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Legal Regulation of the Connection of the co-operative with its Members

In Hungary, public opinion is today keenly interested in the formation of the external and internal interest relations of co-operatives. Within this theme, of wide-ranging and complex character, I want to deal with the internal side of the legal projection of the co-operative interest relations, i.e. with the problems of the connection system between the co-operative and its members, relevant to legal relations. So much the more, because as far as the interest relations of the co-operative interest structure became more complicated and differentiated, the internal connection system has got at least so much coloured and articulated, too. And even, I venture to mention in advance a thesis to be verified later, namely that the connection system between the co-operative and its members can only be taken out from the scope of the co-operative interest relations and from the interconnected outer interest junctions, in order to investigate into them.

Economics considers the interest as such a relation between man and his environment, the aim of which is: to fill the current needs and which connects the individual by this to society (Kálmán Szabó). The question is, to what extent the law can regulate the given interest relation. In order to emphasize the complexity of the problem — apart from the details — let me allow to refer to Imre Szabó and Gyula Eörsi. Szabó writes: "The interest itself, taken alone and for the law, as well, is a too general and too abstract concept to that its social content could be immediately evident. Its appearance, practical manifestation take place in the shape of pairs of antinomies; opposite to the private interest is the public interest, to the individual interest the social interest..." etc.¹ In Eörsi's formulation: "... there are, at first, the economic relations, from this outgrow the political targets, and the law is only achieved when, transcribing the political aims into the law, they formulate the legal targets, creating the legal norm which in the social-economic relations induces the homogenized, impoverished legal relations. reflecting the reality in a distorted way."²

Eörsi finally solves the antinomy, saying: "The transcription into the law transplants the inactment of the target by the State into the legal system, in order that the law can become an implement to realize the target."³

¹ Szabó, Imre: *A jogelmélet alapjai* (Bases of the legal theory). Akadémiai Kiadó, Budapest, 1971, p. 75.

² Eörsi, Gyula: *Jogelméleti torzó* (A torso in the legal theory). Állam- és Jogtudomány, 1980, vol. XXIII. — p. 333.

³ Eörsi, Gyula: *Op. cit.*, p. 372.

Nevertheless, I should say that starting at the line of economy-interest-ideology, and of the political sphere, the "transcription into the law" is not always perfect. More exactly, the law does not always register satisfactorily the emerging tendencies in the optimum moment of recognizing them.

Fixing the fact, formulated in this way, I should like to come to investigating in greater detail the system of connection between the co-operative and its members. I myself, as well, support the standpoint, according to which in addition to the independent and separated co-operative interest, there is the individual interest of the member of co-operative. And even, recently, the interest of small-groups within the co-operative also demands a legal regulation corresponding to them. And these pairs of interests mean the basis of an internal system of connections.⁴

It follows, however, from the concept of the structure of interest, as well, that the groups of relations, appearing in the structure of interests — independently of whether they are external or internal, as compared to the co-operative — determine also the system of connection between the co-operative and its members. Let us think of the changes in the content of membership relations, and not ultimately of the effects connected with accepting the small groups, appearing actually within the group (co-operative) interest as independent points of junction, colouring the content of the co-operative membership.

It is today already a widely accepted opinion that the division, connected with the double position of the co-operative member (as an employee resp. owner) — corresponding to the objective circumstances — should be amplified and, according to this, the interestedness of the co-operative member is already determined by three components, namely: the undertaking of work (co-operation in another co-operative in some activities), small-enterprise (including household, farming, too); and financial co-operation. The system of connections, between co-operative and its members adjusts, therefore, itself to the changes in the structure of interests, the determinant of which is, on the other hand, the formation of social-economic relations. Just therefore the statement, according to which the system of connection between the co-operative and its members has — in addition to its inner side — an outer side, as well: does not lose touch with reality.

The member of a co-operative, as a national, may belong to more than one system of connections. As the co-operative, as well, accomplishes its tasks not only concentrated to its members, the form of the social-economic existence of the members of the co-operative is not exclusively the co-operative, either. The scope of the social-economic duties of the co-operative — as mentioned in the special literature, as well — is inside and outside the co-operative, because, with its means and possibilities, it may serve as a higher basis for other small-holder units, too, without being to the detriment of the common activity.⁵ On the other hand, the productive, servicing activities of the member of the co-operative does not remain always in the framework of the co-operative, either. Therefore, the points of junction of the structure of interests; their structural and functional changes have — even if indirectly — an effect on the role and situation of members in the systems of connection inside and outside the co-operative. Formulating more simply, there appear

⁴ Nagy, László: A szövetkezeti jog alapkérdései (Fundamental questions of the co-operative law). Akadémiai Kiadó, Budapest, 1977.

already today, in addition to the inter-co-operative system of connections, the outer systems of connections, as well, supposing at any rate the former one, too (e.g. the activity in other co-operatives, the secondary husbanding, the economic working party etc.), in which the members appear as subjects of a legal relation, as regulated by the law.

The inner side of the system of connection between the co-operation and its members is, therefore, the content of the membership relation: its outer side, on the other hand, is the system of conditions which provides an opportunity for the co-operative member to establish a legal relation expressing a system of non-co-operative connections, and the activity within the framework of it.

After these, I should really like to some legal questions of the system of connection between the co-operative and its members. Before doing this, however, I should like to remark that alluring as may be to approach the given theme from economic, sociological aspects and from that of the theory of organizing, yet, I consider it as right to remain at investigating into the method — at any rate neglected of late — given by the legal regulation, so much the more, as it is an experimental fact that the theoretical conceptions and legal solutions not only that not always converge but there are, as well, essential contradictions to be found between them.

The first question can only be — in my opinion — how the law is able to express and regulate the system of connections between the co-operative and its members.

The interests of co-operatives — first of all of those of producing type — are indicated by their aims and by the scope of their tasks, realizing these. The interests of the members of co-operatives are ensured by their positions in the co-operative. The division, indicated in the double position should also be amplified. Thus, the position of the owner, which was earlier overshadowed, has today two well-sensible domains of appreciation: the household farming, forming an organic unit with farming on a large scale, the pecuniary co-operation, supposing the financial interest of the owner. I think, at any rate, that the widening of interested fields, the possibility of a new division, were made possible by the position of owner.

As to how many hindering factors impeded, and are impeding even today, clear-sightedness in this field, I should like to refer to an economist who explains in connection with the structural situation of agricultural co-operatives: "Those dealing with the development of social structure in a village are for years not unified in deciding whether the membership relation of co-operatives, i.e. the micro-structure, based on the co-operative ownership, contains any peculiarity in the agricultural structure, by which it may be distinguished from that of state farms. Both the positive and the negative standpoints are only based on a supposition."⁵ He regrets to establish that in Hungary there is going on no research work which would take into consideration, at the principles of group formation, the ownership relations, too, to be found within agriculture. At the same time, it is a fact that the

⁵ Seres, Imre: A termelőszövetkezeten belüli viszonyok főbb jogi kérdései (Major legal questions of the relations within productive co-operatives). A JATE Állam- és Jogtudományi Kar Mezőgazdasági és Munkajogi Tanszékének Kiadványai 4. Szeged, 1979.

structural relations of the workers of agricultural co-operatives are influenced by the relation of members or employees, as well.

At regulating the law of co-operatives, therefore, we should take for our basis the connection of interests within the co-operatives, supposing one another and built on one another and the objective claims of interest-structures, reflecting the socio-economic reality, should not be put into shade. I have not the slightest intention, to deal unceasingly under the key-words "the system of connection between the co-operative and its members" with the problems of the membership relation, repeated over and over again. But — I think — the interested experts look time after time for an answer to the question, how the system of multipolar connections can be comprehended and regulated by the law. There are, namely, generally known the opinions, held to be extreme, which either narrow down resp. transform into labour relation the institution of membership relations or degrade it to be negligible resp. a mosaic-like legal relation.

An interesting and original theoretical conception has appeared about the institutionalization of the managing system of work organizations — which can be formed in the framework of the so-called collective laws (labour law, law of productive co-operatives) legalized, i.e. adjusted to the interest structure, recognized (appreciated) in the main lines of the collective — and of the relation between the collective and the membership as a statusrelation.⁷ Though, I have to remark that the theory of the independent legal entity of the collective was already expounded on the field of the Hungarian labour law by Andor Weltner, in his monograph, entitled "A szocialista munkajogviszony és az üzemi demokrácia" (The socialist labour-law relations and factory democracy) more than twenty years ago, saying: "if we take into consideration the field of the entire legal system, besides the man, the State, and the civil-law person, the collective, too, takes place, as a particular subject of labour law."⁸ And the idea of duplicity of the status and labour relations was raised by Ferenc Erdei in 1968, in his lecture, introducing a discussion, entitled "Theoretical questions of co-operatives", conceived as follows: "The fundamental question which should still be cleared in a long debate is, whether the membership relation itself in the productive co-operation determines the labour-relation of members in the collective work of the co-operative or the participation in the common work requires the creation of separate labour relations."⁹

The fundamental problem may only be, in my opinion, whether the legal relationship of co-operative membership may comprehend in their totality the internal, i.e. co-operative connections of the co-operative and its members, more exactly: arrange the system of co-operative connections well. It is another question, whether the organization and system of means, resp. the

⁶ Zsarnóczai, Sándor: A mezőgazdasági szövetkezetek dolgozóinak strukturális helyzetéről (On the structural situation of members and employees of agricultural co-operatives). *Közgazdasági Szemle*, 1979. No. 1, pp. 76-82.

⁷ Hegedűs, István: A kollektíva jogi felelőssége a jogágak fejlődési távlataiban (Legal liability of the collective in the developmental perspective of the branches of law). *Jogtudományi Közöny*, 1982. No. 6, pp. 452-459.

⁸ Weltner, Andor: A szocialista munkajogviszony és az üzemi demokrácia (Socialist labour-law relations and workshop democracy). Akadémiai Kiadó, Budapest, 1962, p. 381.

⁹ Erdei, Ferenc: A szövetkezetek elméleti kérdései (Theoretical questions of co-operatives). *Társadalmi Szemle*, 1968. No. 2, p. 35.

mechanism, necessary to this, is given at present. Before giving an unambiguously affirmative answer to this, allow me to refer to an easily demonstrable process. While in labour law, as mentioned, there have been made some attempts for more than 20 years to amplify the content of labour relations, to widen the rights of the collective: in the co-operative law the claims present themselves in the elaboration of the organization of the indirect democracy (e.g. widening the scope of activities of the meeting of delegates etc.), formulating rights and duties of the managing and work-organizational units, becoming independent, in the connection of interests of the employer (owner) and employees. In the Hungarian labour law, we may, therefore, be the witnesses of a process of integration. And in the co-operative law, the claim to an internal differentiation is preceptible for the sake of guaranteeing the organizational life.

It is true that the first step towards the organization of enterprisal law was made — nolens-volens — by the co-operative law.¹⁰ And even, it is to be emphasized that the system of connection between the co-operative and its members was made an organic unit by the theory of co-operative law, what has had its effect on the development of labour law. The practical experts observe, however, hardly the conception of enterprisal law or co-operative law, and the least of all that of collective law in the course of making the law, to say nothing of the application of law. On the other hand, as mentioned above, the theory and law-making do not only not harmonize with each other but between the two even a certain divergence presents itself.

If we accept as a thesis the establishment, according to which system of connection between the co-operative and its members is determined by the tendencies of economic interest — economic policy, "the transcription into the law" ought to serve the mentioned tendencies — even if the means are restricted. This role of service — as I see this — cannot be observed unambiguously either in labour law or in co-operative law.

I would only mention one or two examples. One of the central fields of the system of connections is the systematic performance of a work. The co-operative member is, however, in the productive co-operative not only a workshop but he is within the co-operative management quasi an owner-entrepreneur, as well. This duplicity ought to be regulated by the law in a way that these positions create an organic unit and the possibility of the co-operative enterprise may appear as a function of performing the work in the workshop. The co-operative differs namely from the national enterprise just therein that, in case of the former, the ownership relations are more immediate and, consequently, its earning relations must also be of more immediate character.

Or let us take, e.g., the financial co-operation as another important field of the membership interestedness and, through this, that of the inner system of connections. The expression: financial contribution of the co-operative member, resp. the financial connections between co-operative and its member, do not overlap each other exactly. The latter is evidently a wider concept but the legally regulated financial connection has similarly, two basic types. One of them presents itself as the content of the cooperative membership relation.

¹⁰ Cf. in detail in: Sárközi, Tamás: A vállalati jog, mint jogágazat problémájához (To the problem of the enterprisal law, as a branch of law). Jogtudományi Közlöny, 1979. No. 19, pp. 795-805.

the other is independent of the membership relation — being only coloured by that, to which we shall return in short.

As to the inner financial connections, these are, unfortunately, partly not in every case functions of a systematical performance of a work, partly the legal regulation itself does not pay any major attention to the financial connections of economic and managing character between the co-operative and its members, either. If, therefore, we want to fortify the financial co-operative character of productive co-operatives (may these be industrial or agricultural) we should assert instead of the principle of coexistence that of collectivity. Our effort should be that both the co-operative and the co-operative member having a "separate property" be more interested in the economic, financial integration. It is a separate question, what new forms of co-operation can be realized.

Finishing the examples, I should also mention the existence and regulation of the "small-group" interests. We may experience that the small-group interests, growing in strength owing to the concentration of co-operatives, find the forms of asserting themselves even if these do not always correspond to the requirements of the socialist structure of interests; and the working-site collectives are not only the organizational forms of co-operative democracy but also those of the prevailing of the collective interest relations. My opinion was, earlier too, that the organizational skeleton of the large co-operatives is not hardened so much, as yet, that they could not be flexible by growing their interestedness and the assumption of risks, without vertebral fracture. On the other hand, we see that the legal regulation is satisfied with recognizing the organizational framework of the rights of status, without making any mention of their widening or of the transformation of work-organizations into economic organizations with relative independence or of the possibility of their duplicity. For instance, it does not refer to such an undertaking within the co-operative, in which the member entrepreneur makes his unit function approximately with the interestedness of the owner but it does this in an economic system which ensures that the personal profit of the entrepreneur be, at the same time, the profit of the whole collective, as well.

I have the feeling that we recently express the reality, the objective socio-economic development in a too complicate way and, when we speak of husbanding, interest, economic policy, regulation then, behind the obscure formulations, uncertainty, the lack of careful examination hide themselves. It would be good if we, first of all, exactly formulated the objective forces that unambiguously show the way to the legal regulation, as well. It would be good, not to mystify the connections between the co-operative and its members. These are, namely, seen by all clear-headed co-operative members.

The formation of socio-economic relations is reflected in the inner connections. The task for the law may only be, to promote the development, the better possibilities optimistically. It is not questionable for anyone that the inner connections form a uniform system in which the connection of work, undertaking, interests, the social and individual consciousness are decisive factors. Just therefore — I am convinced — the co-operative law should regulate this system in its whole, in the framework of the system of legal relations, so that the co-operatives get even more possibility to realize their expectations but — in addition — so that the interests of the co-operative, the small-group and those of individuals do not lose touch with one another,

as well as the co-operative economy should also not lose touch with the household- and second-farming, the co-operative property with the individual one, the co-operative consciousness with the individual one.

As a conclusion, I should like to formulate from this point of view a few more ideas about the outer side of the system of inner connections, as well. As a preliminary, I would emphasize that the system of internal connection between co-operative and its member is comprehended not only by the co-operative law because the member as a national, too, may have legally regulated connections with his co-operative, but this domain cannot be the subject of our discussion. On the other hand, what is more problematical mainly from the point of view of being regulated, it is the outer side of the system of the connection of members.

We proceeded from the thesis that the junctions of interest-structure (social, sectoral group, small-group, thinking of the disintegrable individual interests) can only be separated from one another in order to analyse them. Is this statement true, then the connections of interests both of the co-operative and its members are not only directed inwards but also outwards. As the outer connections of the co-operative have an effect on the system of internal connections (the members are similarly interested in the formation of the external interest and legal regulations of the co-operative), just as much have the outer interest and legal regulations of the ownership and financial affairs of members an effect on the co-operative itself. Giving prominence to the ownership-side, we should formulate the necessity of returning the "property of nationals" into the social producing process.

As to the development of regulation, we should primarily separate the external connections which may only be set up, on principle, by the co-operative members, if they do not hurt with these the interests of the co-operative (e.g. the small-commodity producing outer connections of specialized groups, of household farming) and outside the co-operative (e.g., activity in other co-operatives, participation in an economic working pool etc.) which are generally characterized by the primacy of corporate interests, that is to say, by the prescription of permit for creating such a connection.

There belong to the second group the outer connections which are independent, i.e. not of function character. In these, the national appears as an owner and free entrepreneur (e.g. if the work was done in the second economy, in the free time etc.). The regulation of these two — in my opinion often mixed — spheres, from the point of view of social interest is, perhaps, the most problematical but, at the same time, the most timely problem. We are at a loss, seeing the phenomenon, which manifests itself, on the one hand, in the overregulation of common activity (the work done in common), in the narrow, financial approach of the pecuniary connections and, on the other hand, in the bold, grandiose treatment of the possible giving back of the wealth of nationals. Or is it still a fancy seeming too bold, to connect the income, acquired fundamentally with work, with the co-operative estate in a way that the former one should take part in some way in the co-operative production and that this participation — in addition to assuming and running the risk — can give (even if in a restricted way) some share to the co-operative member and the national, connected with the co-operative economy. The realization of this conception would not mean any thing else than the secondary returning of the income, acquired with work, through the co-operative. The work of the national is, namely, manifested in this share, too.

Against the innumerable counter-arguments a single argument, reflecting reality, can only be offered, namely that if the thesis is right, according to which, instead of coexistence, the principle of collectivity is to be realized in practice and not only the common economy should help the individual or second economy, connected with it, then the connection of the two properties, being beside each other, in this way augments not only the individual but also the common economy. I am convinced that the legal regulation of the future will promote this tendency, as well.