the sale of shares, even below the starting price in the auction in the absence of a tender or proper direct bid, determining whether the sale was opportune, and the price that was real and serious being exempted from judicial review. Judicial review was thereby restricted in the matter of sale only to its legality. The norm also allowed privatization for a single euro in the case of companies selected by the government if the buyer had committed to making investments, keeping jobs, or creating new jobs. Since 2004, the name of the authority exercising the state's shareholder rights was again modified, this time to the Authority for Recovery of State Assets, and since 2012, it has been called the Authority for Managing State Assets. The latter name change shows that the legislator considers the privatization process closed, at least in terms of its main lines of action.

To regulate the management of the remaining companies in state property that have not been privatized or have not been intended for privatization, a special norm was adopted (Government Emergency Ordinance No. 109/2011 on the Corporate Governance of Public Enterprises).[77]

77 Veress, 2017, pp. 62–78.

10. Conclusion

From the point of view of legal theory, nationalization in Eastern Europe was a unique, distinctive institution similar only to the nationalization that took place in the Soviet Union. The aim was, on the one hand, to review the property-dispossessing measures (nationalization, collectivization) of the Soviet-type dictatorship, which marked a radical social experiment. It was a path toward a utopia that never materialized, and in reality, it was a system characterized by repression and a lack of freedom. After the fall of the dictatorship, there was a partial restoration of the past, measured by possibilities and limited by dogmas (reprivatization), and a new process, also peculiarly post-socialist: privatization. Nationalization, cooperativization, reprivatization, and privatization mark great changes in 20th-century property in East Central Europe. All these processes were politically motivated. Both were public law phenomena devoid of organic development. Reprivatization as a restitutive measure had limited power, as it was designed

> *as an act of recuperation, a return to a just order based in individual ownership that would permit more efficient economic action. Legislating the restoration of ownership rights would overturn the grand theft that had made socialist property possible. This conception failed to grasp how deeply embedded that system had been in social relations of exchange and obligation, not so easily modified by passing a few laws.*[78]

The flaws of the otherwise necessary and inevitable reprivatizations and privatizations practically served a new round of abuses and embezzlements. Dismantling a dictatorship proved to be extremely difficult from all points of view – political, economic, moral, and legal.

78 Verdery, 2003, p. 76.

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