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THE ROMANIST SUBSTRATUM IN THE CIVIL LAW OF THE SOCIALIST COUNTRIES

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1. General Remarks

The law of the socialist countries moves along patterns which are so different from those of law in Romanist countries that it may be considered as forming a separate family of law. This statement has been often repeated. It is intended to facilitate research in a specialized field of law and, from a didactic point of view, it is adhered to in distinguishing disciplines to be taught. This article has no intention of casting any doubt upon it.

However, the fact that the socialist legal systems belong to a separate juridical family does not exclude the existence, within their very bosom, of "substrata"[1] of varying degrees of importance and different kinds. More precisely, they comprise Romanist substrata originating in the centuries-old application of the *Corpus iuris civilis* or of Byzantine sources, or, more importantly, in the utilization by the legislator, and by the interpreter, of categories elaborated in the *usus modernus pandectarum* and then passed down through the universities.

Of course, the clash between Romanist tradition and the political necessities of the socialist revolution has resulted in tradition being sacrificed. And yet, the building of socialism does not mean that only one technical-juridical method has been uniformly adopted. While, in the field of constitutional law, the underlying political questions are of such importance as to leave very little choice as to the legal "techniques" to be used, the margin of choice is, on the other hand, very broad in the fields of civil and economic law.[2] It may suf-

1. I hope I shall not irritate the reader too much by using the term "substratum", meaning "pre-existing cultural stratum", as linguists, *e.g.*, do.
2. Civil law, in the definition of the jurists of the countries dealt with, corresponds to Romanist civil and commercial law, excluding family and economic law. Economic law is the set of rules applicable to state enterprises and their relations. In some countries, the distinction between the two disciplines is, however, rejected.

fice to open any socialist civil code, at random, to see clearly that, behind it, there is a Romanist tradition as opposed to the tradition of common law or of Islamic *sharīa*.

For a long series of reasons, this Romanist substratum beneath the legislations (and, more generally, the law) of European socialist countries could be easily overlooked by scholars.

Scholars of Roman law may, for example, confine their interests to the diffusion of Roman law itself, without considering the diffusion of other, more contemporary legal systems based upon Roman law – nineteenth century *gemeines Recht – ius commune* – (with the general theory of juristic acts, the *actio doli generalis*, and the general action for unjust enrichment) or, indeed, the codified law emerging from the liberal revolutions (with the general prohibition of tortious behavior, the general principle of contractual freedom, and transfer of property under contract).

Historians from the socialist countries who, unlike our own, have the merit of looking into the more recent history of their countries, are logically more inclined to dwell upon the framing itself, and the dialectic-materialistic analysis, of the results rather than on the "neutral" technical data involved in this type of analysis.[3] There are, of course, exceptions.[4]

3. An example, chosen at random from the works available to us, might be Bianchi, *Právne formy monopolizácie za buržoáznei ČSR*, Bratislava 1965.
4. *E.g.*, Andreev, "Rimskoto pravo v Bălgarija" published in Sofia in 1965, deals, in 39 pages, with Roman (Byzantine) law influences upon Bulgarian feudal law, and with French, Germanic, Italian and Russian law influences upon Bulgarian bourgeois law.

   A more important example is the collection edited by Csizmadia, Kovács, *Die Entwicklung des Zivilrechts in Mitteleuropa (1848-1944)*, Budapest 1970. Here we find monographs devoted mainly to the analysis of the infrastructural or ideological significance of juridical methodologies and institutions (Peschka, Horváth, Bianchi, who return to the subject dealt with in the work quoted above). We also find authors concerned with the history of law and thought in the German-speaking countries (Kuntschke, Thieme, Lieberwirth, Melzer) or with historical-systematic problems (Buchda), or with specific and limited historical periods (Vietor deals with the years 1939-1944 in Bohemia and Slovakia, and Buzás writes about the Hungarian revolutionary period, 1917-1919). We find, most of all, a very clear picture of the history of Hungarian institutions, and this picture constitutes the very nucleus of the work: Asztalos examines the metamorphosis of civil law, in general, from 1848 to 1944; Mádl describes the various attempts at codification; Bernáth describes possessory protection from 1802, Kovács analyzes forms of ownership marked by feudal characteristics, Sarlos examines a series of rights conferred by letters-patent (the right to open bakeries, mills, inns), Tákány-Szücz explains mining legislation based on the Austrian model, Pecze the law on industrial inventions (which reacts against the Austrian model), Weiss speaks of contract laws and Szegvári of the working woman, Böszörményi-Nagy, Pap and Degré write about the law of inheritance, marriage and guardianship, respectively. I also recommend the contributions on the process of codification in Poland (Radwański) and in Serbia (Petrić), and wider research on the evolution of Czechoslovak law (Luby presents the background to Slovak non-codified law in the period 1918-1948, Houser explains labor laws from the Austrian era up to the 1931 draft), and

Western sovietologists, apart from a few exceptions,[5] have also tended to neglect these data. Some, such as Berman and Hazard – come from a non-Romanist background and are primarily interested in the Soviet aspects of the system. Others may be mildly interested in knowing the differences between individual pre-socialist models (the French code; the Austrian code; the German-language scientific pandectist system). All this would appear to quell any desire to systematically sift the stream of Romanist and other elements which flow into the socialist data.

On the other hand, even those just starting to study civil or economic law of the socialist countries, will find that the continuing presence of Romanist elements and their origin are extremely promising research topics.

2. Reception, and its Limitations, in Eastern Catholic Countries

In the Preface to an excellent historical outline of Hungarian law up to the socialist revolution,[6] R. David reveals how what is generally considered a legal system belonging to the same family, such as French and Germanic law, actually possesses completely original historical features.

The same is true of a number of Eastern European systems. At first glance, an inexperienced jurist, reading through codes which speak of juridical acts, praedial servitudes, transfer of property by delivery, etc., might imagine that these systems come from an ancient and unmistakably Roman background. Alas, this is an optical illusion which must be discarded.

Beyond the eastern boundary of the Germanic and Italian worlds, the *Corpus Iuris* was only taken up in the countries which were part of the Holy Roman Empire (Bohemia, Moravia and the modern Slovenia); Poland (and Lithuania) and Hungary (including Transylvania, Slovakia and Croatia) remained outside. Roman-Byzantine penetration took a different route in areas under Eastern Christian influence (Bulgaria, Serbia, Moldavia, Walachia). Yet this influence did not apply to the Ukraine and to Russia. It would be superfluous, finally, to speak separately of the reception of Roman law in the Ger-

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on phenomena which occurred in the Austrian Empire (Lentze explains how Austrian jurists abandoned the ABGB and joined the great Pandectist school, and Klabouch describes restrictions on matrimonial liberty from the ABGB to the fall of the Empire).

5. Exceptions which may be mentioned are: Dekkers (see, *e.g.*, "Le droit romain et les nouveaux États", in *Mélanges Meylan*, Lausanne 1963); Zajtay, "La permanence des concepts du droit romain dans les systèmes juridiques continentaux", in *Rev. int. dr. comp.* 1966, 353 *ff.*; P.B. Taylor, "Roman influences in Russian wills", in 16 *The American Journal of Comparative Law* 1968, 430*ff.* See also O.S. Ioffe, "Soviet Law and Roman Law", in 62 *Boston University Law Review* 1982, 701*ff.*

6. I am referring to Zajtay, *Introduction à l'étude du droit hongrois*, Paris 1953.

manic countries which now have a socialist regime: their history blends into the wider history of reception of Roman law common to the whole Germanic world.

On the other hand, special mention must be made of the countries listed above which were part of the Holy Roman Empire. Here the penetration of Roman law followed three distinct paths: *via* the University, the Prince's will, and custom.

The glorious Caroline University in Prague, founded in 1348, was the first beyond the Alps to teach Roman law. As is widely known, in those days there was no rigid difference between law in force and law as studied. A society in movement, with the ambition of perfecting its very structures, was forced to seek out suitable legal models to rationalize customs, to fill gaps, and to regulate new relations. Roman law provided unsurpassed, prestigious models as well as general categories into which it was possible to fit the *leges barbarorum* of the past to increase their capacity of expansion. Moreover, the judge chosen among "jurists" (with a university training, that is) was convinced of the superiority of Roman law and had a better grasp of it than of "barbarian" practices: he thus adopted the Roman solution instinctively.

The Kings of Bohemia (and margraves of Moravia) also frequently supported Roman law. At the start of the fourteenth century, for example, in the reign of the Přemysl dynasty (before the founding of the University of Prague, that is), Wenceslaus (Václav) II adopted mining legislation, the celebrated *ius regale montanorum*, which was clearly inspired by Roman law. The Luxemburgs, like the Habsburgs later, incessantly sought to apply Roman law in the courts of the nobility: they eventually succeeded in this effort after the Battle of the White Mountain (1620) which has broken the powers of the autochtonous aristocracy forever.

The cities of Bohemia and Moravia were the real centers of diffusion and support of Roman law. In Bohemia, as in Hungary and Poland, we find settlements of Germanic peoples who have brought with them their customary legal institutions patterned upon one of the two main moulds: the South German pattern (of Nuremberg) and the Saxon pattern (of Magdeburg). It was precisely this customary Germanic law which had been, and continued to be, penetrated, gradually but incessantly, by Roman law, the latter being more suited to the sophisticated and complex relations that arose in the cities. Thus the urban law of Bohemia and Moravia very soon became synonymous with Roman law. Evidence of it is found in the well-preserved collection of court sentences of the city of Brno (Brünn), the fifteenth century so-called *Brünner Schöffenbuch.*

In Slovenia (or rather, respecting the divisions of the time, in the southern part of Kärnten, and in the Karawanken), the reception of Roman law has proceeded at the same rate of speed as in the bordering German-speaking countries.

On the other hand, there was no reception east of the boundaries of the Holy Roman Empire, so that Roman law penetrated neither into Poland and Lithuania nor into Hungary (including Transylvania, Slovakia and Croatia).

This might come as a surprise as far as Hungary is concerned. Hungary had the same king as Bohemia uninterruptedly since 1526. Right from 1254 on at least, there had been study of jurisprudence organized at Veszprém, and here professors trained in Bologna or Paris[7] taught Roman law. Many cities also had charters influenced by South German models. Nonetheless, the Romanization of the law applied by the courts came only much later. An explanation of this may lie in the uniformity of Hungarian customary law (as opposed to the Germanic or Czech particularism which demanded the superimposition of a consistent legal stratum): it guaranteed a certain self-sufficiency to such customs and hence the capacity to resist the attempts at penetration of the learned university law. King Matthias Hunyadi the Just (1458-1490), a humanist and a reformer, may have intended to promote the reception of Roman law but the idea was not followed up.[8] The subsequent long Ottoman domination of most of the country created a gap in Hungarian university life, from 1526 to 1667, which had even more lasting repercussions. Werböczy's celebrated *tripartitum* of 1514 (*Opus tripartitum iuris consuetudinarii inclyti regni Hungariae, partium eidem annexarum*), a semi-official source of Hungarian law, is an autonomous compilation of such customary law which mentions Roman concepts only in its theoretical introduction. Its autonomous nature was subsequently confirmed by the various *Corpus iuris hungarici*, the *Quadripartitum*, and the *Novum tripartitum*.

The *Tripartitum*, side by side with the typical autochtonous noble law, does incorporate the by-laws of the towns which had been open to Roman law since the start of the fourteenth century due to the influence of the *Summa legum Raimundi* and other such works. However, this Roman-oriented municipal law was by no means prevalent in it, nor would it ever become prevalent in Hungarian law as a whole.[9] Indeed an example of the vitality of traditional

7. A document of 1276 shows that, in the Chapter of Veszprém, there were at least fifteen doctors *utriusque iuris*.
8. According to the account of Gian Ludovico Vives, numerous experts and jurisconsults followed Princess Beatrice of Aragon, the king's bride-to-be, to Hungary: their presence created such a degree of discord that the king had to expel them from his kingdom forthwith.
9. According to Tomaschek "Über eine in Österreich [...] geschriebene Summa legum incerti auctoris und ihr Quellenverhältniß zu [...] dem Werböczischen Tripartitum", in *Sitzungsberichte der Akademie der Wissenschaften* 1883, 105, the *Summa* constituted the main inspiration for the *Tripartitum*, but his assessment has now been convincingly refuted (Bonis, "Einflüsse des römischen Rechts in Ungarn", in V *Jus Romanum Medii Aevi* 1964, No.10. For a reappraisal of the importance of the *Summa, cf.*, Rebro, "I manoscritti della Summa legum Raimundi Partenopei in Slovacchia", in *Atti del convegno internazionale di studi accursiani* 1968.

law may still be found today in the PTK (*Polgàri Törvénykönyv*, or civil code) of 1959, brought up to date in 1977, which includes the "*paterna paternis, materna maternis*" inheritance law (para.611).

In Poland, the rejection of Roman law was, in a certain sense, more conscious and more total. Roman law was not included in university curricula: only the University of Cracow had a handful of professorships in Roman law but chose to leave most of them vacant. The fact was that it was feared as a possible vehicle of an authoritarian political system. Only the towns conformed their laws to Germanic models which, in turn, had been influenced by Roman law. Nor was there any resistance to canon law in the fields in which it claimed jurisdiction. Therefore, Roman components can be said to have penetrated into Poland as well.

3. Reception, and its Limitations, in Orthodox Countries

In Orthodox Europe, the ground for reception has been even more fertile. Of course the sources which we must consider are not the Pandects and the Code themselves but rather later works in Greek, such as the Brachylogos and, above all, the Syntagma.[10]

It seems normal that, in Bulgaria, as a result of Byzantine domination (1018-1185), the various Byzantine sources – the Procheiron, the Epanagogue, the Basilika – should be in force. Other factors, however, unconnected with Greek domination, must be mentioned as well. The reception of Roman law in Bulgaria is associated with the conversion of the Bulgars to Christianity in 865. The Ecloga and the Nomocanon, both Byzantine, were hence already applied in the first Bulgarian kingdom (681-1028) and based on them was the *zakon sudny liudem* (probably of the ninth century), believed to be the major legislative landmark of Bulgaria of that era. Byzantine laws subsequent to the founding of the second Bulgarian kingdom, such as Matthias Vlastar's Syntagma of 1335, were also applied in Bulgaria: indeed the Syntagma remained in force virtually until a century ago.

The penetration of Byzantine law was even more profound in the Romanian provinces. From the fourteenth century onwards, the nucleus of Moldavian and Walachian law was a combination of Byzantine and canon law; customs and by-laws were imposed by the princes. The reception of Byzantine and canon law sources continued uninterruptedly right up to the dawn of the contemporary age. The same may be said of the prince's authority and, in a given period, the diffusion of the doctrine of natural law.

10. The Ecloga, which will be dealt with below, and the Syntagma were, however, applied in some countries in Bulgarian translation.

It is interesting to note that the feudal law of Bulgaria and Romania was not closed to Roman law infiltration either. Roman law, for example, supplied Bulgarian feudal property relationships with advanced solutions and patterns. Scholars of the history of Bulgarian law associate the introduction of Roman law with the development and consolidation of feudal rights.[11]

There is a certain parallelism in the diffusion of Byzantine law in Bulgaria and Serbia. Although one may argue about the degree of originality of the laws of Tsar Dushan, if they do owe anything to a model, that model is Byzantine.

The case of the Principality of Kiev, and later of Russia, is different. Here Byzantine law had a certain influence but it would be wrong to speak of reception. It is true that the first great landmarks of Russian laws were treaties with Byzantium in the tenth century. It is true, above all, that in the various redactions of the *Russkaia pravda*, from the twelfth century onwards, it is possible to find not only customary bases and Germanic elements but also a Greek-oriented stratification due both to the direct influence of the Ecloga and the Procheiron and to an indirect Byzantine penetration (caused by the blending into the *pravda* of the above-mentioned *zakon sudny liudem*, presumably from Bulgaria). Nonetheless, the real basis of the *pravda* was Russian custom.[12] Later, in 1649, the *sobornoe ulozhenie* of Tsar Alexis reveals not only Byzantine influence but also a western Roman influence which had filtered through the "Saxon Mirror" and the Lithuanian Charter. Still, the text, which remained formally in force for almost two centuries, was fundamentally traditionalist. The spirit of the doctrine of natural law, which had a delayed diffusion in Russia, managed to prepare the way for the advent of reform but, in itself, was unable to obliterate the national character of the country's institutions.

4. The Diffusion of French and Austrian Legal Models

It may come as a surprise that in countries where reception took place and in those where it did not, the ensuing differences have left no recognizably deep traces in their current legislative frameworks. Today, for example, traces of Roman law are more conspicuous in Poland than in Czechoslovakia.

Roman law has been destined to evolve continuously: this is the price it pays for the maintenance of its vitality. Roman law had to be integrated with Germanic elements to become *ius commune* (*gemeines Recht*) and it had to respond to the stimuli of natural law as well: subsequently, in the nineteenth cen-

11. Andreev, *op.cit.* note 4.

12. Here I am speaking solely of civil law: for criminal law, the evaluation will be different.

tury, it had to make its innovations explicit by formalizing them in codes, formulating them in conceptual definitions organized into "systems". After this transformation – carried out for the sake of logic and reason – took place, Roman law may no longer be identified as a single model. A whole "family" of different systems has been developed: the "Romanist juridical family". The models which compose this family have spread confidently all over the world. New (and perhaps more prodigious) receptions have occurred in new codes and new scientific "systems".

In this phase, the expansive capacity of the *Allgemeines Bürgerliches Gesetzbuch* is more apparent than real. It is true that this code was applied in Bohemia, Galicia and Lodomiria, and in Bukovina, too. It is also true that Serbia (an autonomous principality not yet independent) had at first planned an integral reception of French civil law but has then (1844) enacted her own civil code upon the Austrian model.[13] And it likewise is true that, in 1848, the Hungarian diet, in abrogating the basic laws on capacity, freedom to alienate, ownership and inheritance, originally derived from feudal law, has created a legislative gap which enabled the Emperor to extend, in 1852, the ABGB to Hungary, too (including Transylvania, Slovakia, and Croatia).

But it is also true that, after only nine years, provisional judicial laws repudiated this extension and Hungarian law became autonomous once more. Just as it is true that, in certain parts of Austria, according to classical jurists – the law of the ABGB was valid only in theory.[14]

On the whole the ABGB had an important, albeit limited, function: to extend the infuence of Romanist law over the southern part of Poland, [15] and Serbia, and to lay a provisional Roman stratum over Greater Hungary.

The capacity of the *Code civil* as a model was, on the other hand, more conspicuous. As a result of the Peace of Tilsit it penetrated the area of the Duchy of Warsaw (where it remained in force, more or less, until 1964) and the spon-

13. At first, in 1829, Prince Miloš Obrenović ordered G. Zaharides to translate the *Code civil.* Zaharides, however, had little experience in law and did the translation very badly. In 1836, S. Hadžić and V. Lazarević, Yugoslav jurists and notables with Austrian citizenship, were consulted: they replied that they felt the draft code was unsuitable for Serbia. In the end, Hadžić was given the job of drawing up an abridgment of the ABGB. Petrić, "Entstehung und Bedeutung des serbischen bürgerlichen Gesetzbuches", Csizmadia, Kovács, (eds.), *op.cit.* note 4, now claims a high degree of originality for the Serbian code.
14. In 1912, Ehrlich (in *Recht und Wirtschaft*, 273-279, 322-324; *idem*, in *Recht und Leben.* Ehrlich's works collected by Rehbinder, Berlin 1967), denied that Austrian law was applied in Bukovina and proposed a systematic survey of the customs of the different ethnic groups present there (Armenians, Jews, Romanians, Russians, Ruthenians, Slovaks, Germans, Hungarians, Gypsies).
15. A symbol of the accession of Polish countries to the Austrian area is the interesting school of Polish literature about the ABGB. See, *e.g.*, the works of Ernst Till (both in Polish and in German) and Friedrich Zoll (in Polish and German).

taneous desire to imitate caused it to be adopted as a model by the new Romanian kingdom (*codul civil* of 1864). This is, more or less, what the Bulgarian legislator was to do soon afterwards: his great laws of ownership, inheritance, contracts, and obligations were inspired by the 1865 Italian model which, in turn, was inspired by the French model.

The *Code civil* might even have had a much greater success. Indeed, Alexander I, Tsar of Russia, had meditated reception of French legal principles. His pro-French minister, Speranskii, planned a draft of the civil code based on the French model and, in 1810, succeeded in having the chapters on persons and things approved. But Napoleon's ill-fated military invasion, in 1812, stopped this reception.[16] The 1835 *Svod Zakonov* was a compromise between tradition and Russian backwardness, on the one hand, and western legal models (French, but also Austrian and Prussian), on the other.

In many countries in question, legal reception took place rather eclectically. It has already been shown how, in Serbia, the decision to adopt the Austrian model was made for partially contingent reasons. The fact that the Serbian commercial code was enacted under the conspicuous influence of the French *Code de commerce* of 1807 shows that the Serbs have also tended to look towards France.

Still in the field of commerce, Romania, too, was ultimately inspired by the French model in adopting her code of commerce, in 1887, which imitated the 1882 Italian version.

Still, perhaps more than the *Code de commerce*, the general commercial code drafted for the Germanic states – the AHGB – had played an important role as a model in the countries of Eastern Europe. In 1863, the first four books of the AHGB entered into force in Austria, and hence also in Bohemia, Moravia, Galicia, and Slovenia. In 1875, Hungary also adopted a commercial code (XXXVII: 1875) which was an adaptation of the AHGB and which, of course, was also applicable in Croatia (hence its name, "Hungarian-Croatian commercial code"). It was subsequently to become the model for the Bulgarian commercial code.[17]

The picture emerging from these eclectic receptions was most interesting. Whereas Serbia imitated Austrian civil law and French commercial law, Bulgaria imitated French-inspired civil models and borrowed Austro-Germanic commercial law. Whereas the capacity of penetration of Austrian, Prussian, and Saxon civil models was limited, the AHGB met with widespread diffusion.

16. The accession of Poland to the French area has left us with Polish-language literature about the *Code civil*. The most celebrated authors were Wołowski and Holewiński.
17. Provisions about bankruptcy and navigation were taken from the 1882 Italian commercial code.

5. The Diffusion of the Scientific Models of the German Systematic School

Nevertheless, neither the diffusion of the AHGB, nor that of the *Code civil* were ever to scale the extraordinary heights of the German Pandectist systematic school in the countries that are now socialist. Just as Italy and Scandinavia, the whole of Eastern Europe was invaded by the new systematic methodology and by the consistent set of definitions which two generations of German-speaking jurists had elaborated in the second half of the nineteenth century on the basis of the *Corpus iuris civilis.* This methodology and this set of concepts – which bear the glorious antonomastic name of "pandectist system" – were, once they had been introduced, to prove much "more durable" than any tradition produced by capricious legislative receptions could ever hope to be.

Above all, it must be pointed out that this school was not exclusively Germanic, nor was its influence restricted to German-speaking countries. We may be accustomed to reading the works of Pandectists such as A. von Randa[18] and Petrażycki in German but the former, for instance, though he wrote about ownership in German, wrote his most important work, on possession, in Czech, his mother tongue. And Petrażycki became a *Privatdozent* in Germany thanks to his classic work on income but wrote for the rest of his life in Russian, according to the Tsarist system which used Russian professors at the University of Warsaw and Polish professors in Russian universities. Thus the Pandectist systematic approach was not born as a strictly German phenomenon. And indeed the diffusion of its results was not late in coming, not only north and south but also – most of all – east.

Correlatively, this systematic school does not incorporate all the German juridical science of the nineteenth century. Minority movements opted in favor of the aims of the law and of the interests it protects; some demanded that the jurists acknowledge the need for greater freedom for the judge who would, in turn, be guided by sociological necessities. More precisely, the school of "legal socialism"[19] – which was then not especially dear to the

18. Strictly speaking, von Randa wrote about Austrian law (in his work on ownership, this emerges in the title itself). Yet cases like his were not rare: authors writing formally about the ABGB, or other modern legal texts, actually contributed to the erection of the great "Pandectist" conceptual system. In fact, Austrian doctrine aimed at codified law and remained extraneous to the systematic movement up to a certain period. Then, in the second half of the nineteenth century, Austrian scholars joined the currents of thought which had been developed in Germany (see Lentze, "Die Eingliederung der österreichischen Zivilrechtswissenschaft in die deutsche Pandektenwissenschaft", in Csizmadia, Kovaćs, (eds.), *op.cit.* note 4.

19. Anton Menger, an Austrian, was its main exponent. "Legal socialism", which had followers

Marxists – managed to have the so-called general clauses, or "Generalklauseln" (the obligation to perform one's contract in accordance with good faith, liability for causing harm to another in a manner which offended *bonos mores*, and so on) included in the draft of the BGB; these clauses would provide room for the judge's discretion given the incessant progress of social conquests.

One of the first areas of expansion of the Pandectist movement was Hungary. Towards the end of the nineteenth century, the fruits of the teaching of Roman law, which had begun at Veszprém many centuries earlier – and which had resumed with a new enthusiasm following the Counter-Reformation – began to ripen. If Hungarian civil law was customary and traditional, science was Roman and, in that era, opened up to German-language Roman law doctrine.

Grosschmied was the leading representative of Hungarian science in that period. If he claimed to be a defender of tradition, encouraged Hungarians to adapt their ancient law to modern needs, and pointed to the English as a model to imitate, he, nevertheless, established a "dogmatic" system of contracts analogous to that of German jurists of that period. He espoused Germanic solutions in general, repudiating only conceptualist methodology because of the excessive abstraction of its constructions. In this struggle against *Begriffsjurisprudenz*, he was joined by another leading figure of the period, Szaszy Schwarz, a follower of Jhering, who was also receptive to modernist solutions. And indeed, given the lack of a civil code, the trends shown by the science of civil law seemed all the more justified in that it appeared natural to adopt the solutions contained in the commercial code[20] (and reflecting the Germanic model) to regulate important issues such as contracts, etc. The drafts of 1900, 1911-1915 and 1928 of the Hungarian civil code bear witness to the Roman bases common to the Germanic and Hungarian science of civil law and to the Hungarians' concrete anticonceptualist tendencies. Apart from the general part (which the draftsmen regarded as too abstract for a legal text), these drafts are similar to the BGB. It should also be noted that in influencing practice, these drafts ended up by reinforcing the scope of the solutions developed in Germany.

Pandectist models also expanded into Poland and Russia. Anyone reading the Polish decree "On the General Rules of Civil Law" of 12 November 1946

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outside Germany, too, is the subject of numbers 3 and 4 of the *Quaderni fiorentini per la storia del pensiero giuridico.* 1974-1975.

20. Weiss, "Die Entwicklung des Vertragsrechts . . .", in Csizmadia, Kovács, (eds.), *op.cit.* note 4, 286*ff.*; Luby, "Die Entwicklung des bürgerlichen Rechts in der Tschechoslowakei . . .", in Csizmadia, Kovács, (eds.), *op.cit.* note 4, 304*ff.* An example of implicit imitation of Roman rules in the field of possession is described in Bernáth, "Besitz und Besitzschutz im Spiegel der ungarischen Rechtsgeschichte . . .", in Csizmadia, Kovács, (eds.), *op.cit.* note 4.

(note the date!) will see that it consists of one part dedicated to the persons and subdivided into two sections: on natural persons (general provisions, domicile, presumption of death, guardianship), and juristic persons; and of a second part dedicated to juristic acts (general provisions, capacity to act, formation of contracts, form, invalidity of the declaration of will, conditions, agency); and of other parts dedicated to the computation of terms and to limitation of actions. Its resemblance to the general part of the BGB is evident, nor indeed is it a coincidence. For that matter, it is not due to the fact alone that since the BGB had been applied in Posnania and in the Polish Corridor (as well as in the area between the Oder-Neisse line and the western border of Poland in 1772), it constituted one of the historical precedents of the unified legislation of the time. The reception "en bloc" of the rules on juristic acts, and of general elements present in the BGB (which accompany other French-derived elements: see below), may be explained more by the influence of Pandectist doctrine on Polish doctrine[21] than by the temporary application of the Germanic code in some Polish regions.

In the same way, our reading of the 1905 draft of the Russian civil code, the work of a commission set up by Alexander III in 1882, confirms what we already knew: the huge influence German doctrine exerted on the training of Russian jurists in that period, and the very great prestige which the draftsmen of Russian laws attributed to the paragraphs of the BGB. Although World War I halted the process whereby the *grazhdanskoe ulozhenie* should have been adopted, the 1922 *grazhdanskii kodeks* (the Russian civil code of the NEP period) was to reflect, in a series of systematic and technical data, the 1905 model itself, and also the Germanic BGB and Pandectist culture.

Russian and generically Soviet models, in turn, originated the rediffusion of Germanic patterns.

Anyone reading the *občanský zákoník* of Czechoslovakia, and recalling the general part of the provisions on juridical acts, will find it very natural that, in the country of Randa, this institution should be treated with reverence. As to the pure reconstruction of the facts, one wonders whether the incorporation of this general part into the 1950 and 1964 *občanské zákoníky* may not have been the direct result of Russian and Soviet influence. In view of this, it is natural that, in the country of Randa, these two codes should have suppressed possessory protection, later to be reintroduced in the great reform of 9 November 1982, (No.131, art.132), which betrays an Austrian conception of possession, different from the Germanic-Russian conception.

21. Formally speaking, the Poles never studied Roman law as a directly applicable *usus modernus*. However, this did not prevent its influence from emerging in the legal texts. Polish Romanists who may be remembered as intermediaries in these influences are Friedrich Zoll (father of the above-mentioned Friedrich Zoll) and Koschembahr-Lyskowski.

But that is not the end of the matter. Bulgaria and Romania were also conquered by the attractiveness of the Pandectist constructions. In these two countries two different juridical schools competed: one based on French doctrinal prototypes, the other on Pandectist prototypes.

In Bulgaria, the adoption of the commercial code was tantamount to a commitment to the Germanizing tendency in the country. And if, up to the end of the nineteenth century, the undoubted Italian influence acted as an intermediary for French models, in the present century it has tended to favor the diffusion of the systematic Pandectist method. Proof of this penetration is that the doctrine (preterlegal, as in Italy) of juridical acts is taught at the University of Sofia. This phenomenon, whereby Roman law spread from school to school, more than from municipal law to municipal law, does not come as a surprise. The strong point of Roman law has always been the Roman university training of its judges. And the strong point of modern Pandectist Roman law has been the university training of its professors, judges and legislators.

Of course this new Roman law also consisted of numerous important elements that were not strictly due to Justinian: the doctrine of juridical acts, the unitary general notion of delict, the general principle of unjust enrichment, the well-defined category of the right of personality, the rule of contractual autonomy, are all contributions of interpreters and are by now indissoluble from the true nucleus of Roman law and further natural law and revolutionary components.

These contributions have demonstrated a vitality which is perhaps superior to the many other unchanged rules still evident in the BGB (*e.g.*, the distinct category of real rights, the standardization of contracts, possessory protection).

More precisely, if the interpreter propagates anything at all, he propagates interpretative methods and a way of approaching juridical knowledge. In propagandizing their conceptual approach by example, the German-language Pandectists have shown themselves to be unsurpassingly efficient. Judge from the example how, in the present age, the Czechoslovak socialist jurist, Viktor Knapp, in presenting the exquisitely socialist right of "operational management", justifies this new category with an important premise: "The present conceptual juridical machinery, based on Roman law, was unable to clarify the nature of the right in question".[22] The existence of a substratum, the assumption of its validity, the Roman character of the substratum and conceptualization as a way of knowledge could not hope for a clearer confirmation.

22. Knapp, "Natura del diritto delle imprese di Stato sui mezzi di produzione loro affidati" in *Atti del convegno di Tremezzo sui problemi giuridici dell'impresa di Stato nei paesi socialisti, Riv. dir. comm.* 1969 No.1-2.

6. The Deterioration of the Systematic Pandectist Model

On 1 January 1976, a new civil code – the *Zivilgesetzbuch* (*ZBG*) – came into force in the German Democratic Republic, and the BGB ceased to be applied.[23]

This new code entails no juridical revolution: more precisely, it does not contain significant political innovations in the law previously in force. Nonetheless, its language, its systematization, even its gaps, display a deliberate detachment from the BGB and the doctrine underlying it.

No one seriously believes in the existence of languages based on class, or on the class system of a given society. There do exist, however, problems of linguistic choice which may become acutely political whenever they somehow concern legal matters: when, that is, law regulates the language or when language is used to express law.

During the nineteenth century, a conventional and esoteric juridical slang developed in the German social *corpus* reflecting the accuracy of German juridical conceptualization. The BGB, which used concepts worked out in school and not in practice, was able to resort to subtle distinctions, and gave names to abstract categories rather than to concrete hypotheses (*e.g.*, juridical act instead of contract; variation in juridical relations instead of acquisition and loss of rights). Not everyone liked the language of the BGB, not even in the Germany of the time. Anyone who favored a "jurisprudence of interests", as well as the sociological and "free law" schools criticized it.

The technical-legal language developed in Germany (on the basis of a nucleus of expressions designed to translate Latin legal vocabulary) had great success abroad. The Russian, Polish, Italian, Romanian and Hungarian legal languages sought out the right words to introduce the terms denominating juridical categories developed in Germany into their midst. The Russians, Hungarians and Poles subsequently remained faithful to this language, and the Romanian Draft does not appear to want to stray from it. Only the Czechoslovaks managed to leave it behind, here and there, in 1964, for the sake of renewal, coining antitraditional expressions which occasionally sound rather strange. The East Germans, too, have, for the most part, repudiated it: not to replace it with a sensational new language, but with the express intent of bringing legal jargon into line with common language, and with the secondary aim of repudiating the Pandectist school (together with the Liberal Imperial Parliament) and reappraising the contribution of the minority schools.

In the final analysis, all those who, in Federal Germany, accused the drafts-

23. Italian legal literature has devoted an article to the ZGB, drawing its inspiration from the analysis and circulation of models: Crespi Reghizzi, De Nova, Sacco, "Il Zivilgesetzbuch della Repubblica democratica tedesca", in *Riv. dir. civ.* 1976, I, 47.

men of the ZGB of "pathological animosity" towards the old BGB may be said to have been right. Thus *Gesellschaft* (company) was turned into *Gemeinschaft von Bürgern* (community of citizens), *Dienstbarkeit* (servitude) into *Mitbenutzungsrecht am fremden Grundstück* (the right to enjoy, with others, the use of property belonging to a different owner), *Unternehmen* (enterprise, which gave rise to *predpriiatie*), became *Betrieb* (activity).

The glorious generalizations of the BGB disappear in the ZBG. And the classical General Part of the code is missing. Any illustration of the juristic person is thus lacking: missing also is the whole doctrine of juridical acts. And the real rights category is not made explicit.

The draftsmen of the code were well aware of the rise (and also of the crisis) of Pandectist science. They were able to move with consummate skill, and with great naturalness, in the conceptual patterns of *ius commune* as it was before the nineteenth century in Germany: in the patterns from which the French have never felt the need to stray. Following the decline of the category of juridical acts, the contract once more held a central position as it did in France.

7. Some Examples

Of all the civil legislations in force in the socialist countries, the Soviet and the Czechoslovak display the most conscious detachment from Romanist models, whereas the Polish, the Hungarian and the Bulgarian are more markedly faithful to them. It is not necessary here to deal in full with Yugoslav legislation – which extends solely to the law of inheritance and to obligations – and Romanian legislation which is still made up of political laws superimposed over the old code.

Another distinction may be made between systems oriented towards the French (Romania, Bulgaria), Austrian or German (Czechoslovakia, Yugoslavia and Hungary) or compound models (Soviet Union, Poland). External form, too, encourages this classification: the East German, Czechoslovak and Hungarian codes are split up into paragraphs; the others into articles.

Our argument may be demonstrated by comparing all the civil legislation of all the countries concerned. It is possible to have an idea of the results that would emerge by preselecting some significant examples. Our choice would be to dwell upon: the presence, in the system, of a general regulation concerning juridical acts; the presence of a category of real relations; the presence and nature of possessory protection; the means of acquiring ownership; the definition of the objective element in the delict; the presence of a general action of unjust enrichment; the standardization of contracts; the means of acquiring

an inheritance; the identification of *ex lege* entitlement to succeed; the treatment of covenants on succession.

1. "Juridical act" is a familiar form both in the 1922 Russian GK (*grazhdanskii kodeks*, or civil code) and in current Soviet legislation. Article 14 of the 1961 Fundamental Principles of Civil Legislation of the USSR mentions it; the legislation of the various republics regulates it completely. For example, the 1964 RSFSR Civil Code – which the codes of the other fourteen union republics (all adopted at approximately the same time) resemble – contains a special chapter on "juridical acts" (arts.41-61); it includes a definition, mentions the subspecies, and regulates the various forms, and the invalidities due to various disabilities, shamming, mistake, deceit or duress. The definition of the juridical act is contained in Article 41 and will be very familiar to anyone acquainted with classical German doctrine. "Juridical acts are acts of citizens or organizations having the aim of establishing, modifying or terminating civil-law rights or obligations. Juridical acts may be unilateral, bilateral or multilateral (contracts)".

A movement away from the usual formulations may be found in the 1964 *občanský zákoník* (the Czechoslovak civil code). It regulates juridical acts (paras.34-42) with synthetized rules, replacing, for example, all rules concerning vitiated will with paragraph 37 which states: "A juridical act shall be considered invalid if it is not concluded freely and earnestly, specifically and understandably".

A precise regulation of a juridical act may be found in Articles 56-109 of the 1964 *kodeks cywilny* (the Polish civil code). It reproduces the abovementioned 1946 decree (although the part regarding the capacity to act is transferred under the chapter on persons) so that the influence of the Pandectist model is clearly evident. The Hungarian PTK, on the other hand, refuses to make allowance for the notion of a juridical act. Already in 1928, the Hungarian draft had disregarded the "general part" of the Pandectist model as being "too abstract". Hence the PTK follows in the same direction.

In Bulgaria, Romania and Yugoslavia, the idea of "juridical acts" is accepted only in doctrine. However, the relevance of this category is very evident in the legislator's thinking in Bulgaria. There the ZZD (the law on obligations and contracts) states in Article 44 more or less what the Italian *codice civile* says in Article 1324: "Rules regulating contracts shall be applied in accordance with unilateral declarations of will wherever the law permits that rights and obligations arise, be modified or terminated as a result of the same" (note how a complete definition of the juridical act emerges here more completely than in the Italian article).

The ZGB fails to define and regulate the juridical act although the term *Rechtsgeschäft* appears in paragraphs 6, 48 and 53. Capacity, consent and

form are regulated as regards contracts and wills, and paragraph 48.2 extends the rules regulating contracts to unilateral declarations.

2. The category of real rights is in a critical position in the most innovative socialist legal systems. Soviet Fundamental Principles, just as the codes of the various union republics, confine themselves to a broader regulation of ownership, without disclaiming that contracts and other facts may constitute a right to possession by other persons (art.157 GK RSFSR) as well as their right to share the fruits (art.140 ivi): they also attribute revendication to any subject having the right to possession of the thing (art.29 Fundamental Principles; art.157 RSFSR Civil Code; and, furthermore, with reference to the pledgee, art.199 GK). In order to fully understand the significance of these provisions, it must be pointed out that the "possession" mentioned corresponds to the German *Besitz* and hence also includes detention.

The ZGB leaves the category of real rights in a shadow: it neither eliminates nor regulates nor mentions it. It regulates some traditional or new rights but remains silent as to others. It assigns protection modelled on that of the owner to anyone having the right to possession of the thing (the Germanic possession includes detention).

The Czechs go even further: they use the general category of "duty" (*povinnost*), incorporating generic duties – almost as if they were disowning the special notion of "obligation" itself.

Ownership and "personal use" are regulated in separate, autonomous sections of the code, and a claim for recovery is granted to anyone having the right to detention of the thing (see paras.132, 203, *obč. zák.*)[24] However, the code of international trade once more brings the category of "real rights" to the forefront; and implicit importance is attributed to the "credit" category (*e.g.*, only credit may be supported by a guarantee).

In their PTK, the Hungarians have implicitly accepted the "real rights" category. The book of ownership devotes a chapter to the rights of utilization: it regulates both the classic real rights of enjoyment (usufruct, use, servitude) as well as the new right of use. Claim for recovery, nonetheless, is granted to anyone having the right to detention (para.193: compare with the silence of para.115).[25]

24. This reasoning is rather arbitrary. Para.132 grants the right to repossess "to the owner": para.203 confines itself to ordaining that "any holder of the right of use has the right to the protection against anyone breaching his right to personal use of the land without due title", and hence suggests that the action in repossession is not granted *solely* to the owner.

25. According to para.193 (concerning unlawful possession) "anyone possessing the thing without entitlement must restitute it to the person who has title to its possession". Laws on the protection of property are more generic: according to para.98, the owner has the right

The "real rights" category is preserved intact in the Polish *kodeks cywilny*. The regulation of ownership (arts.126-231) is followed, in a proper systematic manner, by perpetual usufruct, traditional usufruct, praedial servitudes, pledge. The second book of the code is expressly devoted to "owernship and other real rights".

In Bulgaria, the *zakon za sobstvenosta* of 1951 includes in its title the name of "ownership" and almost all the articles are devoted to it. There is also regulation of ownership of surfaces and two rights of enjoyment (Roman law use, and the perpetual use of the land as a socialist right) whereas practice itself has maintained praedial servitudes. And the sixth chapter of the law is expressly devoted to "real rights over the property of others".

The real rights category seems to be in a highly critical situation in the Soviet Union and East Germany, less critical in Czechoslovakia and Hungary, but as yet uncritical in Poland, Romania, Bulgaria and Yugoslavia.

3. The mechanism of possessory protection also seems to have deteriorated in the socialist countries. When the 1922 GK RSFSR was in force, Russian commentators found no specific articles in it about possessory protection. Article 170, which protected the lessee "against anyone violating his possession, even against the owner", appeared to suggest that if possessory protection is granted to the lessee, it must also be granted to the owner.[26] It was later clarified that possession was protected – in this and in any other case – only in conformity with the law.[27] Any real protection of possession would, in pre-socialist societies, have constituted superprotection of the exploiting classes who – besides enjoying the benefits of a propertied regime established in their interests – would also have obtained partial recognition under the law of their unlawful acquisitions: in socialist societies, therefore, the protection of unlawful possession would have appeared incongruous. The legislation currently in force seems to have accepted these theoretical premises.[28]

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to possession and to the protection of his possession: according to para.115.2, the owner has a right to put an end to any unlawful interference or intrusion and, whenever he is no longer in possession of the thing, he may recover it.

26. So says Novitskii, *Imushchestvennyi naiom* 1923, 23 and 24, and, omitting chronologically intermediate citations, Genkin, I *Grazhdanskoe pravo* 1944, 228. There are even more citations in the passage from Venediktov quoted in the footnote below.
27. Venediktov, *La proprietà socialista dello stato*, It. transl., Turin 1953, 381-413 (the original work was published in Russian in 1945).
28. Perhaps a more general explanation may be imagined by observing that a legislator who is revolutionizing the system of legal "holding" in order to make it more conform to his ideology, is disinclined to accept that goods are subject to a double system of "legal holding": an ownership, granted in accordance with the views of the legislator, and possession. The *Code civil* also regulated ownership without providing for protection of the possessor (this type of protection was later revived by interpreters).

The ZGB does not define possession nor does it envisage any action for its protection. Possession is mentioned solely as a situation which is the right of the owner or of any other entitled subject.

At first the Czechoslovaks, too, adapted to these new bases. Possessory protection was reabsorbed into cautionary generic normative measures prior to, and contemporary with, the judgment (para.5 *obč. zák.* 1964).[29] However, the above-mentioned new law of 1982 subsequently reinstituted possessory protection (art.132a).

On the other hand, possession is envisaged and protected by the PTK (paras.187 *ff.*), by the *kod. cyw.* (art.336), and by the Bulgarian ZS (the seventh chapter of which is devoted to possession). Hungarians and Poles alike have clearly drawn inspiration from Germanic models (and it should be stressed that these are German, not Austrian, models, in that they embrace the unitary conception of *Besitz*, and recognize the category of harm to possession). The Bulgarians instead – according to their habit – have imitated the Italian model. They distinguish possession from detention and grant a remedy against every disturbance only to the former: however, they grant to the detentor an action to regain detention against any person who has forcibly dispossessed him.

The Czechoslovaks, in turn, shape possession in a way that reflects the Austrian definition. Romanians and Yugoslavs, on the other hand, have not legislated in this respect at all and still apply their traditional solutions. Their models are the French (to which the Romanian *Project* remains faithful), and the Austrian, respectively.

4. The transfer of property has been at the center of some most fascinating legislative trends. Let us first observe that Romania and Bulgaria remained faithful to the French regulation whereby property is transferred by contract.[30]

The Soviet Union too, with the first GK RSFSR of 1922 and other parallel legislation, adhered to the equation between contract and transfer. In 1961, however, the Fundamental Principles of the USSR were to demand delivery as the means of acquisition (art.30). The Czechoslovaks have proceeded in parallel to the Russian solution in this sector. The 1950 code broke with Austrian tradition and proclaimed the self-sufficiency of the contract.[31] The

29. *Cf.*, Knapp, "Quelques problèmes relatifs à la protection légale prévue par le code civil", in *Bull. droit tchécosl.* 1964, 38*ff.*

30. In Bulgaria, ZZD art.24 reconfirmed the traditional solution.

31. A further argument against the need of delivery or of formality may be, in moments of revolution, the fear that transfers motivated by political will may be compromised by the non-execution of formalities.

1964 *obč. zák.* revives the constitutive function of delivery for the acquisition of movables (unless the parties in question provided otherwise) and envisages a new type of formality for the acquisition of immovables (*e.g.*, para.134).

The Hungarians remain faithful to the requirement of delivery, or of registration when appropriate under the law (para.117 PTK). In this field, the Poles have suffered the repercussions of the clash of the different traditions existing in the country. If the 1934 code of obligations appeared to confine the immediate effects of contracts to the field of obligations, *vice versa* the first uniform law of real rights (Decree of 11 October 1946 No.57, text 314) seemed to subordinate property transfers to bilateral consent.[32] Faced with the choice, the *kod. cyw.* tended towards the French solution (arts.155, 156) although in the case of immovables it did confine the effect of the property transfer to unconditional formal contract (arts.157, 158).

It should be observed that the system of property transfer as it has developed in the USSR, Czechoslovakia and Hungary, and as it is in force in Yugoslavia, is not exactly the same as that of the BGB, favored by the Pandectist system, in which the property transfer hinges upon the sufficiency of the covenant of transfer without cause. The systems we speak of coincide more with the Austrian system which requires the double requisite of title and *modus*. Of course, we should not underestimate the importance of the Austrian precedent for the Yugoslav tradition and the Czechoslovak and Hungarian codes: one must also remember, however, that the covenant of transfer without cause is incompatible with the rules regulating socialist society: in the latter, the importance of the title and the cause are at one with juridical control of the faithful adherence of the juridical acts of the single enterprise to planning and, in general, to socialist laws, as to the circulation of goods.[33]

According to the ZGB (para.25), property is acquired by contract but this initial statement is then amended by paragraph 26. The latter points out that, besides the contract, the delivery of the movables – or, if the thing is immovable, the unconditional declaration of transfer accompanied by certification and approval of the State – are necessary.

5. There is little doubt that, as far as civil liability is concerned, the details of the law applied in the various countries in no way depend on the fact that the legislator inflicts liability on anyone culpably "causing harm" (rule of

32. This led one part of the doctrine to regard the *modus adquirendi* as being distinct from the title, but as having a consensual nature.

33. This conclusion may be proved logically. The jurists of the DDR reached this conclusion without any modification of paras.929 etc. of the BGB (H. Kleine, *Das Zivilrecht der DDR*, Berlin 1956, 102) long before the ZGB ever came into force.

neminem laedere, French model) or, instead, on anyone culpably "causing harm" by "any injury affecting an absolute subjective right of the victim" (German model).[34] As far as we know, this consideration might even be valid in socialist law. Nonetheless, the adoption of either formula would appear here to be symptomatic for the identification of the models.

We should first note that no socialist country has revived the typical actions of pure Roman law (*actio aquilia, actio iniuriarum, actio furti*, etc.): whereas we find everywhere separate regulation of the liability of an unlawful possessor towards the party entitled, and the ulterior importance of the good or bad faith of the possessor.

In view of this, we may note how Romania and Bulgaria remain faithful, at least verbally, to the rule of *neminem laedere*.[35] The French formula is also to be found in Poland (art.415), even if the name used is more reminiscent of the Germanizing category of illicit acts than of the French civil offences or quasi-offences. The Soviet Union inflicts liability on "damage caused to the person or to his property" (art.88 Fundamental Principles; art.44 GK RSFSR) and enters upon specific distinctions (injury, killing): the Germanic origin of the formula may still be perceived but it is very faded so that it leaves the way open to a lack of differentiation between harm and damage. In Hungary, Germanic influence is visible in the express mention of the unlawfulness of conduct as a requisite, in the case in point, of liability. But there is no precise reference to the injury affecting the victim's right as an autonomous element over damage (para.339 PTK). Only paragraphs 420 and 424 of the *obč. zák.* reveal a clearly Germanic character, because they enunciate precisely that liability is a remedy, and that the *actio doli generalis* is a tortious remedy designed to protect the victim of atypical injuries: "Every citizen[36] is liable for the harm caused by his breach of a duty provided for by the law . . .";[37]

34. This writer has defended this thesis in regard to the French, Germanic, and Italian systems, in *Rev. int. droit comp.* 1965, 827 *ff.*, under the title "Définitions savantes et droit appliqué dans les systèmes romantistes".
35. ZZD art.45 renews adherence to the formula: "Everyone is held to repair the damage he has caused, through his fault, to others". Commentators agree that liability presupposes breach of the rights of the victim so that the common definition of civil law entails introduction of the ulterior term "unlawfully". A tendency towards the extension of liability is represented by A. Kozhuharov who, however, avoided basing his argument exclusively on the letter of art.45.
36. As is well known, in socialist legislations, the word "citizen" serves to indicate in general persons subject to the law.
37. This characteristic feature of obligations of reparation, as deriving from the secondary character of the rule of liability, may appear superfluous in the presence of a general duty not to harm, set out in para.415: "Everyone is held to behave in such a way as not to cause harm to health or to goods, nor to cause enrichment without just cause, to the detriment of society or of an individual". If, however, para.415 was based on general liability for the

"Equally liable for the harm is anyone who has caused it by intentional actions, contrary to the rules of socialist coexistence".[38]

Since an intrinsically socialist model of tort does not exist, the ZGB has kept its previous German orientation, but adopting rather different formulations: liability ensues from damage caused to the life or health of the citizen, to his property, to his right of personality, especially to his honor, to his reputation, to his name, to his image, to his copyright (para.325, 326, 327).

It would be imprudent to draw conclusions and formulate forecasts on the basis of insufficient knowledge. Only deeper analyses will establish whether, in the long run, the work of the socialist judge tends to preserve, or instead to eliminate, traditional, Roman law-derived, technical-juridical notions.

Only wider research can establish whether the deterioration of certain Romanist categories in the socialist systems has occurred for technical, rather than political, reasons; whether, that is, it is parallel to a similar erosion in the Romanist systems themselves or whether it foreshadows, at least, a similar erosion in Romanist systems, independent from a corresponding political evolution.

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damage in a specific area, para.424 (concerning action of malice in general) would be totally repetitious and therefore superfluous.

38. It is necessary to make a comparison with BGB para.826. Of course, acts *contra bonos mores* here become acts "contrary to the rules of socialist community life".