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Overlappings between civil law (private law) and labour law as regards the branch of law and the legal principles

Comments about the legal qualifications of collective agreements

The collective agreement from its beginning belonged to one of the legal institutions, legal qualification of which was subjected to the regulation of private law until the appearance of the independent labour law. Collective agreements, compared to contracts, had however a lot of peculiarities which raised some serious problems about the legal qualification for the capitalist jurisprudence and led to different views and theoretical trends.

The purpose of this study is to deal mainly with some historical and legal-dogmatic aspects of these questions until the appearance of the dependent labour law.

Collective agreements at the age of liberal capitalism

The collective agreement appears when the contrast between capitalists and the working class grows embittered and the inner contradiction of the capitalism becomes obvious; and when the working class as an organized and homogeneous class becomes strong enough to rise against the exploitation of capitalism, and when they are able to extort certain rights from their employers. We cannot say at all that the organization and the strength of the working class reached a high level so far, as they were not able to fight for general improvements but they wanted to achieve better living conditions. To realize these objectives they had to lead political and economic fights, as well. This struggle showed economic marks in its earlier stage but in the course of the further development it gradually filled with political elements. The fundamental goal of organizing the working class into a homogeneous force could only be carried out by trade unions and some other specialized worker organizations. We share Miklós Világhy's opinion who states that certain agreements made between employees and employers before the establishment of trade unions could not be considered to be collectiv agreeements because their realization and predominance could not be secured then by the power of working class or as a matter of fact, the working class could not force the capitalists[1] to take into consideration the agreements.

[1] Miklós Világhy: "Comments about the collective agreement" (Lecture) Published by the Hungarian Academy of Sciences. Seri. I. Alt. Társ. Tud. Vol. I. No. 2., page 64.

The same opinion is expressed by Sidney and Beatrice Webb in their remarkable work of "Workers' Democracy" that runs as follows: "Only the labour organizations can give stability and elasticity to the mutual compromise."[2] Some pages later: "When there is no understanding, the wage

[2] Vol. I. page 203. translated by E. György

workers being strategically weak, what originates from the fact that they are unable to determine the final price of their own work, are forced to accept the lowest wages". We can regard the agreements made before the establishment of trade unions as collective agreements only in etymological meaning, because they are nothing else than individual service contracts made by the representatives of the employer under the same conditions. (It is interesting to mention that such collective agreements made on the basis of the Zenon papyrus in the age of Ptolemaios have been found in Egypt, but, on the other hand, we have not got any relics of this kind of the Roman private law.)

It was obvious for the working class that "If the economic circumstances of the parties are not equal, the legal freedom enables the strategically more powerful party to dictate the conditions."[3] This is the base of the thought of organizing the working class into a unified structure. When the organization, the political and social strength are so powerful that the employers find much better to make certain concessions than to refuse the demands of the workers directly, and to undertake all consequences of a general strike; the collective agreement appears in this situation as a social phenomenon trying to smooth the contradiction, risen between capitalists and workers temporarily.

According to the facts mentioned above, the establishment of collective agreements is fundamentally based on the consolidation of trade unions or to express it in another way, the trade unions, beside their economical function, must take care of safeguarding the workers' interest, wich is the real task of any workers' organizations. Such trade unions could be fround — according to Werner Sombart — first in England in 1851 (Special Organization of the United Machine Building Workers). It is natural that the first collective agreements appeared also here, in 1860. The Trade Union of weavers in Nottingham, and later on the Trade Union of Building Workers in Wolverwhampton in 1866[4]. From that time on, the spread of collective agreements showed an ever growing tendency all over the world; in Germany, for example, more than a thousand collective agreements were recorded at the turn of the century. Jászai mentioned 176 Hungarian collective agreements in 1907[5]. During World War I., the spread of collective agreements increased because the parties took every opportunity to find the most suitable means to secure the undisturbance of productions in war time. All of the possibilities of a strike had to be avoided, thus it seemed to be proper for the capitalists subsidizing the war industry to make

[2] Vol. I. page 203, translated by E. György
[3] S. and N. ebb. page 247.
[4] For more references see: Permeczky: "The collective agreement" Budapest 1938, page 51.
[5] Jászai: "The history of the Hungarian Trade Unions" 1925, page 81.

concessions for those who worked in war industry in form of collective agreements.

So the collective agreement appeared in the society as well, and it spread and was applied in wide circles. The law, however, as one of the vehicles of the ruling class for ensuring their power could not be indifferent to this social phenomenon either. Naturally, it had been quickly noticed by the legislators that the collective agreement did not mean anything else but the restriction of the capitalist to a certain extent; therefore the law was turned against collective agreements and they wanted to limit the spreading and sucess of collective agreements by means of legal rules. The success of collective agreements could be hindered by the law in two vays.

1. One of them was the direct prohibiton. This method was mainly accepted by the countries where the capitalism failed to develop to a greater extent, and thus it seemed to be easier to refuse the demands of working class. The best example for that can be found in our own home practice. According to the Act VIII of 1872, art. 93 and Act XVII of 1884, art. 162. "... agreements between workers on striving for higher wages by general strikes... have no legal effects".

But this situation could not be kept for a long time, anywhere, and after a few years this direct prohibition practically ceased existing in Hungary, too. The spread of collective agreements could not be hindered by legal rules any more. This did not mean that the law gave up fighting against the collective agreements or would have wished to defend them suddenly. It only tried to hinder the assertion of collective agreements in different ways and with different tactics.

2. .The method of exerting an indirect counter effect on collective agreements by means of the power of legal rules began to be more frequent than the method mentioned above. In states where spreading and strengthening of the workers' movements were general, the prohibiton of coalitions and organizations were gradually stopped as it happened in England by the so called Act of Peel in 1824, and in France when the well-known Loy Chapelier brought by the legislature of the French Revolution in 1791 was set aside, and in Germany in 1872, etc. Thus, the possibility to make collective agreements was given in principle in these and other countries, as well. The legal reaction could be detected in the fact that the law did not give any possibilities to enforce the rights originating from collective agreements. This legal enforcement was refused either by legal rules (as in England by the Trade Union Act No. 181) or by the fact that collective agreements were not mentioned at all. Though the possibility to enforce them modelled on the private contracts, formally existed, but concretizing such claims was consequently hindered in the practice of the court. Collective agreements made between 1860—1890 had originally been tariffical respects and after a rather slow and gradual fight their content widened. Later, the working conditions were regulated more thoroughly and the parties considered it necessary to regulate all the details by means of collective agreements.

Summarizing everything about collective agreements being characteristic of the second half of the 19th century, we have to emphasize that we were facing such a social phenomenon which had been explicitly prohibited at the beginning, later on, however, it tried to hinder its development

indirectly and its regulation was rather primitive and uncertain. Only one example: the parties almost always agreed on the legal effects originating from any break of the collective agreement but its realization seemed to be rather problematic. Planiol is right in saying that the validity of the collective agreements is secured by the facts being outside the circle of law. The collective agreement functions only when its assertion is secured by the working class and by the strength of trade unions. When this strength was missing, the legal "disordered order" gave unlimited opportunities to the capitalists to utilize the temporary weakness of trade unions and to withdraw, without much hesitation, the concessions granted and to break the rules, because the law did not redress it at all or only partly.

At the age of the "clear captalism" the legal qualification of the collective agreements meant no problems at all. Namely, when its existance was acknowledged, it was regarded as a simple private contract. It meant only that collective agreements did not belong to the forbidden transaction in spite of the fact that the structure of the collective agreement differed from that of other private transactions in many ways. The legal defence of collective agreements were denied by the court because — according to their opinion — collective agreements differed no much from a simple private transaction that granting of any legal protections was quite impossible. Perneczky underlines the following in his work: "Relations, wanted by the collective agreement differed so much from the individual living conditions belonging to the circle of private law, that it is no wonder if they are reluctantly accepted by the courts not only in our country but abroad, as well. It is interesting to mention one part of Dr. Dávid Papp's comments about collectiv agreements on the debate of the Gentlemen of the Robe in 1909. According to him the regulation is not necessary because — as he says — "it is impossible to empower the collective agreements with the effect of civil law, or to enclose the collective agreements into the civil law coming from the Roman law, because it is nothing to do with the Roman law or with our present law"[6], The reason for which the assertion of the collective agreement was declined is completely indifferent. But it was important that the employers found their ways not to suffer damage. So, the legal qualification could not be risen at all in the jurisprudence till the end of 1800.

Collective agreements in the age of monopoly capitalism

At the turn of the century, the whole inner system of capitalism suffered a fundamental and structural change. Those serious difficulties due to the inner contradictions of capitalism could not be solved any more within the old frames. Economic and social life changed radically and so did the legal system, too. It was the age of imperialism. It could not be doubted that such an important and spreading social and legal institution as collective agreements in the course of further development bore the marks of imperialism.

During the days of imperialism the working class grew stronger and was able to deepen the intensity of its fight. On the other hand, capitalists

[6] Lectures held at the meetings of the Gentlemen of the Robe of Hungary, in 1909.

became stronger and led to an increasing social tension. Due to the wide-spreading class struggles collective agreements spread all over the world, too. As regards this collective agreements, the earlier policy could not be followed by the legislator either. The strength of the working class was much greater then, so, the collective agreements embodying their demands could not be legally neglected. Thus, the legal systems of the states showed their attitude in one or another way in connection with the collective agreements nearly all over the world since 1910. The opinions were various. On the basis of profound examinations of the legal regulation of the collective agreements and taking into consideration the time elapsed until World War II., we can detect there main tendecies. The first group consists of states which not only acknowledge the collective agreement but requalify as a legal rule — according to the components given below. This happens by means of the so called "longdistance operating" force. To the second category belonged states where the collective agreement was considered as a private legal transaction. And in the fascist countries where imperialism, reached its fullest and most developed form, collective agreements were expressis verbis forbidden by law.

Before discussing the above mentioned three tendencies, the legal concept of the "long-distance operating force", used so often, has to be elicited. The long-distance operating force means that every agreement and individual contract, the content of which is contradictory to the meaning of the collective agreements, having long-distance operating force, is to be disregared and they are automatically replaced by the rules comprised in collective agreements. This rule prevails when the individual service contract is made by those who are under the power of collective agreements or by members of the parties representatives of which made a collective agreements. If the legal effect of the collective agreement deteriorates the items of the service contract, by means of the long-distance operating force, it is regarded as "a transforming force" in literature and if this legal effect compensates for the items being not regulated in the individual service contract, we can speak about a "supplementary force." The long-distance operating force works more powerfully, when it also includes those who vill later become members of the organization appointed to make collective agreements and those who are not members of any organizations, but who are working in fields under the force of the collective agreement. This legal effect is well known as a "common compulsory force" in literature. The long-distance operating force — according to our opinion — has two fundamental effects: it penetrates into the content of the individual service contracts and this effect could be regarded as the objective side of the long-distance operating force, and on the other hand it imposes a compulsory attitude for the subjects making the agreements and belonging to certain social status. "(Under certain social status" it is meant that whether someone is a member of the organization appointed to make collective agreements or not). That is considered to be the subjective side of the long-distance operating force. If the collective agreement has only a supplementary or transforming effect then the subjective effect is partial, but in case of collective agreements with common compulsory force we can speak about a general subjective force — in our opinion. The long-distance operating effect, whatever form it appears in the collective agreement, is secured by the legal

rule, but the agreement of transacting parties is not sufficient. The long-distance operating force has an overwhelming importance; it has an elevatory effect by which the collective agreement gets out of the circle of a simple transaction and gets into the field of the objective law.

Having explained the above mentioned questions, let us examine the different states among the main groups. The classification outlined here extends to World War II., but after it a completely different situation took place that vill be discussed later.

In our classification the first main group involves the countries where the collective agreement was empowered with long-distance operating force by the legal rule. Here — according to the factors discussed later — the agreements made earlier were replaced by collective agreements having the power of the legal rule. Two categories can be found within the main groups mentioned. To the first category belong the countieres the legislature of which acknowledges the transforming and the supplementary character of the long-distance operating force, so the compulsory effect touches only the parties. Switzerland, France and Poland belong to this group to the Acts passed in 1911, 1919 and in 1933, respectively. The collective agreement, however, has been empowered with compulsory effect in France since 1936, and this common compulsory force was acknowledged in Poland, too, in a certain degree. To the second category of the first main group belong the states acknowledging the common compulsory force of the collective agreement. Finnland acknowledged it in 1924, Norway in 1927, Sweden in 1928, Holland in 1927, Austria in 1919 and Weimar Germany in 1918. To this category belonged France too, from 1936 on.

To the second main group belongs the countries where the collective agreement was judged by the general rules of private law; where the agreement had a special structure and the transaction was regarded as a private contract with the legislator. This was decided either by a rule or it was acknowledged as a contract of the common law. The collective agreement was considered to be a simple private contract and was tolerated in these countries. The regulations were also different here, for example, in Denmark they handled it as a nominated contract. Elsewhere, (according to the Czech, Roumanian, Yugoslav and Belgian legislatures) it was regarded as an innominated contract. The situation was the worst in such countries where the collective agreement was tolerated and recognized as a private transaction, but the legal rights originating from this transaction were not allowed to be enforced by their law and order. England belonged to one of these countries where the possibilities of enforcing such rights was excluded by the Trade Union Act passed in 1871. It was strengthened by the Trade Disputes Act in 1906.

At first sight there are some points in the Trade Union Act passed in 1871 which seem to serve the interests of trade unions by releasing them from bearing the responsibility for the damages caused by strikes. But in fact this was not true; and it followed from the order of the Trade Dispute Act and Trade Union Act passed in 1927 which claimed that the Act had passed in 1906 (which was quite equal to the Act passed in 1871), could not be applied in case of an "illegal strike." To declare whether a strike illegal or legal was up to such organs which were considering the questions always from the side of the ruling class. If a strike was declared to be illegal, the

trade union had to pay. On the other hand due to the above mentioned Acts the right of the trade unions could not be used against the capitalist employer breaking the contract. Thus, the collective agreement could be regarded as a natural obligation in England. It was interesting and rather characteristic of the English conservativism that the collective agreement was not rearranged by the legal rule, it was left unchanged in its earlier form in the age of imperialism. The collective agreement became a natural obligation in the United States of America as well as in Canada.

To the third group belonged the states where the adoption of the collective agreement was explicitly forbidden. To this group belonged, first of all, the fascist Germany where to make collective agreement was strictly forbidden from 1934 on. The fascist Italy belonged to this group, too, but the settlement of the problem showed rather special features. According to the Italian legislation, the collective agreement could only be made by organizations acknowledged legally. Acknowledged organizations could be such ones, which had suitable political activities and if they did not fulfill this requirement, the acknowledgement granted could be withdrawn. Here the strike was strictly forbidden and was against the penal law. There was no doubt that we could not speak about workers' organizations in such circumstances. Thus the agreements made between such workers' organizations which did not represent the true interest of the workers, and the capitalists could not be regarded at all as collective agreements. When we wish to put the Hungarian collective agreements into any of the above mentioned categories, it can hardly be doubted that their place is among the innominated contracts. Act VII. in 1936 showed the legal settlement of this question, but as we shall see it later, the Act filled the private transaction with the elements of public law.

The legal settlement of the collective agreements occupied a rather special position in the Soviet Union before World War. II. Here we have to emphasize that the Soviet collective agreements differed from the above mentioned types from the very beginning, so we could not put them into any of the above-mentioned categories.

We have also to deal with the role the jurisprudence played as regards the collective agreements and what this new legal institution looked like. We mentioned that this question could not be raised at all till the turn of the century. But when collective agreements obtained a general importance at the early stage of the monopoly capitalism, jurisprudence itself could not turn a blind eye, to this legal institution either and began to give scientific explanations. Circumstances that the collective agreement was carefully studied by legal theorists pushed forward the development as well as the wide-spreading and its popularity. Legal scholars contributed to the fact that the written positive law dealt with the collective agreement and created one of the preliminary conditions for regulations to come up to the practical requirements. Philip Lotmar had been the first who dealt with the collective agreement in his study published in 1900. He and Sinzheimer are regarded as leading characters in the field of collective agreements is the German literature. But the collective agreement was studied rather early in the French literature as well, and was scientifically analysed by Jay and Raynank, too. In that time Lotman declared that was necessary to empower the collective agreements with automatical long-distance operating force, which was

a completely strange idea from the point of view of the written law. But from that time on, the question of the legal qualification of the collective agreements became more and more complicated. The subject of the debate widened constantly and the jurisprudence coped with it but difficulty. The main problem was whether the collective agreement could be regarded as a simple private contract or we should face another form of contract being an entirely new form in the world of law. It was Sinzheimer who explained the difference clearly between the collective agreement and the individual contract of service. In spite of this, a lot of questions remained open. The new transaction, in its own age, differed so much from any other transactions known until then, that it was rather questionable whether it was that or not. The subject of the debate always widened when states empowered the collective agreement continuously with the long-distance operating force. Thus, it was filled in with public law elements. The general opinion was, however, that is was impossible to push the transaction into the sphere of the public law, because the opposing parties had enjoyed a formal equality and thus subordination and superordination, so characteristic of the legal relations of public law, were missing. The whole complex of the questions led to the problems connected with the dualism of jurisdiction, and an institution querying the dualism from theoretical aspects was brought forward again. Naturally, the question of the qualification of the collective agreement arose in the source of law simultaneously.

In connection with the subject of the debate, different positions were occupied by the representatives of civil jurisprudence. We may classify the same opinions into five basic groups. According to our classification to the first group belong those where the collective agreement is regarded as a private transaction, quite independently of whether it is connected with the long-distance operating force or not. The main representatives of this tendency are Iaxobi and Hueck. To the second group belong who regard the collective agreement as an objective law even without any long-distance operating forces. Duguit, Cruet and Leroy are the main representatives of this trend, Philip Lotman thinks similarly, too, because he wants to consider the long-distance operating force to be conceptually inserted into the collective agreement.

The third group consists of those who regarded the collective agreement without any transforming force as a private contract, but collective agreements with transforming force were considered to be legal rules. The most famous representatives of this trend are Kaskel, Sinzheimer (he himself belonged to the first group) Nepperdey and Simpson. Károly Szladits belonged to this group, too. According to the lawers belonging to the fourth group, the collective agreement with a common compulsory effect was considered as a legal rule. (Most scholars agree on this.) We could not put into the fifth category those who considered the collective agreement as a temporary phenomenon with an uncertain situation (Lemire, John Clarke Adam).

In conncetion with these categories some dogmatic-critical remarks are presented here.

ad. 1. According to the scholars belonging to this group, the collective agreement always appeared and came into existence in the form of a contract. They thought that the long-distance operating force meant that the capacity was voluntarily restricted for a given time by the concluding par-

ties, therefore they decline to make any agreements controversary to a collective agreement with long-distance operating force.[7] We cannot share this opinion. Naturally, it is not valid for a collective agreement with common compulsory force, where the capacity of all parties is restricted by law. Independently whether the interested party is renounced or not. If we do not take this into consideration, we have to evaluate this opinion rather negatively. The capacity is not restricted by that the long-distance operating force is given up voluntarily by the parties, because the strength to the long-distance operation is not given by that, but on the contrary, it gains power by restricting the capacity by law. It is not an exaggeration to state that all of the legal rules determining obligations restrict the capacity for the subordinated to a certain degree.

The long-distance operating force is like a lock, through which obligatory effects penetrate into the service contract. The most important cogent effect can, however, not be made other service contracts but only in consonance with the content of the collective agreement.

ad. 2. To quality the collective agreement rule of law, is hardly acceptable. If it is not empowered with a longdistance operating force it will be handled theoretically as a private contract by the written law. The value of this tendency was in those days when the idea of the long-distance operating force had not been accepted, yet, that the introduction of it was urged and a good theoretical fundation was given to it.

ad. 3. The theory belonging to the third group contains the most debated points. Accordingly, the collective agreement without long-distance operating force is merely a nominated or innominated private contract, while, it is a legal rule. László Szilágyi, finds in his comments, the raising of this question in this way to be too simple. It is no doubt that the collective agreement even without a long-distance operating force is a non-tipical agreement and when it is empowered with it, it will not be different from sources known other of law. When we wish to get the real position, we have to take into consideration this fundamental difference. It is another question, what kind of contract the collective agreement is and what character it has as a soruce of law. Whether we consider the collective agreement a nominated or innominated transaction with the long-distance operating force, it depends on the point of view taken by the private law rules in the states to be examined. We must consider the real position a basic point, the final decision depends on the way the collective agreement is treated by legal rules and by the court. In Denmark, for example, it is treated as a nominated transaction while elsewhere as an innominated one. It may occure that the lawmaker and the applier, as well, deals with it as "sui generis", due to its special structure. In spite of all these, here collective agreements are considered as private contracts. We have to contradict to those who regard the collective agreement only as a "preliminary agreement". In that case the parties can insist on making the real agreement. In case of collective agreements, however, nobody can raise a legal claim to make service contracts and it cannot be regarded as a "private agreement" either, because one of its essential points of settling any dispute or the uncertain legal

[7] The collective agreement is discussed by Gusztáv Vincenti in "The limitations of freedom of contract." (Private law reuglations of the work. Budapest, 1942, page 77.)

relation risen between the parties can be solved by mutual submissiveness. Even if the mutual indulgence is accepted in the collective agreement, we cannot say, that the mutual submissiveness is in causal relation with the debatable legal relation. Coming back to the above mentioned facts, according to the representatives of the present trend, empowering the collective agreement with the long-distance operating force establishes the substantive law if only the transforming and the supplementary power exists. We share this opinion in historical and dogmatical questions.

The collective agreement is to be regarded as a legal rule with particular effect. (Collective agreements with common compulsory force have a universal effect.) If the legal rule has particular effect, there is a possibility to elude its regulations.

Here we are going to examine the opinions about the compulsory force in the theory of the source of law. The opinion that the collective agreement consists of two parts a "normative one" and an "obligatory one" has spread in literature since Kaskel. The normative part contains the elements that will be the obligatory points of the service contract. This is the part which is considered to be the substantive law in the theory of sources of law. Besides the obligatory part can be found as well, what means personal obligations for the contracting parties.

According to a rather general opinion, fidelity to regulations of work and bond of peace are regarded as obligations. Fidelity means that the employer does not make and keep up any service contracts, in respect of the given persons, which are contrary to the collective agreement. According to the bond of peace, the employer cannot do anything disturbing the peace of the work; its most important requirement is to reserve from the exclusion of the workers. The bond of peace is valid for trade unions, too, and its basic effect is to reserve from organizing strikes. Both fidelity and the bond of peace prescribe negative attitude. The obligatory part, according to the above mentioned, belongs to the substantive laws. This point of view was sharply criticised by Miklós Világhy. He is right in saying that "the collective agreement as a phenomenon of life and as a concept shows unified structure. To break down this unit on a dogmatic base is rather inappropriate.[8] He says rather effectively: "it is impossible to speak about a thing once as a legal rule and, another time to state that the consequences of the private law originating from breaking the bond has to be applied for it.[9]

We share Világhy's opinion entirely. The collective agreement can only be broken dogmatically. But at the closer dialectical examination of the phenomenon, the unity of the collective agreement is doubtless. The concept of fidelity is really one part of the collective agreements but not the essential one which may claim for legal feature. Fidelity to the regulations of work means that the points of the contract are kept by the contracting parties and no controversary agreements are made. If the collective agreement in respect of the normative part is considered a legal rule which determines the circle of subordinated persons then it follows from its legal character that contracts contrary to the law should be made. All legal rules involve the requirement that not controversary attitude should be shown especially by the persons who had created them. It is difficult to deny that law and order empower

[8] Review of the Society of the Gentlemen of the Robe, 1948, Nos. 1-2, page 129.
[9] Publications of the Hungarian Academy of Sciences. No. 1. page 63.

the collective agreement with the long-distance operating force because it intends to ensure its obligatory force. It is quite useless to emphasize the obligation of parties not to show any attitude contraversary to the collective agreement as it comes from its substantive law character. According to some experts, the so called "excluding argeement" belongs also to the obligatory part of the collective agreement. The "excluding" agreement means, that the contracted parties are not allowed to make service contracts with non-members on the basis of the collective agreement. In our opinion, the parties who have defined the content of the legal rule determine the circle subordinated to the collective agreement, so they set limits to their own rights. The legal rules often contain some points which, over a certain extent, are forbidden to apply. It has not been considered to be a special kind of obligatory contract in case of the collective agreement, because it belongs to the so called "normative" part like fidelity to the regulations of work or the bond of peace. After this it seems to be superfluous to examine in detail the agreements of small importance which according to certain experts, are regarded as "obligatory elements". The estimation of these agreements is the same as that of fidelity to the regulations of work, bond of peace and that of excluding agreement incorrectly classified as a special obligatory part by certain authors.

In connection with the above we wish to quote the brilliant statements of László Szilágyi who criticised the normative and obligatory parts. He says: "Undoubtedly, this classification is artificial and it seems as if we wished to explain a human being by enumerating his chemical components." He comes to the final conclusion: Dissecting the collective agreement into a normative and an obligatory part does not solve the problem and does not give an answer to the question what the legal nature of the whole collective agreement is.[10]

ad. 4. It could not be doubted in its own age at all, that the collective agreement with common binding force was a legal rule because it usually appeared in form of the rule of law. Thus, the arguments brought up against not only the content but the form, too, proved false.

ad. 5. These rather changeable opinions belonging to this group do not touch the collective agreement at all. Szirtes's point of view, however, is characteristic. According to him, the collective agreement is not a "labour contract" and formally it cannot be regarded as law. What happens, however, in the collective agreement is law-making.[11] The representatives of this tendency recognize the detachedness of collective agreements from private law but they do not put them into the sphere of substantive law.

[10] Lectures held at the meetings of the Gentlemen of the Robe of Hungary, 1948, Nos. 1-2, page 145.

[11] Collective agreements, 1912.