

## ON CO-OPERATIVE PROPERTY

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### I.

#### Universal (common) traits of co-operative property

It is of frequent occurrence in scientific work that a problem once settled has to be made subject to a thorough study once again mainly to explore other relations or regularities implied in it. This is a frequent phenomenon in particular in the social sciences, and within them even to a higher degree in the scope of political sciences and jurisprudence.

Actually political sciences and jurisprudence are in a phase of evolution where in the light of the new mechanism of economic management investigation has to be re-opened for a number of problems which already formed the subject matter of research work in an earlier phase, and which at that time had been assigned to their proper places in both theory and legislation.

Among others, a typical problem of this type is that of ownership. Since the Liberation, a fairly significant place has been allotted in Hungarian jurisprudence to the study of the various problems of the theory of socialist ownership. Theoretical studies of socialist ownership made rapid headway in particular when these studies came to be associated with the drafting work of proposed legislation in one or the other of the more important scopes. Thus theory directly came to the aid of legislative work, and then, in the wake of legislation, helped the establishment of a proper and uniform practice of the courts. As examples it may suffice to quote Act IV of 1959, i. e. the Civil Code, or Law-Decree No. 7 of 1959 on the agricultural producers' co-operatives, or Acts III and IV of 1967, respectively, on co-operatives and on landed property.

In Hungary, the new method of economic management has shaped a new, on the whole uniform co-operative policy. To this end, among others, the problem of co-operative property has come to the fore again in a novel manner, namely in the first place for the purpose of a study of the common, general rules, characteristic peculiarities, which may be discovered in co-operative property in all its forms in existence in Hungary, or which, if not at present but as a peculiarity permitting generalization, manifest themselves in one or another form of co-operative property. Hence the primary objective of this paper is an inquiry into this problem.

1. Apart from certain in many respects antiquated theses of ownership of the now twenty-year-old Hungarian Constitution, in Hungarian legislation

some of the general rules of co-operative ownership have for the first time and to this day exclusively been brought under regulation by the Civil Code.

The Civil Code has integrated the general rules of co-operative ownership partly with the general rules of ownership, partly with the special rules applying to social ownership, on the understanding that, in general, these rules apply not only to the various concrete forms of co-operative property, but also on the assumption that in general the rules governing co-operative property are normative also for the property of social organization and associations. In fact these, too, come within the sphere of socialist group property and do not create an autonomous form of property. Or, in a simplified form, this means that the Civil Code contains the general rules of co-operative property with a claim that, in general, these are also the general rules of group property, hence with the exception of state property they apply to all other forms of social group property.

Ten years ago, when the Civil Code was ready for promulgation, in all certainty general rules of this type could be formulated for group property with proper reason, although certain doubts may have emerged in this connexion already at that time, as is clearly reflected by the preamble to the Civil Code at several places. At the same time, even today, the opinion still firmly holds its own that since the Civil Code incorporates the general rules which for group property, and within it in the first place for co-operative property, could be generalized at all, it is either superfluous to deal with the question in a new, consolidated co-operative act, or else all that has to be done is to take over the relevant provisions of the Civil Code, and insert them in the new consolidated co-operative act. Still no matter whether or not a new co-operative act brings under regulation these general theses of co-operative property, it is certain that without these provisions the Civil Code would be incomplete, so that these had to be incorporated in it in one way or another, and as far as this author knows there is general agreement on this question.

All this even indicates by itself that when in connexion with the drafting of the new co-operative act the problem of a definition of the general theses of co-operative property will emerge, the legislator should preferably set out from the relevant provisions of the Civil Code on his path to a solution. Here the basic issue to which a reply has to be given is whether or not the general rules of the Civil Code applying to co-operative property may be observed under the conditions of the new method of economic management. As a matter of fact when these provisions cannot be met wholly, or at least in certain respects, then it would be hardly proper and justified to omit in the new co-operative act a new regulation satisfying the needs of today and of development in the foreseeable future.

a) As is obvious from the rules governing social ownership as well as from the preamble, the Civil Code considers social group ownership a uniform category of ownership, of which a typical self-contained form is co-operative group ownership, so that the rules governing this ownership are normative, also for any other form of manifestation of group ownership. At the time the Civil Code was drafted, in particular because at that time the country was living in the period of a centralized economic mechanism and the mass collectivization of agriculture was still to come, a regulation of this type on the whole suited the forms of group ownership as known at that time.

However, the category of social group ownership began to develop on a large scale exactly on the promulgation of the Civil Code, in the first place when mass collectivization of agriculture was about to come to an end. The new economic mechanism on its part again gave an impetus to the evolution of the category of social group ownership. This still incomplete process of evolution is at present at a stage where a whole system of social group ownership is about to unfold, and, to be more precise, as an integral part of the socialist system of ownership of this country.

With the evolution of the system of social group ownership it has become even more obvious that there is not only a single type of social group ownership. In fact social group ownership must not necessarily exist in the structure which has been embodied typically by co-operative group ownership. Beyond this there may exist and even exist also other types of social group property, and in principle yet others may come into being.

These various forms of social group ownership, including also co-operative group ownership, can and do possess certain general, common features, which may equally be discovered in any form of group ownership. However, it cannot be taken for granted at all that these general and common features are identical with the general and common features which are characteristic of co-operative group ownership. And when the fact is remembered that in Hungary during the latter years a system of co-operative ownership has taken shape, which by itself is difficult to survey and consequently not even the general rules of this system of ownership can be established, then it stands to reason that the provisions of the Civil Code relating to co-operative group ownership can no longer be considered as the general rules of group ownership and, consequently, as normative for other manifestation forms of group ownership. Or to be more precise: these rules may be normative to a lesser or greater degree, however, they will fail even as general rules of group ownership to satisfy the demands which in general are forthcoming from the field of group ownership.

However, from this reasoning the only lesson which may be drawn directly is that when all this holds then an amendment of the Civil Code will have to consider in what form the Civil Code should formulate the general rules of social group ownership. May such general and common rules be incorporated in the Civil Code at all, or would the proper course be to group and generalize such common rules by the conceivable categories of social group ownership?

b) Apart from what has been set forth above, the provisions of the Civil Code applying to co-operative ownership may still be valid in principle as far as the largest category of social group ownership, i. e. co-operative group ownership is concerned. This is even more obvious since the general rules of co-operative ownership drawn up with this end in view have only been projected to other forms of social group ownership. Hence even if this projection of rules in this form should fail to satisfy the needs, they may nevertheless be suitable for the direct purpose for which they have been made, i. e. they may still remain valid as the general rules of co-operative ownership.

Summing up all this, the conclusion will be inevitable that in the present phase of development the general rules of the Civil Code governing co-operative ownership can be applied to co-operative ownership less and less and in their broad outlines only. This is the case before all for two reasons of a fundamental character, namely partly because the new system of economic management

has, as compared to the earlier, brought about certain changes in the socialist approach to ownership, partly because the new, general co-operative policy has, as compared to the earlier, introduced changes in the structure of agricultural co-operatives and in their system of regional federations, which supersede the general provisions of the Civil Code on co-operative ownership on the one part and yet more distinctly betray the lack of rules which could help to advance co-operative ownership in the period of the new method of economic management on the other.

The rules of the Civil Code according to their sense reflect the socialist ownership approach that was basically characteristic of the centralized system of the economic mechanism. This is the case because ten years ago when the Civil Code was ready for promulgation, in Hungary socialism was built in the system of a centralized economic mechanism. It has to be recognized that the provisions of the Civil Code on ownership already impress one as if the approach to social ownership could not be any more so rigid as it was e. g. in the opening years of the fifties. Since in the agricultural co-operative movement the premonitory signs of the advent of a new economic mechanism could already been discerned, this circumstance may have had an effect in so far as the provisions of the Civil Code governing ownership give expression to the socialist ownership approach characteristic of the period of a centralized economic mechanism in a more or less mitigated form.

What was the essence of this approach to ownership? In the opinion of this author the essence was partly a "simplified" approach to social ownership, partly the distortion of this approach in both theory and practice.

The simplification of the approach to social ownership manifested itself essentially in the circumstance that in general notionally only the categories of state-social and co-operative-social ownership were considered, and these two basic categories of ownership were made exclusive in both theory and practice. Even when occasionally it occurred to those concerned that social ownership might have, and even had, other forms in Hungary, the question was brushed aside with the remark that law decreed the application of the rules of either the one or the other basic category of social ownership to all other forms of social ownership constituting a "third category".

This simplification went on in the distortion of the ownership approach. The distortions, in whatever form they had manifested themselves, may be traced back essentially to the position which drew an unjustifiably sharp line between the two forms of social ownership much for the benefit of state-social ownership. This position gave prominence to state-social ownership to the prejudice of co-operative-social ownership, i. e. emphasis was given to state-social ownership in a way which at the same time amounted to the degradation of co-operative ownership to "second-class" social ownership. In practice, in a system of a centralized economic mechanism, this resulted in the extension of a state-centred mechanism based on state-social ownership so to say in an unchanged form among others to the sector of the national economy relying on co-operative ownership.

Naturally an ownership approach of this type could take shape only in a way that state social ownership itself in a rather one-sided form was handled in a so-called "state-centred" mind. On the other hand, in principle, co-operative ownership existed as group ownership, in particular in the case of agricultural

co-operative ownership. Still the earlier mechanism tried to operate this co-operative social group ownership essentially in the same way as the state-centred state-social ownership, which nationally turned the group ownership character of co-operative-social ownership into something formal. From another aspect this at the same time also meant that for each form of co-operative group ownership in a small way the same interpretation developed as on a large scale in the case of state ownership. A phenomenon of this type could be noticed in particular in the case of farmers' co-operative ownership, where in point of fact co-operative ownership did not manifest itself as the group ownership of each farmers' co-operative, but as the ownership of a network of farmers' co-operatives, i. e. so to say as centralized ownership, where the particular farmers' co-operative units were stewards of the co-operative assets managed by them, rather than direct owners. This was of course possible only because the National Association of Co-operatives (SZÖVOSZ) was a co-operative centre built on the principle of centralization, which to a considerable extent operated in practice like a department of economy.

In other words all this meant that the farmers' co-operative ownership, referred to by way of example, in a small way operated according to a „SZÖVOSZ”-centred notion similarly to the state-centred notion according to which state social ownership existed, on a large scale, so that in this related concept the two could not anymore be alien to each other in the system of a centralized economic mechanism.

To this it should be added that in the system of the earlier mechanism any form of co-operative group property could have coped with the hardships only on a principle which, in the sign of autonomous management and economic independence was about to take shape at that time. Consequently the dominant approach to ownership understandably had repercussions also on co-operative group ownership, which on the whole was responsible for the failure of the benefits and undoubtedly best properties of the construction of co-operative social group ownership to unfold themselves in Hungary in both legislation and the enforcement of law, notwithstanding the fact that in both theory and in the statutory provisions constant stress was laid on the group ownership character of all existing forms of co-operative ownership.

c) On reverting to the provisions of the Civil Code applying to social ownership, the statement may be brought forward that against co-operative ownership, and at the same time to its prejudice, even the Civil Code gave prominence to state-social ownership with all its legal consequences.

This fact by itself gives prominence to the rather essential demand that in the course of a restatement of the Civil Code, as well as in a possible new co-operative act, the provisions governing ownership have to be formulated and regulated on uniform principles for the various forms of social ownership.

And here uniform basic principles before all suggest that in both legislation and the enforcement of law the principle of the equal rights of the forms of social ownership must be observed.

The principle of the equal rights of the forms of socialist social ownership raises a number of important questions all of which we cannot deal with here. However, from the point of view of the present topic the principle of the equality of rights has to be studied from two aspects in any event, viz. partly in general in the mutual relations of co-operative ownership and state-social

ownership, partly within the whole system or co-operative ownership, i. e. in the mutual relations of the particular forms of co-operative ownership.

When it comes to study the problem of the equality of rights of state-social ownership and co-operative ownership, the start should be from the assumption of the uniformity of the various forms of co-operative ownership, i. e. in an abstract form here the question is of the mutual relations or equality of rights of co-operative ownership as group ownership and state-social ownership as "all-national" ownership.

Earlier, if schematically only, we have tried to make clear where an inequality of rights of the two types of social ownership would lead to, and why. On the other hand, in contrast to the earlier mechanism, in the new system of economic management a wide scope has been opened in both state and co-operative sectors to economic autonomy, and to the independent management of the producing and farming collectives; i. e. in the abstract, the intention is to offer equal chances to the various economic units in a way that each unit relying on its own resources and labour force, etc. manages its affairs at its own risks and achieves as favourable results as possible, which through many stages would eventually redound to its benefit. This approach to economy from the very outset relies on a legally highest degree of equality of the various economic units. In fact these units are integral parts of a socialist economy constituting a concrete, coherent system, where the parts mutually presuppose one another. For that matter the legally possible highest degree of equality of the economic units is a phenomenon of extreme complexity.

The cardinal problem of the legal equality of socialist economic units is the equality of ownership, or more precisely, the demand that co-operative social group ownership should not be at a disadvantage in opposition to state-social ownership. The enforcement of the equality of these two forms of social ownership does not mean, and cannot mean, that the provisions governing them should be uniform in every respect. A case of uniform regulation may be present only if both co-operative and state ownership were recognized as group ownership of uniform structure. However, in Hungarian jurisprudence a theoretical approach to ownership on this understanding has not developed, and what is even more decisive, the evolution of economic life itself has not furnished a proper basis in Hungary for the recognition of any form of social ownership as some sort of a more or less uniform group ownership.

On the other hand, for either form of social ownership the provisions governing ownership have to offer equal chances in the field of economy in a way and in the form as permitted by the given structure of social ownership without, however, to the prejudice of either form. Or, expressed in a simpler form, here the case is that the regulation of the two types of social ownership should not take place in a manner of placing the one type above the other, or to the prejudice of either, but rather so as to prompt them to mutual aid, or to the wholesome development of their mutual relations. All this is feasible without a risk of co-operative ownership losing its co-operative and group character, or without pushing it to the background in any form. Similarly, state social ownership will not on the whole have to be converted into co-operative ownership.

All this has been said merely to convey an idea of the sense in which the equality of the two types of social ownership could be brought about. In this

connexion it should be pointed out that in all likelihood, under the circumstances of the new system of economic management, the enforcement of the principle of the equality of the two types of social ownership is desirable not only on the part of co-operative ownership, but also on the part of state-social ownership. It is desirable also because actual management, i. e. so-called enterprisal management relying on state ownership also takes place on a "group level" similarly to co-operative management, and so both state and co-operative enterprisal management in conjunction create the uniform system of present socialist management on the same level. And objectively such a uniform system of socialist management can be built up only on the principle of an equality of the forms of social ownership.

Still the enforcement of the principle of the equality of the forms of social ownership is required not only in the mutual relations of heterogeneous (state and co-operative) forms of social ownership, but also beyond this in the mutual relations of homogeneous (co-operative) forms of social ownership. At the first glance the raising of the question may appear to be unnecessary, this being a truism, i. e. something that could not be argued for a moment even.

But the problem has to be dealt with merely because during the past period of the Hungarian socialist co-operative movement the equality of the various forms of co-operative ownership was neither in theory nor in practice a clear-cut, natural phenomenon. In the first place the question is perhaps not even one of the failure of the Civil Code to formulate the general provisions governing cooperative ownership by relying on this basic principle, but rather one of its failure to give expression to this equality of the various forms of co-operative ownership, and thus willy-nilly advanced the formation of a notion and practice defeating this principle.

We believe we may dispense with adducing special proof to demonstrate that the form of co-operative ownership which existed consolidated into a system of a co-operative centre and which was supported by a centre which towards its member co-operatives performed considerable state supervisory and official activities, was considered from an unbiased point of view being in an economic and legal position by far superior to the form of co-operative ownership which had no federal organization or a centre, where the particular subjects of co-operative group ownership managed their affairs in a manner segregated from one another, and for which any official business was attended to by the competent agencies of the sovereign power and state administration. For the former a typical example in Hungary was the farmers' co-operative property consolidated into a system of a co-operative centre by SZÖVOSZ where the agricultural producing co-operatives had no system of federation whatever until the new system of economic management began to unfold itself.

However, this duality in the field of co-operative ownership, a feature of the Hungarian co-operative movement, not only manifested itself in the scope of federal organization and in other scopes closely related to it, but affected co-operative ownership more or less so to say in every field. To quote a single example only in this connexion the particularly prejudicial position of agricultural co-operatives may be pointed out. Although these co-operatives had juristic personality, nevertheless their sphere of activities and their legal capacity attached to this sphere were in the earlier system of economic management circumscribed with a rigour, and so also the substantive sphere of co-

operative ownership, which was unjustified even by a narrowest construction of the scope of activities of agricultural co-operatives. It may suffice to mention that for a long time no large farming machinery could be owned by agricultural co-operatives, although this was a precondition of modern large-scale farming. In the same manner, for a long time agricultural co-operatives could not be owners of land, although in Hungary land was not, and is not even at present, uniformly in state ownership.

Examples may still be quoted for both the objects of ownership and the content of ownership. These examples could but substantiate the general statement that in Hungary among the various forms of co-operative ownership the principle of equality of rights never prevailed, even when it was a case of social group ownership forms belonging to a single group.

From what has been set forth so far the conclusion of general validity may be drawn that in both the theory of ownership and in recent legislation and the enforcement of law the thesis will have to be enforced, that in the new system of economic management the principle of a general equality of the forms of socialist social ownership has to prevail.

The principle of the general equality of the forms of socialist social ownership must not in any case be identified with the functions which the various forms of social ownership perform in socialist economic and social life. It is a well known fact that in Hungarian economic and social life state-social ownership has a fundamental function and only secondarily there may be talk of the function and significance of any degree of the various forms of co-operative ownership. Naturally the present function and weight of the forms of social ownership are not given once for all. While the function of certain forms of social ownership are in the ascendant, that of others persists in its present significance for sustained periods. Again the functions of yet other forms are declining as required by socialist evolution. However, this evolution of the various forms of social ownership goes on abreast, or in mutual correlation of the forms, still so that this evolution does not insist on, moreover is averse to, the one form getting into a preferential legal position, and so to a preferential economic position, to the prejudice of another. In the Hungarian system of ownership each form of social ownership carries with it the potentialities of evolution, and when on the basis of the principle of equality a path is thrown open to this evolution in building up socialism, there may hardly be need for buttressing up the one form to the prejudice of another.

2. There is always a definite interaction between management and ownership. In the present socialist conditions, socialist management has a determining function in this interrelation. In this respect the determining function of socialist management means that there has to be a proper harmony between management and its underlying ownership relations. Still when this harmony is wanting, or incomplete, and consequently satisfies the interests of management in a deficient manner, or not at all, a harmony as required by the interests of socialist management has to be brought about between ownership and management. This harmony of vital importance cannot be brought about unless by an adaptation of ownership to socialist management in one proper form or another, or to be more precise, preferably in a form which does not merely give a free scope to, but at the same time also advances, the growth of the socialist economy.

The existence of a harmony between economy and its underlying property relations is an objective necessity which sooner or later, still in one form or another, will in all circumstances become a reality. It is also a well-known fact that ownership in the economic sense adapts itself with particular readiness to economy, follows at a quick pace economic growth, and meets the needs raised by this growth.

On the other hand this cannot be said of ownership without reservations. Movement, or change of ownership is by far more numerous than the adaptation of property in the economic sense. This does not, however, necessarily mean that ownership will always and in each case be lagging behind, and follow in the wake of economic evolution in a protracted manner. This lagging behind of ownership is in particular not characteristic of the socialist system of ownership. As a matter of fact, in principle the socialist system of ownership exists in forms of ownership which in point of principle satisfy the needs of economy for the whole period of socialism, i. e. the socialist system is in principle and on the whole in harmony with economy.

However, in reality the situation is by far not so clear-cut. It is not clear-cut because when only social ownership is considered socialist social ownership has many forms, a circumstance which by itself introduces complexities into the practical realization of a harmony between economy and ownership. Furthermore the situation is far from being a plain one merely because each type of socialist social ownership may be given different constructions. Consequently when the given socialist social property is conceived in a sense which is not in harmony with the postulates of socialist economy, a contradiction will spring up between the apparently homogeneous economy and ownership which will retard economic growth. An immanent contradiction of this nature has to be overcome without a change of the character of ownership and economy still in a way that ownership should though in the same framework yet all the same, be adapted to economy.

A typical example which may be quoted here is the economy of state enterprises and state social ownership. Both state social ownership and the economy of state enterprises are of a socialist character, i. e. in this sense there is in principle a harmony between economy and ownership. On the other hand if it is remembered that in the new system of economic management the economic independence of the state enterprises has been widened considerably, still at the same time state social property is handled in a state-centric notion reminding of the period of the earlier mechanism, there will already be a contradiction between economy and ownership. There will be a contradiction for the very reason that the state-centric notion of state social ownership and the rules formulated in conformity with this notion will retard the evolution of the economic independence of state enterprises. Hence this contradiction cannot be removed unless by forgoing the state-centric notion of state social ownership and by the formulation of a notion of state social ownership which gives expression to, and at the same time meets the needs of, the economy of state enterprises in the new system of economic management.

a) In the case of co-operative economy the unity of economy and ownership is likewise a basic principle, and so also a proper harmony between ownership and economy doing justice to the interests of co-operative economy.

There is a number of interpretations for the harmony between economy and ownership in the co-operatives. In point of fact, in the scope of co-operative economy this harmony raises by far more problems than e. g. in the relations between state social ownership and the economy of state enterprises. There are many more problems to be solved, first because co-operative economy in general gradually supersedes production on a small scale, and this gradualness from the very outset implies that in the scope of co-operative economy the harmony between ownership and economy has to be construed and handled with extreme elasticity. Secondly, the variegated character of co-operative ownership and economy, the given construction of co-operative group ownership, and its notion, permit the application of a number of variants even within the same system of economic management. Here again as an example the farmers' co-operative and agricultural co-operative ownership in the system of a centralized economic mechanism may be quoted, where the farmers' co-operatives were managed on the basis of co-operative ownership of a SZÖVOSZ-centric notion consolidated into a centre, whereas management of the agricultural co-operatives was carried out on the basis of isolated co-operative group ownership, not to mention the fact that the fundamental means of production of agriculture (land and large agricultural machinery) were not owned by co-operatives.

The fact that in socialism co-operative economy has come into being partly in the place of small-scale production (agricultural and artisans' co-operatives), partly along with individual and personal business in a manner supplementing this (general consumers' and marketing co-operatives, housing co-operatives, savings co-operatives), then later on, when the foundations of socialism had already been laid, the association of socialist economic units began to make headway, has necessarily become responsible for a differentiation in the establishment of the unity of economy and ownership in the case of the particular forms of co-operatives. A definite phase of evolution had to lapse until in each co-operative form the direct harmony between ownership and economy could be enforced in a uniform manner.

At the birth of the co-operatives, i. e. at the start, a direct harmony between economy and ownership can be discovered to the least degree in the agricultural co-operatives. In point of fact, in the first phase of evolution of the producer's co-operatives, i. e. essentially before mass collectivization had been completed, exactly the basic means of production of agriculture, i. e. land and large farming machinery, were not, and could not even be, in the ownership of the agricultural co-operatives. In this phase the direct unity of economy and ownership and their harmony were supplemented in the agricultural co-operatives by the harmony and the direct unity of economy and the joint assets of the co-operatives. Hence in this phase of evolution the joint assets of the co-operatives appeared undoubtedly as an "ownership-substituting" institution. However, in the following phase a process set in as the outcome of which joint co-operative assets to the greater extent passed over into the ownership of the co-operative, i. e. in the first place large farming machinery, however, gradually also land, were transferred into co-operative ownership. Still until this process has come to an end, the notion of joint co-operative assets has to be preserved in the co-operatives in both the economic and legal sense as an "ownership-substituting" institution, and its significance will cease, or dwindle to a mini-

num, only when it will be superseded by co-operative ownership both economically and legally.

On the other hand, in non-producing types of co-operatives in general on the whole the unity of economy and ownership has become a reality. In fact, even when this unity is the product of an evolution over a period of some length, this will be of secondary importance only.

Still the federation of socialist economic units already at the outset creates the direct socialist harmony of economy and ownership (e. g. in the case of joint enterprises of agricultural co-operatives).

On the whole this is an indication of that in Hungary in the co-operatives, in particular in the agricultural co-operatives, the creation of a unity of economy and ownership was a prolonged process. It is true though that under conditions in Hungary already when mass collectivization came to an end, and with the launching of the new system of economic management, within legally regulated frameworks, rapid progress received a new impetus also within the producing co-operatives as the outcome of which joint co-operative assets on the whole began adapt themselves even legally to a joint co-operative economy. Consequently within a reasonable time even in the agricultural co-operatives the direct harmony of economy and ownership will become a fact in its entirety.

On this understanding the general conclusion may be drawn that in the event of a regulation of the conditions of the various co-operatives by the introduction of a uniform co-operative act the detailed provisions governing economy, assets and property could be formulated uniformly as a principal rule extending to all forms of co-operatives on the basic principle that in the co-operatives the harmony of economy and ownership exists on a group ownership level.

However, in this connexion special emphasis has to be given to the epithet "direct". In this case the adjective "direct" wants to signify that the assets on which economy relies is owned by those who directly manage these assets. Consequently the assets constituting the basis of the operations of agricultural co-operatives are owned by them, similarly as the assets on which the operations of a general purchasing and marketing co-operative relies are owned by this co-operative, and so on. In the same way the assets constituting the basis of the operations of joint enterprises (economic associations) of agricultural co-operatives will be in the ownership of the joint enterprise. This directness of the harmony of economy and ownership is what mostly promotes the development of the socialist economy in the system of the new economic mechanism in the co-operative sector of economy, and therefore both economically and legally all efforts have to be made for a most perfect enforcement of this harmony.

However, in the co-operatives this unity of economy and ownership must not be absolutized. This principal rule must not be absolutized in a sense as if co-operative economy could rely exclusively on co-operative social ownership. A conclusion in this sense would be unfounded under socialist conditions even historically, and when future development is kept in sight, this conclusion ought to be rejected. Co-operative economy is an integral part of the socialist system of economy, which according to its meaning means to say that even when on the whole co-operative economy in the first place relies on co-operative ownership, in a co-operative economy in the one sense or the other, directly or

indirectly, all forms of socialist ownership (often even private property) may, and do have a function.

Apart from the fact that historically this can be demonstrated in an illustrative form mainly in the agricultural co-operative economy, even the present situation of co-operative economy in a clear-cut manner tends to confirm that on the whole co-operatives would be unable to operate if in their economy they could not rely in the first place on state-social ownership, further in a reciprocal way on the various forms of co-operative ownership, and by no means to a negligible extent on personal ownership. In the joint operations of agricultural co-operatives within the totality of the co-operatives' joint assets even today the assets owned by the state, the property of the members of the co-operative, and occasionally even property of persons outside the co-operative may have important functions to perform. In this form all these take part directly in the joint operations of the co-operatives. However, state-social ownership also has indirectly significant functions in the joint operations of the co-operatives, e. g. through the banking system, soil improvement schemes, and in many other forms. Still as an example the housing co-operatives may be quoted, in whose creation as well as in the creation and operation of joint ownership and personal ownership co-ordinated through joint ownership, state-social ownership has fundamental functions. In fact, essentially the state advances the funds necessary for the formation of a housing co-operative almost in their entirety and free of interest in a way that the state even undertakes construction work, so that the housing co-operative acquires the assets of the co-operative in a condition ready for operation.

These facts on their part call the attention to the circumstance that in the co-operatives the unity of economy and ownership must not be handled in an isolated form, but as a principal rule, which increasingly affords chances to co-operative economy of an organic integration into the system of socialist economy, and that on the principle of the equality of the socialist economic units the co-operatives prosper so as to advance the development of a socialist economic and social system in both the co-operatives and the national economy as a whole.

3. The direct harmony of co-operative economy and co-operative ownership from the very outset postulates the group ownership character of co-operative ownership. Or in other words, co-operative ownership cannot be in complete and direct harmony with co-operative economy, unless on a group ownership level of co-operative ownership.

However, experience accumulated in the course of the historical evolution of the socialist co-operative movement indicate that in a given socialist state the system of co-operative ownership may exist in a number of structures. Even when it is assumed that in a given socialist state state-social ownership is predominant, like e. g. in Hungary, the system of socialist co-operative ownership is conceivable at least in a duality of structures.

One of these possible structures is that of the system of centralized co-operative ownership. In this structure, in the co-operative network of the given type, the network itself, or rather its centre, is the owner, and the member co-operatives belonging to the network essentially operate as trustees and economic units on the basis of an economic independence of a definite form. As a matter of fact this structure and notion of co-operative ownership is in respect

of the given co-operative network the enforcement of the notion on a small scale, which is characteristic of the state-centric concept at state-social ownership and an economy relying on it.

This concept and structure of co-operative ownership can on the whole prevail only in a system of centralized economic mechanism, with the addition that not even there for all forms of co-operative ownership. In this sphere experience tends to confirm that in a system of a centralized economic mechanism in general the non-producing types of co-operatives manage their business on this basis, still the producing types of co-operatives will even under such circumstances operate on a direct group ownership level, i. e. producing co-operative ownership will in general exist in a non-centralized structure. Perhaps we may dispense with demonstrating that this centralized notion and structure of co-operative ownership is essentially alien to the group ownership character of co-operative ownership, because it estranges ownership from the actual owners, i. e. from the co-operative members and the co-operating economic units, i. e. the member co-operatives, and degrades these direct owners to simple trustees.

In a centralized co-operative system the co-operative centre, as the embodiment of the given network of co-operatives, is a passive and not an active owner. In fact it is not the centre that manages business directly, but the member co-operatives, although it cannot be ignored completely that in this case the centre will interfere with the operations of the member co-operatives.

At the same time in the event of centralized co-operative ownership not even the actually operating particular member co-operatives may consider themselves fully qualified owners of the assets in their management, because these assets are legally in the ownership of the centre, or through this centre, of the network of co-operatives as a whole. All this demonstrates that centralized co-operative ownership has ceased to be typical group ownership, although it cannot be considered all-national ownership.

Still it would be wrong to draw a general conclusion as if any integration were alien to co-operative group ownership, or the co-operative centre could not become the subject of co-operative ownership, moreover the actual trends in evolution gradually bring about the integration of co-operative farms, a co-ordination of the operations of co-operatives on an expanding scale, the development of systems for protecting mutual interests, etc. Still all this is feasible in a form not alien to co-operative group ownership, i. e. the different forms have to crop up from co-operative group ownership in a way that harmony between co-operative economy and co-operative ownership should prevail, no matter whether directly or indirectly.

Another possible structure of co-operative ownership is the democratic system of co-operative ownership. In the democratic system of co-operative ownership the co-operatives are direct owners of the property which they manage. In this system both the member co-operatives and the units of the co-operative federations of the given type of co-operative manage their affairs autonomously, on the basis of separated own property. Hence in this system of co-operative ownership there is direct harmony between co-operative economy and co-operative ownership, which on the part of ownership indicates that this co-operative ownership functions typically as social group ownership.

In the democratic system of co-operative ownership, co-operative group ownership is in all cases active ownership, because in a co-operative as a juristic person the actual manager of property and the owner coincide.

By virtue of its nature, the new system of economic management, as regards co-operative ownership, insists on the democratic system of co-operative ownership, and this is so not only for the producing forms of co-operatives, but in general for the network of socialist co-operatives as a whole. It is for this reason that the development of the uniformly democratic system of co-operative ownership has been put on the agenda similarly as earlier in the case of the legally already regulated agricultural co-operatives.

It has already been indicated that although co-operative ownership is typically group ownership, the process of integration is by no means alien to it, and for that matter a process of integration which sets out from below, from co-operative-social group ownership itself. Accordingly, even for the democratic co-operative-social group ownership system the process of integration is not something unusual, still in this system, in contrast to the centralized system of co-operative ownership, the process of integration proceeds from below upwards, and not from above downwards, i. e. co-operative group ownership is not centralized by way of subordination.

In the democratic system of co-operative ownership the process of integration essentially goes on in a way that as the outcome co-operative group ownership will not be wound up, on the contrary, it will be consolidated. On whatever level integration will be completed in this system, co-operative ownership will preserve its group ownership character on the given level, and consequently in a co-operative economy on the integrated level the direct unity of economy and ownership will prevail, and in a way characteristic of a co-operative economy.

Consequently it is an organic feature of the democratic system of co-operative ownership that

*a)* the regional federations and the national federation of the co-operative sector should have co-operative group property of their own;

*b)* in an economic association created by two co-operatives or more, operations, should be on the basis of co-operative joint group ownership;

*c)* in the economic associations created by co-operatives and state enterprises, operations should rely on mixed social common group ownership of co-operative character; and finally

*d)* it is part and parcel of the democratic system of co-operative ownership that all member co-operatives joined in the branch-co-operative regional federation, or in the national federation, should bring about co-operative property of which all member co-operative are owners.

If the term inter-co-operative ownership is in general maintained for the description of the property of co-operative joint enterprises and undertakings, or of associations, then property which the federations of co-operatives manage as the joint property of the member co-operatives belonging to the federation, and not as group property of their own, should for a better differentiation perhaps be distinguished by the term "co-operative community property."

Since co-operative joint (mixed) ownership will be discussed in detail subsequently, here the above cases have been named merely by way of example to demonstrate that in the present phase of economic development the integ-

ration of co-operative ownership in harmony with the integration of co-operative economy is a natural concomitant of the democratis system of co-operative ownership.

However, it is characteristic of this process that as concerns management both inter-co-operative property and co-operative community property are concentrated in a single hand, i. e. a single agency (enterprise or federal organization) attends to their utilization. Hence the property cannot be split up among the particular member co-operatives, joint owners or other economic units for exploitation. All this finds an expression also in ownership rights, in a form that in external ownership relations the agency exploiting the property will appear as owner, i. e. the direct owner is the inter-co-operative association (joint enterprise, joint venture) itself, or the given co-operative federal organization, whereas the joint-owner co-operatives or the member co-operatives of the federal organization creating the association will act as indirect owners only.

All this has been laid down in an unambiguous form in Act III of 1967 on Agricultural Co-operatives according to which the joint venture or co-operative joint enterprise in the joint property of the founders and of those joining it subsequently (indirect owners), but the assets of the joint venture, or the co-operative joint enterprise, are in the ownership of the venture or enterprise (direct owners). Hence the joint co-operative concern or co-operative joint enterprise may simultaneously appear as both object and subject of co-operative ownership, namely in the relations between indirect and direct owners as the object of ownership (but it may also act as a contractual partner, etc.) whereas in the external relations of ownership the direct owner takes parts as subject of ownership in his own name, i. e. acts as the subject of ownership.

In our opinion there would hardly be another legal construction which for inter-co-operative or co-operative community ownership would guarantee the direct harmony of co-operative management and property, i. e. the basic feature of a co-operative economy.

Finally, in connexion with both inter-co-operative and co-operative joint property it should also be remembered that the fact that e. g. inter-co-operative property may be split up among the indirect owners by their proprietary share, does not affect the co-operative-social group property character of these associations.

4. Divisibility or indivisibility of property is an essential point of principle, at the same time of practical importance, of social group property in general, and in particular of co-operative social group property. It is a vital problem also for the very reason that in capitalism the co-operative movement applied the principle of divisible co-operative property as the basic rule. In socialism indivisible co-operative property has come into being first of all, but the socialist co-operative movement also uses divisible co-operative property, in particular in the process of integration of the co-operative economy.

Under socialist conditions divisibility or indivisibility of co-operative property is basically dependent on the way how the co-operative has been formed and how it operates. In general this means that when the co-operative has been formed on a personal basis, i. e. when the co-operative is exclusively a personal (labour force) association for common work, joint transactions, or when it has been created on a personal and financial basis, i. e. the co-operative members tie down their full working capacity for the purposes of co-opera-

tive management and in addition they socialize their possible private property in excess of their personal property in the co-operative, then as a principal rule co-operative property so created and augmented should be deemed to be indivisible. On the other hand when the co-operative has been brought about exclusively, or in the first place, on a financial basis and the personal association is of secondary significance only, then the co-operative property so created and augmented should be deemed to be divisible. However, it is possible in principle that the co-operative property brought about exclusively, or in the first place, on a financial basis may become indivisible co-operative property if this is the intention of the parties. A typical example for this case in the Hungarian system of co-operative ownership the so-called co-operative community property, i. e. a form of property brought about exclusively on a financial basis, yet whose basic feature is its indivisibility. (Co-operative community property is, e. g. a mutual assistance fund created in the given co-operative branch, accumulated from the payments of the member co-operatives and other sources, whose owners are the member co-operatives belonging to the given co-operative branch.)

In principle cases may occur when co-operative property, irrespective of whether it has its origin in an association of physical persons, or the pooling of assets, may exist as partly divisible, partly indivisible co-operative property. For the purpose of divisibility this category of co-operative property is regarded as "partially divisible co-operative property". It is partially divisible, and not partially indivisible, because in the socialist co-operative system indivisible co-operative property will hardly change into even partially divisible co-operative property, whereas at a certain stage of development, and to some extent, divisible co-operative property may often become indivisible. Therefore for reasons of accuracy the term partially divisible co-operative property should be preferred.

(Although we do not intend to deal with the concrete manifestations of the divisibility or indivisibility of particular categories of co-operative property in any detail, a peculiarly indivisible category of co-operative property has to be mentioned here, namely the property of housing co-operatives. As is known, joint co-operative property in a housing co-operative is indivisible and consolidates the personal flat-ownership of the co-operative members to such an extent that even the right of disposal over personally owned flats is limited and defined to a certain extent.)

Whenever under socialist conditions there is a case of creating a definite category of co-operative property, then at the formation of the structure of this property, it should be born in mind as general policy-making that the divisibility of co-operative property must not eventually lead to the creation and consolidation of an economy based on private ownership, nor act as a revitalizing factor on private property or private economy. On the other hand, the divisibility of co-operative property may increase and reinforce personal property, or what is of equal importance, in a given instance the divisibility of co-operative property may in its entirety serve the growth of co-operative group property as far as the co-owner co-operatives are concerned.

From what has been set forth above it follows that where in case of co-operative property there is a risk of its divisibility to lead back to private property and private economy, the indivisible structure of co-operative pro-

perty should be preferred. On the other hand, when there is no such risk, co-operative property may be created and operated both in the divisible and the indivisible structure. On the basis of present practice even the conclusion may be drawn that whenever co-operative joint property is called into existence by co-owners as juristic persons, then divisible co-operative property should be the rule, except for co-operative community property mentioned earlier, which at the very outset has come into being as indivisible co-operative property.

In everyday life it is often not quite clear what is to be understood by the divisibility or indivisibility of co-operative property. It is not clear in the first place for the very reason that in the course of co-operative economic operations the divisible or indivisible character of co-operative property is not quite perceptible, and it will come into the limelight only when the given co-operative is about to be wound up.

Without going any deeper into the analysis of this question we believe a stress should be laid on the following points:

*a)* Co-operative property is divisible where in the course of co-operative work the co-owners are entitled not only to share in the profits of the co-operative through work actually performed by them, or to split up the profit proportionately to their shares in the assets of the co-operative, but on their withdrawal from the co-operative to claim their share in the property of the co-operative (in kind or in money), or in the event of the liquidation of the co-operative, to claim a distribution of any residual net assets of the co-operative by their shares in the co-operative property. But as long as the co-operative operates, the assets needed for its operation cannot be distributed among the co-owners; and when anyone of the co-owners withdraws from the co-operative while it is still operating, then the share of such withdrawing member should be disbursed to him without any jeopardy to the further operation of the co-operative. In principle this is feasible mostly in a way when the share of the withdrawing member is repaid in money by those remaining in the co-operative, or taken over by anyone of the co-owners.

*b)* Co-operative property is indivisible where in the course of co-operative operations the co-owners share in the profits of the co-operative according to their assets surrendered to the co-operative for exploitation, or according to their share in the co-operative. Hence the co-owners cannot claim their share in the co-operative assets when for one reason or another they withdraw from the co-operative. Nor can the residual assets be distributed among the co-operative. Any residual sums have to be appropriated for co-operative purposes.

According to established practice in the socialist co-operative movement, co-operative property in producing co-operatives is as a principal rule indivisible (indivisible co-operative property), however, even the invested property of non-producing co-operatives has to be considered indivisible (partially divisible co-operative property). Also the property of the federal organizations of co-operatives is indivisible co-operative property, and so is the co-operative community property managed by these organizations. On the other hand, in general, the property of joint co-operative concerns or joint co-operative enterprises is usually divisible (divisible co-operative joint property), although in principle also joint co-operative concerns or enterprises are conceivable which have been created on the basis of an indivisible co-operative property structure, and are operated on this understanding. Co-operative ownership in this sense is

likely to exist in the event of a joint co-operative concern, or co-operative joint enterprise embracing the given co-operative branch a whole, and is even desirable in this case. However, in reality this is but one of the concrete forms of manifestation of co-operative community property.

The indivisibility of co-operative property is not a phenomenon existing for its own sake. The economic roots of indivisibility have to be sought for in the evolution of the productive forces and production relations. Under socialist conditions social production is associated with the social ownership of the basic means of production, and this social ownership has to be preserved in the interests of the socialist economic and social order. This socialist social character of ownership among others finds an expression exactly in the indivisibility of co-operative property. This indivisibility guarantees that the basic and principal means of production, owned by the co-operative, will remain in social ownership also when a given co-operative management comes to an end, and that it be in harmony with social production even in this form of ownership.

The indivisibility of co-operative property is directly in the interest of a co-operative economy. the group interest of those active in the given co-operative, and at the same time gives expression to the co-operative group character of property. However, the indivisibility of co-operative property will not be affected even when the co-operative is liquidated, as the property may be used exclusively for co-operative ends even afterwards, before all for ends being the same as those of the respective co-operative branch. This means that the indivisibility of co-operative property is at the same time an indication of the branch-co-operative character of the property. If for some reason the co-operative property cannot be appropriated for branch-co-operative ends, even then it will have to be used for co-operative ends. On the other hand, this potentiality and obligation of use indicates that in the given instance the indivisibility of co-operative property also expresses the all-co-operative character of this property. And when the exploitation of this property for co-operative ends is not possible, the state will take care of its exploitation in the same way as of the exploitation of state property. And this is an indication of the all-national character of the property. On the whole, therefore the statement may be advanced that essentially the indivisibility of co-operative property is but the concrete form of manifestation of the all-national character of social property for the case of co-operative group property.

5. For any ownership the crucial problem is its object. As regards the ownership of juristic persons this problem will come into prominence in an increased degree, in particular under socialist conditions, mainly because the sphere of objects of the ownership of juristic persons is in the socialist system of ownership both externally and intrinsically limited. When, therefore, the ownership of other juristic persons is ignored, the sphere of objects of the ownership of co-operatives as juristic persons is similarly limited externally and intrinsically.

Externally the sphere of objects of co-operative ownership is limited in so far as in principle the exclusive objects of state ownership cannot become objects of co-operative ownership. This thesis will in principle hold its own even under actual conditions, still as regards its practical enforcement two things have to be remarked. First, in the period of the centralized economic mecha-

nism the Hungarian theory of ownership gave an unjustifiably extensive construction to the exclusive sphere of objects of state ownership, much to the prejudice of co-operative ownership, in particular of that of the agricultural co-operatives. This attitude was wrong in both principle and practice, and became the origin of a number of errors. (E. g. for a long time, on the basis of this wrong construction, the exclusive state ownership of large agricultural machinery was enforced, which according to its meaning runs counter the interests of a large-scale operation of the agricultural co-operatives, etc.) Secondly, in the period of the new system of economic management the sphere of objects of exclusive state ownership will have to be given a narrower construction lest it should hamper the statutory operations of the co-operatives. State ownership should in its way rather promote the statutory activities of the co-operatives, i. e. in this sphere, too, the equality of the forms of social ownership has to be enforced in a sense that state social ownership should not enjoy priority to the detriment of co-operative ownership. In other words this means that among the exclusive objects of state ownership the means of production and equipment required for co-operative economy may appear only in so far as these permit, and at the same time promote, the development of a co-operative economy. However, when the fundamental rule is remembered that under the circumstances of the new system of economic management there has to be a harmony between economy and ownership in each economic unit, the first thesis may be formulated in a way to express that actually in the Hungarian system of ownership the exclusive objects of state ownership cannot comprise such fundamental means of production and equipment as are required for the enforcement of the statutory objectives of the existing co-operatives as juristic persons.

Intrinsically the sphere of objects of co-operative ownership is limited owing to the circumstance that co-operatives as juristic persons are tied to definite ends. This means that only things can be in the ownership of the co-operatives which are needed for the achievement of these ends.

This character of the co-operatives as juristic persons manifests itself from another aspect as the question of the legal capacity of the co-operative as a juristic person. Here, too, the problem of construction is of importance. Construction is of importance because, as shown by experience made so far, the legal capacity of the co-operatives can be construed both restrictively and extensively. In the system of the centralized economic mechanism, as regards the co-operatives in general, the restrictive construction was predominant as far as the legal capacity of the co-operative was concerned. This restrictive construction manifested itself mainly, as far as the agricultural co-operatives were concerned, in a sense that on the basis of the construction agricultural co-operatives were reckoned among the "primary producers". Their legal capacity was therefore essentially restricted to agricultural producing activities in a narrower sense of the term, i. e. to a single basic activity in the process of economy. On the other hand, agricultural co-operatives were barred from all other phases of economy and were consequently deprived of the chance to bring about a harmony between the productive and operative risks of the agricultural co-operative and its potentialities. Hence this narrower construction given to the legal capacity of the co-operative as a juristic person is conflicting with the interests of the co-operative economy and can be approved in no circumstances.

On the other hand, in the period of the new system of economic management, in both principle and practice, the extensive construction of the legal capacity of the co-operative as a juristic person is the characteristic feature of co-operatives. This extensive construction is substantiated by objective economic regularities, in particular in the case of producing co-operatives, as economic activities at own risk in all circumstances insist on the extension of the legal capacity of the co-operative to the whole process of economic activities (i. e. purchase, production, processing, sale) and also permit the achievement of other ends (servicing activities, sporting and cultural ends, etc.). Consequently, as regards the objects of co-operative ownership, the legal capacity of the co-operative extends to all things, assets which are needed for the achievement of the economic and other ends of the operation of the co-operative.

However, for the purpose of co-operative property, the form in which a thing may become the object of co-operative property is by no means immaterial. As has already been made clear, co-operative property is direct group property and accordingly the objects of ownership as things are in the direct ownership of the co-operative, i. e. the co-operative possesses and uses the objects of co-operative property directly as owner.

However, co-operative economy, and at the same time the integration of co-operative ownership, of necessity have brought about that the co-operatives should be owners of the things as objects of ownership not only directly, but also indirectly, i. e. through another economic unit, which is also a juristic person. Typical forms of this indirect ownership are the various associations of co-operatives of which the best known is the joint enterprise or the joint co-operative concern. As has already been made clear in this case, the legal construction is that the direct owner of the thing in the physical sense is the joint enterprise or the joint co-operative concern, whereas the indirect owners are the co-operatives establishing the enterprise. Legally the indirect ownership of the co-operatives establishing the enterprise finds expression in the form that in the ownership of these co-operatives the joint enterprise or the co-operative enterprise, and through it its owners become owners of the assets in the joint enterprise or the co-operative enterprise. In other words, the object of co-operative ownership is the joint enterprise and the joint co-operative concern as juristic persons, at a time when the joint enterprise or the joint co-operative concern itself is the direct owner of the assets or things handled segregated by it.

On this understanding the general rule may be proposed that in principle each co-operative has a right to become owner of the joint enterprise or joint co-operative concern in the form of co-operative joint property. The law even enables the co-operatives as juristic persons to become owners in this sense.

The legal situation is by no means as clear-cut when it comes to answer the question whether a co-operative alone may establish an enterprise operating as an independent juristic person. Or in other words, can an enterprise be the object of co-operative ownership if the enterprise has been established and is operated by a co-operative?

Clause (1) Section 66 of the Civil Code answers the question by declaring that the federations and centres of co-operatives may establish co-operative enterprises in the cases and manner specified by provisions of law. This means that individual co-operatives, or member co-operatives belonging to federa-

tions and centres of co-operatives cannot alone establish an enterprise or set up an enterprise of their own. To this we would add that subsequent legal regulation relies on this provision of the Civil Code, so that not even Act III of 1967 on Agricultural Co-operatives authorizes solitary agricultural co-operatives to form and operate enterprises of their own, moreover, if the agricultural co-operative remains sole in a joint co-operative concern or a joint co-operative enterprise, such concern or enterprise may henceforth operate only as a domestic economic unit of the co-operative, i. e. it ceases to operate as an independent juristic person, although it continues its activities unchanged as before.

In connexion with Clause (1) Section 66 of the Civil Code it should be remembered that at the time of the promulgation of the Civil Code federations of producing co-operatives were unknown, and other co-operative federal organizations or centres operated in a manner characteristic of the period of the centralized economic mechanism. On the other hand, agricultural co-operatives now have social organizations of their own, they have a well established federal organization, and what is of significance, the federal organizations of the other co-operatives may also change over to methods of operation on principles similar to those embodied by the federal organizations of producing co-operatives, i. e. they may democratize their federal organization and its operation.

However, among the functions of the regional federations of the producing co-operatives, there do not figure any economic activities through the agency of an enterprise of the federation's own, although this is not expressly prohibited by provisions of law. On the other hand, the regional federations of other co-operatives may within the specified limits operate, or establish enterprises of their own.

The legal provisions governing the regional federations of agricultural co-operatives fail to answer the question whether a regional federation of agricultural co-operatives may, as an autonomous juristic person take part as founder or associate in the establishment and operation of an independent joint enterprise or joint co-operative concern.

The analysis of the problem may be continued, still it will be clear even so that there are discrepancies between the federations and the "centres" of the particular co-operative branches as far as the establishment and operation of enterprises of their own are concerned, although the relevant provision of the Civil Code draws no clear-cut line between co-operative federations and centres in this respect. Obviously, the actually existing distinction must be considered transient and in a re-statement of co-operative law necessarily the inequality existing in the right of the co-operatives to set up enterprises of their own will have to be abolished. From the point of view of legislation, this would mean that irrespective of the co-operative branches each federation and centre of co-operatives will have to be authorized uniformly to take part in co-operative associations as founder or associate, or establish a co-operative enterprise of its own. In this respect, perhaps as the only permissible restriction, the law should decree that branch federations should be barred from establishing an enterprise which may become the competitor of a member co-operative included in the branch federation, or of the different co-operative associations created by the member co-operatives.

A problem much more difficult to tackle is whether or not co-operatives may be authorized to establish enterprises of their own. As has already been

mentioned, in conformity with valid law, co-operatives may not set up an enterprise of their own. All they can do is to form co-operative associations.

However, under the circumstances of the new system of economic management, more and more co-operatives raise the demand for the foundation and operation of enterprises of their own. Demands of this sort emerge in the first place at producing co-operatives. The economic incentive may perhaps lie in the fact that producing co-operatives are eager to have a share in the entire process of economy, but this process may be split up into parts whose operation in the form of independent enterprises may be more advantageous for the co-operative, or may influence the other sections of economic management in a positive manner.

As an example again the agricultural co-operatives may be quoted. According to Clause (1) Section 43 of Act III on Agricultural Co-operatives "Co-operatives shall be engaged in agricultural production and processing of products, servicing and other supplementary activities, as well as in purchase and sale." This provision clearly states that an agricultural co-operative may carry on activities in a particular branch of economy from the beginning to end. However, the phases of any branch of economy are separated from one another to an extent that, especially in larger agricultural co-operatives, different groups of the members are active in different phase, and the assets required for their operations are also assigned to their management. Essentially, this leads to the formation of independent economic units within the farm. The economic independence of these economic units within the farm may even satisfy the needs, provided that these economic units entertain no external relations and have not to act in external legal relations. But as soon as their activities have grown to dimensions which force them to take part, to a great extent or even wholly, in external legal relations, the demand will at once be forth coming on the part of these units for their greater convenience to act in these external legal relations directly, in their own name, this method being preferable for all parties concerned. This applies in particular to the servicing activities, to certain degree to processing, but mainly to sales, let alone that e. g. an independent processing unit (e. g. a canning plant) often engages in purchasing, processing and the marketing of the processed goods directly. In such and similar cases the desire on the part of the unit to continue its activities as an independent juristic person, as the enterprise of the co-operative, may be wholly justified. This would be convenient not only for the economic unit and third persons directly dealing with it, but in the majority of cases also for the co-operative.

This method would be more convenient for the agricultural co-operative as a whole, because in this case the management of the co-operative would have no direct dealings with the independent unit, it would not have to attend to its problems, as all of them would now be settled by the management of the enterprise of the co-operative. Consequently the management of the co-operative could give more attention to the basic activity of the co-operative proper, viz. agricultural production. In dealing with the affairs of economic units, which might as well become independent, management will often dissipate its time and energy, and will have neither left to deal with the fundamental activity of the co-operative, i. e. agricultural production, to the desirable extent.

Similarly it would be hard to find proper reasons why a co-operative, left alone in a formerly joint enterprise or a co-operative enterprise, which enterprise has hitherto operated as an independent juristic person, should not continue its activities in the earlier form, in particular when all enterprisal relations have been established in this form and would be preferred by both the unit and its business partners.

On the basis of the reasons enumerated here schematically, only the opinion may be advanced that in the course of future legal regulation within definite limits even a single co-operative should be authorized to set up an enterprise of its own.

Another important facet of this problem is to decide under what rules an enterprise set up by a co-operative should operate, irrespective of whether this enterprise has been called into life by a co-operative federation, centre or e. g. an agricultural co-operative. According to clause (2) of Section 66 of the Civil Code, the provisions governing state enterprises should be applied to the legal capacity, organization and operation of a co-operative enterprise set up by a federation or centre. Still it stands to reason that under the conditions of the new system of economic management this provision has become obsolete, and consequently new provisions will have to be introduced for the legal capacity, organization and operation of co-operative enterprises. Since the promulgation of the Civil Code such provisions have on the whole come into being, but comprehensive legislation meeting actual demands would also be an urgent task of the legislator.

## II.

### Joint (mixed) co-operative ownership

1. The evolution of a socialist co-operative economy, the economic integration making headway there, necessarily have brought about also the integration of co-operative ownership, which eventually will lead to the emergence of joint co-operative property. It is characteristic of this process of integration that co-operative group property does not become joint co-operative property in its entirety, but only in definite parts, and even so in a form that the co-operative does not forfeit its ownership. The quality of the co-operative as owner will remain even in this case, but in a changed form, because not a single co-operative, but several co-operatives together will appear as subjects of joint co-operative ownership.

Before discussing this topic, first of all some concepts will have to be defined. As a matter of fact, practice in this field is rather variegated, and far from being settled. Often even those may find it hard to get their bearings here, who for the positions they are holding ought to be familiar with this field.

a) As has been mentioned, joint co-operative property has its origins in the economic associations of the co-operatives. However, not all co-operative economic associations produce joint co-operative property. A simple association of co-operatives for production will not create joint co-operative property, even if the association handles the assets for the achievement of its ends separated from other assets. The more elaborate forms of the economic associations

of co-operatives, which operate as independent juristic persons, will in each case create joint co-operative property. As a general rule it may be stated that as a result of the economic associations of co-operatives, joint co-operative property will not be produced unless the association operates as an independent juristic person.

So far this more developed form of the economic associations of co-operatives has, apart from mixed enterprises, created two types of juristic person, namely, first, the joint, and, secondly, the joint co-operative enterprise. However, it would seem that these two types of juristic person do not meet all needs of the economic associations of co-operatives, i. e. in addition to these two forms, demands have been forthcoming for at least another form of association as a juristic person, which would be suitable for meeting the needs for association of co-operative (and other economic) units which insist on a method of operation in the form of an independent juristic person, but fail to satisfy the conditions of a joint concern or a joint co-operative enterprise. This third variant could perhaps be some sort of a "joint co-operative economic association", This association should then formulate the conditions of an independent juristic person in a form which would satisfy any needs in the scope of co-operative economic associations, which outstrip the framework of a joint concern or a joint co-operative enterprise as a juristic person.

Coming back to the existing forms of co-operative associations operating as juristic persons, where joint co-operative property may come into being, we have to advance the statement that joint co-operative property created in this way is not uniform. Practical experience tends to show that, to a certain degree, joint co-operative property may differ depending on the agencies which have brought about the co-operative economic association in the form of a concern or enterprise. For practical purposes the following cases may occur:

1. When two or more co-operatives belonging to a definite co-operative branch bring about an economic association, this will be a "co-operative branch association", and the property so accumulated will be the typical form of manifestation of joint co-operative property.

2. When two or more co-operatives belonging to several co-operative branches bring about an economic association, this will be a "mixed co-operative association", and the property so accumulated will be a "mixed joint co-operative property."

3. When two or more co-operatives belonging to one or more co-operative branches and one or more state enterprises bring about and operate an economic association, this will be a "mixed economic association", and the property so accumulated will be "mixed joint social property". According to valid Hungarian law, the co-operative or non-co-operative character of mixed joint social property is determined by the agencies which have formed the enterprise. As a matter of fact when the joint enterprise or concern has been formed by co-operatives, and the state or any other economic units take part in the association in a subsidiary character, then the mixed joint social property will be of the co-operative type. On the other hand, when the economic association has been launched by state enterprises, and the co-operatives take part in it in a subsidiary role and not as founders, then, in principle, the mixed joint social property will be of a non-co-operative character, and even if it will not have the nature of state property, it will in general be closer to the mixed joint social

property of the state. Mixed joint social property has two types: first, mixed social property of the co-operative type, and, secondly, for want of a better name, mixed social property of the non-co-operative type.

b) It would seem that there is no essential difference between joint co-operative property and mixed joint co-operative property. The two differ from each other only in so far as in the one co-operatives belonging to a particular co-operative branch take part as co-owners, whereas co-operatives belonging to several co-operative branches are the co-owners in the other.

However, this apparently formal difference actually cloaks discrepancies whose elimination and uniform legal regulation is the task of the near future. This applies in particular to the preconditions of a participation in the foundation of a joint concern or a joint co-operative enterprise. As regards agricultural co-operatives the resolution of the general assembly is sufficient for the foundation of a joint enterprise. On the other hand, in the other co-operative branches there is an uncertainty among the co-operatives whether or not the resolution of the general assembly, or the management (board) is sufficient, or the consent or licence of an external agency (federation of co-operatives, or a state administrative organ) is needed. Similarly, there is uncertainty in the associations of co-operatives, partly also in the agricultural co-operatives, and in particular in the other co-operatives, as to whether the subscription to a definite part of the capital stock may be deemed to be equal to a participation in the association, or beyond this the direct personal co-operation of the co-owners is indispensable. Personal co-operation constitutes a problem in the everyday activities of the association through the agency of the workers and employees rather than in the management, where the problem can be solved in each particular case. The problem may become particularly serious in associations of non-producing co-operatives where the members are under no obligation whatever to take part in common work, and consequently the co-operative cannot rely on the working capacity of its members.

The two questions which have been raised indicate that the existing uncertainty has to be removed by some sort of a uniform legal regulation, taking as the basis the final settlement of the problem by the Agricultural Co-operatives Act. Accordingly, for a participation in an association of co-operatives, both for foundation and subsequent accession, the resolution of the general assembly, or of the management, or board, should suffice in any type of co-operative. For a direct co-operation in the association, in addition to the financial contribution, as a general obligation the "personal" co-operation in the management of the association (on the board, or in the management and the control committee) should be satisfactory in both agricultural and other co-operatives.

c) As compared to joint co-operative property, or mixed joint co-operative property, a considerably larger number of problems crop up in the case of mixed joint social property.

First of all, we propose to deal with the problem of the foundation of a mixed economic association. In conformity with valid law, it is decided already at the foundation whether or not the mixed social property will be of a co-operative character. Under valid law, when a mixed association is brought about by co-operatives, the mixed joint social property will be of a co-operative type. On the other hand, when the association is formed by state enterprises with the subsequent accession of co-operatives, the mixed joint social property

will be of the non-co-operative type, and will be closer to state social property. In point of fact, co-operatives cannot found a non-co-operative mixed association, nor can state enterprises form a co-operative-type mixed association. Also when co-operatives and state enterprises in conjunction form a mixed association, this will be of a non-co-operative character.

What is logically clear is that when exclusively co-operatives form the association, and this will take on a mixed character only by the accession of a state enterprise, the association can be only of the co-operative type. This is the proper attitude simply because the co-operative type is more convenient for the co-operatives, and also the association may operate in harmony with the principles of co-operative economy.

On the other hand, logic seems to have been ignored in the case when only state enterprises bring about the association, with the subsequent accession of co-operatives. It may be questioned why in this case the state enterprises should not be allowed themselves to decide the character of the association, i. e. why it should not be left to the state enterprises to decide whether the association should be one of a co-operative character, or not. Similarly it is somewhat illogical that when state enterprises and co-operatives in conjunction establish an association, why should it not be the parties themselves that decide the character of their association.

It does not sound very convincing that the granting of a choice would in any way become prejudicial to state social property. In fact here is a case of divisible joint property, where the participation in the profits is defined by the ratio of the financial contribution to the venture, so that in the last resort the share due to the state will anyhow find its way to the state treasury, even if not directly and to its full extent from the association, still, in all events through the channel of the state enterprise taking part in the association as co-owner. On the other hand, the co-operative character will instill a spirit of democracy, freedom and elasticity into the operations of the association, not to speak of the circumstance that in an association a state enterprise will find it more convenient to adapt itself to co-operative economy than vice versa, i. e. a co-operative to state enterprise economy in the same association.

As regards the formation of mixed economic associations, a regulation may therefore in practice promote the operations of the association by which co-operatives should form economic associations of a pure co-operative character only, whereas state enterprises, or state enterprises and co-operatives in conjunction may bring about economic associations whose co-operative or non-co-operative character should be decided by the founders.

For mixed economic associations, the problem of direct co-operation on the part of the co-owner economic units taking part in the association still remains to be settled. As regards direct co-operation in principle, two paths are open, the choice of either being dependent on the character of the mixed association. As a matter of fact, when the mixed economic association is of the co-operative type, then the direct co-operation of the economic units participating in the association is on the whole of the same nature as in the event of an association of co-operatives. For practical purposes this means that the direct co-operation of the participants in the mixed economic association manifests itself partly in the form of financial contribution, partly in the form of so-called personal co-operation. In this case, too, this personal co-operation cannot

oblige to more than to a personal co-operation in the management of the association (board of executives, management and control committee).

On the other hand, in a non-co-operative mixed economic association, direct co-operation of the economic units constituting the association will be fundamentally of a financial character. But owing to the non-co-operative character of the association, the participants cannot be obliged to personal co-operation. Consequently a mixed economic association of this type will essentially become a "limited partnership" company, where the primary end is the profitable investment of capitals, whereas participation of the associating economic units in the operations of the mixed economic association is thrust back to a secondary position. In a mixed economic association of this type, so-called personal co-operation cannot be expected from the economic units participating in the association, because such a co-operation is not implied in the structure of the association. For a vigorous development of the national economy it would be better if the economic units did not invest capital superfluous in their own business through the intervention of banks, but made use of it in production, in the specified phase of operations, where with the aid of such capital production values could be produced or augmented, as the case may be, and, by this, earned greater profits for both themselves and the national economy.

For that matter, why should the "limited ownership" form of an economic association be alien to the socialist economic and social system, when as a result of the existence of this type, it is the given form of socialist social property and the socialist economy which will benefit from this, and not private property and private economy? The form of limited ownership can be beneficial not only to private proprietors in a capitalist society, but also to socialist economic units in a socialist society.

If this is true, then in point of principle hardly any objections could be raised to such economic associations being formed without putting any artificial obstacles in their way. Nor can the participation of a socialist economic unit be contested in an economic association, when this unit can contribute money only to the association, whereas it lays no claim to a personal co-operation, nor can it do so even when the other partners take part in the economic association financially as well as personally.

These possible variants will by no means affect the joint ownership character of co-operative and non-co-operative mixed joint socialist property, or bring about changes in it. Still they might provide facilities for a reinforcement of the socialist economy and through it of the socialist system of ownership.

On the basis of what has been set forth above, the direct co-operation of the socialist economic units participating in mixed economic associations should be brought under regulation uniformly, i. e. irrespective of the co-operative or non-co-operative character of the mixed economic association, in a way that financial participation of the co-owners should be made obligatory by shares as agreed upon, yet direct personal co-operation should not be made compulsory. However, in the event of a mixed economic association of the co-operative type also direct personal co-operation would be desirable in addition to financial contribution. Here an exemption should be granted only to the

co-owners who are relieved of the obligation of a direct personal co-operation by unanimous vote of the other co-owners.

Finally, in connexion with this problem, mention should be made of the demand forthcoming from the field, on grounds of principle not to be disapproved, that facilities should be provided for the constitution of mixed economic associations as juristic persons which do not create mixed joint social property, there being no need for it in their operations.

*d)* On the understanding of what has been made clear so far of joint (mixed) co-operative property, a few generalizing conclusions may be drawn.

First, since there is no essential difference between joint co-operative property and mixed joint co-operative property, the still existing slight differences should be evened out, and the two types of property then subjected to uniform regulation. In fact a continued differentiation between these two types of joint co-operative property appears to be wholly unjustified. Consequently, irrespective of whether two or more co-operatives belonging to one or more co-operative branches, bring about an economic association, this association should be considered being of the co-operative type and the property so created should be deemed to be joint co-operative property. For a participation in a co-operative association of this type, either in the capacity of a founder, or by subsequent accession to it, the resolution of the general assembly or of the management (board) of the participating co-operatives should suffice. Direct co-operation in the co-operative association should be realized in the form of financial contribution, or in a personal co-operation in the management (board or managing council, or control committee) of the association. To certain participants an exemption may be granted from the obligation of personal co-operation by a unanimous resolution of the other members of the association. By agreement of the associates, the obligation of personal co-operation may be extended to the provision of the labour force required for the operation of the association.

Secondly, when a state enterprise joins an association of co-operatives, the co-operative association will change into a mixed economic association of co-operative type. As regards the mixed economic associations, a regulation is desirable according to which if state enterprises, or state enterprises in conjunction with co-operatives, form an economic association, the co-operative or non-co-operative type of this association should be decided by the founders themselves. Mixed joint social property so created is either mixed joint social property of a co-operative, or of a non-co-operative type. For a participation in such mixed economic associations, as far as the co-operatives are concerned, the resolution of the general assembly or the management (board) should suffice. Direct co-operation in the mixed economic association in the form of financial contribution should be made obligatory; but for mixed economic associations of a co-operative type, personal co-operation should also be compulsory, however, in the same form as for co-operative economic associations. It should be noted that in the course of future legislation the rules of operation of non-co-operative mixed economic associations should be approximated to the rules governing the mixed economic associations of the co-operative type.

On the other hand, this trend of thought will lead us to the recognition of the need for a uniform codification of the law of associations. Furthermore if the unified law of associations is construed so as to mean the uniform regulation

of any economic association irrespective of whether an economic association has been formed and is operated by co-operatives or state enterprises, or by the two in conjunction, then in our opinion the unified law of associations should be converted into a law of associations of a "co-operative character" for both co-operative and state enterprise associations, or for the mixed associations of the two. The law should have a co-operative character for the very reason that the otherwise desirable development in this field can be achieved only in this way in all fields of the national economy, let alone the fact that when this is not done not only the economic associations of state enterprises would fail to grow in the desired way, but also the development of the existing economic associations of the co-operatives would suffer a setback which would be a harmful and undesired economic phenomenon for the co-operative movement and the national economy alike.

Thirdly, both the co-operative and the mixed economic associations should be allowed to operate as independent juristic persons in a sense that the legal entity status of the association should not extend to joint social property. This is essential in particular as far as purchases and sales are concerned, i. e. in the commercial sphere where the costs of the association would have to be borne by ratios as agreed upon by the associates, whereas the profits of the operation of the association would appear directly at the associates, and not at the association, yet through its agency. Here considerations of operation do not insist upon a lasting separation of joint social property in respect to ownership within the association, i. e. the right of the association to the management of property in its capacity of a juristic person satisfies the needs of operation, so that the institutionalization of joint social property may be dispensed with here.

2. All that has been said of joint (mixed) co-operative property applies to joint social property which comes into being as the result of the economic associations of the co-operatives, or as that of the economic associations of co-operatives and other economic units. This group of the joint (mixed) co-operative property is essentially "joint inter-co-operative (inter-enterprisal) social property", as one of the form of manifestation of social group property.

However, as has already been made clear, from this type of property the type of joint co-operative property has to be distinguished, which comes into being independently of the result of the economic associations of co-operatives, i. e. whose origin and function is expressly attached to the social collaboration of co-operatives, to the creation and operation of the federal agencies of the co-operatives.

As is known, in a number of branch co-operatives, at the various federal organizational units, the member co-operatives accumulate a so-called "Mutual Assistance Fund" from the payments of the co-operatives and other sources. It admits of no doubt that the owners of the assets of this Fund are the member co-operatives of the co-operative federation, i. e. the owner is not the co-operative federal organization managing the fund. Apart from the purposes for which the agency managing this fund is free and even bound to appropriate it, the fact of the indivisible joint ownership of the fund remains, i. e. it is community property rather than joint property. This epithet at the same time gives expression to the branch-co-operative character and to the indivisibility of this

property. Hence this category of joint co-operative property is "co-operative community property".

The Mutual Assistance Fund as the primary form of manifestation of co-operative community property, is not yet general in all co-operative branches. Valid statutory regulations contain no provisions for a mutual assistance fund in the federal system of agricultural co-operatives; on the other hand, the federal system of general purchasing and marketing co-operatives (SZÖVOSZ) includes the possibility of, and regulations for, such a fund.

The Fund itself is a phenomenon of the co-operative movement which can, and should be made general in each co-operative branch, hence also in the agricultural co-operatives. Consequently in re-statement of the law of co-operatives the creation, management and appropriation of the Mutual Assistance Fund should be brought under uniform regulation with validity for each co-operative branch, as one of the forms of co-operative community property.

To this we have to add that co-operative community property deserves by far more attention in both co-operative economic policy and co-operative legislation than was given to it earlier, and more conscious efforts should be made towards the establishment of this institution and towards its statutory and economic consolidation.

So, e. g., in the agricultural co-operative movement, the so-called Funds for the Management of Co-operative Assets have been known for some time. Under present Hungarian law the management of this Fund is the responsibility of the regional federations of the co-operatives. Essentially, the assets pooled in the Fund for the Management of Co-operative Assets represent one of the concrete manifestations forms of co-operative community property. Accumulation and growth of the fund are wholly dependent on contingency, as, so to say, its exclusive source is the net capital remaining after the termination of co-operatives by way of winding up or dissolution. This residual capital has to be remitted to the Fund for the Management of Co-operative Assets, and appropriated for the purposes of agricultural co-operatives.

Since, actually, also in the other co-operative branches co-operative management and the position of co-operative group property develop in very much the same way as in the agricultural co-operative branch, the conclusion to bring under uniform regulation the Fund for the Management of Co-operative Assets, and all problems of management and appropriation of assets forming co-operative community property, appears to be wholly logical.

Also a uniform statutory regulation having the merger of the Fund for the Management of Co-operative Assets with the Mutual Assistance Fund as its target should be considered. In this way the principal form of manifestation of co-operative community property would in each co-operative branch be the Mutual Assistance Fund.

3. In the economic associations of co-operatives, and in the mixed economic associations, the harmony of operation and ownership should be enforced in the same way as in any other branch form of co-operatives. Here, too, the enforcement of this harmony necessarily urges an adaptation of ownership to operations. On the other hand, operation takes place in any economy association on an associative level i. e. it is not directly the co-operatives (and the state enterprises) bringing about the association that take care of the operation of the

association, but it is directly the economic association as juristic person created by them.

A logical consequence is that if the association actually in charge of operation is not the owner, but the owners are only the co-operatives (state enterprises) creating the association, then in this case there is no direct unity and harmony between operation and ownership in the association, i. e. one of the fundamental characteristics of co-operative (enterprisal) group property, i. e. the direct unity and harmony of operation and ownership will be wanting.

On the other hand if only the economic association is the owner, then although there will be direct harmony between operation and ownership in the association, yet on the whole the association will not only be estranged from the creating co-operatives (state enterprises), but even become detached from them, i. e. the association will become independent in a way running counter to the interests of the economic units which have created it. In other words this would mean that under such a legal construction the co-operatives (state enterprises) would refrain from bringing about economic associations merely for want of a direct interest attaching them to such an association.

For co-operative economic associations a statutory expedient had to be found for bringing about a harmony between operation and ownership, which expresses and satisfies the needs of this harmony and the interests of the co-operatives constituting the economic association as owners. The statutory expedient would in this case satisfy the basic needs and interests by an appropriate coupling of the categories of the direct and indirect owners. The essence of this statutory expedient is that for joint co-operative property the direct owner is the economic association itself, and the indirect owners are the co-operatives creating the association. Law would then couple these two categories of owners in a way that to the external world the association would appear as owner of the assets of the association, still the association would pass into the ownership of the co-operatives creating it. I. e. the co-operative economic association would at the same time appear as subject and object of ownership.

This expedient has received statutory regulation in Act III of 1967 on Agricultural Co-operatives, dealing with joint enterprises and joint co-operative concerns. Accordingly, in case of a joint co-operative enterprise the fixed and current assets which the founders, and those joining the joint enterprise subsequently have surrendered, further the assets produced by the activities of the enterprise, the proceeds from their sales and from services rendered, further assets purchased by the enterprise or acquired by it by any other title, are in the ownership of the enterprise. The enterprise is the joint property of the founders and those joining it at a later time. The share in the property is defined by the respective financial contributions of the members.

This legal adaptation of the joint co-operative property to the exigencies of actual operations does in every respect meet the condition of a direct harmony between operations and ownership, and at the same time respects the interests of the maintaining co-operatives as owners.

Obviously in a re-statement of co-operative law for both co-operative economic associations and mixed economic associations, i. e. for both the joint co-operative property and the mixed joint social property, this statutory structure should be made general and uniform. As regards joint co-operative property, irrespective of whether the economic association has been formed by co-operati-

ves belonging to one or more co-operative branches, practice already relies on this legal structure. But this should be made also the rule for mixed economic associations, not only when the mixed economic association is of a co-operative type, but also when it has been created as a non-co-operative economic association.

In a certain sense the problem may assume a different form in the event of co-operative community property. In general, operations with assets in co-operative community ownership are usually operations of a non-enterprisal type (although this is not precluded); in a certain sense they remind of budgetary or financial (banking) operations, where the needs of management are fully satisfied by the right to management. In the last analysis, this right to the management of property, and also the direct management of property, is exercised by the organs appointed by the owners for ends defined by the owners, and constituted as regional or national agencies of the co-operatives. Although these managing organs are juristic persons, they belong to a category where the executive body is re-elected by the owners from among their own ranks at definite intervals, i. e. in this respect these organs act as separate agencies, so to say as the trustees of the owners. In other words this means that, although not on the principle of direct, but on that of representative democracy, yet on a democratic basis, there is a harmony between co-operative community ownership and operations on the basis of this ownership.

4. In conjunction with co-operative community property the problems of the ownership of the co-operative federations, the enterprises of the regional and national federations of the co-operatives, and assets deposited at these enterprises have to be discussed.

Legally the direct harmony between operations and ownership should be enforced as a principal rule even in these enterprises. Here the statutory structure may be regarded as given. Even in this case, since it is one of economic units taking part in enterprisal operations, the direct owner of the enterprisal assets is the enterprise itself, in about the same way as e. g. the joint co-operative enterprise is owner.

On the other hand, the ownership of the enterprise of a regional or national federation of co-operatives is a much debated, yet for practical purposes vital problem. Is such a co-operative enterprise in the ownership of the regional or national federation of co-operatives as a legal entity, or in that of the member co-operatives belonging to the co-operative branch in question? The problem is crucial also on considerations of the theory of ownership. Namely in the first instance the federal enterprise is simply co-operative group property, whose owner is, independent of the member co-operatives, the regional or national co-operative federation as a juristic person. In the second instance, the federal enterprise is not co-operative group property, or joint co-operative property, but co-operative community property, whose owners are the member co-operatives belonging to the given co-operative branch in about the same way as the member co-operatives are owners also of the assets in the Mutual Assistance Fund.

The problem is not a serious one as far as the agricultural co-operatives are concerned, since here neither the regional federations of co-operatives, nor the National Council of Co-operatives have enterprises of their own. On the other hand, a solution of the problem is urged in the case of the General Federation of

Consumers' Co-operatives (SZÖVOSZ), or the County Federation of the General Consumers' Co-operatives, where such enterprises exist, or continue to operate. Section IV/3 of the provisional statutes of the National Federation of General Consumers' Co-operatives decrees among others that its non-servicing enterprises of earlier date have to be converted into joint enterprises of the co-operatives concerned, or of other agencies. However, those of the actually operating non-servicing enterprises, which for some reason cannot be converted into joint enterprises of the co-operatives, will continue to be operated by the National Federation as provided by law. According to the Statutes of the Federation, proper expression must be given to the interests and the services of the co-operatives in the operations of these enterprises.

This provision of the Statutes of the Federation introduces further complexities into the problem, by turning certain federal enterprises into joint co-operative enterprises, namely the joint enterprises of the co-operatives concerned and of other agencies. But which are these co-operatives or other agencies, to what sphere does their interest extend, to the particular member co-operatives, or to all co-operatives belonging to the particular co-operative branch? Can this co-operative enterprisal property be turned into joint co-operative property divisible by its nature, and, if so, on what basic principle? There is no reply in the Statutes of the Federation to such and similar questions. Nor do the Statutes settle the question of ownership of co-operative enterprises that remained within the National Federation (SZÖVOSZ).

Let us first revert to the problem of ownership of the federal co-operative enterprises. In this connection it should be understood that it is not the function of the federal organizations to continue activities through the agency of their enterprises, nor is it their function to invest their assets in a profitable way in an enterprise of their own. Their true function is in every respect, also in the sphere of economic activities, to promote the operations of the member co-operatives belonging to the given co-operative branch. For this purpose, the contributions of the members provide the necessary financial basis, and it would not be the proper course if the federal organs substituted their own activities for these financial contributions, rendering them superfluous in this way. All that can be approved is that they supplement this financial basis to a certain extent by activities of their own, preferably by activities performed by the federation in conjunction with a few, or all, member co-operatives, by assisting joint operations or economic association of the member co-operatives in this form. However, by virtue of Clause (1) of Section 66 of the Civil Code, the law does not preclude the operation of enterprises constituting the property of the co-operative federation, as has been mentioned above.

However, for practical purposes, such co-operative federal enterprises belong to two categories; namely, these enterprises may be such as the federation as a juristic person has founded and operates with proceeds from assets of its own; and, secondly, such as the federation has formed and operates with proceeds from assets owned by the member co-operatives, and not of its own, irrespective of whether or not the co-operative federation figures formally as founder and owner of the enterprise.

Obviously, a co-operative federal enterprise which the federation has established and operates with assets owned by the member co-operatives, will in the last analysis constitute the property of the member co-operatives, i. e. it will

be in co-operative community ownership. In this case the co-operative federation, as an independent juristic person, will act for, and on behalf of, the member co-operatives as the trustee of the co-operative community property, and will not establish the enterprise on the basis of its own separate assets, in its own name, i. e. the federation will act as an agency entrusted with management and representation, in which case it will represent the interests of the totality of the member co-operatives belonging to it.

Consequently, the net incomes, actual profits of an enterprise of this category will have to be distributed among the member co-operatives as owners. However, since this is a case of indivisible co-operative property, the profits cannot be distributed among the member co-operatives by any specific ratio, and, in our opinion, any profits will have to be placed in the Mutual Assistance Fund, and invested or used in conformity with the relevant rules.

In the opinion of this author, any existing co-operative enterprise which in conformity with the provisional statutes of the National Federation (SZÖVOSZ) cannot be converted into a joint co-operative enterprise, should be considered an enterprise in co-operative community ownership, and should be operated by the National Federation also in the future. This would at the same time mean that any profits derived from the enterprise should be paid to the Mutual Assistance Fund, and not to the National Federation, and should be appropriated as specified for this fund.

On the other hand, if this is the proper course, then it will have to be decided which of the non-servicing enterprises of the National Federation (SZÖVOSZ) should be converted into joint co-operative enterprises. The principal consideration of any decision should be co-operative interests, i. e. the form should be chosen which in the given instance serves co-operative community interests best, and then the structure of co-operative community ownership should be applied as suggested by the chosen form.

5. A common trait of joint co-operative property, mixed joint social property, as well as of co-operative community property, is that, fundamentally, all these forms have an underlying financial basis. The primary character of the financial participation of the co-owners is confirmed by the fact that in the case of both joint co-operative property and mixed joint social property, the co-owners participate in the profits by the ratio of their financial contributions. This method of sharing the profits at the same time indicates that in the event of joint enterprises the direct personal co-operation of the co-owners is of secondary significance, i. e. personal co-operation has no direct influence on the participation in the assets. So it seems that with the given structure of joint enterprises, the financial participation of the co-owners and their direct personal co-operation are independent of each other. This is also confirmed by the fact that the participants in the joint venture reach separate agreements on financial participation and on personal co-operation. Consequently, for practical purposes, it is possible that one of the co-owners participates in the joint enterprise with a large contribution, but, as compared with his share, he delegates only few of the members or employees to the board; and vice versa. In principle, in case of this method, it is by no means impossible that one of the co-owners takes part in the joint enterprise with a definite contribution in terms of money, whereas by common agreement he "does not insist" on a direct personal participation. On the other hand, this cannot be done the other way

round, as no partner co-operative can be admitted to the joint enterprise to take part by way of personal co-operation only, yet without a financial contribution. It should also be noted that in the case of co-operative community property the question of a direct personal co-operation of the co-owners cannot be raised at all, as here the structure of ownership is from the outset based on financial participation, whereas the competent federal organization will take care of the management and exploitation of the assets.

Obviously, in cases of joint co-operative economic associations, the present method is not in every respect satisfactory as far as direct personal co-operation is concerned. The method is a democratic one, as the solution of the problems has in its entirety been entrusted to the associating parties. Yet since the statutory provisions fail to draw the limits of the solutions, practically undesirable solutions may emerge without being formally in conflict with the law. Hence a democratic conception of the solution of this type will carry with it the risk of distortions. The solution may become the source of errors, which in some way has to be eliminated in future regulation of co-operative economic associations.

However, the question may be asked, how this can be done. An obvious solution of the problem would be the one where the personal co-operation of the participants in the economic association would be tied to their financial contributions, i. e. they would be qualified for, or even bound to, a personal co-operation by the proportion of their financial contributions. Undoubtedly, in this form of solution the word of that co-owner will carry greater weight whose share is the largest in the economic association, whereas the word of those participating with a minimum only will weight least. However, this is wholly understandable, and as known form it is accepted by the associating enterprises as just. Actually even today the situation is something like this: although under present law the personal co-operation of the parties to the association is not tied to the ratio of their financial participation, and the extent of co-operation is in its entirety defined by the agreement of the parties, still for practical purposes this agreement often takes into consideration the financial interest of the parties and adjusts the extent of the personal co-operation to this share. If this is the case, obviously the established practice should be recognized also by legislation, and at least the skeleton of this participation should be defined.

In the opinion of this author in a re-statement of the law of co-operatives it would not suffice to tie the personal co-operation of the associates in the management of the association exclusively to their financial share. In addition to financial interest the extent to which the associates take part in the operations of the association through their members and employees will have also to be considered. Hence the extent of participation in the management (board, management, control committee) of the economic association would be defined by two factors, namely the financial interest, and the number of co-operative members and employees transferred to the association.

This method of regulation of the personal participation in the management of the economic association would in all certainty meet with the agreement of the co-operatives, and would not be conflicting with the co-operative character of the association nor joint co-operative ownership.

In connexion with this problem it should be remembered that in Hungary only juristic persons of a socialist character may take part in economic associa-

tions, i. e. the participation of non-socialist juristic persons or of private persons in economic associations is precluded from the very outset. This is entirely understandable, and requires no particular reasoning. However, in the opinion of this author, in practice this by itself proper rule should be enforced with greater elasticity than before, and facilities should be provided for the profitable investment of certain assets in economic associations by trustees who, owing to their office, could otherwise hardly take part in an economic association (e. g. the profitable investment of trust estates, etc.).

6. Since in the course of this discussion, though in a scattered form, we have spoken of the divisibility or indivisibility of the forms of joint ownership, here by way of a summary the following statement may be advanced on this problem:

*a)* The joint co-operative property is to its full extent divisible by the ratio of the financial participation of the co-owners. In principle, the divisibility of this form of joint ownership will exist even if it is a case of an economic association where all co-operatives belonging to the given co-operative branch are co-owners, i. e. it is an economic association on a national level. However, for practical purposes, in co-operative economic associations on a national (county) level, the joint co-operative property functions as indivisible property, at least as long the association is economically justified. Naturally, the actual indivisibility of this ownership does not preclude the participation of the co-owners in a manner defined by their financial shares in the association, but a personal co-operation in the management of the association will of necessity become indirect. It will be indirect because in a branch-co-operative economic association operating on an all-national level, the delegation of a representative by each co-owner co-operative to the board would hardly be feasible. But it would be obvious to use the National Federation of the branch as a substitute for direct delegation, which in fact is the elected representative organ of the co-owner co-operatives.

*b)* Similarly, mixed joint social property is divisible in its entirety by the ratios of the financial participation of the co-owners. In the present developmental phase of the economic associations, this form of joint ownership does not show trends towards becoming indivisible for practical purposes in the present case, similarly to the joint co-operative property of branch-co-operative economic associations on a national level.

*c)* Co-operative community property is indivisible in its entirety, however, this indivisibility is of a nature which not only does not preclude, but even presupposes, an utilization of the property in a way serving the interests of the community of the owner co-operatives. From this the conclusion can be drawn that co-operative community property is a higher, more developed form of manifestation of co-operative group property, i. e. a phase, and at the same time a step, towards the transformation of co-operative group property into all-national property.

### Some problems of diverse traits in co-operative property

1. In addition to the general, i. e. common traits of co-operative property, peculiar traits, or characteristic features departing from the general, appear in certain concrete forms of co-operative property as a matter of course. In this case the question is not one of how co-operative property in general differs from other forms of property, e. g. state or personal property, but to what extent and how certain concrete manifestation forms of co-operative property differ within this system from others while these differences do not extinguish the co-operative nature of property, nor do they render it questionable in any respect. Or in simpler terms, the question here is merely by what essential peculiarities the various forms of property belonging to the family of co-operative property differ from one another.

A study of the problem is justified by two fundamental factors. First, in the course of socialist economic and social development several still living forms of co-operative property have come into being, although the Constitution, and in particular the Civil Code, have tried to bring under regulation co-operative property integrated rather than differentiated, by approaching it from the side of the general, common peculiarities of co-operatives. Closely associated with this factor is the second, i. e. a tendency towards a comprehensive and uniform regulation of co-operative legal relations which have come into prominence in these days, towards a generalization of the common traits of co-operatives, while the special, differing peculiarities would be considered and brought under regulation only in so far as their preservation and statutory re-statement are justified, both economically and socially, i. e. the peculiarities are facts which cannot be ignored, or omitted in a statutory regulation which has uniformity as its objective.

Within the system of co-operative property, two large groups of traits departing from the general may be distinguished. One group includes the characteristics of traits which apply to two or more forms of co-operative ownership, and which, although diverse in a certain sense, at the same time manifest themselves as common traits of a narrower group. The second group includes traits which are characteristic of single forms of ownership, and therefore only appear as diverse traits.

a) The present analysis will be based on the forms of co-operative ownership which have developed in the actually operating forms of co-operatives in Hungary, namely in forms which have come into being in the course of building socialism and are therefore lasting, developing forms of ownership.

Actually the following branch forms of co-operatives are in operation:

1. Agricultural co-operatives
2. Artisans' co-operatives (artisans' and domestic industrial producing co-operatives)
3. Consumers' co-operatives (general consumers' and marketing co-operatives)
4. Housing co-operatives
5. Savings co-operatives.

It should be noted that at present the following federations of co-operatives exist: the National Council of Production Co-operatives of the agricultural co-operatives; the National Federation of the Artisans' Co-operatives, the National

Federation of the General Consumers' Co-operatives (SZÖVOSZ) representing the interests of consumers' co-operatives, including the savings and housing co-operatives.

In the following the analysis will be confined to the ownership of the fundamental co-operative units (member co-operatives) of these co-operative branches. In point of fact the peculiar traits of co-operative ownership departing from the general and characteristic of a particular branch of co-operatives, present themselves mainly in these fundamental units or forms of co-operative group ownership.

Accordingly, Hungarian law recognizes the following as independent forms of co-operative ownership:

1. the ownership of agricultural co-operatives
2. the ownership of artisans' co-operatives
3. the ownership of consumers' co-operatives
4. the ownership of housing co-operatives
5. the ownership of savings co-operatives.

Even when it is remembered that in the terminology of co-operative ownership the term "savings-co-operative property" is a rare occurrence, and, if occurring at all, it is mostly implied in the notion of consumers'-co-operative ownership, there are five current forms of co-operative ownership even today, which by itself is the indication of a developed system of co-operative ownership. And for that matter this system of co-operative ownership owes its existence precisely to the traits of the particular forms of co-operative ownership by which these depart from the general.

2. For each form of co-operative ownership, the subject of co-operative ownership is the co-operative as a juristic person. However, beyond this legal form there is as actual owner in each case the given co-operative collective. But if this collective is made subject to a scrutiny, differences will come into view between the forms of ownership according to the basis on which a given collective co-operates.

The collectives of producing co-operatives, i. e. of agricultural, artisans' co-operatives and of domestic industries, congregate on a personal and financial basis. But in the present developmental phase of the co-operative movement, these co-operative collectives may in their entirety, or at least as a general rule, be considered as producing co-operative collectives existing on a personal basis.

Here the character of a personal co-operative association indicates that the members tie up their working capacity with the assets of the co-operative, i. e. the owners of the co-operative are at the same time its workers. This owner-worker status finds an expression in the membership relations of the co-operative, and, accordingly, the member have a direct share in the results of operations, and also take part in the administration of co-operative property.

Here the owner-worker status is coalesced so intensely that the one cannot exist without the other; and if they do, this will have repercussions on the status as owner. This means that if in the producing co-operative a person is active only under a labour contract, and not in a status of owner, then he is not a member of the co-operative owners' collective. On the other hand, if somebody has contributed his property for the use by the co-operative, without becoming member of it, he will not be member of the co-operative owners' collective,

even if he works for the co-operative as an employee. (E. g. an extraneous person's landed property in the use of an agricultural co-operative.)

Undoubtedly, in his person also the employee is member of the agricultural co-operative collective, i. e. he ties up his working capacity in its entirety with the co-operative assets in the same way as the co-operative member, and for this reason he will participate in the profits on the basis of work he has contributed, still he cannot exercise the owners' rights of the member in respect of co-operative property. Consequently, in a production-co-operative collective, not all of it are the subjects of co-operative ownership; only those are, who are members of this collective by virtue of the legal relation which follows from co-operative membership.

The non-producing co-operative collectives, i. e. consumers' co-operatives, savings and housing co-operatives, come into being on the basis of financial contribution. A co-operative pooling of this kind indicates that the co-operative members participate in the operations of the co-operative with a definite portion in terms of money, whereas in this status they do not tie up their working capacity with the co-operative assets, i. e. even as members of the co-operative they have free disposal of their working capacity.

In co-operatives of this category, co-operative membership only expresses the status of an owner, but not the status as a worker. Naturally, this does not mean as if the members of the co-operatives of this category were barred from personal co-operation. The members are entitled to a personal co-operation in the management of the co-operative, to the exercise of proprietary rights, but as members they are not bound to contribute to the co-operative with their working capacity. From time to time, as individuals, they may do so, but simply as employees, and not as co-operative members. Co-operative membership may be an advantage only in so far as in case of more applicants, the co-operative member must be given priority for employment, other conditions being equal.

Hence in co-operative collectives brought about on a financial basis the status of an owner and of a worker are wholly independent of each other, i. e. in these instances the co-operative owners' and co-operative workers' collectives are completely separated from each other. This separation finds expression also in the circumstance that in co-operatives existing on a financial basis the owners' collectives exclusively consist of the members of the co-operative, whereas the collective of co-operative workers is a collective of employees, irrespective of whether the workers of the co-operative, often in the aggregate, but to a greater or lesser extent are practically in each co-operative at the same time also members of the "employers' co-operative owners' collective" merely by virtue of membership in the collective.

What has been set forth so far in connexion with the subject of co-operative ownership indicates that law can, beyond a general rule or two, hardly say more of who are subjects of co-operative ownership in a manner uniformly valid for all forms of co-operative ownership. In fact, the deeper we try to explore one or another form of co-operative ownership, the more the peculiarities of these forms will come into prominence. For all forms of co-operative ownership, uniformly, and with general validity, the following statement may be made: The subject of co-operative ownership is the co-operative as a juristic person, further those who are subjects of the co-operative collective, composed of the

co-operative property and the co-operative members. Beyond this rule, already the specific rules will emerge as far as the subjects of co-operative property are concerned, the ownership relations of whom manifest themselves already in conjunction with rules applying to other aspects (e. g. in the rules governing membership relations.)

There is a difference between a producing co-operative created on a personal basis, and another relying on the assets of the members, also in the manner where and how the owner status of the co-operative members finds an expression.

In producing co-operatives the members share the profits yielded by the exploitation of co-operative property on the basis of the work performed by them, and chances of sharing in a manner independent of the work performed, or by any other title, are negligible (e. g. social, sporting, cultural benefits, land rent, rent incident on stocks, etc.). However, even in these co-operatives there is opportunity for an unaided accumulation of assets by members, i. e. the full value of the work performed by the members cannot be paid for, since part of the profits will remain in the co-operative for being added to the net assets. However, in the present system of distribution the co-operative owner members do not act a share from this value directly, i. e. the way in which profits are distributed does not express the rates by which the co-operative members have contributed to accumulation through not having received the full equivalent of their work. This problem leads to raising the problem of the rent of accumulation in producing co-operatives. Primarily, this is a problem of the national economy, but one calling for a statutory regulation. In producing co-operatives where the aged or disabled members on pension receive a supplement to their pensions, or benefits of other kinds, although essentially in an everyday form, the idea of the payment of a rent on accumulations may be discovered, adjusted not only to the work the members concerned have performed in the co-operative during the many years of their active service, but at least to the same extent as the financial contributions made in particular during the phase of collectivization, when these contributions had a significant role in the creation of co-operative property and joint co-operative assets.

In non-producing co-operatives proprietorship of the members manifests itself in the material sense by the ratio of their financial interest in the co-operative, namely in the form of a rent-like benefit (rent or interest payable on the member's share, on deposits in savings banks, etc.), or, on the contrary, in the form of a proportional contribution to the costs of administration of the joint property, chargeable to the personal incomes of the members (costs of maintenance of the joint property of housing co-operatives, etc.).

In certain cases the material manifestation form of the owners' status may have repercussions also on membership relations. In agricultural co-operatives, membership of the retiring member does not cease, i. e. the retired member will continue to be co-operative member, and he will have opportunity to exercise his proprietary rights directly even at a time by which he had met his obligation to work once for all. True, this system has been enforced consistently only in agricultural co-operatives, whereas in artisans' co-operatives the law leaves regulation to the statutes of the co-operative. However, if statutory regulation is to be consistent even in this respect, then inevitably the same rules will have to be enforced in the artisans' co-operatives as in the

agricultural co-operatives. Naturally a solution in the opposite sense is also conceivable, i.e. a generalization of the rules valid for artisans' co-operatives by extending them to the agricultural co-operatives. However, this method would lack a basic principle, not to speak of the need for an amendment of the provisions governing the pensions of agricultural co-operative members so as to adapt them to those governing the pensions of the members of artisans' co-operatives.

In non-producing co-operatives the material manifestation of the owner status of co-operative members does not raise issues of this kind. But problems of proprietary rights may emerge which have their origin partly in the divisibility of co-operative property (shares, etc.), partly in the integral unity of co-operative and personal property (housing co-operatives), i.e. problems which are unknown in producing co-operatives. For non-producing co-operatives such specific issues are e.g. the alienation or the inheritance of the share of the co-operative member, i.e. issues of ownership and property which follow from the commodity character of the share of the co-operative member within a definite scope.

Since there are obvious discrepancies between the material manifestations of the owners' status of the members of producing and non-producing co-operatives, the conclusion is that one person can at the same time only be member of one producing co-operative and of one non-producing co-operative. In principle it is precluded that one person could be member of several co-operatives of which two are of the producing type.

3. The sphere of the objects of co-operative ownership is again one where essentially only a single legal characteristic will qualify the various forms of co-operative ownership. Otherwise, or beyond this, the discrepancies will come to the fore. This common characteristic may be summarized in a sense that each co-operative may become owner of the assets required for the achievement of the end specified by its statutes.

However, this general and uniform statutory formulation of the object of co-operative property cannot be satisfactory for the particular concrete forms of co-operatives, or in the statutory definition of the concrete forms of co-operative ownership. On the other hand, if the sphere of objects in co-operative ownership has to satisfy such conditions, then in principle a line has to be drawn between the two large groups of co-operatives, viz. between the producing and non-producing co-operatives.

It is a characteristic feature of the ownership of producing co-operatives that here the sphere of objects of co-operative ownership basically extends to the means of production needed for co-operative activities, and also to the results of production, further to other assets which the co-operative may require for the achievement of other ends.

On the other hand, in the case of non-producing co-operatives, the sphere of objects of co-operative ownership, in the first place, and overwhelmingly, extends to consumer's goods, or to goods and equipment which cannot be ranged, the means of production. This does not mean as if these co-operatives could not own means of production for the achievement of their objectives. Consequently, there may be, and are, means of production in the ownership of non-producing co-operatives; however, here the ratio of ownership related

to means of production and to means not serving production is reversed, if compared to the ratio in producing co-operatives.

An analysis of the sphere of objects of the particular forms of co-operative ownership to any depth and in any detail will finally lead to the general conclusion that the spheres of objects of each particular form of co-operative ownership basically differ from one another by the particular branches and forms of co-operatives. Consequently, and principally, it is not the common features, but the differences that are characteristic of the objects of co-operative ownership. This is wholly reasonable, since the sphere of objects of co-operative ownership are attached directly and closely to the differences appearing in the ends and spheres of activities of the co-operatives. Essentially, this general statement applies also to the economic associations of the co-operatives, or, more precisely, to the sphere of objects in the ownership of these associations.

4. Depending on definite conditions, the situation, as regards the contents of co-operative ownership, is in some respect the reversed of that of the category of objects of co-operative ownership.

The situation is reversed merely because in the democratic system of co-operative ownership the content of co-operative ownership has to be uniform for all forms of co-operative ownership. Hence in this case the common characteristics, and not the discrepancies are preponderant.

On the other hand, when the mixed system of co-operative ownership prevails, the content of co-operative ownership will be different for each form of co-operative ownership. The difference will depend on whether the given form of co-operative ownership exists in a centralized co-operative federal organization, or exists without such a co-operative federal organization (centre), in the framework of a democratic co-operative federal organization (centre). Essentially, the difference will manifest itself in the scope of the right of disposal. In a centralized system, the right of disposal of the co-operative managing the assets, and actually operating, is to a greater or lesser degree limited. On the other hand, the right of disposal of co-operatives operating independently of a federal organization, i.e. within the framework of a democratic federal organization, will be exercised by the owner co-operative managing the assets and operating them in their entirety.

In Hungary, the enforcement of the democratic system of co-operative ownership is the goal, and therefore in the content of co-operative ownership, for each form of co-operative ownership, primacy has been accorded to the common characteristic features.

However, to this we have to add that notwithstanding there may be, and even are, discrepancies among the particular forms of co-operative ownership, as far as the content of this ownership is concerned. However, these discrepancies will appear in the first place in the inner co-operative relations, and not in the external ownership relations, or more precisely, in the inner co-operative ownership relations, i.e. in the way the content of ownership prevails within the co-operative. Still, this depends primarily on the inner organizational methods of operation of the co-operative, on the system of the inner management of the co-operative.

In connexion with the intrinsic discrepancies it must be emphasized again that in a co-operative the self-assertion of the content of ownership is on the

whole attached to the owners' collective of the co-operative in each case. Care has to be taken that these discrepancies should not be responsible for a cessation of the direct exercise of the rights vested in the owners' collective of the co-operative, i.e. to an alienation of co-operative ownership.

5. Apart from the fact that identities and differences between the one form of co-operative ownership and another are present also in other spheres of ownership so far ignored (acquisition and termination of ownership, etc.), yet another problem has to be discussed briefly by way of conclusion. This is the problem of the interaction of co-operative ownership and the economic environment.

The relationship between co-operative ownership and economic environment, between the form of co-operative ownership and any other form of ownership, are of utmost significance in the socialist system of ownership. In fact it is the environment which, in addition to the inner peculiarities of co-operative ownership, primarily defines the character, extent, enforcement and the conditions of co-operative property, i.e. the place, function and significance of the part in the whole.

Without presenting the totality of the problem in its principal outlines, three salient questions will have to be touched in any case.

a) First of all, it should be remembered that any form of co-operative ownership is the equal, integral part of the socialist system of social ownership. The external ownership relations come into being on this understanding, so that from this point of view there is no difference between the various forms of co-operative ownership.

b) Similarly, state supervision and control are uniform for each form of co-operative ownership. However, concrete manifestation, the methods, etc. of this control differ from one another, and, what is of particular significance, state subsidies are differentiated by the forms of co-operative ownership. This differentiation finds an accentuated expression in financial grants to co-operatives.

In connexion with this question it should be specially stressed that budgetary subsidy for co-operatives has to be most intensive as far as the agricultural co-operatives are concerned. The principle of state subsidies has to be enforced in these co-operatives mainly because in a socialist agriculture large-farming is realized overwhelmingly in the form of agricultural co-operative large-scale farms. Consequently, any financial aid extended to these farms will redound to state subsidy for socialist agriculture as a whole. On the other hand, this system of subsidies is an objective economic need in any modern industrial commodity-producing society, no matter if capitalist or socialist, and therefore, among the forms of co-operative ownership agricultural co-operative ownership should be granted state support to the highest degree, and most intensely in the first place.

Similarly, yet for other economic reasons, housing co-operatives i.e. the forms of ownership embodied by the housing co-operatives (i.e. fixed personal property and joint co-operative group property) deserve increased state subsidy whereas the state subsidy to other forms of co-operative ownership may, for different considerations, move within narrower channels.

c) Whereas, in general, co-operative ownership is in interrelationship with the other forms of the socialist system of ownership on the basis of an

equality of rights, the mutual relation between co-operative ownership and personal ownership is differentiated by the specific and co-operative forms of ownership.

To illustrate how this differentiated relationship manifests itself in particular forms of co-operative ownership, the following may be quoted by way of example: Whereas in an artisans' co-operative, by virtue of co-operative management and work performed there, the primary source of personal ownership is co-operative ownership, in an agricultural co-operative personal ownership is to a certain extent organically attached to co-operative group ownership in the form of household plots, and although primarily agricultural co-operative ownership is the source of personal ownership of the members, this latter may be, and even is, in a certain sense the source of the former. Compared to this, there is even a more intense organic intertwining between personal ownership and co-operative ownership in the housing co-operatives, since here the source of co-operative ownership is expressly personal ownership, but at the same time this co-operative ownership respects ties down and defines in many respects the limits of personal ownership in respect of the apartment constituting personal property, not to mention that here both co-operative and personal ownership basically rely on subsidies by the state. As a matter of fact, in the creation and preservation of both, financial support by the state has a principal role.

By way of conclusion I should like to emphasize that the exploration of the uniform and diverse peculiarities of the different forms of co-operative ownership is an important task of jurisprudence for the purpose of both legislation and the enforcement of law. This study may lay claim to being an initial step in this work, so that the objective of the author is to raise part of the problems, rather than to propose a solution to them. It may be hoped, however, that in the foreseeable future explorations in this field will come to a stage where it will be possible to rely on the results of detail work, and to give with appropriate generalizing and summarizing work a conclusive picture of the general, common, and of the diverse, traits of the socialist system of ownership.

#### ZUSAMMENFASSUNG

Unter den allgemeinen (gemeinsamen) Zügen der genossenschaftlichen Eigentumsformen ist vor allem der Grundsatz der Gleichwertigkeit der gesellschaftlichen Eigentumsformen zu betonen. Dieser Grundsatz muss im Verhältnis zwischen dem genossenschaftlichen und dem staatlichen gesellschaftlichen Eigentum sowie im Verhältnis der genossenschaftlichen Eigentumsformen untereinander zur Geltung kommen.

Die Schaffung eines Einklanges zwischen Eigentum und Wirtschaftung ist ein weiterer wichtiger Grundsatz, der den Interessen der sozialistischen Wirtschaft entspricht. Das bedeutet in der Genossenschaft einen den Interessen der genossenschaftlichen Wirtschaft entsprechenden unmittelbaren Einklang zwischen Eigentum und Wirtschaftung. Das genossenschaftliche Eigentum kann nur auf dem Niveau des Gruppeneigentums mit der genossenschaftlichen Wirtschaft vollkommen und unmittelbar übereinstimmen. Dies wird am besten im demokratischen genossenschaftlichen Eigentumssystem verwirklicht, das auch in Ungarn erst beim Übergang auf das System des neuen Wirtschaftsmechanismus in allen Genossenschaftszweigen allgemein eingeführt wurde.

Kommt eine Genossenschaft auf persönlicher, bzw. auf persönlicher und Vermögensgrundlage zustande, so ist das genossenschaftliche Eigentum in der Regel zum grössten Teil unteilbar. Kommt sie aber ausschliesslich, bzw. primär auf Vermögensgrundlage zustande, so ist das ge-

nossenschaftliche Eigentum in der Regel teilbar, kann aber teilweise oder auch ganz unteilbar sein. Es ist eine allgemeine prinzipielle Forderung, dass die Teilbarkeit des genossenschaftlichen Eigentums letzten Endes nicht zum Zustandekommen und zur Festigung der Privatwirtschaft führt. Die Unteilbarkeit des genossenschaftlichen Eigentums ist dem Wesen nach nichts anderes, als die konkrete Erscheinungsform des volkseigenen Charakters des gesellschaftlichen Eigentums im Falle des genossenschaftlichen Gruppeneigentums.

Der Kreis der Objekte des genossenschaftlichen Eigentums ist äusserlich beschränkt, indem die ausschliesslichen Objekte des Staatseigentums prinzipiell nicht Objekte des genossenschaftlichen Eigentums sein können. Im ungarischen Eigentumsrechtssystem gibt es unter den ausschliesslichen Objekten des Staatseigentums zur Zeit keine solche grundlegenden Produktions- und Arbeitsmittel, die zur Verwirklichung der staatsmässigen Ziele der bestehenden Genossenschaften als juristischer Personen notwendig wären. Der Kreis der Objekte des genossenschaftlichen Eigentums ist immerlich durch die Gebundenheit der Genossenschaft als einer zielgebundenen juristischen Person beschränkt. Die Rechtsfähigkeit der Genossenschaft erstreckt sich bezüglich der Objekte des genossenschaftlichen Eigentums auf alle Sachen und Vermögensgegenstände, die zur Verwirklichung der wirtschaftlichen und anderen Ziele der Genossenschaft notwendig sind. Auch eine gemeinsame Unternehmung oder ein gemeinsames genossenschaftliches Unternehmen als Rechtsperson sind Objekte des genossenschaftlichen Eigentums.

Ohne Hinsicht auf die Genossenschaftszweige muss, jeder Genossenschaftsverband und jede Genossenschaftszentrale einheitlich das Recht erhalten, an einer genossenschaftlichen Vereinigung als Gründer oder als Beitretender teilzunehmen, bzw. ein eigenes genossenschaftliches Unternehmen zu gründen.

2. Das gemeinsame genossenschaftliche Eigentum als Ergebnis der Wirtschaftsvereinigungen der Genossenschaften kommt erst dann zustande, wenn die Vereinigung als selbständige juristische Person funktioniert.

Wenn zwei oder mehrere Genossenschaften desselben Genossenschaftszweiges bzw. mehrerer Genossenschaftszweige eine wirtschaftliche Vereinigung bilden, so ist das so entstandene Eigentum gemeinsames genossenschaftliches Eigentum. Wenn dagegen zwei oder mehrere Genossenschaften desselben oder mehrerer Genossenschaftszweige und ein oder mehrere Staatsunternehmen eine wirtschaftliche Vereinigung bilden, bzw. in Betrieb halten, so ist das so zustandegekommene Eigentum ein gemischtes gemeinsames gesellschaftliches Eigentum. In diesem letzteren Fall wäre eine derartige Regelung als Minimum erwünscht, wonach die Teilnehmer der Vereinigung selbst den genossenschaftlichen oder nichtgenossenschaftlichen Charakter einer solchen gemischten wirtschaftlichen Vereinigung bestimmen können. Übrigens wäre die Schaffung eines einheitlichen Vereinigungsrechtes erwünscht.

Auch als Ergebnis einer gesellschaftlichen Vereinigung der Genossenschaften kommt ein gewisses gemeinsames Vermögen zustande (Gegenseitiges Unterstützungsfonds), das unteilbar ist und das im Interesse der genossenschaftlichen Gemeinschaften des gegebenen Genossenschaftszweiges entsprechend zu verwenden ist. Ein solches genossenschaftliches Eigentum bildet aber ein „genossenschaftliches Gemeinschaftseigentum“.

3. Neben den allgemeinen, gemeinsamen Zügen besitzen die genossenschaftlichen Eigentumsformen auch abweichende besondere Züge. Ein Teil dieser abweichenden Besonderheiten erscheint in einer anderen Form bei den Produktionsgenossenschaften und wieder anders bei den übrigen Genossenschaften, — ein anderer Teil dieser Besonderheiten erscheint dagegen bei sozusagen allen Genossenschaftszweigen anders. So ist z. B. der Fachkreis des genossenschaftlichen Eigentums ein anderer bei den Produktionsgenossenschaften und wieder anders bei den übrigen Genossenschaften. Dagegen ist der Inhalt des Eigentumsrechts im allgemeinen bei jeder genossenschaftlichen Eigentumsform einheitlich, wobei aber in den inneren Eigentumsverhältnissen schon Abweichungen vorhanden sind, die im Grunde genommen von dem inneren organisatorischen Aufbau, von der inneren Verwaltung der Genossenschaft abhängen.

Hinsichtlich der Funktion des genossenschaftlichen Eigentums sind die wirtschaftliche Umgebung sowie die gegenseitigen Beziehungen zwischen dem genossenschaftlichen Eigentum und den übrigen Eigentumsformen von sehr grosser Bedeutung.

## РЕЗЮМЕ

Среди общих черт форм кооперативной собственности подчёркивается прежде всего принцип равноправности правовых норм общественной собственности. Она должна осуществляться в отношении друг к другу между кооперативной собственностью и государственной общественной собственностью, равно как и в отношении друг к другу форм кооперативной собственности.

Важным принципом является также создание согласия, соответствующее интересам социалистического хозяйства между собственностью и хозяйством. В кооперативе этот принцип означает непосредственную координацию, соответствующую интересам кооперативного хозяйства между собственностью и хозяйством. Кооперативная собственность становится полной лишь на уровне групповой собственности и находится в непосредственной координации с кооперативным хозяйством. Это осуществляется прежде всего в системе демократической кооперативной собственности, которая и у нас стала всеобщей во всех отраслях кооператива путём перехода на систему нового хозяйственного механизма.

Если кооператив создаётся на личной основе, или на личной и имущественной основе, то кооперативная собственность оказывается большей частью неразделимой как правило. Однако, если, он создаётся на имущественной, или первично на имущественной основе, то кооперативная собственность оказывается, как правило, делимой, но её конструкция может быть частично или целиком неразделима. В отношении общего принципа требуется, чтобы делимость кооперативной собственности не могла вести в конечном итоге к созданию и укреплению частного ведения хозяйства. Неразделимость кооперативной собственности не является по существу лишь формой конкретного появления всенародного характера общественной собственности в случае кооперативной групповой собственности.

Объективная сфера права собственности кооперативной собственности оказывается по внешнему виду ограниченной таким образом, что исключительные предметы права государственной собственности принципиально не могут быть предметами права кооперативной собственности. Среди исключительных предметов права государственной собственности не находятся теперь в системе венгерского права собственности такие основные средства и орудия, которые нужны для осуществления уставной цели существующих кооперативов как юридических лиц. Сфера предметов права кооперативной собственности ограничена внутренне в следствие связанности кооперативов как юридических лиц с целью. Правоспособность кооператива относительно предметов кооперативной собственности распространяется на все вещи, имущества, нужные для осуществления экономических и других целей кооператива. Предметом кооперативной собственности является общее предприятие и общее кооперативное предприятие как юридическое лицо.

Без учёта кооперативных отраслей всем кооперативным союзам и центрам надо единодушно дать право участвовать в кооперативном объединении как основатели и как присоединяющиеся.

2. В результате экономических объединений кооперативов общая кооперативная собственность создаётся в случае, когда объединение действует самостоятельным юридическим лицом.

Если экономическое объединение создаётся двумя или несколькими кооперативами, принадлежащими к одинаковой отрасли кооператива, или двумя или несколькими кооперативами, принадлежащими к двум или нескольким кооперативам, то так созданная собственность является общей кооперативной собственностью.

Однако, если, экономическое объединение создаётся или вводится в строй двумя или несколькими кооперативами, принадлежащими к одной или другой кооперативной отрасли и одним или несколькими государственными предприятиями, то так созданная собственность является смешанной общей общественной собственностью. В последнем случае такое урегулирование было бы желательным как минимум, чтобы объединяющиеся сами могли определить кооперативный или некооперативный характер такого смешанного объединения. Впрочем было бы желательным создание единого права объединения.

В результате общественного сплочения кооперативов создаётся некое общее имущество (Взаимный Фонд Поддержки), которое является неразделимо и которое должно быть употреблено соответствующим образом в интересах кооперативных коллективностей, принадлежащих к данной кооперативной отрасли. Такая кооперативная собственность является уже „коллективным имуществом кооператива”.

3. Кроме их общих черт формы кооперативной собственности имеют и различные особенности, часть которых появляется другим образом в кооперативах производственного типа и опять другим образом в иных кооперативах — их другая часть появляется другим образом в почти всех кооперативных отраслях. Так, например, сфера предметов кооперативной собственности появляется в кооперативах производственного типа и опять иначе в других кооперативах. Однако, содержание вообще едино в случае всех форм кооперативной собственности, но во внутренних собственнических отношениях имеются различия, зависящие в основном от внутренней организационной конструкции, от внутреннего управления.

С точки зрения деятельности кооперативной собственности очень важным является экономическая обстановка, а также взаимная связь между кооперативной собственностью и другими формами кооперативной собственности.