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Legal Protection of Labour Relations and that of the Technical Mental Creators

1. The law of intellectual productions regulates the social conditions, connected with creating and using the mental products containing new ideas. Within the framework of this, the jurisprudence of civil law deals with two groups of institutions of fundamental, determining character: one of these is the protection of copyright, the other is that ensured by trade law. This latter can be devided into three parts, being different in respect of their nature. The most important of these is the right of inventors, containing the legal conditions in respect of innovations and inventions, serving the protection and use of mental creations which are outstanding from technico-economic point of view, primarily in the field of production.

Taking into consideration the importance of the legal protection of mental works, the amended Civil Code undertakes the general protection of all intellectual products, owing to their peculiarities that are different from other rights, attached to the person. In addition to the provisions of special rules, an extra protection is given to the products which can be used in a socially wide scope and having not become a public property, as yet, as well as the economic, technical and organizational knowledge, experiences of financial value.[1] In the following, we investigate in those from among the mental products, promoting technical development, the productivity, efficiency of work, into the subject-matter of innovations.

2. The innovation is essentially a comparatively new technical resp. organizational solution, submitted to the economic organization, having a useful result; but there belong here certain proposals, as well, the aim of which is to eliminate accidents or some conditions noxious to health, to improve working conditions, solve the tasks of nature reserve, and diminish our costs of investment.[2]

The innovator generally makes his work in the framework of a labour relation. He is, therefore, the member of the collective of an institution, enterprise; it depends, nevertheless, upon his person, whether he wants to publish his idea and considers the proposal worthy of being submitted as an innovation or not. In respect of the legal status of the person of proposer there is no limitation; any natural person may submit innovation suggestions,

1. Hungarian Civil Code, Art. 86.
2. Order in Council No. 10/1983. (V. 12.) MT on innovations (later cited: "UR"/. art. 2, sec. (1).

either being in labour relation or not; if his proposal corresponds to the criteria contained in the rule of law, it will be qualified as an innovation. A limitation is only concerning the degree of remuneration if the proposition of the suggestion relates to the working duties of the submitter. We shall return to this later on.

3. The investigation into the activity of an innovator also requires a complex approach. At creating the regulation, corresponding to the given period, it should rely on the establishments of economics, sociology and psychology, as well.

The public administrative forms which were initially characteristic of the legal relations of innovation, and also the norms of other branches of law, fell more and more into the backround and, parallel with this, the staindpoint took place that innovation, as an intellectual creation, falls into the scope of civil law. This does not mean, of course, that the provisions, institutions of other branches of law have no effect on this territory. Thus, there come into consideration the regulating norm of labour law, financial law, public administrative law and civil procedural law, and even, in addition to these, the principal results of other discipliens, too. already mentioned above.

4. In the scope the legal institutions, ensuring the protection of intellectual compositions, as well, rights of personality and property are due to the proposer.

In the circle of the contents-questions connected with the right of the innovator the question emerges, when the right of the innovator comes into being whether, from the point of view of authorship, the recognition of the economic organ is of constitutive or declarative effect. There is namely a difference between the scope of the claims emerging opposite to the enterprise and that of the rights of innovation, depending on the contents of which some exigible claims may then take place.

The rights connected with the person — i.e. the protection — are due to the author of the intellectual work from the moment of creating it. He may, therefore, ask the court of law — in principle — for enforcing the right connected with the authorship, even before presenting his proposal and thus the recognition has not even emerged in respect of him. The right connected with the person has in respect of a given proposal of solution an absolute effect and the innovation right is created by the law, with realizing the innovation corresponding to the conditions prescribed by the rule of law. Pursuant to this, the economic organization, which recognizes the innovation, only declares the existing law in the form of a rebuttable presumption (praesumptio iuris).

The most typical way of realizing the right of authorship is if the elaborater of the innovation presents a formal innovation suggestion. It is, at any rate, possible that an idea, which can qualified as innovation is realized, on the basis of proposal, presented to an enterprisal instance; formally, however, there is made to concrete proposal. The rights of innovation can be vindicated in this case only by the person who presented a proposal of innovation within six mounth after the beginning of utilization. In case of realizing a rejected proposal later on the original proposer should be considered as innovator.[3]

3. UR, Art. 4.

At presenting the proposal, there is a difference in respect of whether its proposer is in a labour relation (on in a membership relation of a co-operative) or not, as well as whether this proposal affects the scope of activity of the employer (co-operative) or not. If the proposal takes its origin from a person being not in a labour relation, its presentation need, of course, not be allowed. And this is the situation also if the proposal does not affect the employer (co-operative) but he wants to present it to another economic organization. It follows from this that the employer has quasi a preferential right to the innovation. The employee has, therefore, to offer the proposal, affecting the scope of activity of the enterprise primarily to his employer. The employer can only deny the permit to the presentation to another enterprise if it hurts his important interests.[4]

The permission of the employer is not necessary if, e.g., the solution of the subject of innovations aims at preventing accidents or improving working conditions; if the innovator does not want to utilize the solution or dispose of it.

5. The authorship of innovation is a right connected with a person, it should not be transferred. The financial claim originating from this (innovation, bonus, cost) can, however, be transferred inherited, according to the rules of civil law.

The right of disposing of the work is connected with the contents of the (subjective) right. The thesis which is generally characteristic of intellectual works, according to which the consent of the author is necessary to realizing the work, does not prevail in this field consistently. In case of innovations, it is possible even without any contract to utilize the proposal, although the possibility of utilizing a proposal without contract could only be accepted in cases where the proposal expressly belonged to his scope of activity, service. In every other case, the usurpation of innovation could essentially be established and the corresponding sanctions, connected with this applied.

By submitting the proposal, a legal relation is created between the innovator and the given economic organ, the parties have some determined rights and are burdened with certain obligations. Then, however, we cannot speak expressly of the birth of an innovating legal relation, as yet, though the rights and duties have a considerable influence on later events. This, however, cannot be qualified as a civil-law relation but only as a preparatory process, coming ahead of the contract. If therefore the economic organ infringes its obligation (e.g. at deciding it does not keep the time-limit), the legal protection of the proposer is ensured, besides the provisions of the civil law, by the rules of other branches of law, as well.

6. As to entitlements of the innovator, if the economic organization recognizes the submitted solution and wants to utilize it as an innovation, it should conclude a contract with the proposer. To do this — in opposition to the decision — there is no imperative time-limit. Thus, in practice, as regards time, there are considerable differences. It would be justified if the enterprisal statutes contained suitable prescriptions concerning time-limits and if legal consequences were fixed, as well, for the infringement of these.

In so far as the conditions are not ripe, as yet, a guarantee would be ensured to the innovator in the form of a preliminary contract. The prelimi-

4. UR, Art. 6.

nary contract was introduced by the amended Civil Code, primarily as an effective means for organizing lasting economic connections in the long run, on which the plans of economic organs can also be based in a realistic way. The positive rules of the preliminary contract can correspondingly be applied to the legal relations of innovators, as well, and ensure a wider protection to them.

The innovator has no enforceable subjective right in case of the acceptance of the proposal, either, and even after concluding the contract. The realization is the exclusive business of the acceptor and the enterpise cannot be obliged to introduce the innovation with judicial decision, either. But the contractual obligation cannot be equated by obliging somebody to a real fulfilling because the acceptor owes in case of default a compensation, at the degree of which the conditions, prescibed in a rule of law, (the circumstances concerning the people's economic importance, the effect on foreign trade etc.) should, of course, be taken into consideration as influencing factors. The liability of the economic organization assumes a form according to the general rules of civil law concerning liability resp. excuse. Without this restriction, it would namely be possible that the acceptors draw under contract innovations, depriving others in this way of these and, in addition to damaging the innovators, possibly with the abuse of their legal right, they would also hurt the all-social interests, too, connected with the technical economic development.

The innovator may therefore claim a compensation from the illegally proceeding realizer if he proves that the economic organization used his solution without his consent, illegally and imputably to him, without any contract or in spite of a refusing decision. And if the claim of the innovator to an innovation bonus would be refused, the innovator may then enforce his rights judicially.

In innovation cases the harmonizing of interests is particularly important. It is emphasized by the decision speaking about the legal-political directives of applying the law, as well, that the innovators should obtain the equivalent of their work and, at the same time, the court of law should take into consideration the interests of the economic organ (collective), as well.[5]

It should not leave out of consideration, either, that the innovators often rather omit the procedure against the employer and do possibly not even use the state intervention for realizing their rights. A possible way would be, too, to generalize the provision of a number of enterprisal rule in a wider scope, as well, according to which in lack of the agreement of parties the realizer should be obliged to turn to the court of law in order to decide the unsettled questions. From psychological point of view, as well, it would be very right to popularize this method of regulation.

Summarizing what has been said, in relation of enforcing the personal and real rights, we may risk the statement legaldogmatically in a well-established way that the personal rights of the innovator prevail and may be indicated — in respect of the concrete innovation — with real effect but only in a properly determined scope, while real rights, connected closely, at least typically, with the contract of use, represent a relative legal effect.

7. The concept of innovation is formed — since the first legal regulation

5. Decision of the Presidential Council No. 14 1973 on legal-political directives of law applying. In: Magyar Közlöny, 1973. No. 39.
6. Order in Council No. 11.940/1948.

of it — by real and personal criteria.[6] The endeavour to give an exact delimination is characteristic of the Hungarian regulation, as well. In this — following the development of the social and economic conditions — very frequently modified rule of law the definiton needed correction on every occasion. Innovation was defined by the maker of law sometimes in a wider, sometimes in a narrower sense. The most critical of the conceptual elements is the category of the scope of duty in the sphere of activity; as a considerable change has just now appeared in this field, it is justified to outline in short the historical development.

Speaking in a general way, it can be established that in the overwhelming majority of innovation suggestions these emerge in the working place, generally in connection with the work of the employee. He is, therefore, only entitled to a separate remuneration for it if he has not obtained its equivalent in the form of wages. In addition, only such an activity can receive a moral and material recognition which exceeds the duty within the scope of activity.

There are considerable differences between innovation relations and labour relations. The subject of innovation contract is to utilize the result of an intellectual work; on the other hand, the subject of labour contract is to perform the work, in the course of which the employee is obliged to accomplish the task entrusted to him. The innovation relation is independent of the labour relation. The legal prescription unambiguously delimits the former from the rights and duties originating from the labour relation.

There can be no question of innovation, independently of the labour relation, if its maker expressly fulfilled his duty in his sphere of activity by producing it. In this case, the elaboration of the solution remains within the framework of the labour relation, no civil-law relation takes place independently of the labour relation.[7]

8. The personal criterion of innovation is that the proposed solution does not belong to the duties within the scope of activities of its proposer or it belongs there, but then it is a considerable creative achievement. The duty within the scope of activity excludes, therefore, the formation of innovation relations even if the proposal corresponds to the real, conceptual criteria of the rule of law. In practice, the interpretation of this definition is the most controversial problem in respect of the duties within the scope of activity. The right standpoint is often complicated, requiring a comprehensive investigation.

It serves as a directive that only the activity can be considered as a duty within the sphere of activity, which should be performed by the employee as a task owing to the scope of his activity determined in his labour relation (on the basis of a labour contract, rule of law, bye-laws, statutes, list of the spheres of activity, the comission or command of the competent person, orally or in writing). This means, in essence, the fulfilment of the aggregate of the tasks which are compulsory presribed to do by the employees taking into consideration their qualifications, classing, placing, on the play-roll, in order to realize the result in case of the average diligence that can be expected. The scope of the duty within the spere of activity is surpassed by the suggestions which are connected with the elaboration of solutions concern-

7. Törő, Károly: Újítási jogunk reformja (Reform of our innovation law). In: Magyar Jog, 1975. No. 9. p. 511.

ing such products, technologies labour and plant-organization which do not fall into the category of the enterprisal activity, as well as the suggestions that are not qualified as service inventions.

Taking into consideration all these, duty within the sphere of activity is generally the scope of activity, with performing of which the employee is charged and which he is obliged to perform in the labour process, owing to his labour relations. The question of the duty within the sphere of activity should therefore be decided not on the basis of denomination of the sphere of activity but on that of the actually performed work. A duty within the sphere of activity cannot come into question, either, if the suggestion was elaborated on the basis of a preliminary innovation contract or of the point of a plan of tasks.

The determination of criteria of a considerable creating accomplishment is similarly problematical. This can only be investigated if the submitted solution falls among the duties of the proposal within the scope of his activity. A considerable creating accomplishment can only be determined on the basis of the joint examination of all the participating factors. An influencing factor is the size and profile of the economic organ but other qualitative and economic conditions may also have an effect on evaluation.

The application of a well-constructed evaluating method may render help to an objective judgement. Such may, for instance, be the due categorization of the informative criteria, the designation of a qualifying factor with a point or percentage (possibly with the combination of evaluations of positive and negative signs), and the evaluating systematization of all the components. A few examples which can be determinative at evaluation: creative character, practicability, the level of novelty, useful results, stc.

A regulation of such a character, built on local peculiarities, ensures a major possibility to the economic organ for a more exact evaluation of the suggestion submitted in the scope of activity resp. for stimulating to a work, submitted in the sphere of activity and considered as being on a high level.

9. In the latter period, the opinion has become more and more accepted that the most important creative layer, the technical intelligentsia should not be excluded from innovations. The increased technico-economic requirements, the necessity of putting forth the creating energies at a great pace, made seasonable the further development, modification of the legal regulation concerning innovations and inventions.[8]

One of the fundamental aims of the continued development is the increased drawing of technical intelligentsia into the innovation activity. On the basis of what has been said above, a provision took place, according to which if the submitted suggestion corresponds to the objective criteria of innovation, independently of the personal circumstance, it can be considered and registered as an innovation. If the suggestion was partly or entirely the duty of the proposer, belonging to his sphere of activity, this should only be taken into consideration and evaluated at fixing the remuneration in such a way that at fixing the key of innovation bonus, this would be a diminishing factor. The full refusal of financial remuneration is not justified, even if the proposal was a duty within the scope of activity.[9]

In addition, the differentiated financial remuneration, the systematic inno-

8. UR
9. UR, Art. 12, sec. (4)

vation activity of technicians should also be recompensed in other forms, as well (e.g. rewarding, pay-raise, promotion, good record of service, etc.), and these would be concretized — taking into consideration local specialities — on the basis of the framework of rules of law and directives by the innovation regulations of the economic organs.

The prevailing of a justified claim is necessarily required by giving wider foundations to the innovation movement. According to this claim, those from whom the most valuable innovation suggestions are to be expected, who know most the domain of their work, should not be in a more disadvantageous situation.

10. The utilization of an innovation, containing a new solution, can take place in two kinds of forms: a) the economic organization uses it in the scope of its own activity,resp. puts it in circulation, b) it passes it to another organization.

The passing mainly affects the solutions, suggested by the employees of the institutes of research, development and planning; in addition, the marketing of products among the economic organizations is also a considerable form, because a part of products is suitable for being sold, as well. This is beneficial to people's economy but it may also render help to the receiving enterprise and useful for the deliverer and the innovator, as well.

There were already attempts, earlier too, to solve the domestic circulation systematically but they did not achieve a succes. The enterprises should also be made interested in taking over the valuable ideas, already realized somewhere else, in order to introduce all the methods, solutions which have already been applied with success.

In order to raise the efficiency of innovation activity, as well as to eliminate the superfluous, parallel research works and attempts, it would be desirable if the enterprises offerred the innovations, reckoning on a considerable interest, to other organs, as well. It would be necessary to develop an informative system, corresponding to the professional specialities, enabling the interested persons to become acquainted with the possibilities of using these and ensuring the needed publicity in a given circle. Beyond these, it would be justified to introduce compulsorily the innovations improving labour-safety, health and working conditions, as well as in case of innovations concerning nature reserve because the propagation of these on country level is in the interest of the whole of society.

11. In connection with passing, it is necessary to return to the problem of the subjective right of the innovator, investigating into the problems of transferability, the rights connected with the person and those relating to property. This becomes, namely, of practical importance, at the introduction of innovation at another enterprise, be it either in the form of a relative novelty or of a unilateral taking over. In case of passing the innovation to different organs, the right of the innovator to the financial participation, guaranteed by the legal rule, should be taken into consideration. The economic organ, recognizing the innovation, is due to right of disposal, as a derivative right.

The foregoing expositions are in an unambiguous accordance with the principles and rules of the general legal protection of intellectual productions. In case of innovations, at any rate, there emerges the question: What is the range of the rights, ensured to the innovator resp. realizer, that can be vindi-

cated against another enterprise, taking into consideration the condition, as well, that at innovations we can only speak about a relative novelty — i.e. it should be new at the given economic organ — while at inventions, the criterium is the absolute novelty. There are also some opinions, according to which on the basis of our new economic policy the enterprise enjoys exclusive rights in respect of innovation.[10]

In our opinion, however, if an innovation, which was already proposed — or possibly introduced, too — in an enterprise, is initiated at another organ, by a third person, then the author of this proposal will already be this third person. The innovation right of the original proposer will in itself not have a prohibitory effect on the merits of the solution, except for the case of introducing this in the given enterprise. In this case the rights originating from the innovation are already due to this person, of course, with the exception of the case if he acquired the proposal of another innovator illegally; in this case, the usurpation can really be established — otherwise however it cannot.

It follows from the foregoing that the organ accepting and realizing the innovation originally, does not acquire — even by practising the right derivatively — an exclusive right against third persons. Thus, the economic organ, disposing of the innovation — but, in fact, the innovator himself, either — do not enjoy actually any corresponding legal protection if the already introduced innovation is used — without any contract on this subject — by another enterprise. In case of breaking the secret of service or industrial data, the commiter is, of course answerable for his actions.

Summarizing, we may draw the conclusion that the right of an absolute protection is not due to the innovator, not only practically but even in principle, on the basis of the rule of law. The point is, essentially, that at this solution more than one person can be considered as equally entitled: This is the earlier mentioned special protection of the (subjective) right.

10. Világhy Miklós: Gazdaságpolitika és polgári jog (Economic policy and civil law). Akadémiai Kiadó, Budapest, 1978. p. 97.