

TIVADAR MIHOLICS

The Obligation to Give Employment and to Perform Work

I was a direct collaborator of László NAGY for more than twenty years; first in the Secretariate for wage affairs of the Council of Ministers, later in the Secretariate proper, and then in the Ministry of Labour. This fairly long time gave me a lot of opportunities to get acquainted with the rich human qualities, sensitivity to realities, and high degree of scientific erudition of the jubilant, and to profit from them. As a matter of fact, the subject-matter of my study is also closely complied to his personality.

It happened in the 1950-s that I went to see him one day. As I told him, it was unintelligible for me that the obligations of employers and employees bearing upon the performance of work was not regulated by the Labour Code or the respective rules were very defective, in spite of the fact that the performance of work was the main function of a team. My concern threw him almost into fever, and he asked me instantly to elaborate my ideas more thoroughly. The content of the study, presented here, gives due information on the outcome of the said meeting as well. Doubtless to say, the suggestions, the encouragement, and the professional assistance of the jubilant played always an important role in the results. And one more remark: as a matter of fact, it was also László Nagy who took the charge to be my leader in postgraduate studies, and the subject-matter of my dissertation concerned the obligation to perform work in labour law.

I

1 As a result of the exhaustion of the extensive reserves of development, the increased integration into the international division of work, and the concurrent hardening of the relevant conditions, the activity of the Hungarian State in the field of economic organization and cultural education is tending to be broader in the coming years. In accordance with this, some factors of development of the economy, such as efficiency, quality improvement, required savings in material and power, a more reasonable use of manpower, etc. are brought more and more into the foreground. To comply with the said purposes, it seems to be important, however, to lay down appropriately the obligations of both employers and employees in connection with the performance of work, ensuring the relevant rights and remunerations at the same time. In other words, the obligation of employers to secure employment and that of employees to perform work are here concerned.

Problems of the obligation to give employment and perform work have been treated in Hungarian labour law only for a relatively short time.

Making a survey both of the legal regulation and the relevant literature, this becomes apparent unequivocally.

2 As regards *codification*, the first Labour Code, enacted in 1951¹, contained not more than only a few secondary rules in this respect, and even these could be traced only separately from each other, as parts of the rules of the distinct chapters, governing labour relations, working time, labour discipline, etc. The respective labour codes of the other socialist countries were characterized by the same features at that time.

The efforts aimed at a comprehensive regulation of the problems related to the performance of work became manifested at first in the preparatory codification work of the new labour code, which was to be enacted in 1959. Nevertheless, the draft code was withdrawn from the legislative agenda from considerations of economic policy. In fact, the said points were put down in the draft code already in a separate form, as paragraphs 73 to 80 of Chapter VI, under distinct heading. The dispositions as provided concerned work within and beyond the individual scopes of activity, the spending of working time at the place of work, work performed beyond working time, the obligation of employees to comply with instructions, the observation of the norms of socialist morale, and the obligation of employers to secure employment, respectively.² The draft contained no separate dispositions concerning the obligation of employers to give employment.

A separate, and to some extent already comprehensive, regulation of problems concerning the obligation to give employment and to perform work took place, actually only with the second Labour Code which came into effect on January 1, 1968³. As it is expressed in the motivation of the code, "it filled up a substantial gap in the content of the previous regulation, and corrected some deficiencies in its system".⁴ The issue is regulated in paragraphs 33 to 36 of Chapter III of the Labour Code, entitled "Performance of work" and the rules of implementation related to the same; nevertheless, some matters, such as the detailed rules of labour protection, working time, etc. continued to be regulated in other chapters of the Labour Code. Similar efforts could be traced, in fact, also in the labour law regulations of several other socialist countries in the coming years. Thus, regulations of a somewhat equally comprehensive character are laid down in this field in the labour codes of Rumania⁵, having become effective in the year 1973, of Poland from 1974⁶, and of the German Democratic Republic which came into force in 1978⁷.

3 Problems concerning the obligation to give employment and to perform work have been dealt with in the *literature* from the 1960-s. Following

¹ Law-decree No. 7 of 1951.

² Magyar Közlöny (Hungarian Gazette). Lapkiadó Vállalat. 1959 edition.

³ Act No. II of 1967.

⁴ Introductory part of the motivation to paragraphs 33 to 36 of the Labour Code, on the performance of work.

⁵ Paragraphs 17 to 22 of Chapter II of the Rumanian Labour Code. Although the said rules have more comprehensive dispositions (they are laid down under the heading "Rights and obligations of the employees", the major part of them concerns problems of the performance of work and, in spite of the title, they contain the principal obligations of the employers as well.

⁶ Chapters I and II (paragraphs 94 to 101) of Part Four of the Polish Labour Code.

⁷ Chapter IV, paragraphs 80 to 90 of the Labour Code of the German Democratic Republic.

the historical order of succession and taking into account only the publications of major importance, the following comments may be made.

Problems bearing upon the *obligation to give employment* were first treated in a separate publication by L. Trócsányi. The work, published in 1960, dealt with issues related to some major problems of the character, origin, existence, and practice of the obligation to give employment.⁸ Examining the conditions of material liability for damages caused within the frame of a labour relationship, L. Nagy mentioned also the problem of the obligation of employers to secure employment in a monograph of high importance, published in 1964. He gave particular emphasis to some obligations of the employers, such as to establish the possibility of performing work as stipulated in the labour contract, to secure continuous, troubleless, healthy, and safe labour conditions, and to ensure the benefits and supports needed with regard to a labour relationship, e.g. postgraduate studies, professional extension training, etc.⁹ The author of the present study dealt with the problem, too, in several monographs, published in 1969¹⁰, 1978¹¹, and 1982¹², treating the various obligations of the employer at the time of entering into work and in the course of a labour relationship. In particular, the obligations of employers bearing upon assignment to work, the establishment of appropriate conditions of work, giving the necessary orientation for employees, assistance to the extension training of employees are dealt with, as important elements of the obligation to give employment.

As regards the treatment of problems related to the *obligation to perform work* in the relevant literature, things seem to be more favourable. Indeed, this issue was examined in several monographs of major importance, published as early as from the mid-sixties. Thus, a monograph by I. Kertész treated the problem when analysing the content of the obligation regarding labour discipline. The analysis comprised mainly problems bearing upon the scope of activity, instructions, the requirement of care to be taken when performing work, some other obligations closely connected to the performance of work, and finally the conduct to be observed when acting within a given scope of activity.¹³ In a monograph, referred to above and examining the conditions of responsibility for damages caused within the frame of a labour relationship, L. Nagy dealt with the obligation to perform work as well. The requirements of complying with the tasks of a given scope of

⁸ Trócsányi, László: A dolgozó joga a foglalkoztatásra és a foglalkoztatási kötelezettség, különös figyelemmel az egyéni jogviszonyokra (The right of employees to be employed and the obligation to give employment, with special regard to individual legal relations). J.K., 1960/7-8.

⁹ Nagy, László: Anyagi felelősség a munkaviszony keretében okozott károkért (Material responsibility for damages caused within the frame of labour relations). Közgazdasági és Jogi Könyvkiadó, Budapest, 1964. pp. 76.

¹⁰ Miholics, Tivadar: A dolgozó és a vállalat munkával kapcsolatos köteleességei (Obligations of employees and enterprises in connection with work). Táncsics Könyvkiadó, Budapest, 1969. pp. 56.

¹¹ Miholics, Tivadar: A dolgozó és a vállalat munkával kapcsolatos jogai és kötelezettségei (Rights and obligations of employees and enterprises in connection with work). Táncsics Könyvkiadó, Budapest, 1978. pp. 75.

¹² Munkajogi ismeretek (Outlines of labour law). Táncsics Könyvkiadó, Budapest, 1981. Vol. I. pp. 342.

¹³ Kertész, István: Fegyelmi felelősség alapkérdései a munkajogban (Fundamental problems of disciplinary responsibility in labour law). Közgazdasági és Jogi Könyvkiadó, Budapest, 1964. pp. 62.

activity, performing work within and outside the place of work, and collaborating with the fellow-workers or employees were emphasized in particular.¹⁴ Examining the problems of the socialist labour contract, A. Weltner treated the issues of the obligation to perform work in a separate chapter. As to the individual main points, the comments concerned the personal character of the obligation in question, the fulfilment in favour of a third party, the scope of activity, the obligation to collaborate, the temporal extent and, finally, the discontinuance of this obligation.¹⁵ Investigating the types of employers' instructions in a monograph published at the beginning of the 1970-s, the author, L. Román, also dealt with some fundamental categories of the obligation to perform work, such as problems related to the scope of activity, place of work, and working time.¹⁶

It is a characteristic feature of the studies referred to above, however, that the issue mentioned in the preceding paragraph is dealt with, in general, only subjected to the aspects of the main problems investigated by the author. As a consequence of this, the authors have less possibility to give a theoretical analysis of the fundamental points.

The author of the present study made an effort to work out in detail the problems of the obligation to perform work in a comprehensive way and with a special emphasis on this issue. The results of these studies were published first for educational purposes, in textbooks and essays treating a particular subject-matter, respectively,¹⁷ followed later by monographs¹⁸. This method of elaboration made it later possible to turn to investigations taking into consideration theoretical bases as well.

4 Later on, the material and the problems of the obligations to give employment and perform work were included into the material of the education and teaching of labour law at universities and high schools¹⁹, and the comments to the Labour Code in 1978 comprised them as well.²⁰

For the time being, the problems in question have been dealt with by a fairly remarkable number of authors within the relevant literature of both socialist and non-socialist countries, even if, as it has been the case

¹⁴ Nagy, László: *op. cit.* p. 77.

¹⁵ Weltner, Andor: *A szocialista munkaszerződés (The socialist labour contract)*. Közgazdasági és Jogi Könyvkiadó, Budapest, 1965. pp. 436.

¹⁶ Román, László: *A munkáltatói utasítási jog alapproblémái (Fundamental problems of the right of employers to give instructions)*. Közgazdasági és Jogi Könyvkiadó, Budapest, 1972. pp. 315.

¹⁷ Miholics, Tivadar: *A dolgozók munkavégzéssel kapcsolatos kötelezettségei (Obligations of employees in connection with the performance of work)*. Munkaügyi Szemle (separate print). 1969/2-3.; *A dolgozók és a vállalatok munkavégzéssel kapcsolatos kötelezettségei (Obligations of employees and enterprises in connection with the performance of work)*. Táncsics Könyvkiadó, Budapest, 1969.; *A munkavégzés (Performance of work)*. Munkaügyi Szemle (separate print), 1972/3.; *A dolgozó és a vállalat munkával kapcsolatos jogai és kötelességei (Rights and obligations of employees and enterprises in connection with work)*. Táncsics Könyvkiadó, Budapest, 1978.; *Munkajogi ismeretek (Outlines of labour law)*. Táncsics Könyvkiadó, Budapest, 1981. Vol. I. p. 551.

¹⁸ Miholics, Tivadar: *Munkavégzési kötelezettség a munkajogban (The obligation to perform work in labour law)*. Közgazdasági és Jogi Könyvkiadó, Budapest, 1980.

¹⁹ Nagy, László—Weltner, Andor: *A magyar munkajog, I. (Hungarian labour law. Vol. I.)* Tankönyvkiadó, 1974. Chapter IX. pp. 180., Csanádi György: *Munkajog (Labour law)*. Tankönyvkiadó, 1977. Part III, Chapter I. pp. 117.; Miholics, Tivadar: *Munkajog (Labour law)*. 1980. Part III, Chapter IX. pp. 114.

²⁰ Commentaries to the Labour Code. Vol. I. p. 439.

in Hungary, the matters in question were dealt with principally in connection with other examined issues.²¹

5 The following comments should give first, i.e. in the first portions of Parts II and III, a brief summary of the main points of content of the obligations to give employment and perform work, principally as reflected in the Hungarian legal rules in force. Following to this, the distinct tasks and objectives are dealt with which, in our view, seem to require the development and improvement of the respective labour law rules in force. The problems bearing upon the obligations to give employment and perform work are commented separately.

II

(1) The obligation to give employment has a stricter and a broader sense. In the first case it is understood to mean the employer's obligation to take care of the continuous employment of the persons who entered into labour relations with the employer, and not to prevent the employee, in a way contrary to the law, to perform his work. As for the broader sense, the obligation in question comprises then to establish all conditions of an employment, including the respective long-term tasks. The problems of the obligation to give employment are treated in the following on the basis of the afore mentioned broader interpretation.

(a) As concerns the *positive Hungarian regulation in force*, it contains a comprehensive rule, on the one hand, and several detail rules, on the other hand. The first case means paragraph 33 of the Labour Code, with four elements of employers' obligation to give employment, i.e. (a) to secure actual work for the employees, (b) to ensure conditions for the appropriate, healthy, and safe performance of work, (c) to give the necessary instructions for the way of performing work, and (d) to give assistance to the employees regarding their efforts to perform their work in a more efficient way. The other relevant rules of the Labour Code, regulating details and laid down in various chapters, concern in particular the general order of the exercise of employers' rights,²² labour protection,²³ the employer's obligations respecting the improvement of the professional training of the employees.²⁴

²¹ Pashkhov, A. S.—Hrustalev, B. F.: A munka kötelező jellege a szovjet jog szerint (The compulsory nature of work according to Soviet law); Stavtzeva, A. I.—Yakovlev, M. V.: Alkalmazás és áthelyezés más munkára (Employment and transfer to other work). 1967.; Witz, K.: A munkával kapcsolatos kötelezettségekről (Obligations in connection with work). Praha, 1962.; Miller, I.—Ghimpu, S.: Az alkalmazottak kiküldetése, kirendelése és áthelyezése (Delegation and transfer of employees). Bukarest, 1966.; Salwa, Z.: A jog szerepe a munka megfelelő minőségének biztosításában (The role of law in ensuring the appropriate quality of work). Warsaw, 1966.; Pätzold, E.: A munkahelyet megillető megállapodás a munkaszerződésben (The agreement designing the place of work in labour contracts). Berlin, 1962.; Hueck, A.—Nipperdey: A munkajog alapvonalai (Outlines of labour law). Berlin/Frankfurt am Main, 1960.; Nikisch, A.: A munkajog (Labour law. 2nd ed). Tübingen, 1955.; Orliach, G.: A munkaszerződés (Labour contrast). Paris, 1970. Wlotzke, O.: A munkavállaló szolgáltatási kötelezettsége és személye a munkaszerződés dogmatikájában (The obligation of rendering service and the person of the employee in the dogmatics of labour contracts). Köln, 1965.

²² Decree on the implementation of the Labour Code, paragraph 36, indent (1).

²³ Labour Code, paragraphs 51 to 54.

²⁴ Labour Code, paragraph 50, indent (3).

(b) The actual regulation in the *other socialist countries* is partly similar; nevertheless, some important differences appear as well. Some rules of the labour codes of the German Democratic Republic and Poland are worth particular mentioning, on account of their structure with a more comprehensive legislative regulation; nevertheless, individual rules may be found in almost every respective regulation which represent an additional improvement in relation to the dispositions of the Hungarian labour code. Differences manifest themselves in two main fields: first, in respect of actual obligations as prescribed; second, giving much more detailed regulation in some matters. The dispositions in question concern e.g. the obligation of the employer to train the employees,²⁵ the tasks of employers related to the education of the employees,²⁶ the employers' obligations in respect of organization and inspection of work,²⁷ and their tasks affecting the acquisition of professional training.²⁸

(c) As for the relevant *Hungarian literature*, problems affecting the obligation to give employment were commented so far more by explaining the regulation in force or facilitating its application. Nevertheless, the necessity to fix some additional obligations beyond the positive rules in force was already expressed in the publications referred to above. Thus, the employer should be obliged directly to check the actual existence of the conditions required to be ensured prior to entering into work, and this should be made before the beginning of the employment; to organize employment with a strict inspection in some fields of activity for a fixed period; the establishment of the general objective conditions of the performance of work should be declared as a legal obligation of employers; employers should be bound to give appropriate and regular information for the employees of the general targets and plans of the employing body; in case of the law, the consequences to be imposed on the employer should be made known to him.

(3) Taking into consideration the aforesaid it may be already stated that, as regards the treatment of the problems related to the obligation to give employment, only the first steps have been made in Hungarian labour law so far. Accordingly, it seems to be necessary to reveal the theoretical foundations appropriately and to disclose the respective deeper connections. As a matter of fact, the realization of the said tasks is far beyond the compass of the present study. What is practicable here is, it is for the author to lay down the very outlines of his views concerning the content of the obligation to give employment and the improvement of the relevant actual rules, making use of the theses of a major essay on this matter having been published recently.²⁹

²⁵ Czechoslovak Labour Code, paragraph 142.

²⁶ Polish Labour Code, article 94, item 10.; Labour Code of the German Democratic Republic, paragraph 18 and paragraph 71, indent (1).;

²⁷ Polish Labour Code, article 94.; Labour Code of the German Democratic Republic, paragraph 71, etc.; Labour Code of the Soviet Union, article 53.; Rumanian Labour Code, paragraphs 21 and 98.

²⁸ Polish Labour Code, article 1032, paragraph 3.

²⁹ Title of a study prepared upon demand of the State Office for Wages and Labour Affairs: Proposal for the regulation of the rights and obligations of employers and employees in connection with the performance of work, for the new Labour Code.

In our view, the obligation of employers to give employment consists of four principal elements, i.e.

- to ensure appropriate conditions of work
- to give employment for workers
- to support the efforts of employees aiming at performing work in a better and more efficient way, and finally
- to ensure appropriate conditions of work; besides, employers are obliged to inspect the observance of the rules of employment.³⁰

Nevertheless, it has to be noted that a regulation comprising only the elements of the obligation in question as enumerated above, as it is the case, in fact, with the Hungarian Labour Code in force, cannot be regarded as satisfactory.³¹ With the actual rules, of a general character to a high extent, it is very difficult in practice to fix the limit beyond which an employer breaches his obligations against an employee or the community of employees, respectively. Accordingly, the contents of the various elements concerned have to be determined more precisely. When effecting this work, the following aspect ought to be taken into account in our view.

(a) In fact, the assurance of appropriate conditions of work requires to secure all conditions of the performance of work; in accordance with this, an appropriate legal regulation should stipulate that the employer would be obliged to take care of the following: to provide for the *objective* conditions of the performance of work, such as place of work, facilities at the place of work, means of work, etc., to *enforce the requirements of health and safety* in respect of the conditions referred to above, and in the course of operation, respectively, to *establish the conditions of safe guarding* of the clothes and personal equipment of the employees, not used during work, and to provide for the *regular improvement of the conditions of work* referred to above.

As it is clearly expressed in the foregoing remarks, the care for the health and safety of the employees constitutes an integral part of the employer's obligations in respect of the performance of work. In view of this, it seems to be absolutely unacceptable to continue to have a separate regulation concerning the problems of labour safety, in case of a comprehensive regulation of the problem of the obligation to give employment. In fact, this is an unnecessary repetition of rules, even within the frames of the present regulation. Accordingly, the employers' tasks in respect of labour protection are to be regarded as part of the obligation to give employment, i.e. the rules bearing upon this subject-matter are to be integrated into those governing the obligation to perform work.

³⁰ The stipulations of paragraph 33. of the Labour Code, regulating the obligation of employers to give employment actually in a comprehensive way, contain partly the elements of obligations referred to above. Nevertheless, this is expressed in a wording of an even more general character than that of the afore mentioned paragraph 33., on the one hand; the text contains, however, separate dispositions, on the other hand, on some problems such as labour protection, obligation to give directions, which are only parts of the principal elements of the obligation to give employment, mentioned above. Besides, there is no important disposition on the obligation to inspect, in our view.

³¹ There is a more detailed regulation of the obligations of employers in connection with labour protection but not without a problem, i.e. the relevant matters are regulated here in a separate chapter, disconnected from paragraph 33 bearing upon the obligation of employers to give employment.

For various reasons, it seems to be justified to prescribe the systematic improvement of the conditions of work as part of the obligations of employers. This suggestion is confirmed, on the one hand, by important actual shortfalls in several places of work; it may be taken for granted, on the other hand, in the absence of a systematic improvement mentioned above, shortfalls would manifest themselves in newly established plants as well, as a result of a rapid development in techniques, technology, etc. It should be noted, anyway, that there are already prescriptions as suggested above but only in the field of the protection of health and corporal integrity.³² It seems to be convenient, at the same time, that the said provisions should be prescribed only if the required financial means are available.

(b) The obligation to give employment comprises, in fact, the scope of employers' tasks connected with the *personal* conditions of the performance of work. In this respect, the legal regulation ought to include the following points as elements of the obligations of employers: to *prepare* employees to *perform their work*, to *assist them when entering into work*, to *take care of continuous employment*, to *give the necessary orientation* in respect of the work to be performed, to *provide for a disciplined order of work*, and for *observing labour discipline*, to *organize the extension training of the employees and, finally, to evaluate and qualify their work regularly*.

The obligation to give continuous employment does not mean, of course, a requirement of employment at any price. In fact, the employer has to take into account the health and safety of the employees and public health requirements, on the one hand. In compliance with this, the employer has to take care e.g. of the organization of the appropriate medical inspection. On the other hand, it seems to be evident that an employer is subject to the obligation of giving continuous employment only to the extent and within the limits which are set by the requirements of reasonable functioning and economic activity. Accordingly, the employer's obligation to secure employment change appropriately in case of a decrease or a change in the scope of these tasks.

The socialist organizations charged with employment are expected with good reason to draw regular attention to the work, the professional development and the respective experiences of their employees, and to inform them of their relevant observations. Consequently, it would be convenient to declare this as an employer's obligation, apart from the other requirements referred to above. This is practicable all the more as it gets realized, in general, necessarily in practice for the time being, in the course of the accomplishment of individual works, in the frame of work meetings held from time to time, etc. Besides, it should be a further requirement that the tasks considered as promoting the development of the employee concerned ought to be mentioned in the evaluation in question.

(c) As regards the obligation of an employer to *support the efforts of employees aimed at the performance of a better and more efficient work*, this comprises, in our view, the following points in particular: to *help the employees to participate in the orientation of the employing body*, to *support the socialist emulation, the innovators' movement, the communities of the foundation members of enterprises* and, finally, the promotion of the employees' participation in professional, political, etc. training. Accordingly, an appropriate regulation in the afore mentioned sense ought to be realized.

³² Labour Code, paragraph 51, indent (1).

A major part of the obligations of employers, referred to above, is already incorporated into the positive rules of Hungarian law; nevertheless, these rules are included into individual legal dispositions, beyond the system of the Labour Code and the respective direct rules of implementation.³³ As a consequence of this, there is no direct connection between the respective general rule of the Labour Code and the secondary rules bearing upon a number of individual matters. It goes without saying, furthermore, that, by integrating the said particular rules into the rules of implementation of the Labour Code, several double dispositions could be eliminated.

As a matter of fact, there is a clear difference between the support given to the employees by the employer in respect of their participation in professional, political, etc. training and the obligatory extension training which is a direct obligation of the employer binding him. The first case, i.e. participation in a training or postgraduate education, originates from initiatives of the employees themselves, undertaken with a view to increase the level of their professional and political training and education in general. Of course, the employer should not be obliged to give support in this case in any way; the support should be subject to its compability with the actual scope of activity of the employee or employees concerned.

(d) As for the employer's obligation to inspect the assurance of appropriate conditions of work and the observance of the rules of employment, respectively, it comprises to establish the system of the respective internal inspection, its continuous functioning, taking efficient measures in case of deficiencies or troubles with a view to eliminate the same, and to proceed against the responsible party appropriately.

There are some actual legal rules, partly beyond the field of labour law, with dispositions concerning the employers' obligations mentioned above.³⁴ Taking into consideration, however, the circumstance that substantial interests are linked to the appropriate employment of the manpower, the economic (production, etc.) purposes of the employer have to be realised also from the part of the respective labour relationship, and the provisions in question serve ultimately the performance of work within the frames of the labour relationship concerned, it seems to be necessary to lay down the obligations of inspection, orientation, etc. of the employer also within the stipulations of the Labour Code or its rules of implementation, respectively

(4) Finally, the local organs ought to be authorized to dispose for matters not regulated by the central (general) rules but requiring the consideration of local peculiarities. Nevertheless, dispositions of this kind should be within the frames of the positive legal rules.

³³ Joint resolution No. 1049/1982 (XII. 15.) Mt. H. — SZOT (of the Council of Ministers and the National Council of Trade Unions) point III/3.; joint resolution No. 1038/1977 (X. 4.) Mt. H. — SZOT — KISZ KB (of the Council of Ministers, the National Council of Trade Unions and the Central Committee of the Association of Communist Youth) point 9.; decree No. 38/1974 (X. 30.) MT; joint resolution No. 1021/1980 (VI. 10.) Mt. h. — SZOT (of the Council of Ministers and the National Council of Trade Unions).

III

(1/a) The actual regulation of problems of the obligation to perform work is more complete than that of the obligation to give employment, in respect of both the range of obligations and the detail rules. The more important rules can be summed up as follows:

— The employee is obliged to perform the work prescribed for his scope of activity; in addition to this, he may be also obliged to perform a work, with a provisional character, even beyond his normal scope of activity in a justified case if this did not cause an unproportionate injury to him, taking into consideration his function, age, state of health or other personal conditions.³⁵

— The employee is obliged to perform the work within the time fixed for his particular scope of activity; he may be obliged, however, in extraordinary cases, to perform work beyond the regular working time, or to be prepared to perform work for a fixed time and at a specified place, respectively. When fixing the working time or ordering to perform overdue work, care has to be taken to effect these measures so as to avoid any danger to the health and corporeal integrity of the employees. Equally, the measures mentioned above must not impose on them any unproportionate burden with respect to their personal and family conditions.³⁶

— The employee has to perform the work at a place, permanent or changing, fixed in the relevant labour contract. He is obliged, however, to perform work provisionally also outside his permanent place of work and also for an employer other than that fixed in his labour contract, unless this is excluded by a legal rule.³⁷

— The employee is obliged to perform the work fixed for his scope of activity with the full use of his capacities, in a workmanlike and careful way which is expected from him. Furthermore, the work has to be performed in compliance with the respective rules and prescriptions, the instructions of competent superior persons or bodies, and the customs of the relevant professional branch.³⁸

— The employee should keep state, service, or enterprise secrets; he is not allowed to impart data to an unauthorized person which became known to him in connection with the performance of his work, if the communication of the data concerned might involve undesirable consequences to the employer or an other person.³⁹

— The employee is obliged to collaborate with his fellow-workers; he has to perform his work and, in general, to show a conduct so as to avoid any danger to the health and corporal integrity of other persons, any molestation to their work, and to prevent any material damage to, or the improper estimation of them.⁴⁰

³⁴ Decree No. 39/1978 (VII. 18.) MT; decree No. 1/1976 (I. 31. MÜM, paragraph 16.

³⁵ Labour Code, paragraph 43 indent (2), and paragraph 35, indent (1).

³⁶ Labour Code, paragraphs 37 and 38, indent (1).

³⁷ Labour Code, paragraph 35, indent (2), and decree on the implementation of the Labour Code, paragraph 37.

³⁸ Labour Code, paragraph 34, indent (2).

³⁹ Labour Code, paragraph 34, indent (2).

⁴⁰ Labour Code, paragraph 36, indent (1).

— The employee is obliged to behave in accordance with his scope of work, even outside his place of work.⁴¹

(b) As regards the socialist countries, in which steps have been made forward in recent times towards a comprehensive regulation of the obligation to perform work, e.g. Poland, the German Democratic Republic, and Rumania, things are partly similar; on the other hand, important elements of content may be found as well, and there are considerable differences also from the point of view of the distinct approaches and solutions. The respective codes of the other socialist countries contain equally dispositions of some problems within the scope of the obligation to perform work; nevertheless, these cover, as a rule, only a narrow range of issues. As it is mentioned previously there are already fairly significant works dealing with the treatment of the problem in the literature.

(2) Although the rules bearing upon problems of the obligation to perform work are, essentially, suitable in our view, it seems, however, that there are problems of their improvement in this field, too. As a matter of fact, nothing more but very roughly outlined comments can be made within the frame of the present study also in this field.

As regards the content of the obligation to perform work, it consists of some decisive major elements in our view, and these coincide only partly with the elements of the obligation in question as laid down in the actual regulation. These elements are, in our view, the following:

- efficient performance of work
- obligations concerning the extent of work, such as the fixed scope of activity, the prescribed working time, and the performance of work coupled to a specified place of work
- suitable performance of work.

The observance of the requirements concerning the keeping of state and other secrets, got known in the course of the work performed for the employer, and the ban on the transmission of other important information are regarded in our view as some of the principal obligations deriving from a labour relationship, and the same is applicable to the prescriptions related to the conduct of an employee in respect of his fellow-workers within the enterprise or outside his place of work, respectively. These norms are, in fact, not elements of the obligation to perform work, hence they may be grouped into this category in case of a broader interpretation at least.

(a) The actual performance of the work by the person concerned is not directly prescribed by the respective Hungarian legal rules in force, i.e. it may be concluded at least indirectly from the rules concerned. Anyhow, the requirement of the actual performance of the work by the person concerned appears as one of the most general criteria of a work performed within the frame of a labour relationship. In consequence of this, it has a decisive importance in respect of the other requirements that may be realised in relation to an employee. Accordingly, the prescription of the actual performance of the work by the person concerned as a fundamental requirement seems to be absolutely justified.

Apart from the requirement of the actual performance of the work by the person concerned as a general demand, *it is necessary in exceptional cases to make it possible for third parties to participate in the work which*

⁴¹ Labour Code, paragraph 36, indent (2).

is *primarily concerned*. This is justified, first and foremost, in the sphere of atypical labour conditions with a marginal character within the range of labour law, e.g. housekeeper, steward of a holiday house, etc. Accordingly, this is applicable to cases in which the proper functions of the labour relations concerned are not hindered by the participation of other persons (third parties) in the respective work, and the third persons in question are chosen principally from the members of the family of the employees concerned, being in a labour relationship.

(b) Turning to the group of obligations bearing upon the extent of work, the first remark concerns *working time*. So, it seems to be inconvenient in our opinion from methodological point of view to regulate the relevant problems separately, as it is the case with the present Labour Code. It goes without saying that working time is one of the fundamental constituent elements of the obligation to perform work; in consequence of this, the respective regulation has to be placed *within the rules of the obligation to perform work*. This arrangement would certainly facilitate to consider problems closely related to each other from a uniform view, and not only in research work but in the application of the law as well.

(c) The regulation concerning the *place of work* ought to be completed in our view. This means that the terms "permanent" and "changing" places of work, as used in the relevant legal rules in force, are inadequate in our view, for the exclusive denomination of the work to be performed regularly within the frames of a legal relationship. Instead, a distinction should be made between three types of cases. There are several cases concerning e.g. postmen, field electricians, field collectors, etc. in which the employee performs his work regularly neither at a permanent place of work i.e. in the plant of the employer not in a way that he could be regarded as having a changing place of work. In consequence of this, it appears convenient to *establish a distinct category* for these cases. Considering the characteristic features of the cases in question, they should be qualified as having an employment at a partly permanent and partly changing place of work or, more simply, at outdoor places of work. Of course, the respective consequences ought to be drawn, too.⁴²

(d) As a matter of fact, the scope of work, the working time, and the place of work set limits to the work that may be prescribed for an individual employee. As a result of the permanent nature of labour conditions and the circumstances of the performance of work carried out for the various employers it is unavoidable, however, to ensure the possibility for the employer to order in given cases to perform the work beyond the specified scope of work or outside the place of work, respectively, or in excess of the fixed working time, and all this also apart from cases in which the relevant labour contract is modified. Besides, this possibility has been established in the relevant legal rules, with time limits and other guarantees for the employee. We are, however, of the view that the said limits ought to be *specified in a more differentiated way, taking as basis circumstances* justifying the establishment of the category of "different" works.⁴³

(e) As regards the way of performing work, the Labour Code's relevant dispositions regulate the problem from two aspects.⁴⁴ First, the Code has

⁴² See: Miholics, Tivadar: Munkavégzési kötelezettség a munkajogban (The obligation to perform work in labour law). Part II, Chapter V, section B. p. 143.

a rule of content, i.e. the employee has to perform the work with the full disclosure of his capacities, the professional knowledge and the care he is expected to possess; on the other hand, the legal means, i.e. legal rules, instructions of the competent superior person, are determined which have a role when the obligations bearing upon the way of performing work are laid down. Two principal corrections should be made here. First, the order of succession seems to be inappropriate. The point is that, in our view, an employee has to perform the work, first and foremost, taking into consideration the relevant legal rules and other legal means. Accordingly, the aforementioned rule of the Labour Code may be related only to the employee's conduct within the frames of the said rules. On the other hand, a more comprehensive rule of content is needed, as the actual wording disconsiders just requirements affecting the way of performing work, e.g. the one that an employee has to perform the work with the appropriate intensity which is expected from the society. In view of this, it seems to be convenient to lay down a general requirement saying that the employee is obliged to perform the work as it may be expected in general, in the given case; in addition to this, the relevant rules of implementation or possibly work statutes could, or should, contain directions in respect of the closer content of what may be expected. At any rate, this requirement of expectancy must not be limited to individual capacities; on the contrary, it has to comply with the objective degree required by the given scope of work.⁴⁵

⁴³ See item 42, pp. 74, 124., and 166.

⁴⁴ Labour Code, paragraph 34, indent (2).

⁴⁵ See item 42, p. 198.