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THE LAW OF CONTRACTS IN
COMMUNIST COUNTRIES
(RUSSIA, BULGARIA, CZECHOSLOVAKIA
AND HUNGARY)

W. J. Wagner*

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ing the nature of the comparative research undertaken by the
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Emerging Subject of Comparative Study, in XXth Century Com-
parative and Conflicts Law—Legal Essays in Honor of Hessel E.

With the introduction of communism to a country, its political
and economic system is subject to an upheaval. Along with these
changes, many fields of the law must be substantially overhauled
or completely replaced by new rules to be consistent with the new
ideological foundations of the country involved. An interesting
problem is presented by the question of the fate of the law of con-
tracts under the communist form of government.¹

It is hardly necessary to state that in all countries, and par-
ticularly in totalitarian ones, there is some discrepancy between
the written law and the actual practice. Some provisions may
never be applied. Some others may be used in a way not reflected
in their wording. Courts may give a broader or a narrower inter-
pretation to written texts. Many rules may develop parallel to or
even contrary to the provisions of codes and statutes. Last but not
least, all rules may be disregarded altogether, and the agencies of
the state may take any action they want paying no heed to the re-
quirements of the rule of law. The aim of the present observa-
tions, however, is just to analyze the legal rules officially in force in
the states under consideration.

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¹ According to the official theories of communist countries, it takes a long time
to "build communism." First, all of them must pass through the stage of "social-
ism." In the Soviet Union, the XXI Congress of the Communist Party declared, in
1959, that socialism has been achieved, and communism is to be constructed. In
newer communist states, it is said that they are "building socialism."
The first communist system of law was established in Soviet Russia. The Civil Code of The Russian Socialist Federated Soviet Republic of Nov. 11, 1922, effective on Jan. 1, 1923, is still in force. It "either was directly put into effect in other soviet states or was closely followed by their own codes." In general, "it may be presumed that the provisions of the R.S.F.S.R. Code enjoy a nationwide recognition." Outside of the Soviet Union, there were no communist systems of law until World War II. Countries which now have a communist system of government are adjusting their law to the new political approach to social life. Comprehensive enactments in the field of civil law have been passed since the end of the war by three states: Bulgaria, Czechoslovakia and Hungary. Others are still applying old laws, modified by many new statutes. In Poland, the work on codification of the civil law has been in progress for quite a few years. The last comprehensive draft was published in 1960.

In the Soviet Union, for many years the enactment of codes for the whole U.S.S.R. was being contemplated. Art. 14 of the Soviet Constitution of Dec. 5, 1936, read as follows: "The jurisdiction of the Union of Soviet Socialist Republics, as represented by its highest organs of state power and organs of state administration, embraces:—(u) Legislation concerning the judicial system and judicial procedure; criminal and civil codes." Many provisions of the Russian Code of 1922, which served as a model of the whole Union, became obsolete. Besides, in the flood of statutes, decrees and regulations which were enacted after the Russian Civil Code went into force, there are many provisions which conflicted with each other. Upon the death of Stalin, it was asserted that there was chaos in the administration of justice in the Soviet Union, and a Soviet Academician asserted, in 1956,

3. Ibid.; for its adoption or influence on other soviet republics, see v. II, pp. 4-8 (1949).
5. Thus, e.g., "(t)he codes of 1922 and 1923 have been drafted to provide for a limited form of private enterprise to aid in restoring the economy of a country only recently emerged from devastating civil war. . . . the assumptions on which the codes had been drawn began to change, and by 1936 when a second constitution replaced the original federal document of 1923, private enterprises had become so limited that no individual was permitted to employ labor in production, nor was any citizen permitted to buy commodities for the purpose of resale at a profit." However, provisions about private stock corporations still remained in the code. Hazard, Soviet Codifiers Receive New Orders, 6 Am. J. Comp. L. 540 (1957). See also Berman, Soviet Law Reform—Dateline Moscow 1957, 66 Yale L.J. 1191 (1957).
that "lack of order in our legislation, lack of system, contradiction in legal provisions were also one of the reasons for the violations of legality, and therefore a scientific codification of Soviet legislation is of paramount importance." In the same year, a commission of jurists was established with the view to collect and publish statutes which are in force in the Soviet Union.8

Recognizing the necessity of introducing some order into the legal system of Russia and the whole Soviet Union, the recent developments in the U.S.S.R. went in the direction contrary to the one prevailing in the Stalinist era. Some decentralization in the field of legal enactments began to be looked upon with favor. The result was the decision of the Supreme Soviet to amend the above cited provision of the Constitution. By virtue of the law of Feb. 11, 1957, it was changed to read as follows: "Determination of the principles of legislation concerning the judicial system and judicial procedure and of the principles of criminal and civil code." Thus, the general principles of law alone are determined centrally, while detailed rules, embodied in the text of the codes, are a matter to be decided by the several Soviet republics.

In June of 1958 the first drafts were made public. They covered general principles of criminal law and of criminal procedure,9 the old codes of 1924 having become not less obsolete than those in the field of civil law.10 With some changes, the new principles were adopted by the Supreme Soviet on Dec. 25, 1958. On the ground of these principles, the Russian Soviet Republic was the first to draft its new codes, and on Oct. 27, 1960, promulgated its criminal code as well as that of criminal procedure and of judicial organization.11

Civil law was next to be taken care of. A project of the general principles of civil law and of civil procedure was published in July of 1960, and discussions on the project were invited. Until these new principles are adopted and new codes drafted, the old enactments in the field of civil law will continue to be in force.

With all fundamental changes brought about by the advent of

COMMUNISM, it must be observed that contract law has not undergone many modifications. However, two things should be kept in mind. First, that the scope of the traditional contract law, with the nationalization of all important means of industrial production, became much narrower than in the traditional legal systems. Not many important matters are left to negotiations and agreements between private individuals. State enterprises take care of most problems. The situation was thus characterized by a commentator:

\[
\ldots (T)he\ socialist\ codes\ make\ it\ quite\ clear\ that\ contract\ relations\ between\ the\ non-socialist\ partners\ have\ been\ reduced\ to\ insignificant\ proportions.\ So,\ for\ instance,\ the\ law\ on\ obligations\ in\ the\ Soviet\ draft\ limits\ the\ range\ of\ contracts\ between\ individuals\ to\ the\ sale\ of\ agricultural\ products\ by\ the\ collective\ farmers,\ and\ to\ the\ sale\ of\ articles\ owned\ by\ the\ individuals\ themselves.\ Exceptionally,\ an\ owner\ of\ a\ one-family\ house\ may\ rent\ it,\ or\ part\ of\ it,\ to\ a\ private\ party.\ But\ in\ general\ the\ citizen\ of\ a\ socialist\ state\ must\ deal\ with\ the\ state\ in\ its\ many\ forms.\ He\ rents\ his\ living\ quarters\ from\ the\ local\ government,\ he\ travels\ by\ the\ government-owned\ public\ conveyance,\ borrows\ money\ from\ a\ government\ bank,\ and\ deposits\ his\ savings\ in\ the\ government-owned\ bank.\]

Besides, even in the matters which were left to private citizens, some general provisions of the law may have an effect on the validity and legality of some contracts, and lay down sanctions for violating the rules of the communist system.

In Russia, the Civil Code was designed to be "the economic policy of the transitional period laid out in the form of sections of a statute," as defined by the Chief Justice. Its appearance indicates "that it was framed after the pattern of the most advanced Western European codes, the German and the Swiss." Many sections "were taken from the draft of a civil code which had been prepared under the imperial regime and introduced in the Russian legislature, the State Duma, in 1913, but not passed." Gsovski remarks that "(a) series of sections was inserted in the code to represent the socialist elements of Soviet law," but

\begin{itemize}
  \item[12.] Grzybowski, Reform of Civil Law in Hungary, Poland and the Soviet Union, 10 Am. J. Comp. L. 253, 259 (1961).
  \item[13.] Stuchka, 1 Course 9, cited by Gsovski, supra Note 2, at 24.
  \item[14.] Gsovski, supra note 2, at 24.
  \item[15.] Id. at 25.
\end{itemize}
that many provisions, standing alone, "might easily have been included in the civil code of any capitalist civil law country," and that "such provisions predominate."\(^{16}\)

The most important and sweeping new provisions which may affect contracts as well as other fields of law are Sections 1 and 30 of the Code. Sec. 1 reads as follows: "The law protects private rights except as they are exercised in contradiction to their social and economic purpose."\(^{17}\)

The general reporter of the Code, Goichbarg, stated in his report that "rights are being given to private individuals exclusively with the view to develop forces of production of the country, and they would not be protected if they should be used for other purposes."\(^{18}\) Besides, Sec. 4 reflected the same idea as Sec. 1, stating that "legal capacity is granted by the state to the citizens with the view to develop forces of production of the country." Such a limited view of private rights and legal capacity was, of course, contrary to the traditional approach to the function of the law, and Sections 1 and 4 of the Code were the ones which met the strongest disapproval in other countries. It was rightfully observed that "legal capacity has an absolute character; the man gets civil rights by the very fact of his birth; legal capacity is recognized by the state but not created by it."\(^{19}\)

Sec. 30 of the Code lays down the following principle:

A legal transaction made for a purpose contrary to law, or in fraud of law, as well as a transaction directed to the obvious prejudice of the State, shall be invalid.\(^{20}\)

This provision "was directly designed to guard during the New Economic Policy against undesirable growth of private business."\(^{21}\) An additional rule was expressed in Sec. 147:

In the event the contract is invalid as one contrary to law or directed to the obvious prejudice of the State (Section 30), none of the parties shall have the right to claim from the other the restoration of that which such party has performed under the contract. Unjust enrichment shall be collected for the benefit of the State (Section 402).

\(^{16}\) Id. at 26.
\(^{17}\) For comments, see Gsovski, supra note 2, at 314-338.
\(^{18}\) Fridieff, supra, note 11, at 93.
\(^{19}\) Ibid.
\(^{20}\) For comments, see Gsovski, supra, note 2, at 426-431.
\(^{21}\) Id. at 427. It seems that Sec. 30 is the only provision about legal transactions which departs "from the standards of nonsoviet laws." Id., at 418.
Thus, "(w)hatever is delivered by one party to another in performance of such void transaction reverts to the State."22

The provisions of the Code should be read in the light of some other enactments. Thus, Art. 130 of the Soviet Constitution imposes on the citizens a duty "to observe the laws, to maintain labor discipline, honestly to perform the public duties and (obey the) rules of the socialist community life." And Sec. 3 of the Judiciary Act of 1938 requires the courts to "educate the citizens . . . in the spirit . . . of respect for the rules of the socialist community life."

Some other features of the Code are pointed out by Gsovski:

A voluminous category of contracts must be notarized to be effective, particularly if a government enterprise is a party to the contract. Notaries public are outright government officials in Soviet Russia, keeping a permanent record of acts notarized. Therefore, this rule enables the government to supervise private transactions. Many other contracts must be made in writing.23

The freedom of contracts is not spelled out in the Code. A modern textbook "admits that civil relations include an element of will but emphasizes the supremacy of the State over the will of the parties thereto."24

Special problems arise, of course, in connection with contracts of government enterprises. "(T)he notion of a contract as outlined in the Civil Code no longer covers, in reality, all ramifications of contract in soviet law, in particular contracts between government agencies engaged in industry and commerce."25 And the problem of "Contract Versus Plan in the Socialized Sector of Economy" presented many difficulties to the soviet legal theorists. As Gsovski states, it was first visualized that Soviet law would consist of "two sets of laws, one for relationships between citizens, for which the provisions of the Civil Code should remain in force, and another for relationship among the government agencies engaged in business—an 'economic administrative law' based upon the planned economy and excluding free contract."26 However, this program "was rejected and condemned as an unfounded attempt to destroy the unity of the socialist legal system

22. Id. at 28.
23. Id. at 29.
24. Id. at 421.
25. Id. at 415.
26. Id. at 433.
of the Soviet Union ... Contract, as a form in which business re-
lations among the economic government agencies are expressed,
was retained ... But numerous enactments were adopted and not
included in the Civil Code, which outlined the special rules gov-
erning contracts among government agencies engaged in business
as a method of carrying out a general government economic
plan."

The conclusion of Gsovski is that in such contracts "the free will
... is greatly curtailed under the principle of the domination of
the plan."28

This is to put the matter mildly. While, as a rule, the contract
law of the traditional legal systems has the main purpose of carry-
ing out the intention of the contracting parties, the underlying
idea of transactions between state owned enterprises is to achieve
the realization of the economic plan of the government.29 Such
plans are a necessity, in the communist system; as soon as the
means of production become nationalized, the state has to lay
down a program for the economic output, its marketing, estab-
lishing prices, etc. Thus, the economic plan supersedes the bar-
gaining between private enterprises in the traditional legal sys-
tems. In spite of the fact that detailed rules as to economic plan-
ning may be different in the several communist countries, their
basic philosophy is everywhere the same. According to a professor
from Sofia, Bulgaria,

the economic plan of the state has the power, by executive orders
... to create direct obligations, and particularly, to compel state
enterprises to conclude contracts or to renounce contracts which
have been concluded, as well as to modify existing obligations;
thus, the plan appears to be a factor which obliterates or rather
diminishes ... the difference between contractual obligations and
obligations imposed by law, factor which has no equivalent in the
classical law.30

Legal rules applicable to contracts between state enterprises are
rather elaborate. However, most enactments regulating them do
not cover problems dealt with by traditional law. Communist
statutes are concerned, above all, with the questions what super-

27. Id. at 433-434.
28. Id. at 436.
29. Wagner, supra note 4.
30. Kattarov, La planification comme problème juridique, 10 Rev. Int. Dr.
Comp. 389, 311 (1958).
vising institutions have to enter into general contracts, which economic entities of the state must make offers, and which have to accept them. Once there is a duty to enter into a contract, the state enterprise cannot get away from it. If it does not answer to an offer, it is deemed to accept it, contrary to the traditional legal rules, by virtue of which the general principle is, in such a situation, that no contract comes into being.

The peculiarity of planned economy contracts is enhanced by the fact that disputes involving them escape the jurisdiction of the courts. Controversies are decided by special arbitral tribunals which have very broad powers. Their duty is to see to it that the economic plan is carried out, and they may create, modify or terminate legal relations between the socialist enterprises involved. A theorist of economic planning observed that a limitation of the freedom to contract is in their respect necessary, as "if absolute freedom to contract were maintained, the realization of the plan would probably be hindered because of discrepancies which would certainly arise between the intention of the parties and the provisions of the plan."32

In the Soviet Union, the foundations of such an arbitration were laid down by a decree of May 3rd, 1931.

The new project of the general principles of civil law of the Soviet Union does not repeat the provisions of Sec. 1 and 4 of the old Civil Code. With all the important means of production in its hands, the State can hardly anticipate that rights of private individuals, granted them by the law, can be "exercised in contradiction to their social and economic purpose."33 Sec. 1 of the project reads as follows:

Civil legislation regulates material (physical) relations as well as those, which being not material (physical) are connected with them, in order to reaffirm and to develop the socialist economic system and the socialist ownership, in order to establish a material and technical foundation of communism and satisfy, at all times and fully, material and spiritual needs of the citizens.

Priority accorded to "materialistic relations" is a reflection of the basic philosophy of communism. The very provisions of the project (Sec. 32-79) which deal with the law of obligations do not contain any statements of great significance.

31. On these tribunals, see also Grodecki, State Economic Arbitration in Poland, 9 INT. & COMP. L.Q. 177 (1960).
32. Katzarov, supra note 30, at 313.
33. Fridieff, supra, note 11, at 93.
The year 1950 marked the enactment of rules on obligations in two communist countries: Bulgaria and Czechoslovakia.

Bulgaria never enacted a comprehensive Civil Code. Before World War II, its law of obligations was regulated by a statute of Dec. 5, 1892. It was replaced by that “concerning obligations and contracts,” of Nov. 22, 1950. It has 436 articles and includes the law of guaranties, pledges, mortgages, as well as commercial law, with negotiable instruments law in the first place.

The enactment of a civil code is being contemplated.

Art. 1 of the Statute reads as follows:

The present law regulates the obligations and contracts with the aim of contributing to the building of socialism, the carrying out of the state economic plan, and the realization of civil rights of the working people in the People’s Republic of Bulgaria.

According to the understanding of Bulgarian commentators, this enumeration establishes a gradation of the purposes of civil law:

Contrary to the principles of classical law, it thus puts on the third place the realization of civil rights of the citizens, giving priority to the “building of socialism” and the “carrying out of the state economic plan.” This new hierarchy of the sources of obligations is described with still more precision in the “general provisions” of the same law. In a word, while maintaining the principle of the freedom of contracts, the law of obligations, in its whole, is placed in the service of the economic plan of the state; contracts contrary to the plan are declared null, but this nullity has, as it was pointed out, a special character.

Among the general principles there are some which make reference to the “socialist common life.” Thus, Art. 2 requires the interpretation legal provisions which are not clear “in a sense which most closely corresponds to the rules of the socialist common life,” and it continues:

34. Derzhaven Vyestnik, No. 275
35. A comprehensive treatise on The Bulgarian law of obligations was published in 1958 by Kojoukharov (631 pp.)
36. An article on the draft civil code of the People’s Republic of Bulgaria was published by Vassilev in the first issue of the “Izvestia a Instituta za Pravni Nauki” (Bulletin of the Institute of Legal Studies).
When the law is incomplete, for cases not regulated by it those legal provisions are applicable which refer to similar cases, if this corresponds to the rules of the socialist common life. When this cannot happen, relations are regulated according to the basic principles of socialist law.

The enjoyment of private rights is subjected to the general purposes of the state. Art. 4 of the Statute permits the citizens to exercise their rights to satisfy their needs, provided "they are not contrary to the interests of the socialist society." 38

As in other communist countries, the economic life of the country is regulated by the state, and socialist organizations are running industrial and commercial enterprises of any importance. Special articles of the Statute refer to those organizations. Art. 3 provides:

Socialist organizations use rights which are given to them in accordance with the state economic plan and in a manner which in the best way can insure the growth of the socialist property and constant improvement of the living conditions of the working people.

Art. 5 permits "authorities responsible for the carrying out of the state people's economic plan" to "impose obligations that something be given or done," or to "create obligations for the conclusion of a contract."

Similarly to laws in other communist countries, the Statute provides (in Art. 6) for arbitration as a method of settling disputes arising from planned economy. 39 And the next article submits obligations arising from acts of planning the people's economy to the provisions of the Statute unless there are other special rules applicable to them.

38. Risoff, Limitation of the Freedom of Contracts, 4 Highlights 275 (1956) and Status of Private Rights in General, 5 Highlights 239 (1957).

39. The foundations of the arbitral procedure in Bulgaria were laid down by the statute of May 31, 1950. Since that time, in accordance with the usual communist setup, arbitral tribunals are the only ones which have jurisdiction over private law controversies between socialist economic organizations. They are neither judicial nor administrative organs, in the traditional sense, but they are attached to the executive branch of the government. They "contribute to the strengthening of the socialist legality, of the discipline of the plan and of the conventions as well as to the economic efficiency of the activity of these socialist organizations (state institutions and enterprises, associations, cooperatives)." Vlahoff, Le Tribunal d'Arbitrage d'Etat dans la Republique Populaire de Bulgarie, 11 Rev. Int. Dr. Comp. 711 (1959).
The first provision referring to the conclusion of contracts makes it still more clear than Art. 4, supra, that the freedom of contracts is restricted. Art. 8 reads as follows:

Contracts shall be made and performed on the basis of the socialist, political organization of the government, socialist ownership of the means of production and the government plan for the national economy.

They shall serve the progressive build-up of socialism, realization of the government plan for the national economy, and the satisfaction and protection of the material and cultural interests of socialist organizations and individual citizens, following, also, the rules of everyday life of a socialist society.

And the next article adds, in its first part:

The parties can freely determine the content of the contract if it does not contradict the law, the state economic plan, and the rules of the socialist common life.

Art. 12 requires the parties, in conducting negotiations as well as in concluding contracts, “to act in good faith and according to the rules of the socialist common life.” And Art. 26 declares as invalid contracts which are contrary to the law on the state economic plan, or which circumvent it, as well as those which violate the rules of the socialist common life.

The next communist state to enact rules of the law of contracts was Czechoslovakia. Until 1950, in the Czech part of the country, the Austrian Civil Code of 1811, in effect since Jan. 1, 1812, was in force. In Slovakia, the old Hungarian law was applicable. The new Czechoslovak Civil Code of 1950 has been effective since Jan. 1, 1951.40

As in other communist countries, planned economy is the basis of the industrial and commercial life of the country. Its most important foundations were laid down in the constitution, Art. 162 of which provides that “by the economic plan, the state directs all economic activity, and in particular, the production, commerce and transports.” Planned economy contracts have a special place in the Czechoslovak economic and legal system. The Civil Code

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The Law of 1950 deals with them briefly. Its Sec. 212, entitled "Obligations Resulting from carrying out the Uniform Economic Plan," reads as follows:

(1) The carrying out of the uniform economic plan shall be insured by contracts specially adapted to the needs of economic planning (economic contracts). If required by the needs of economic planning, definite obligations may be imposed by competent agencies.

(2) In absence of any other provisions, legal relations thus established shall be governed by this law.

Planned economy contracts were introduced in Czechoslovakia by Proclamation No. 1052 of the Government Planning Bureau of Oct. 12, 1949, and replaced by the Law of July 13, 1950. Detailed regulations were then issued. The Cabinet Decree No. 33 of May 28, 1955, replaced the Law of 1950. Some Czechoslovak lawyers attempt to prove that such contracts are regular contracts. Even if they may be recognized as contracts, however, they can hardly be treated as consensual obligations in the traditional sense of the word. "(F)ree will, an essential element in making contracts, is greatly curtailed in passing economic contracts; and... obligations stipulated in economic contracts arose before and independent of the contracts, being determined by administrative authorities. Thus, the economic contracts become a mere formality."42

In the Code, they are listed as one of the sources of obligations. Sec. 211 provides:

Obligations shall arise from carrying out the uniform economic plan, from acts in the law, in particular from contracts, and also from causing damage, from unjust enrichment, and from other facts referred to in laws.

In the Czechoslovak legal theory, three kinds of planned economy contracts are distinguished: 1) Those in which one party has the obligation to conclude a contract (e.g. a contract for transportation by railroad). 2) Those in which both parties must conclude a contract. 3) In the third situation, an administrative act is substituted for declarations of intention of the parties and creates a legal relationship between them which has the same effect as a contract, e.g., a contract of lease established as a conse-

42. Ibid.
quence of an assignment of an apartment by a public authority. Looking realistically at the third situation, a commentator states that actually, in this case, there is no contract, as the agreement of both parties is lacking, but instead, there is a legal relationship arising from an act of a public authority, and having the same consequences as a real contract.\textsuperscript{43}

The Code abolished "the privileges of commercial law." It is "clearly different from the previous code because of its phraseology which is, in most instances, much more general\ldots\ The new Civil Code vests in the people's judge\ldots\ a great freedom of evaluation and thus reaches a considerable degree of flexibility, being able to adapt itself to social relations which evolve with particular speed in a society being in the stage of transition towards socialism."\textsuperscript{44}

This is what the same commentator has to say about the features of the new Code as far as consensual obligations are concerned:

The so-called freedom of contracts and the so-called equality of the contracting parties before the law constituted the principal philosophical theses of the bourgeois law of obligations. This freedom, proclaimed so solemnly, was actually—in the abusive bourgeois society where the power of the state was in the hands of capitalists, and where the capitalists as a class were masters of the means of production—a freedom for those who were exploiting, and an absence of freedom for those who were exploited, and the juridical equality of the parties sanctioned a factual inequality.

In our society, the contractual freedom and the equality of the parties receive a completely different meaning. The question of the so-called freedom of contracts affects the very foundations of the socialist notion of freedom. First of all, there is here the problem of liberating the workmen from exploitation. Exploitation being abolished, and the working people being the owner of the means of production, a complete freedom of developing his abilities, as well as an equality in accordance with the principle\ldots\ "from everyone according to his abilities, to everyone according to his work" are assured to every person who works.

However, this freedom of the individual is necessarily coordinated with the freedom of the community. There is no conflict between the interests of an individual worker and the collective

\textsuperscript{43} Knapp, \textit{Les Principes du Nouveau Droit Civil}, 9 Bull. Dr. Tchéc. 6 (1951).

\textsuperscript{44} Id. at 9.
interest of all workmen. A freedom of an individual in a socialist society which would be in conflict with the freedom of the community would be an evident contradiction . . .

Sections 251 and 298 grant to competent organs the power to modify and even to annul obligations resulting from legal relations being important for the carrying out of the uniform economic plan, if the needs of economic planning require it. Thus, it is seen that obligations can be established, existing liabilities modified and even annulled without the concurrence of the will of the parties, if it is in the interests of the uniform economic plan.

Contrary to the situation in other continental countries, Hungary was until recently a nation which did not enact any comprehensive civil code. "Common Law," based on customary law, was applicable.

In 1848, the revolutionary Hungarian government decided to take steps in the direction of codifying the law of the country. However, results were only partial. Most progress was achieved in the field of commercial law; many statutes as well as a commercial code (in 1875) were enacted. After World War II, similarly to the situation in other communist countries, commercial law lost its character of a separate legal discipline.

Between 1900 and 1928, four drafts of a civil code were prepared, but they were inconsequential. In 1953, the Council of Ministers established a codification commission, which began to work in 1954. The first draft of a civil code was ready in September of 1956. Some amendments were submitted, and the final text was ready next year. It was enacted by Act IV of 1959.

Presenting the Draft Code to the Parliament, the Hungarian Minister of Justice commented on the failure of pre-war Hungary to enact a civil code in the following way:

The main reason thereof is to be sought in the fact that the wholly uncertain case law or custom, based, as it was, entirely on judicial practice, suited the interests of the bourgeoisie and those of the landowners much better than a written code. It was, in fact, customary law that the Courts of the ruling class had accepted and applied in their judgments, in accordance with the interests and the good pleasure of the said class. When so demanded by the in-

terests of the bourgeoisie, the Curia—in its capacity as supreme judicial organ, directing the practice of the other courts, and serving the interests of the exploiters throughout—could depart more easily and more rapidly from the provisions of the old law.\textsuperscript{46}

The same commentator stressed the achievement in preparing the Draft of a code, which "is being studied with great interest, and made use of, everywhere,"\textsuperscript{47} and lingered on the notion of socialist coexistence, giving examples of rules based on this notion while adding:

Since the rules of socialist coexistence may be traced right through the provisions . . . it will be useful . . . to quote a few characteristic examples of such legal solutions as fully satisfy the demands of socialist morals . . . (N)ot only the contracts contrary to statute shall be deemed to be null and void, but in like manner those which are denied recognition by the Act for being contrary to the interests of the workers, or to the postulates of socialist coexistence.\textsuperscript{48}

Hence it is obvious that contracts, resulting in loss to the State, are invalid.

Some other purposes and features of the Code were explained by the ministerial motivation to the Civil Code:

There was no question . . . of trying to preserve . . . the decrepit legal relations of a moribund society; the task consisted, just on the contrary, in the endeavor to regulate the entirely novel legal relations of a new society, having radically and definitely abolished both exploitation and anarchy. The objective that prevailed was, on the one hand, that the Civil Code should comply with the present social conditions of our people's democracy and should meet all requirements, being raised by the present or to be raised by the near future, with respect to civil-law relations, and should, on the other hand, be suited, on the whole, to regulate the future civil-law relations of the socialist Hungary to come.\textsuperscript{49}

\textsuperscript{47} Id. at 187.
\textsuperscript{48} Sec. 200(2). However, subject to the limitations set out by the law, "(t)he parties shall be free to determine the content of the contract. . . ." Sec. 200(1).
\textsuperscript{49} Id. at 172-173.
As stated by one of the drafters of the Code, "in order to build a socialist system of law, one had to keep in mind, first of all, the results of the soviet law."\footnote{50} Besides, the drafting committee "studied with great care, and made good use of", the 1950 Civil Code of Czechoslovakia, the 1955 Draft of the Polish Civil Code, and the Bulgarian Statute on Obligations and Contracts,\footnote{51} as well as "did useful research work by undertaking comparative studies in respect of the French and German Civil Codes," and "other civil codes and civil-law codification work."\footnote{52}

Contrary to the usual continental approach, followed by other communist countries, the Hungarian Code is not divided into a general and a detailed (or special) part. It was explained that this solution "corresponds entirely" to that "adopted by the former Hungarian drafts, and rests, therefore, on a certain tradition in this country,\footnote{53} and is better than the usual approach. However, the Code contains "introductory provisions determining the fundamental principles underlying the Code."\footnote{54}

Some of those provisions which are worthy of quoting are the following: Sec. 1 (1) which states that the purpose of the Act is to meet "systematically and to an ever increasing extent the material and cultural demands of society," and to build socialism; Sec. 1 (2) which provides that "provisions of this Act shall be construed in full conformity with the economic and social order of the Hungarian People's Republic", and Sec. 4 (2) which reads as follows:

In civil-law relations everybody shall act by mutual co-operation and in accordance with the demands of socialist co-existence. Cooperation shall be realized by strictly performing all obligations and by exercising all rights in conformity with the function of such rights.

Remarking that the fundamental premise of the Code was that "not the regulatory features of legal relations, but social and economic relations which lie at the foundations of the former relations, should be taken as the basis of the system,"\footnote{55} a commenta-
tor from another "People's Republic" concluded that the Hungarian Code is "a new type of a civil code, expressing a socialist concept of law which is well suited to social and economic conditions of a people's democracy." 56

As in other communist countries, special legal provisions deal with planned economy contracts. A comprehensive set of rules to be applied in this field was enacted by a decree of 1951. 57 It dealt with delivery contracts, such a contract being defined in Sec. 1 of the decree as "an agreement made for the delivery of goods or performance of services of economic value aimed to fulfill the objectives set by the plan in which at least one of the parties is the State or State-owned corporation and under which the performance will be made at a time following the making of the contract." The decree regulated the making, performance and termination of such contracts, concluded with the views of carrying out the objectives of the national economic plan. They cannot be recognized as contracts in the traditional sense of the word. 58

In the Code, some provisions are devoted to the economic system of the country. Sections 81-42 deal with some state enterprises and agencies as "juristic persons," and Sections 43-67 with cooperatives. Chapter XXXV (Sections 397-409) regulates "Plan Contracts" between socialist organizations, on which it imposes, in Sec. 397, the duty to enter into contracts in order to carry out the national economic plan. By virtue of Sec. 409 (1), detailed rules of plan contracts are left to be settled by special statutes. As in other communist countries, arbitration is provided for in case of dispute. 59 Contracts for production and for bulk delivery of produce, called in other communist states "contractions," are regulated by Chapter XXXVI (Sections 410-422).

Other communist countries have not enacted, until now, new comprehensive laws regulating the law of contracts. In relations between private citizens, not interesting the state, old legal rules are applicable, with some changes. On the situation in Poland, some articles in English were published. 60 In Yugoslavia, a fundamental law on state economic enterprises, and another one on the

56. Id. at 580.
57. Decree No. 206/1951 (Dec. 8) M.T., as amended.
59. For comments, see Mihaly, The Role and Activity of Arbitration Commissions in a Communist Economy: The Hungarian Experience, 9 Am. J. Comp. L. 670 (1960). Arbitral tribunals were established by the decision No. 2850 of 1949.
60. See Wagner, supra note 4, and materials cited in that article.
management of economic enterprises and superior economic associations by the working collectives were enacted. They cover the mechanics of contracts between state enterprises. The question which seems to be of utmost interest to Yugoslav jurists seems to be that of validity of contracts concluded by a director of an enterprise against conclusions of the managing board.

It seems that the first comprehensive enactment in communist Yugoslavia will be a code of maritime law. It will be done gradually. Principles of contracts on utilization of sea vessels were enacted in 1959. However, they seem to be hardly applicable to private citizens.

It was remarked that "(w)hen Yugoslavia broke away from the Cominform, her law making also began to move away from that of the Soviet Union. The most characteristic legislative act revealing this tendency was the Workers' Councils Act, which purported to give the workmen industrial self-government." The Act was enacted in 1957. However, the new trend will have hardly any effect on the law of contracts between private citizens, which anyhow is similar in communist and traditional systems of law, with exceptions brought about by the new political approach.

It will be noted that the replacement of old codes and private law legislation by new rules after a change of the régime of the country concerned is by no means a matter of course. The French Civil Code of 1804 has been in force for more than one century and a half, notwithstanding the fact that during this period of time France underwent rather frequent structural upheavals, passing through two empires, a monarchy and five republics. Again, "the German Civil Code of 1896 has served the Empire, the Weimar Republic, the Nazi Reich, the democratic West German Bundesrepublik, and the communist regime of East Germany." Even with the advent of communism, as pointed out above, there is no wholesale repeal of the previous private law system. The only exception is Communist China where upon the victory of the revolutionists the old law has been declared abro-

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63. Szirmay, _Introduction to v. II of "Law in Eastern Europe"_ (1958). See also Cirković, _Les nationalisations en Yougoslavie et la gestion des entreprises par les collectifs ouvriers_.
64. Schlesinger, _Comparative Law_, _supra_ note 9, at 264.
gated before new rules could be enacted, so that during some period of time the country was left without any law whatsoever in some fields of human relations. However, in China, the situation was specific, and the old written law has never been fully enforced anyhow.65

In other countries, the philosophical, economic and structural changes brought about by communism, were not deemed to necessitate an abrupt severance with the past in vast areas of the civil law. According to the Marxist ideas, law is only a superstructure erected on the "real basis" of economic conditions. With the change of the basis, the superstructure is bound to change, too; but this process may be more or less long. In the transitory period, some overriding general enactments assuring to the court the possibility of deciding cases in accordance with the new reality are believed to be sufficient. An express repeal of some provisions of the old law may follow. Others may be denied effect by virtue of the new overriding enactments. Still others will be interpreted in a new way, promoting the ideological foundations of the new order. There will be some which will remain on the paper but will never be applied, as the relations which they were to regulate disappear (this is particularly true in the field of commercial law governing business in a free enterprise system). Only the remaining ones will have their full force as previously.

Then, as soon as the situation is ripe for the dumping of the remnants of the ancien régime, new comprehensive enactments will replace the old ones. And sometimes it will be realized, soon later, that some pre-revolutionary solutions were not so bad after all and will return to the system organized on communist principles.66


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