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Kiadja

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(Szeged, Lenin krt. 54.)

Kiadványunk rövidítése

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I.

Various forms of international cooperation between socialist countries have developed. There are, for example, interstate organizations (e. g. COMECON), joint administrative bodies (e. g. Czechoslovak—Hungarian Joint Water Economy Administration), joint enterprises of production or management (e. g. Intermetall, Intransmash), labour cooperation (e. g. between the GDR and Hungary). It admits of no doubt that these forms of cooperation will be amplified in the future.

Within the scope of this paper I only shall discuss the problems of those cooperative forms whose aim is to engage in joint activities in the fields of production, management and trade. The legal form of the joint organization, i. e. whether it is operating as an enterprise, or bureau, or under any other description or nature, will be disregarded, because this circumstance has no substantial consequences as concerns the solution of the problems of labour law that may be involved here.

II.

Before starting our detailed discussion of the problem, I deem it advisable to make a survey of the situation that actually prevails in the domain of joint enterprises. In doing so, I should like to touch upon three questions. First, the organizational pattern and the field of activities of the joint enterprises; second, the national status of the employees, the procedures of employment; and, third, the labour statutes applied at present.

1) The enterprises operating at present have arisen from agreements made partly by two, partly by more countries. Their headquarters are in one of the member countries. Part of the joint enterprises only maintain permanent organizations at their headquarters, or in the respective country, and have no permanent organizations in the rest of the member countries. There are even enterprises that conduct no activities whatsoever outside the country of their headquarters (e. g. Haldex). Other such enterprises have permanent organizations also outside their headquarters in other member countries, or in all of them. There is also a trend to the effect that certain joint enterprises set up permanent organizations in countries that are not among the member countries of the enterprises concerned. Part of the joint enterprises are engaged in activities of production, management, etc. only at their headquarters or their permanent business seats. Another part of joint enterprises are engaged in such activities also outside these areas (especially building and assembly works).

2) In case of joint enterprises — especially for emphasizing the joint nature of the enterprise — the employees holding the most important leading positions are usually of a nationality other than that of the host country; all member countries may be represented among them as nationality is concerned. Employees in minor

leading positions, as well as subordinate employees, are usually nationals of the given country, but exceptions to this rule are found fairly often also here. It frequently happens that the nationals of another member country are employed to such posts. So we may conclude that if a given enterprise maintains organizations in several countries, the employees of the various seats and branch offices, as a rule, are of different nationalities. In cases where a given joint enterprise is active in a country in which it does not maintain a permanent organization, part of the persons employed there are delegated from the headquarters or from one of the permanent seats; but the others are usually employed from among the nationals of the given country.

A characteristic feature of employing people is that the employees holding the principal leading positions in the joint enterprise are usually delegated by the member states pursuant to the agreement of foundation. Hence the joint enterprise establishes employment with certain specified persons, usually for a fixed duration of time. If, within that period of time, termination of employment becomes necessary (e. g. a reason for summary dismissal arises) this is usually effected in such a manner that the appointing member state is requested to recall the person in question, and employment is then terminated upon agreement to this effect on part of the proper organs of the joint enterprise and the member countries. As concerns the other employees of a joint enterprise, there is no such appointment as a rule; they are employed directly by the joint enterprise.

3) The specification of labour statutes to be applied within the scope of a joint enterprise is usually provided for by the interstate agreement on the foundation of the joint enterprise. The manners of solution differ from case to case. There are agreements which provide for the application of valid labour statutes (e. g. the labour statutes of the headquarters, of the permanent business seat; rules governing the organization of COMECON). There are agreements which lay down special rules for the employees of the joint enterprise. In this case, they actually create a Labour Code of their own. On the other hand, there are interstate agreements which make it the responsibility of the management of the joint enterprise (board of directors, executive committee, etc.) to frame the labour regulations to be applied. Finally, there are cases — in addition to the aforesaid two varieties — where the interstate agreement authorizes the management of the joint enterprise in certain cases to depart from the rules laid down in the interstate agreement, i. e. to regulate certain questions of detail within the scope of these rules, but in a different manner by paying due regard to the particular circumstances of the joint enterprise.

It follows from this medley of the manners of regulation that the labour statutes to be applied in joint enterprises show a highly varied picture as concerns their content. Accordingly we see the following patterns:

a) There exist joint enterprises to which the rules relating to the employees of the COMECON are applied.

b) There are joint enterprises which are governed by special rules laid down in the interstate agreement, or by the management of the joint enterprise, these rules being in no conformity with the rules of any of the member countries.

c) There are joint enterprises where the rules of the COMECON apply to leaders employed on the basis of delegation, but the special rules of the joint enterprise apply to the rest of the employees.

d) Some of the aforesaid patterns may be applied to certain joint enterprises with the difference, however, that the rules valid for the headquarters, or the

permanent business seat, i. e. for the place of work, are applied to the administrative and auxiliary personnel and to the physical workers.

e) Finally, we know of cases where the rules valid at the place of work are applied to all employees, including the leaders, irrespective of their nationality. This pattern is found mainly in cases where the joint enterprise is active only in the territory of one country.

Considering this variety of solutions we may conclude that there appears a fairly marked trend, namely to take the status of interstate organizations as a basis for laying down the rules of labour law to be applied within the scope of joint enterprises. This situation emerged partially as a result of the circumstance that the nature of joint enterprises is not yet clarified sufficiently, and that, for the time being at least, these enterprises still present themselves as interstate associations for the most part.

As concerns the future we must reckon with the increase of the number of joint enterprises, with the emergence of patterns even more varied than so far, and also with the circumstance that joint enterprises will not in every case be created by interstate agreements reached between governments. It is therefore necesarry to lay down the general principles which are to be directive for framing the statutes of labour to be applied in practice.

III.

Before discussing the definition of labour statutes to be applied in this field, we must examine two circumstances. One: what kind of help can we expect from the discipline of international law of labour; two: what are the pertinent provisions of the legislations of the socialist countries concerned.

1) As concern the stand taken by international law of labour, there are several schools of opinion. Within the sphere of socialist jurisprudence, it may be regarded as a universally accepted view that the general principles of private international law cannot be applied to the definition of provisions of labour law. Owing to the particular nature of employment, the principles underlying decisions in this set of problems are different. Hence special rules of international law of labour must be laid down.[1] The dominant view in socialist jurisprudence is that the law valid at the place of working (lex loci laboris) should usually be applied to the problems of employment.[2] Several exceptions to this rule are defined because of the particular nature of work or the place of work. Relations of international maritime navigation, for instance, are governed by the right of flag, those of river and air transport by the law of the place of registration.[3] The uniform nature of labour law is manifest also in the fact that the law of the place of working governs the legal and

[1] Szászy I.: La determination de la loi compétente dans le domaine du droit international du travail. (Geneve, 1968.)
Szászy I.: Les conflits de lois en matiere de droit du travail.
Szászy I.: International Labour Law (Akadémiai Kiadó, Budapest, 1968.)
Szászy I.: Nemzetközi munkajog (Közgazdasági és Jogi Kiadó, Budapest, 1969.)
Világhy M.: Introduction to the Private International Law (Tankönyvkiadó, Budapest, 1966. p. 187.)

[2] Világhy M.: l. c.

[3] Szászy I.: La determination de la loi compétente dans le domaine du droit international du travail. (Geneve, 1968.)

disposing capacity of the parties concerned, and also the formal requirements of the validity of the contracts of employment (with the aforementioned exceptions).

The correct view, in my opinion is to take the place of working as the basis for framing labour statutes to be applied to any particular instance of employment. I do agree with István Szászy who says that the object of the social relation regulated by labour statutes is work. It follows from this that the law to be applied must be determined by the economic and cultural function of work; and this function of work is manifest first of all at the place where such work is being done.[4]

On the other hand, it ought to be noted that socialist international labour law does not deal with the question of joint enterprises.

The situation is different in the sphere of capitalist jurisprudence. The notion of a uniform law of labour is unknown to most scholars of capitalist jurisprudence, and a distinction is being made between labour statutes of contractual nature and those having the nature of public authority. The former are placed in the category of civil law, the latter in the category of public law. Those elements of the contract of employment which can be specified by the parties concerned are regarded as labour statutes having the nature of civil law, while the rules governing labour safety, social insurance, regulation of working hours, settlement of labour disputes etc. are usually regarded as rules having the nature of public law. Taking this distinction as a basis, the majority of the representatives of bourgeois jurisprudence hold the view that as concerns the definition of labour statutes employment is in principle governed by two branches of law. The collision norms (lex obligationis) in the sphere of obligatory rights of private international law must be applied to those elements of the labour statutes which have the nature of civil law, while, by contrast, the law of the working place (lex loci laboris) will usually be normative for those elements of employment which have the nature of public law.[5] This view is opposed by those who advocate the uniform application of the law of the place of work.[6] Within these two principal groups of views, there are differences of opinion in respect to details.

2) As regards the labour statutes of the socialist countries, these are not concerned with rules to be applied to joint enterprises. Also the provisions relating to the employment of aliens, to employment to be established abroad, are rather incomplete. The situation is as follows:

a) the following cases come under the ruling of the Hungarian Code of Labour:
   - employment of a Hungarian national by a Hungarian employer in Hungary or abroad, even if the work is to be done abroad;
   - employment of an alien by a Hungarian employer in Hungary, irrespective of the circumstance whether work is to be done in Hungary of abroad;
   - employment of a Hungarian national by an alien in Hungary if work is to be done in Hungary;

[4] Szászy I.: La determination de la loi compétente dans le domaine du droit international du travail. (Geneve, 1968.)
Világhy M.: 1. c.

[5] Szászy I.: La determination de la loi compétente dans le domaine du droit international du travail. (Geneve, 1968.)
Világhy M.: 1. c.

[5/a] Szászy I.: La determination de la loi compétente dans le domaine du droit international du travail. (Geneve, 1968.)

[6] Hungarian Labour Code 7. §

— employment of an alien by an alien employer in Hungary if work is to be done in Hungary;
— employment of an alien or of a Hungarian national by an alien abroad if work is to be done in Hungary.
— Cases in which a diplomatic representation or other state agency employs one of its own nationals are exceptions to the two latter rules.[7]

b) The Czechoslovak Code of Labour provides that employment of Czechoslovak nationals by foreign organizations, as well as employment of aliens — working in the territory of the Czechoslovak Socialist Rebublic — by Czechoslovak organizations come under the ruling of the Code of Labour, unless otherwise provided by rules of private international law.[8]

On the other hand, the 1963 Czechoslovak Code of Private International Law regards the law of the place of work as decisive, unless otherwise specified by the parties concerned.[9]

The labour statutes of Poland do not regulate this question, but the Polish Code of Private International Law provides that the law of the place of work should be applied, unless otherwise specified by the parties concerned.

The Soviet, Bulgarian and Roumanian Codes of Labour do not regulate these questions; the possibilities to enter agreements that depart from these statutes are recognized in practice.

3) It ought to be mentioned that the agreement entered by the COMECON States in respect to the general conditions of assembly work contain provisions that have the nature of international labour law (this agreement was proclaimed in Hungary by Decree 19/1962 KKM).

This agreement provides, for example, that
— the expert of the deliverer is under the obligation to comply with the rules valid in the customer's country and having compulsory force on the expert under the law; the expert is also obliged to keep by all means the state or official secrets that he has come to know during his work or which have been made known to him,[9/a]
— the expert's working hours to be spent at the site of assembly work must be fixed pursuant to the rules valid in the customer's country,[10]
— the customer is under the obligation to inform the deliverer or his representative in detail about the rules of accident prevention, labour safety, fire protection, etc. that are valid in the customer's country, and the deliverer is obliged to take every measure in order to ensure compliance with these rules on the part of his experts,[11]
— if the customer fails to comply with the rules of accident prevention and labour safety, the experts of the deliverer must notify the customer in writing to this effect. Should the customer fail to take the necessary measures, the experts of the deliverer are entitled to discontinue working.

The experts of the deliverer can discontinue working at once in cases when circumstances arise that endanger their life or health. The customer must be notified in such a case.[12]

[7] 6. §
[8] 16. §
[9] 16. § (2)
[10] 27. §
[11] 28. §
[12] 29. §

Thus the aforesaid agreement applies the law of the place of work to these questions.

IV.

As appears from what we have said so far, neither the discipline of socialist international labour law, nor the labour statutes of the various socialist countries are concerned explicitely with the problems of joint enterprises. This can be explained by several circumstances. On the one hand, joint enterprises have a relatively short past, and their number is low in the particular countries. On the other hand, the problems relating to the labour statutes to be applied have been dealt with partly within the scope of agreements creating the joint enterprises, partly by means of norms laid down within the joint enterprise proper. This means that instead of regulations of a general character, agreements covering particular cases were used. And, last not least, the true nature of the joint enterprises has not yet been clarified sufficiently, because of the aforesaid factors for the most part: the question how far such enterprises can be regarded as home or foreign enterprises is still to be answered. I believe that if we are to reach a decision, we first must clarify this circumstance in the following.

The joint enterprises created by socialist states are socialist organizations based on the social ownership of the means of production, and are engaged in the same activities of production and management as the domestic economic organizations of the particular state. Hence these are not interstate organizations; they are economic, productive units, enterprises.

Yet it follows from the foregoing, too, that as concerns a particular state the joint enterprise in which this state has a share is the „own" enterprise of that state at the same time. Consequently the joint enterprise is not regarded as a foreign enterprise as far as the participating state is concerned.

The Codes of Labour and all relevant regulations of all socialist countries agree in that any employment established in the territory of the particular country by the country's own nationals or by a body corporate come under the ruling of labour statutes.[13] (Regulations relating to employment of, or by, aliens, as well as contractual work to be performed abroad are disregarded here). If this rule is compared whit the conclusion reached in respect of the „own" status of the joint enterprise, it follows logically that, in case of joint enterprise, the portion of a joint enterprise which lies in the territory of a given member country must come under the ruling of this particular country's labour statutes. Hence, if a joint enterprise has branches in several member countries, it follows from the domestic rules of the socialist countries that each branch of the enterprise is governed by the labour statutes of the host country.

V.

On the basis what we have said in the foregoing, we may sum up the following conclusions in respect to labour statutes to be applied to the operation of joint enterprises of socialist countries:

1) The discipline of socialist international labour law is not explicitely con-

[13] Hungarian Labour Code 7. §

cerned with the question of joint enterprises. Apart from this, it accepts the law of the place of work as the principal governing rule.

2) The Codes of Labour of the socialist countries contain no provisions relating to the questions of joint enterprises. Otherwise it follows from the effect of valid rules that the branch of a joint enterprise lying in the territory of a particular member country must come under the ruling of the labour statutes of that country. This agrees with the principle of the law of the place of work.

3) The actual situation relating to joint enterprises shows that uniform special rules are valid for the major portion of these enterprises — embracing the enterprise as a whole — while the law of the place of work, and the combination of the latter and the aforesaid special rules, are applied to a smaller portion of the enterprise.

It follows from these conclusion that no view has yet taken shape in respect to joint enterprises. I am of the opinion that to lay down the uniform principles of this problem is imperative. The present situation in which the regulation is left to interstate agreements that create the joint enterprises cannot be maintained. There are two circumstances which justify this conclusion. First, such ad hoc regulations contain many chance elements, and this may result in unjustified differences emerging between enterprises of similar character. Second, and more important, joint enterprises are likely to emerge in the future within the scope of COMECON on a much wider basis than so far. It may be expected in this connection, too, that joint enterprises will not always be created by interstate agreement. The likely trend is that direct relations between the enterprises or other organizations of various countries will be established at an increasing rate. If so, it will actually not be possible to depart from valid rules, and to apply special ad hoc regulations, because there will be no interstate agreements to do so.

I am of the opinion that as concerns the labour statutes to be applied to joint enterprises, the law of the place of work ought to be applied as a general rule.

My suggestion might be opposed by a solution which emphasizes the unity of the enterprise. This could be effected in two ways. One solution might be to apply the law of the headquarter's country to the entire enterprise. The other might be the framing of one, special, uniform labour statute for joint enterprises, which would be applied in a uniform manner to all joint enterprises, but would not agree with the valid rules of any of the COMECON countries. In my opinion, these two solutions would not be lucky ones. I believe that it would be better to apply the law of the place where the work is performed. This is justified chiefly by the fact that the majority of the employees of the units and branches of the joint enterprise are usually nationals of the given country. And, if so, it is only correct to regulate their rights and duties arising from employment in a similar manner as is the case with the rest of the employed population of that country. Different solutions would only lead to undesirable tensions. It should be taken into account in addition that in the course of its operations every joint enterprise is more or less bound to comply with the rules of the country in which it is active. For instance, the holidays of that country must be kept, the official regulations of labour safety, public health, etc. must be observed. In maintaining economic relations with the organizations and enterprises of the host country, the joint enterprise must adapt itself to a certain extent to the working programme of these bodies. All these circumstances would have the effect that a uniform enterprise regulation would be of no avail because departures would have to be made at various units of the joint enterprise in compliance with the law of the place of work. Finally it

ought to be pointed out that it is the application of local law that usually best agrees with the provisions of law valid in the various socialist countries. But even if we accept the application of local law as the general rule, there will be left a few questions of detail that are to be settled. These are partially connected with the uniform nature of a joint enterprise, partially relate to the employees of the enterprise who are working in some other country, and partially affect the circumstances of employees delegated to the joint enterprise.

VI.

A joint enterprise is a body corporate which forms a unity. There is uniform direction, uniform organization within this unit. The measures, the right of decision of the manager, of the headquarters of the enterprise, are valid for all branches and units of the enterprise, irrespective of whether these branches and units are operating in the same country as the manager, or the headquarters, or in some other country. Nor is this validity affected by the circumstance that some units of the enterprise might enjoy a certain measure of independence. But given this circumstance it requires the clarification of the nature of employment with some of the units of the joint enterprise, as well as a study into the realization of enterprise decisions and into the enforcement of the employees' claims.

1) If a joint enterprise has establishments and branches in several countries, and these are authorized to make contracts of employment, the employee enters the relationship of employment on the basis of the contract with the body corporate, i. e. with the joint enterprise even in this case (the place where he has to work is a different matter).

It follows from this that if the employee is transferred from one unit of the joint enterprise to some unit in some other country, this fact does not affect the existence of his employment (except for cases, of course, when his employment is terminated at the first unit, and new employment is entered at the other unit). Needless to say, the contents will change within this framework, because employment will be governed by other statutes of labour as a result of such transfer. A comparable case may occur when, for example, a publicly financed institution is reorganized into an enterprise, or vice versa, in Hungary. This does not affect the employment proper of the staff, but the rules relating to them will change substantially, and so will the contents of employment as a result.

It also follows from the foregoing that the transfer of an employee from one unit of the enterprise to antother is governed by rules relating to transfer within the enterprise. If, however, such transfer involves the employee's sending to another country, whereby his employment will be governed by statutes of labour valid in that other country, his transfer must be feasible under the rules of both countries (e. g. no matter if there is agreement between employer and employee for the transfer of the latter if there exists some prohibition in the prospective country that prevents the employee from doing his particular work there).

2) Transfer from an enterprise branch in a given country to a branch in another country may present a problem concerning the enforcement of the employee's claims. Considering the uniform character of employment it admits of no doubt that transfer of the employee to an enterprise branch in another country does not affect the employee's right to enforce his claim to some benefit that had

fallen due. Yet it may be debatable where, and on which legal basis, the employee can enforce his claim.

Considering that employment exists with the joint enterprise, I believe that the employee should enforce his claim at his new place of work. This serves the employee's interests. The contrary solution would render the enforcement of his claim extremely difficult. Otherwise it is this type of solution that is generally applied in cases of transfer within the enterprise.

The employee's claim has arisen at the former branch of the enterprise, which is governed by the statutes of that country. It follows from this that the employee's claim has to be considered pursuant to the law of the aforesaid country, no matter when and where this claim is raised. Consequently the law to be applied to consider the claim is always the law valid for that enterprise branch where the claim has arisen. This means that the new place of work has to proceed in accordance with the law of the former branch of employment.

Two problems present themselves in connection with this conclusion. One is the claim for compensation in case of accident, the other is the law governing labour disputes.

In case of compensation for accident, the aforesaid principle is usually adequate. Yet it often happened that there was a substantial difference between the time of the accident and the time when damage was sustained. This may happen in cases where the employee resumes his work after recovery, and a change (e. g. paralysis) resulting in his reduced working ability — and reduced earnings — develops in him only later, maybe after several years. It may happen, too, that the employee is able to attain his former earnings for some time following his accident, but his performance and earnings decrease later, even if there is no deterioration in his state of health. If the employee is transferred to work in some other country, and transfer takes place during the period between the accident and the manifestation of the damage, it may be problematical the law of which country is to be applied.

Causation of an accident amounts to unlawful conduct, to which disciplinary or criminal liability, or some other sanction may be attached; but no financial liability is attached to the accident proper, since the prerequisite of such liability is damage suffered. Financial liability is constituted by the manifestation of damage, and this usually takes place at a later time. Limitation is to be counted from that time. And if damage becomes manifest at the new place of work, the provisions of law which are valid to such a case then and there must be applied. It might be argued, too, that if the rules of the former place of work are more favourable for the employee, he may request to apply those.

As concerns the settlement of labour disputes, it follows from the aforesaid general principle that the body settling such dispute must apply the substantive law valid at the former place of work. But the procedural law to be applied in such a case must be the effective law that governs the acts of such body. If a contrary view were adopted, this might create an insoluble situation because formalities or forms of legal remedy might be valid in one country but might be inexistent in another. Otherwise this principle agrees also with the principles of international procedural law.[14]

[14] Szászy I.: La determination de la loi compétente dans le domaine du droit international du travail. (Geneve, 1968.)

Connected with the question discussed above is the enforcement of the employee's adjudged claims in cases where the employee's place of work has changed because he has been transferred to another country meanwhile. The employee can request performance at his new place of work also in such a case. If execution has to be levied, this presents no difficulty because agreements on judicial assistance exist between the socialist countries. Apart from these existing agreements, I believe that agreements or legislative measures, would be needed to the effect that in case of joint enterprises the decisions made in labour disputes in a given country must be enforced in some other country in the same way as if they had been made by the body acting in labour disputes in that other country. The same principle ought to be applied to the outstanding debts of enterprises.

3) Problems similar to the foregoing ones present themselves in connection with the financial and disciplinar liability of employees.

The problem of the employee's financial liability is simpler. A dispute in such a case can arise only if the time of causing damage and the time of detection differ, and the employee's place of work has changed meanwhile. As concerns the financial liability of employees, the rules of socialist labour law regard the time when damage is caused as decisive. In my opinion, it is the time when damage actually occurred that should determine in such cases the statutes of which place of work should be applied.

Cases of disciplinary liability are somewhat more problematical. One question here is whether an employee who has committed a disciplinary offence at one place of work can be held liable at a place of work in some other country to which he has been transferred. If we start from the uniform character of employment, there can be no doubt that he can be held liable. The other question is which country's law is to be applied. I am of the opinion that a given legal relationship can only be judged in a uniform manner. The employee's rights and duties arising from his employment are defined in a co-ordinated manner. It would be wrong to substitute any of these by other rights and duties which are not in harmony with the whole. This applies also to disciplinary liability. So we conclude that the employee can be held liable by disciplinary action pursuant to the statutes of the new place of work. And this should include not only the procedure and the imposition of punishment, but also a decision to the effect whether he had committed a disciplinary offence at all, whether it had become barred or not. These principles prevail also in Hungarian law. If, for instance, an employee of an enterprise commits a disciplinary offence and is subsequently employed, say, by the Post Office, the former employer may request the new employer to take disciplinary action. This, however, will take place pursuant to the disciplinary rules of the Post Office.

VII.

It is a principle of general validity in the socialist law of labour that substantial rights of participation are due to the collectives of employees, and especially to the trade unions representing them, in defining, enforcing and supervising the rules of working conditions. The Hungarian Code of Labour provides among others:

a) to lay down within the enterprise any rule relating to working conditions

is permissible only in cooperation or agreement with the trade union.[16] Moreover, the spending of funds allocated for cultural and social purposes, the operation and availability of institutions maintained from these funds (e. g. resort houses, cultural centres), is decided upon by the enterprise committee of the trade union.[17]

b) In cases defined by provision of law, the cooperation of the enterprise committee of the trade union is required for individual messures of executive character to be taken by the manager of the enterprise.[18]

c) The trade union is authorized to supervise the observance of rules relating to working conditions. If the trade union makes comments, the concerned managers of the enterprise are obliged to give a reasoned reply within a fixed time.[19] The trade union is authorized to raise objections against measures of the enterprise that violate the rules of working conditions, or violate treatment of the employees in accordance with socialist morals. The measure objected to cannot be carried out in such cases until there is a decision concerning such objection.[20]

The local laws of the place of work are applied as a general rule also to the rights due to the trade union and the collectives of employees; but this is so only as long as the measure, the decision of the enterprise, takes effect only in the enterprise establishment or unit within the given country (e. g. the manager of the Hungarian establishment or unit of a joint enterprise fixes the working hours of the unit, makes wages adjustment, etc.). Problems arise when such measures affect not only the unit in the given country, but the joint enterprise as a whole, including its units in other countries (e. g. the manager general or the board of directors of the joint enterprise wish to carry out wages adjustment which is valid for the enterprise as a whole, or wish to fix the funds to be used for social-cultural purposes, or lay down the principles of distributing the profit shares for the employees, or to devise a system of financial incentives for the joint enterprise). Namely joint enterprises have no unified trade union organs. Trade union committees are being organized for the enterprise units operating in different countries pursuant to the rules and to trade union organizational principles valid in the particular country, but such committees are competent only for the given unit. A trade union organ is operating also at the headquarters of the joint enterprise, but is competent only in matters concerning the headquarters. If the manager general or the board of directors wish to issue some order, they evidently do it with the cooperation of this trade union organ. The latter, however, does not know and cannot represent the opinions of all of the employees and all trade union bodies of the whole joint enterprise. The rest of the enterprise branches and units are left without representation in decisions affecting the enterprise as a whole, and are not in a position to present their opinion. The same applies to cases where rules prescribe consultation of the employees or a preliminary discussion of certain planned measures with the staff.

In my opinion, a satisfactory solution of this problem would be reached if in case of joint enterprises a central trade union organ were formed of the repre-

[15] Szászy I.: La determination de la loi compétente dans le domaine du droit international du travail. (Geneve, 1968.)
Világhy M.: 1. c.
[16] Hungarian Labour Code 13. § (1)—(2)
[17] Hungarian Labour Code 13. § (4)
[18] Hungarian Labour Code 13. § (3)
[19] Hungarian Labour Code 11. § (2), 14. § (1)
[20] Hungarian Labour Code 14. § (2)

sentatives of the trade unions of the units operating in the several countries, and this central trade union organ cooperated in framing measures and orders which are to affect the joint enterprise as a whole.

VIII.

The rule having general validity at present in the field of international law of labour is that the place of permanent employment must be regarded as directive for applying the law. The law to be applied remains the same also if the employee temporarily leaves his permanent place of employment and travels to some other country to do work there. In other words, when he is on detached duty.[21]

The same rule must apply also in case of a joint enterprise, i. e. if the employee is working temporarily outside his permanent place of work, in the territory of another country, this must not affect the rules governing his employment.

Yet this principle requires some addition in cases where an employee is doing work within the fromework of another unit of the joint enterprise, or for some other enterprise (e. g. assembles machinery, or trains the emyloyees of that other enterprise, etc.). And in my opinion such addition is necessary not only in the case of a joint enterprise, but also to the discipline of the international law of labour in general. Namely in cases when an employee is on detached duty and is doing work in, and for, some other organization (a unit of the joint enterprise in another country, or some other enterprise), he must adjust himself to the circumstances prevailing in that country in respect of working hours, to the domestic rules of that enterprise, and must comply with the rules of labour safety that are valid there. This development is reflected by the aforesaid agreement of the COMECON countries which specifies the general terms of delivery.

This solution is a demand of practical life. To do work within the scope of a foreign organization without complying with the rules of that given organization is simply inconceivable. Yet at the same time it ought to be asked whether these rules can be applied to the employee without asking for his opinion in this respect, or a preliminary agreement to this effect between the delegating employer and the employee should be necessary.

Within the field of socialist labour statutes it is a rule of general validity that any contract of employment can only be modified with the mutual consent of the parties. This applies also to cases where an employee is on detached duty and is placed in a situation which calls for the modification of the contract of employment.

As concerns working hours, to fix the schedule is usually within the authority of the employer on the basis of labour regulations. The consent of the trade union might be required. Hence employees are under the obligation to comply with schedules or their modifications. Consequently, if working hours are not longer at the place of delegation than at home, and only differ in respect of spacing, the employee is obliged to accept this schedule. Needless to say, an employee is not under the obligation to comply with a schedule that violates some provision of law intended to protect the employee (e. g. prohibition of night work). If, however, the working time at the place of detached duty is longer than at home, agreement

[21] Szászy I.: La determination de la loi compétente dans le domaine du droit international du travail. (Geneve, 1968.)
Világhy M.: 1. c.

with the employee is required before he is delegated. Obviously, such agreement must comply with the labour statutes valid at the original place of employment. Any agreement that violates this latter rule is null and void.

As concerns the regulations of labour safety, express agreement with the employee is required for their acceptance if they are less favourable at the place of detached duty than at home. I should like to remark in this context that the rules governing the employer's liability for accidents may not be narrowed down in their scope on the basis of agreement. This liability of the delegating enterprise is not affected by the circumstance that an accident is caused by the enterprise where the work on detached duty is performed.

IX.

Application of the local law still may cause problems in some instances, and is likely to do so in the future, in the case of those employees — mainly leaders — of the joint enterprise who enter employment with the joint enterprise upon delegation or appointment by one of the participating countries. This is especially the case when the labour statutes governing the joint enterprise are less favourable for the employee than the former ones had been, or if the delegated employee — maybe for family reasons — has to maintain his former home. It is exactly because of such circumstances that special regulation rather than the local law of employment is chosen fairly often. But difficulties are present even so.

In my opinion, the regulation of such problems should be removed from the sphere of the labour statutes governing joint enterprises in general, and should be settled within the relationship between the delegating country and the delegated employee. The delegating state should agree with the employee whether the latter accepts new employment in a given case. (Mutual consent is required for such a measure under Hungarian law.[22] Within the scope of such agreement the delegating state may undertake to refund the employee for compensating his loss. (Under Hungarian law, the employment of the employee is suspended during his detached duty abroad, but the minister may permit payment of his wages by his original employer.[23] Such agreement is altogether independent of the employment existing with the joint enterprise.

X.

It may happen that a joint enterprise operates a unit or branch in a country that is otherwise not a party to the joint enterprise. Such a unit or branch is qualified as a foreign enterprise in relation to such a country. As I have pointed out in the foregoing, the rules valid in socialist countries are rather imperfect as concern foreign enterprises, but the law valid at the place of work is usually applied. This is in conformity with the principles of the socialist international law of labour.

A believe that a unit or branch of a joint enterprise located in a non-member country does not require regulation that should differ from the regulations for any other enterprise. Accordingly, I think it correct to apply the law of the place of work.

[22] Hungarian Labour Code 25. §
[23] Order No 17/1967. (XII. 31.) Mü. M.

XI.

In the course of our foregoing discussions I only have pointed aut the most important problems of the labour statutes that govern joint enterprises. That practice should raise a number of questions yet to be solved, is quite evident.

A few words ought to be said of the ways of realization. What I should like to suggest is that the COMECON states accept an agreement which would lay down the principle of applying the law of the place of work, and which would regulate the questions of detail which I have mentioned in this paper, and the regulation of which may become necessary in the future.

I have not mentioned the social insurance problems connected with joint enterprises. To settle such problems presents no difficulty if there exist social insurance agreements between the member states of the joint enterprise. But difficulties may arise even here: if the povisions of such agreements are not entirely identical, problems may present themselves in cases where an employee has worked in several member states.

I deem it advisable therefore to reach legal regulation within the framework of the aforementioned agreement, but independent of the bilateral social insurance agreements, to the effect that is in case of joint enterprises the legal relationship of social insurance should be recognized as uniform — like in the case of employment — and services and benefits ensured accordingly. Meeting of the expenses should be regulated also on such a uniform basis.

XII.

The purpose of this paper was only to present in outline the important problems relating to the labour statutes to be applied to the joint enterprises of socialist countries. Apart from joint enterprises established for the purpose of production, or management, several other forms of cooperation occur between the socialist countries. Suffice it to mention as an example the manpower management cooperation between the German Democratic Republic and Hungary, or the labour permit system under which the inhabitants of border villages or towns can work in the territory of the neighbouring country. I believe that we ought to devote more attention to these problems in the future, and to frame the labour statutes to be applied to the various forms of economic cooperation going on between the socialist countries. At the same time we must not, of course, neglect the solution of problems involved in the labour-legislative aspects of international relations of a non-economic nature.

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