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The Interpretation of the Scope of Questions Regulable by Collective Labour Contracts

The collective agreement as a specific regulating means makes rules for the labour relations of enterprises, however, not for all concerns of labour relations but mainly for relations necessary to the achievement of the enterprise's purposes. The content of the collective agreement is regulated in the Labour Code by the following method: on the one hand it determines within the group of norms referring to the institution of collective agreement also the content of such agreement on a higher level of principle. It says: "Collective agreements define —within the sphere and framework determined by provision of law— the rules relating to the rights and obligations of the enterprises and workers as well as principles concerning the implementation of such rules."[1]

On the other hand the Labour Code and legal rules issued for its implementation —besides the general definition quoted above— contain factual authorizations which elements of the labour relation should be regulated by collective agreements namely such legal rules distinguish among the content elements: they order the regulation of certain elements compulsorily, that of others only as a possibility for the parties concluding collective agreements.

Such method for specifying the content of the collective agreement needs an interpretation since the views diverge as to the range of questions regulable by collective agreements.

On the basis of checking the contents of the collective agreements made in 1968, that is to say concluded instantly after the coming into force of the Labour Code, can be stated that the parties concluding collective agreements construed rather largely the range of the questions regulable. From some collective agreements emerged even such an extreme point of view according to which a collective agreement may regulate all questions not being dealt with by legal rules. In this way several rules of the former Labour Code accustomed to by the enterprises got into collective agreements during their 16 years' practiice, rules from which the enterprises could not easily break away. In addition to that many collective agreements contained undertakings characteristic of the years of 1950, prescriptions regarding socialista emulation, etc.

According to the other explanation —narrowly defining the content of the collective agreement—, the collective agreement may only regulate

[1] Para. (1) Section 10 of the Labour Code.

factual questions for which the statutory rule contains specific authorization. Thus: if the statutory rule does not expressly refer to the regulation by collective agreement, in that case the collective agreement may not provide any regulation. If for all that the collective agreement gave a regulation, such regulation would be void for lack of authorization to be given by statutory rule.

In the beginning there was missing a uniform interpretation of legal provisions concerning the content of the collective agreement also in the practice of organs authorized to decide on the voidness of provisions contained in collective agreements. This is reflected in the opposite views evolved relative to a provision of the collective agreement.

The Territorial Labour Law Court of Arbitration for the Capital Budapest ruled out the provision contained in Section 10 of Chapter III of the collective agreement from 1968 of the Servicing Enterprise for Building and Construction according to which "the withdrawal of the dismissal notice becomes absolute on the consent of the other party" and ordered the said enterprise to amend its collective agreement since this contained a provision not permitted by a legal rule of higher grade. Namely the reasons adduced of the Court say: . . . the regulation and ordering may exclusively take place in the limits fixed for this purpose by other statutory rules of higher grade . . .[2]. On the other hand the supervisory organ of the enterprise in line with the trade union expressed the following point of view about the content of the collective agreement. "It is generally experienced that the collective agreements are not confined to the regulation of imperative or dispositive cases specified in the central statutory rules but within the framework of the law they draw also such cases into the sphere of regulation which the management or the trade union found necessary for this purpose. There is only one restriction for such contractual provisions, namely that the regulation should not infringe statutory rules of higher grade or rather it should not violate the law . . . Since . . . the contested part of the enterprise's collective agreement does not go beyond the limits of the Act or law-decree, the decision of the Court of Arbitration erroneously judges that part unlawful and incorrectly makes reference to the lack of other legal rule of higher grade."[3]

I do not examine here the relevance of the provision contained in the collective agreement and regulating the withdrawal of the dismissal notice. The standpoints cited are significant since they clearly express the view accepting the narrower or larger conception of collective agreements.

The guide given for the conclusion of collective agreements is destined to help put an end to this uncertainty and develop a uniform interpretation; this guide contains as to the question discussed as follows:

"The collective agreement may not give arrangements but for such questions the regulation of which the statutory rules refer to the collective agreement, or rather permit such a regulation."[4] The wording of the guide

[2] Announcement No. 1608/1968 of the Territorial Labour Arbitration Court for the Capital of Budapest.

[3] Answer No. 6588/1968 of the Ministry of Building, Housing and Town Development as well as of the Trade Union of Workers employed in the Industry of Building Materials to the announcement No. 1608/1968 of the Territorial Labour Arbitration Court.

[4] Guide to the conclusion of the collective agreements of the years 1971-1975. Labour Gazette No. 5 of 1971 P. 83, Hereinafter: Guide.

cited above —it seems— accepts a narrow interpretation relative to the content of the collective agreement. The narrow construction even more clearly emerges from the view of László *Nagy* according to which "... the collective agreement may give regulation if the Labour Code or other legal rule gives an express authorization for that."[5] The latter point of view —in my opinion— cannot be explained but in the way that the conrete casual authorizations have to be considered as taxative enumerations and the collective agreement iis not allowed to go beyond such authorizations.

On continuing the quotations we are convinced of the fact that neither the Guide, nor László *Nagy* narrow down the contents of the collective agreements to the case of "express" i. e. explicit authorizations. The Guide contains namely further on as follows: "Besides the cases when statutory rules order the obligatory regulation of certain questions in collective agreements, the latter may give regulations in the following cases:

(a) Where the legal rule does not prescribe an obligatory regulation but it renders such regulation possible.

(b) The collective agreement may regulate, too, when the legal rule —without referring to a detailed regulation or definition to be made in the collective agreement— uses a general notion having a content different in view of the activities, character of the enterprises.

(c) The collective agreement may make an arrangement also in such cases, when the Labour Code or other legal rules fix the framework of a right or allotment in limits "from-to" although it makes no reference to the fact that the filling of such framework belongs to the sphere of the collective agreement."[6]

László *Nagy* has the same opinion in his work entitled "The collective agreement in practice" and summarizes his view at the end of his analysis as follows: "As to the two completions it must however, be emphasized: when the Labour Code or other legal rules do not determine any limits or rather do not use any general notions, they may give a regulation in the collective agreement if there is an authorization for that."[7]

László *Nagy* in his work issued later even widens the content of the collective agreement with a completion. He thinks possible the regulation in a collective agreement beyond the foregoing also in those cases when the parties "wish to determine a principle of implementation for the provision contained in the legal rule or in the collective agreement."[8]

On summarizing the views quoted in the foregoing it can be stated that these take up a position between two extreme opinions. They do not admit that the collective agreement may arrange no matter which question but at the same time ultimately they do not consider the casual, express authorizations of the statutory rule as a taxative enumeration. In order to expound my point of view in the discussed question, I have to go back to the legal provision defining the content of the collective agreement, and

[5] László *Nagy:* The collective agreement in practice. Táncsics Publishing House. Budapest 1968. P. 12, this author puts it in similar manner in his other work with the addition that "thus the collective agreement may not regulate any question without the authorization of the statutory rule." László *Nagy.* System and practice of the collective agreement I.P.13.

[6] Guide. P.83.

[7] László *Nagy:* The collective agreement in practice. I.P.14.

[8] László *Nagy:* System and practice of the collective agreement. Táncsics Publishing House. Budapest 1971. P.18.

it seems advisable to make a thorough study of the casual authorizations contained in statutory rules.

By virtue of para. 10 of the Labour Code quoted above, the collective agreement determines the provisions concerning the rights and obligations of the enterprise and the workers as well as the principles for implementing such provisions in the range and limits specified by statutory rules. It is obvious that the expression of the Act "in the range and limits specified by statutory rules" denotes the content limits of the collective agreement, this definiton, —however—, does not indicate necessarily a narrow interpretation of the content. The expressions "range" and "limits" do not give namely but a general delimitation of the content. The word "limit" of the contested expressions —in my opinion— signifies that if the legal rule determines the maximum or minimum of the rights or rather both of them, — the collective agreement must not exceed such maximum and minimum.[9]

Yet the expression "the range specified by statutory rule" has to be construed in the way that it covers all questions the detailed regulation of which a legal rule of higher gradde did not effect and dit not refer to the sphere of a legal rule connected with another labour relation. Thus the expression "the range specified by statutory rule" means the range delimited by legal rules in indirect way. Had namely the legislation wished to determine the content narrowly, it should have regulated it expressly, clearly by the help of another terminology. Would we object to such reasoning the question: what is the use of the factual authorization of the Act and other statutory rules for regulating the collective agreement in specified cases, I could —in my opinion—correctly answer: the legislator indicated the main area for the regulation of the collective agreement, namely the area where he deemed necessary and possible the regulation of the collective agreement. But he did not want to exclude the possibility of the regulation in other events. This conclusion is supported by the general legislative practice, since we do not find in our legal system any example of the case in which a legal rule of higher grade would give a taxative enumeration of questions regulable in the sphere of the implementation, although all acts contain such reference.

It would be, —however— incorrect to draw the ultimate conclusions exclusively from para. 10 of the Labour Code as a general rule of principle. A deeper study than given above need the casual authorizations of the Labour Code and other legal rules, too. Such authorizations —considering their character— can be listed into, two groups, in particular:

(a) obligatory regulation ordered by statutory rules,

(b) a possibility of the regulation.

ad (a) Such questions belong to the sphere of regulation compulsorily imposed on the collective agreement for which the statutory rules do not comprehend prescriptions or contain but general provisions not being usually applicable and being in want of completion. E.g. it is compulsory to regulate in the collective agreement the timing of the working hours, the payment for overwork, the scheme of assignment of workers and work, the conditions of placing the workers on the payroll, etc.

[9] My view is in line with the opinion of László *Nagy*. Also according to him, "in cases when ... the regulation of a question belongs to the collective agreement, the arrangement has to remain within the scope or rather limits determined by statutory rule." László *Nagy:* System and practice of the collective agreement 1971. P.15.

The questions belonging to this sphere may not be left unregulated, partly because the course of the application of law would stop, partly beecause the lack of some of such rules would violate fundamental rights of citizens, as e.g. the right to relaxation or the protection of mothers with small children. The provision of rule prescribing the regulation of certain questions in the collective agreement has always to be a factual and unambiguous authorization.

The legislator referred to the second group of the content of the collective agreement in which the regulation is not binding, — such questions the regulation of which the legal rules completed but allow the divergence from that in the collective agreement in accordance with the conditions of the enterprise. Such possibilitiy is given by the legislator for the increase of the period for dismissal notice, for the deviation from the term fixed for the communication of timing the working hours, for setting forth a different pause in work, for enhancing in specified cases the rate of responsibility, etc.

Should the parties concluding a collective agreement use such authorization they make practically an exception to the rule of principle determined in the statutory provision. Yet according to a correct interpretation of law a provision containing a divergence, exception if this means a deviation from an imperative rule, the collective agreement may not specify but in the event of an express authorization. This results unanimously from para. (3), Section 8 of the Labour Code. In line with this provision namely the collective agreement „may deviate from another statutory rule referring to the labour relation in only so far as this rule permits. A provision offending against such prohibition is void." Thus a rule of the collective agreement specifying a deviation, exception without a factual authorization shall be void. etaoih

It follows from the foregoing that the concrete authorizations of statutory rules concern only the provisions imperatively regulable as well as specifying a deviation of the collective agreement's content.

It would be, however, inaccurate to assert that the collective agreement may not regulate other questions behind this scope. More provisions of the Labour Code contain relatively general elements needing an unambigous concretizing and interpretation with a view of an exact laying down the rights and obligations. A case in point is Section 13 of the Labour Code differentiating from the point of view of the use of trade union rights according as we are talking about questions concerning larger units of the enterprise or rather larger groups of the workers. Similar general elements are to be found in Section 35 of the Labour Code obligating the worker to temporarily perform duties not belonging to the sphere of his activities, as well as to provisionally work out of his permanent place of work and with other enterprises, too. In my submission, the law did not specify these rules more exact since it wanted to give possibilities to the enterprises for different interpretations proper to their specific conditions. We have to admit that the collective agreement with regard to such questions may concretize or rather construe the provisions of the statutory rules in fact a more detailed determination of these is expressly desirable.

My view evolved so far according to which the content of the collective agreement may exceed the cases of an expressed authorization given in statutory rules, practically is not contrary to the opinion set forth by

László *Nagy*. To my mind, too, those are the most characteristic instances of the possibility of a regulation in a collective agreement going beyond the authorization given in a statutory rule which are indicated by László *Nagy*, namely 1. concretizing general notions, 2. the determination of the measure of authorizatiion within the denotation "from-to" and 3. the definition of the principles of implementation. The difference of opinion consists in that while in my view the cases enumerated are merely typical and not exclusive instances of the regulation in a collective agreement, according to the opinion of László *Nagy* there is not any possibility of regulation in a collective agreement beyond the cases set forth by him. By that he blocks up the enterprises and trade unions from the opportunities to construe the rules of the labour law and thus they would consider in vain necessary to regulate any question in the collective agreement, pursuant to this view they could not do that even if the rule was not contrary to the law — merely on the basis that there is no factual legal authorization and the question does not belong to any instance set forth by him.

Such point of view narrowing down the content of the collective agreement in this way —in my opinion— does not ensue either from the rules of the Labour Code, or from the economic-social conditions of the Act's coming into existence and particularly not from the function of the collective agreement.

At last concernig the decision of the question how far the content of the collective agreement may exceed the sphere of the factual authorizations, significant ist the definition of the "enforcement principles" pursuant to para. (1) Section 10 of the Labour Code.

It is not contested in the literature either that the collective agreement may specify the enforcement principles both of its own rules and of the statutory rules of higher grade. It remains to be seen what character the enforcement principles have, what demarcate such principles from the rights and obligations?

László *Nagy* shows by some typical examples what provisions were considered as such by the legislator:

— the determination of the purpose of making use of the amounts allotted to bonuses;

— the realization of a certain rate of wages extension for factual groups of workers.[10]

We meet also in the practice many times rules defining principles contained in collective agreements, e.g.:

— the principles of determining basic wages (placing on the pay-roll);

— aspects to be applied on granting premiums, etc.

The above-mentioned indicates that also such rules impose obligations on one of the parties (mostly on the enterprise) and establish entitlements for the other. A difference between the rights and obligations as well as between the enforcement principles consits in the fact that on the side of the workers as entitled person is always the whole collective of the enterprise or a specific group of that (e.g. members of the old staff, workers concerned with energetics, workers showing a specific behaviour, etc.). The rule coming into being in this way has generally no individual obligee, such regulaton cannot be enforced by the individual. Yet the element of the enforcement is not absent from this specific rule, as a rule the power of

[10] László *Nagy:* System and practice of the collective agreement. I.P.10-12.

enforcement in such cases belongs to the sphere of activities of the trade union organ representing the collective concerned. The trade union organ of the enterprise may object if the employer did not act in line with the principles established. Thus I cannot go along with the standpoint of László *Nagy* according to which the places the enforcement principles between the rule originating a right and the decision and does not consider them rules. Even as he expounds, the parties fix their agreements in the enforcement principles that "they should not fall into oblivion." Should we not treat such prescriptions of principle as other provisions of the collective agreement, doubts might arise e.g. whether Section 56 para. (3) of the Labour Code (and other similar rules of principle) are in fact legal rules. Pursuant to this provision namely on giving out the holiday "the wishes of the workers have to be taken into consideration in conformity with the possibilities." Thus this rule is no more than the enforcement principle for the enterprises of scheduling the holidays on government level.

The enforcement principles fixable in the collective agreement — in my opinion — as to their legal nature practically do not differ from other norms. Since on principle such norms are permitted as to all questions, in line with the previously mentioned reasons the collective agreement disposes of a general and not concrete authorization in questions bearing on the labour relation.

Thus we can state from the discussion serving the construction of the questions regulable by the collective agreement the ultimate conclusion that the legal authorization facilitates the self-regulation of the enterprises jointly with the trade union and it is incorrect to attribute to the provisions of the Act such sense according to which those in specified factual cases "permit" the regulation in the collective agreement. I wish, however, to emphasize, as I deem inaccurate the interpretation of the rule exceedingly narrowing down the content of the collective agreement, at least as much I hold incorrect and harmful the other extreme view referring to the content of the collective agreement which considers everything regulable not arranged by law.

In my opinion merely by deep analysis, with the use of all methods of the legal rule interpretation can be decided in individual cases upon whether a certain question may be regulated by the collective agreement and whether the enacted rule is lawful or unlawful.

Jurisprudence and standpoints serving the formation of a uniform practice have to endeavour to help forward the parties concluding collective agreements with the correct construction of the law. A method of this could be the exploration of cases beyond the authorization of statutory rule containing further possibilities of regulation. Parallel with this it is desirable to explore and analyze those covenants of the collective agreements exceeding the opportunities given by statutory rules; covenants concerning questions for which —according to a correct interpretation of the legal rule— neither in a general nor in a cencrete form exists possibility of a regulation in the collective agreement.

The formation of a correct practice in concluding collective agreements would serve the drafting of such uniform principles indicating the bounds and content limits of a regulation in collective agreements. Such principles to be applied are as follows:

— the covenant of a collective agreement may not differ from the im-

perative provisions of statutory rules but pursuant to a special authorization;

— the covenant may not go beyond the scope of movement even in the case of a permissive i.e. dispositive regulation of the statutory rule,

— it may not contain provisions contrary to the basic principles of the labour law or our socialist legal system,

— it may not contain such provisions giving less rights or more unfavourable working conditions than those warranted by law.

The feasible contents of the collective agreements secured by statutory rules on the basis of the above interpretation —in my opinion— makes the collective agreement suitable for the accomplishment of its function, for the task to fully and adequately define the rules of a reasonable and human association of human and material factors necessary to the producing activities of the enterprise as well as to make the workers interested in the successful operation of the enterprise.

Summarizing our view we condider merely such covenants of the collective agreement void which offend against the provisions of the Labour Code or other statutory rule or differ from them without a specific authorization. Beyond this the parties concluding a collective agreement may regulate all those questions necessary to facilitate an optimal operation of the enterprise in harmony with the purposes and principles of the law, to protect the interest of the workers and to specify the rights and obligations of such parties more precisely.[11]

[11] As to the content range of the collective agreement, other authors, too, took sides in the literature. László *Román* construes para (1), Section 10 of the Labour Code in a way pursuant to which the collective agreement may "move" within the limits specified by statutory rule. Though he does not reveal any detailed standpoint, also he delimits himself from the opinion which deems it possible that the collective agreement "may regulate everything not prohibited by the Labour Code or other statutory rules." László *Román:* The nature of the organization-like internal rules with special respect to the collective agreement. Studia, Pécs, 1970.P.33.

Also György *Csanádi* admits the possibility of a limitation of the regulation by the enterprise, but he puts the accent on the independence of the enterprises. To his view, beyend the imperative and differing rules of the collective agreement "it is not precluded that the collective agreement should regulate other questions, too, — those relative to which the statutory rule does not mention the regulative role of the collective agreement yet the regulation of which in the collective agreement the enterprise and the trade deem necessary." Such questions not arranged by statutory rule may have to be taken into consideration."

György *Csanádi:* Labour Law. Educational Publisher. Budapest. 1972. P.63.

László *Nagy* in his study prepared for the codification going on similarly advocates the enlargement of the content of the collective agreement. László *Nagy:* The system of the labour law regulation. Budapest, 1983. Manuscript P.20.