The Oscar Publishing Services
American Journal Of Social Sciences And Humanity Research

VOLUME Vol.06 Issue06 2026
PAGE NO. 88-93
DOI 10.37547/ajsshr/Volume06Issue06-19

A Comparative Legal Analysis of Nationalization and Requisition as Grounds for The Termination of Ownership Rights Under the Civil Legislation of The Republic of Uzbekistan

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Received: 28 April 2026; **Accepted:** 24 May 2026; **Published:** 22 June 2026

Abstract: The article presents a comparative legal analysis of nationalization and requisition - two related yet independent grounds for the termination of ownership rights enshrined in Articles 202 and 203 of the Civil Code of the Republic of Uzbekistan. Drawing on statutory definitions, doctrinal positions of Uzbek and foreign scholars, and international investment arbitration practice (ICSID cases against the Republic of Kazakhstan), the author shows that the similarity between the two institutions is structural (a public-law subject, the public-interest purpose, compensability), while the differences concern the grounds for the taking, the timing of valuation, and the scope of the former owner's right to reclaim property. The study concludes with proposals for a special law detailing the nationalization and requisition procedure in Uzbekistan.

Keywords: Nationalization; requisition; termination of ownership; taking of property; expropriation; compensation; Civil Code of the Republic of Uzbekistan; investment arbitration.

Introduction: Chapter 15 of the Civil Code of the Republic of Uzbekistan (hereinafter - the Civil Code) sets out the system of legal facts that constitute grounds for the acquisition and termination of ownership rights.Among the involuntary grounds (those not based on the will of the owner) for the termination of ownership rights, Article 197 of the Civil Code lists: voluntary alienation of property; an owner's waiver of ownership; write-off or liquidation of property; the taking of property from the owner; uncontested recovery of debt; requisition; nationalization; and confiscation.

Nationalization and requisition (Articles 202 and 203 of the Civil Code) are of particular scholarly and practical interest, as these institutions appear at first glance to be similar, or even interchangeable, yet a detailed analysis reveals substantial differences in their grounds, procedure, and legal consequences.

The relevance of this study is due to three circumstances.

First, neither nationalization nor requisition has been elaborated in Uzbek legislation through a dedicated special law, which creates legal uncertainty in their application.

Second, as the State's role in strategic sectors of the economy (energy, subsoil use, public utilities) expands, the question of the limits of and guarantees against the taking of property acquires practical significance for the country's investment climate. The Law of the Republic of Uzbekistan «On Investments and Investment Activity» expressly guarantees investors adequate compensation in the event of requisition of their assets , which underscores the practical importance of a precise delineation between these two institutions already at the level of national legislation.

Third, examining international investment arbitration practice in cases against States of the Central Asian region makes it possible to see how formal distinctions between nationalization, requisition, and other forms of compulsory taking of property affect the actual scope of State liability and the protection afforded to investors.

The purpose of this article is to identify the similarities and differences between nationalization and requisition as independent grounds for the termination of ownership rights under the civil law of the Republic of Uzbekistan, and to formulate proposals for improving their legal regulation.

To achieve this purpose, the following tasks are addressed in turn: to reveal the legal nature of nationalization; to reveal the legal nature of requisition; to compare them according to key criteria by means of a comparative table; to examine practical examples of the application of analogous institutions in international arbitration practice; and to formulate conclusions and proposals for improving the legislation.

The Concept and Legal Nature of Nationalization

Under Part 1 of Article 202 of the Civil Code, nationalization is the compensated transfer to the State, on the basis of law, of ownership rights to property owned by citizens and legal entities. Several constitutive features of this institution follow from the statutory definition.

First, nationalization is an exceptional measure, the application of which is subordinated to strictly defined public objectives: ensuring State security and economic independence, and protecting the constitutional order and the rights, lawful interests, and health of citizens.

Second, nationalization is carried out exclusively on the basis of law: the mechanism cannot be triggered by a subordinate regulation or an administrative decision with respect to a specific object in the absence of a dedicated legislative act.

Third, nationalization is compensable by nature: the owner receives monetary compensation covering the value of the property taken and the losses associated with the taking. This feature fundamentally distinguishes it from confiscation (Article 204 of the Civil Code), which is uncompensated by its very nature.

Fourth, the legislation permits the reverse process - denationalization: a former owner is entitled to demand the return of previously nationalized property, unless otherwise established by legislative acts. This right is not absolute and may be restricted by a special law.

In civil-law doctrine, the question of how nationalization relates to neighbouring institutions of involuntary taking of property has traditionally given rise to debate. V.A. Belov notes that it is widely believed that requisition and confiscation are varieties of nationalization: requisition is treated as «compensated nationalization», and confiscation as «uncompensated nationalization».

While agreeing that all three institutions share a common feature - the taking of property by the will of the State - it should nevertheless be noted that the Uzbek legislator treats nationalization, requisition, and confiscation as independent, non-subordinate grounds for the termination of ownership rights, listing them in separate articles of the Code, each with its own subject of regulation. A closely analogous model is enshrined in Articles 235 and 242 of the Civil Code of the Russian Federation, which may be explained by the common origin of the civil legislation of the former Soviet republics. Conflating nationalization and requisition at the level of law enforcement risks the unwarranted application of a regime favourable to the State - for instance, the denial of immediate compensation, which is characteristic of requisition, in cases that are, in substance, instances of nationalization.

The Concept and Legal Nature of Requisition

Article 203 of the Civil Code defines requisition as the taking of property from an owner in the interests of society, by decision of public authorities, carried out in the event of natural disasters, accidents, epidemics, epizootics, or other circumstances of an extraordinary nature, with payment to the owner of the value of the property in the manner and on the terms established by legislation. Part 2 of the same article establishes that, once the circumstances giving rise to the requisition have ceased, the former owner is entitled to demand the return of the property that remains in existence.

The key distinguishing feature of requisition is its direct connection to an emergency - circumstances arising objectively, independent of the will of either the State or the owner, that require an immediate and operational response in the interests of public safety.

Unlike nationalization, where the State determines in advance the property to be taken and adopts the relevant law, requisition is situational in character: the decision is taken by a public authority in a concrete set of circumstances, without any prior legislative procedure with respect to that particular object.

A second significant difference concerns the procedure and timing for determining compensation. In requisition, the value of the property is determined on the basis of its actual condition - typically after the fact, based on its real value at the time of the taking - a feature inherent to the nature of an emergency, which does not allow for a prior valuation.

In nationalization, by contrast, compensation is, as a general rule, determined in advance, in full, before the transfer of ownership to the State, since nationalization is a planned measure rather than an urgent one.

A third difference concerns the legal consequences of the cessation of the grounds for the taking. In requisition, the former owner is entitled to demand the return of the property in kind, if it has survived, and the law does not provide for compensation for the value of any portion of the property lost or consumed in the course of the emergency.

In nationalization, denationalization generally entails the return of the property (if it still exists as an object of civil rights), or a special procedure established by a dedicated legislative act, without being strictly tied to the physical preservation of the thing in its original form.

Comparative Characteristics of the Two Institutions

It is useful to summarize the features set out above in a comparative table that systematizes the similarities and differences between nationalization and requisition under the civil legislation of the Republic of Uzbekistan.

Criterion	Nationalization (Art. 202 of the Civil Code)	Requisition (Art. 203 of the Civil Code)
Subject in whose favour the taking occurs	The State	The State
Purpose	Public benefit, State security, economic independence	Public benefit under emergency conditions
Compensability	Yes, in full - value plus losses	Yes, in the amount of the actual value of the property
Ability to challenge the amount of compensation	Yes	Yes
Legal basis for the taking	A special law concerning the specific property	A decision of a public authority in an emergency setting
Temporal character	Generally permanent (transfer of ownership)	Temporary, limited to the duration of the emergency
Timing of valuation	In advance, before the taking, in full	Based on actual value, generally after the fact
Right to demand the return of the property	Denationalization is possible - return of the property to the former owner	Return only of property that remains in existence, with no return of the value paid

The table shows that the similarity between nationalization and requisition is structural rather than substantive: both institutions are united by a public-law subject of the taking, by compensability, and by a shared orientation toward the public benefit.

The differences, by contrast, concern the substantive characteristics of the mechanism - the basis on which the obligation to take property arises (a law adopted in advance versus a sudden emergency), the timing and procedure for determining compensation, and the scope of the former owner's rights to the return of the property. These differences explain why the legislator placed nationalization and requisition in separate articles of the Code, while positioning them consecutively - one after the other - owing to their genetic kinship as forms of the compensated transfer of property to the State.

Practical Examples of the Application of Analogous Institutions

Expropriation in International Investment Arbitration Practice

The practice of resolving investment disputes in the Central Asian region provides extensive material for understanding how differences between forms of taking property affect the scope of State liability.

In AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan (ICSID Case No. ARB/01/6, Award of 7 October 2003), the tribunal found that the physical seizure of a joint venture's land plot by the local authorities of the city of Almaty, without the payment of compensation, constituted an unlawful expropriation in breach of a bilateral investment treaty . The key circumstance that determined the characterization of the act was precisely the absence of a prior lawful procedure and of compensation - that is, the absence of the very features that, under the Uzbek model, characterize a lawful nationalization.

In Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan (ICSID Case No. ARB/05/16, Award of 29 July 2008), the tribunal awarded the investors compensation in the amount of USD 125 million for the unlawful expropriation of shares in a telecommunications company, effected through the abuse of authority by State bodies . The amount of compensation was calculated on the basis of the fair market value of the lost asset on the date of the expropriation - that is, according to the same logic of a «full and predetermined value» that is characteristic of a lawful nationalization, but assessed here as a measure of liability for an unlawful act.

A comparison of these cases with the Uzbek model of nationalization and requisition demonstrates the practical value of a clear procedural distinction between the two institutions: compliance with the procedure established by law and the timely payment of compensation substantially reduce the risk that the State's actions will be characterized as unlawful expropriation entailing significantly greater financial liability.

International Legal Standards of Compensation

The cases examined above are particular instances of the broader international legal category of expropriation, which encompasses any form of compulsory taking by the State of the property of private persons, including foreign investors. In the doctrine, a broad approach treats nationalization, requisition, and confiscation as varieties of a single phenomenon, while a narrow approach distinguishes them by their formal and substantive features . The Uzbek legislator, by constructing nationalization and requisition as separate institutions, each with its own grounds and procedure for compensation, in effect leans toward the narrow approach - a position analogous, with respect to Russian civil law, to that of A.P. Sergeev, who treats nationalization, requisition, and confiscation as independent forms of the compulsory termination of ownership rights .

The foundational instrument for the modern understanding of a State's right to expropriate remains United Nations General Assembly Resolution 1803 (XVII) on «Permanent Sovereignty over Natural Resources» of 1962, which established the right of States to nationalize property on the condition that adequate compensation is paid . This resolution became the basis for a compromise between the principle of State sovereignty and the need to protect the rights of owners, a compromise on which the modern regulation of nationalization in the civil legislation of post-Soviet States continues to rest.

With respect to the standard of compensation in international investment law, the so-called Hull formula long predominated, requiring the payment of «prompt, adequate, and effective» compensation upon expropriation. Contemporary UNCTAD analysis notes that the practice of international arbitral tribunals over recent decades has developed more flexible criteria for assessing compensation, taking into account the specific circumstances of each instance of taking, including the nature of the investment and the character of the State measure.

Problems of Legal Regulation and Proposals for Improving the Legislation

Despite a relatively clear doctrinal and statutory distinction between nationalization and requisition, the civil legislation currently in force in the Republic of Uzbekistan is not free of gaps.

First, neither Article 202 nor Article 203 of the Civil Code refers to a special law that would set out in detail the procedure for determining and challenging the amount of compensation, the list of competent authorities, the time limits for payment, and the procedure for appealing decisions on nationalization or requisition. In the absence of such a law, the provisions of the Code remain largely framework in character, which creates risks of legal uncertainty for both property owners and State authorities.

A similar problem has been noted in the doctrine with respect to neighbouring legal systems: M.S. Karpov points out that the absence of a special law on nationalization has repeatedly led to the emergence of piecemeal legislative drafts that fail to provide systemic protection for owners' rights.

Second, the question of judicial review of the grounds for, and the amount of, compensation in both nationalization and requisition deserves discussion. Establishing mandatory judicial review at the level of a special law would strengthen the guarantees protecting ownership rights while at the same time increasing the predictability of enforcement for State authorities.

Third, as the investment disputes examined above demonstrate, differentiated standards of compensation depending on the owner's status (resident or foreign investor) and the nature of the taking can substantially reduce investment risk while preserving the flexibility that State regulation requires under emergency conditions.

CONCLUSION

The analysis conducted in this article supports the conclusion that nationalization and requisition, while sharing a common public-law nature, purpose, and principle of compensability, are independent, non-subordinate institutions for the termination of ownership rights.

The key difference between them lies in the basis for their application: nationalization is a planned measure based on a special law, whereas requisition is the State's operational response to an objectively arising emergency. A consequence of this difference is the divergent procedure for determining compensation and the divergent scope of the former owner's rights to the return of the property.

The decisions of international investment tribunals in cases against States of the region, examined above, confirm that compliance with the established procedure and the timeliness of compensation directly affect the legal characterization of a taking and the scope of State liability.

The adoption of a special law detailing the procedural aspects of nationalization and requisition, together with the establishment of judicial review of the grounds for and amount of compensation, appears to be a well-founded direction for the further improvement of the civil legislation of the Republic of Uzbekistan.

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