THE PARTICIPATION OF EMPLOYEES IN THE EXERCISE OF PROPRIETARY AND EMPLOYER'S RIGHTS DELEGATED TO THE EMPLOYER ENTERPRISE

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I.

Whenever the economic-social contents of social ownership and of proprietary rights to be exercised by socialist economic organisations are to be analysed, whenever the organisational-legal forms of these rights are to be framed, an approach to these questions from the angle of political, state-administrative, financial and civil law presents itself as a scientific task of great importance. Yet it is a question at least of the same importance how the collectives of employees can participate – directly, or through trade unions and other social organisations – in the exercise of proprietary rights delegated to employer enterprises; or, more exactly and in more detail: what rights of participation are due to them on the enterprise level, and on higher levels, in planning, directing and controlling the activities of enterprises. Another important question is in what ways, through what legal forms, the employees' collectives and their members can have a share in the national income, i.e. in enterprise profits.

To clarify all these questions, the discipline of labour law takes over the relay baton from the disciplines of political, administrative, financial and civil law at the door of the enterprise, so to speak; and it is principally concerned with studying how the internal economic-social substratum of a socialist employer enterprise, the corresponding enterprisal structure, the organisational-legal status of collectives and their members, are shaped in respect to the aforesaid questions.

The answers science gives to these questions necessarily follow the development of the mechanism of the economic-social system, of social ownership, the development of relations between the state and its enterprises, and the development of the enterprises proper. So it would seem reasonable to give – if only in brief – an outline of this development, which has taken place in the substratum and structure of state enterprises in connection with the economic reform, and in the views held about these questions.

II.

1. Prior to the introduction of the economic reform in Hungary, a virtually dominant view has emerged in Hungarian literature according to which the enterprises are not owners of the assets whose management had been entrusted to them, because the owner is solely and exclusively the state in every case.

This notion about the essence of state enterprises was in conformity with social reality during a certain period of our development. Yet development that has taken place since, and especially the introduction of the economic reform, called for some amplification of this conception in two respects. On the one hand, the state's proprietorship can no longer be isolated so sharply from society, from enterprises; it cannot be regarded as exclusive to such an absolute extent, because the rise and development of socialist democracy, and – recently – the economic reform have made it possible and also necessary, that the citizens, i.e. society, take a larger part in public and proprietary administration exercised by the state, as a result of which state property is becoming increasingly and actually property of the whole population. On the other hand, enterprisal independence is growing, and so is workshop democracy, as a result of which the employees' collectives participate more and more intensely – under legally regulated organisational conditions – in the planning, organisation, direction and control of state enterprise activities, and, consequently, also in the exercise of proprietary rights due to the enterprises. Hence "state" enterprises are turned gradually also into "social" enterprises.

So the image formed about the economic-social contents and structure of state enterprises must be completed; on the one hand, with the relationships existing between the state and society, on the other hand with the relationships that exist between the state and the social facet of a state-owned enterprise, or we may as well say, between its organisational form and economic-social contents. The authors of the textbook "Hungarian Civil Law" enriched this concept some time ago. It was extended by Miklós Világhy "upwards", toward society; Gyula Eörsi extended it "upwards", "sideways" and "downwards" alike.

In his treatise "The People's Economy, Political Science and Jurisprudence" Miklós Világhy says that "at the present stage of socialist development, i. e. in circumstances where production goes on as organised by the state, with means of production owned by the state, the proprietorship of the employed person is materialised through his status as a citizen. The employed person is owner because, and in so far as, his status as a citizen permits him to have his say in the exercise of public executive power."[1]

Gyula Eörsi made an approach to the social facet of state enterprises through appreciating state property, enterprisal assets, and especially the internal conditions emerging within the collective, and elaborated the pertinent view in this way.[2]

It was essentially to this point that views had developed in Hungary when in January 1968 the economic reform was introduced in this country too which has brought about changes in the relationship of the state and its enterprises. One substantial feature of these changes is that the independence of state enterprises has grown considerably in the field of management, and that

also workshop democracy has continued to develop as a result. In view of this fact the problem of state ownership, of state enterprises as juristic persons, and the problem of the relationship between state and its enterprises were subjected to analysis in socialist countries including Hungary, once more.

We cannot undertake here to give a detailed description of this highly important polemic which is still going on; Gyula Eörsi has given one in his critical analysis concluding that uniform state ownership continues as a fundamental phenomenon of continuity within changes, no matter what substantial modifications have been introduced.[3]

As will be seen from our further argumentation, we, too, accept Eörsi's view, although we approach the problem from a different angle. Namely what is of interest in connection with our theme is to clarify how people in general, as citizens of the state, on the all-social level, and employees in particular, as members of enterprisal collectives, can take part in the exercise of proprietary rights relating to the instruments of production, to enterprisal assets. While the holders of the views that emerged in the aforesaid polemic were principally interested in the situation which develops between the state and its enterprises in respect to proprietary rights, we are interested in the other, not less important facet of all this. We are going to investigate what relationship exists in respect to employers' and employees' rights and obligations between state ownership and the proprietary rights to be exercised by the enterprises on the one hand, and between enterprises as juristic persons and enterprisal collectives and their members on the other hand. And we must carry out this analysis all the more so since an adequate concept of state ownership and of the entire complex of state enterprises, and, moreover, a complete and true picture of labour contracts and labour relations, cannot be formed if these questions are not clarified.

2. In our judgment the introduction of the economic reform, the development of socialist democracy, and especially of workshop democracy within economic units, call for a further development of our views on state ownership and state enterprises, and for drawing the appropriate theoretical and practical conclusions. In an earlier study we have explained in detail that state-social ownership emerges as a joint ownership of a novel type; that it is not a configuration of joint ownership under capitalist or socialist civil law, simply elevated to the all-social level, but is an all-social joint ownership of novel type.[4] As concerns the "legal" form of proprietorship, this joint ownership is characterized by the community feature on the one hand, and by the feature of indivisibility on the other, which means that social property and its legal form: state-social proprietorship cannot be divided into "proprietary" shares among the part-owners, i. e. the citizens, and not even among the enterprises. A fundamental question presents itself here: in what ways, in what legal forms, can the citizen's status as a part-owner be maintained despite this fact, but with regard to this fact at the same time; how can the enterprise exercise proprietary rights, how can enterprisal collectives participate in the exercise of proprietary rights? A correct answer to these questions can only be given if we realise that social joint ownership is manifest not only in the form of ownership under socialist civil law, but that it manifeststs itself within the scope of numerous other legal forms, interweaving and embracing the economic, social and legal system of society as a whole. Namely what is basically characteristic of this joint ownership in view of its social purpose is the fact that for the citizens it ensures the

assertion of their status as part-owners, because it enables them, within legally regulated forms,

a) to join their working ability with the instruments of production in social ownership: this is the right to work;

b) to have a share of the national income: this is the right to socialist distribution;

c) to participate in the public and proprietary administration of the socialist state, in enterprisal management: this is the right to participate in management.

3. This considerably simplified scheme, however, is working within most intricate organisational-legal forms; essentially, it operates on a tripartite level interconnected by a number of links: on the all-social level, on the enterprisal level, and on the level of citizens, i. e. the employed population.

a) On the all-social level, the state exercises the proprietary rights of social joint ownership in the interest, and as the representative, of the whole society; first of all, through the agencies of state administration. But the exercise of these all-social proprietary rights by these agencies is not in disregard of the citizen. Citizens and their various social organisations are increasingly drawn into attending to proprietary administrative functions, not only on the basis of our representative system, but also within the scope of various forms of socialist democracy developing at a growing pace. To exercise his rights as a part-owner on the all-social level is ensured to the citizen and his social organisations by subjective rights defined in the Constitution and other provisions of law, and by other institutionalised possibilities of socialist democracy on the basis of which the citizen can exercise influence on the state's proprietary activities, i.e. on how the state should have disposal of the means of production on the highest level, how it should distribute the national income. From all this it follows that the transformation of proletarian dictatorship into an all-popular state, the full development of the public character of social joint ownership, and the full development of the partownership status on the all-social level, are mutually conditional on one another, and mutually consolidate one another.

b) What correlation exists between state-popular property, its administration, on the one hand, and the state enterprises on the other? How is the status of citizens as part-owners maintained within the framework of state enterprises?

The state – and this is very important – exercises its proprietary functions, its partial rights included in ownership, not solely through the organs of executive power and state administration. Namely the exercise of some of these must be ceded to the economic organisations. First of all, because, particularly since the introduction of the economic reform, the organs of executive power and administration would not be able to take all the dispositions necessary for the possession, use and circulation of commodities. To put in another way, they are not able to perform the direct tasks of production and distribution; they are only able to plan, organise, direct and control production and distribution on the all social level. The possibility to exercise partial proprietary rights had to be ceded in a defined sphere also because a special type of commodity production is going on, in the circumstances of the economic reform, by making use of the law of value;[5] state enterprises can be properly managed, and can take

part in the circulation of commodities only if rights of possession, use and disposal are granted to them – although not in the sense of capitalist civil law, but according to the rules of the socialist legal system – in respect to the enterprisal assets made available to them. But we consider it at least as important that the members of enterprisal collectives can exercise their rights as part-owners, especially their right to participate in management, only if the enterprises are given the legal possibility to exercise proprietary rights – i. e. the rights of possession, use and disposal – in respect to the assets made available to them; this is the organised basis on which the citizens, as members of enterprisal collectives, can maintain their status as part-owners directly in the field of production through taking part in the management of the enterprise. This was the case – within a narrower scope – also before the introduction of the economic reform. The substantial change is that as a result of the reform the independence of state enterprises has grown in their relations with organs of state administration; they have been authorised by the state to exercise the rights of possession, use and disposal independently in a substantially broader field. This developmental process has also affected intensely the gradual development and enrichment of the material contents and legal form of labour relations. Namely, the legal relation of employment assumes a socialistic character already from the right to socialist work and socialist remuneration; moreover, the socialistic nature of employment begins to take shape with the fact that the employee joins his working ability with means of production owned by the state. The possibility to take part in the management of enterprisal activities was given to employees as the members of the enterprise collective already after the victory of the socialist revolution. But the rate of further growth and development was determined by the extent to which the relative independence of state enterprises was increased; it was this measure of independence that determined the growth of workshop democracy, i.e. the right of the enterprise collective, of the employees as members of the collective, to participate in the regulation, planning, organisation, direction and control of enterprisal activities. Consequently, the broader the independence of an enterprise, the more powerfully can the status of partial ownership be asserted and make felt its favourable individual and social effects. Rights of a collective nature, due to collectives, may also be established; these offer the possibility to the members of collectives to take part in those administrative activities of state enterprises which the latter are entitled to on the basis of rights of possession, use and disposal delegated to them by the state.

c) If we finally examine what kind of relationship exists between the employees' personal, subjective rights under labour law and the partial proprietary rights, it is easy to see that the employees' novel, personal subjective rights, developing in the circumstances of socialism, are closely connected with their very status as part-owners, such as their right to work, to being employed, to adequate organisational and technological conditions, to guidance and information as may be necessary, etc.

What is therefore characteristic of the employee's status within his employer enterprise in socialism is the fact that his relations with the employer are essentially made up of three interconnected relationships: participation in the work of society, a share of the national income, and participation in the plan-

ning, organisation, direction and control of enterprisal activities, precisely as the manifestation of his status as part-owner.

This has brought us to the realisation of the economic-social substance of socialist labour relations. Hence the legal regulation of labour contracts and employment as legal forms is determined by this economic-social content. This is sometimes concealed on the surface by the circumstance that labour law defines employment as a relationship existing between employer enterprise and employee. Yet the contents and nature of regulation are fundamentally determined by the aforesaid three relationships. Some socialist codes have already made explicit reference to this economic-social content behind legal regulations.[6]

As a consequence of all this, the right to work is present in the circumstances of socialism as one of the most important personal rights; its enforcement, protection and promotion are served by several means of the socialist economic-social and legal system. The part-owner's right to have a share of the national income is manifest under labour law as the right to wages, premiums, profit-shares, etc. The part-owner's right to participate in enterprisal management is legally manifest — within the framework of a state enterprise at least — in that the members of the enterprise collective can take part, through various organisational-legal forms of workshop democracy, in ways defined by provisions of law, in the planning, organisation, direction and control of the activities of the economic organisation. Hence their status as part-owners is manifest also in that they are entitled to take part — within limits set by provisions of law — in the exercise of proprietary rights delegated to the employer enterprise.

4. As concerns the structure of state enterprises, we only wish to discuss the principal questions, such as the state enterprise as an economic-social, organisational and legal unit; the special legal status of the manager; enterprisal independence; the very important correlations between workshop democracy and the internal conditions of trade unions; and developmental trends connected with all this.

Socialist economic units are basically characterised by features which are not the formal opposites of those typical of capitalist economic organisations; they are altogether new features.

It was mainly under the influence of the XXth Congress of the Soviet Communist Party that socialist democracy in general, and workshop democracy in particular, began to grow and flourish. This was manifest in the broadening of trade union authority, in the formation of internal organisational patterns (works councils, production conferences, labour-dispute committees within works, workshop courts, etc.) on the basis of which the status of employees as part-owners was manifest not only in their right to work, and the socialist manner of sharing the national income, but also in that the employees could take part in enterprisal management. Hence a socialist employer enterprise is a new phenomenon characteristic of socialism; it is novel not only as concerns its economic-social content, but also in respect to its legal form.

In this connection we might emphasize first of all that within the framework of a socialist enterprise we do not find any antagonistic difference between the owner of the means of production and the employees. As concerns the basic relationship to the means of production, each member of the collective is in the

same position as follows from his status as part-owner. The only difference between them appears in the particular job they hold in the hierarchic order of the enterprise in accordance with rules of organisation and operation. This is so because – as we have shown – the socialist state-owned enterprise stands on the basis of socialistic joint ownership; both from the sociological and legal point of view it forms a unit, a unit consisting of the assets made available to it, of pertinent rights and obligations, and of the collective of the employees, the collective rights due to the collective of the employees. Thus – as opposed to the structure of capitalist enterprises – the employees are no longer outside the framework of this structure, they are kept within it. The same applies to trade unions as the bodies protecting the employees' interests, and to various organs operating under their guidance, such as workshop courts, production conferences, etc.

In the second place we may point out that the legally relevant activities of the aforesaid bodies do not result in any restriction from outside of proprietary and employers' rights, they rather realise the participation in their exercise. This means, in more detail, that the entire collective of employees, co-operating with the manager, take part in these activities, exercising their pertinent rights in part directly, and in part indirectly, through the trade union and other internal organs. Within the sphere of workshop democracy, the proprietary rights ceded to the enterprise are exercised, and the tasks of work are attended to, by the same persons, i. e. by the members of the collective, each of them having his particular function in these respects as assigned to him by the rules of organisation and operation.

To conclude our considerations in this field, we mention that on the basis of the ideas we have set forth the position of the citizen as it emerges within the framework of the economic unit, is not solely a relationship of work and distribution (remuneration), neither from the sociological, nor from the legal point of view; it is an organisational relationship of participation in the planning, organisation, direction and control of enterprisal activities, and within this scope, a relationship of participation in the exercise of proprietary rights delegated to the enterprise, these relationships being based on the status as part-owner.

5. If, in connection with the assets of state enterprises, we start from the concept of social joint ownership, we may reach the conclusion that the state – its executive and administrative organs – representing the organisation of society as a whole, and having to perform tasks of disposal over means of production, and of directing management, must meet an obligation towards society; and that this obligation consists in coupling the working ability of society with the means of production in order to satisfy society's material and cultural needs; it further follows from this that the organs of the state are bound by economic-social laws, and are also under a politico-legal obligation, to establish state enterprises for attending to social tasks. This entails the further obligation for the state to make available to enterprises the fixed and current assets required for the successful performance of their proper activities, to ensure them the conditions of possession, use and disposal. Rights due to state enterprises in this respect are the most important entitlements in the enterprise-state relationship; and they are among the most important elements of the economic-social contents of the state-enterprise construction at the same time.

If, therefore, we consider a state enterprise not only as a legal form, but also as social reality, no state enterprise is conceivable without the personal factors – i.e. the collective of its employees – nor without being supplied with fixed and current assets.

Hence a state enterprise – as far as its economic-social contents are concerned – is the unit of the employees' collective and the assets put at its disposal.

Yet we must not restrict the sphere of enterprisal activity and independence to the possession, use and disposal of enterprisal assets, for this would be nothing else but another narrowed-down view. The activities and independence of an enterprise do not consist merely in an independent management of the assets put at its disposal. A very wide sphere of activities is displayed within the scope of independence, connected, for instance, with management, production, regulation and organisation of working conditions, with the remuneration of employees, including personnel policy, professional training, and extension training. Promotion of welfare, of cultural, sporting, etc. activities, is also important for the employees. Enterprise collectives, usually through their trade unions, today take part in the organisation and administration of all these activities.

6. The manager as the top executive organ of the enterprise, with his special powers, obligations and responsibilities of one-man leadership, holds a special position at the head of the enterprise, and within its structure and collective at the same time.

According to new regulations framed upon the introduction of the economic reform, state enterprises continue to be headed by a manager (Civil Code, Section 34), who takes decisions independently and under personal responsibility, within the compass of provisions of law, in matters concerning the enterprise.

The new provisions of law place considerable emphasis on the importance of the collective, and on trade union authority. It has been provided that in attending to his tasks the manager must rely on the community of employees. The community of the employees is represented within the enterprise by the local organ of the trade union. The manager is under the obligation to respect the trade union's authority of interest protection, and to co-operate with the local trade union organ. The rights due to trade union organs in the management of enterprises are defined in the Code of Labour and in other provisions of law.

Pursuant to pertinent provisions of law, the manager is responsible for holding production conferences.

Highly important in respect to workshop democracy is the provision according to which the opinion of the trade union must be obtained for judging the work of the manager and his deputies (deputy).

It is also provided by law that the employer's rights in respect to the manager's employment are exercised by the foundation organ.[7]

The first conspicuous feature is that the directive organ not only appoints the manager, but also exercises all other "employer's" rights, since there is no such organ within the enterprisal structure as would be entitled to exercise employers' rights towards the manager. So it is the state, as the proprietary or-

ganisation of the highest level, that exercises the employer's rights in respect to managers.

We reach the same conclusion if we examine the manager's status from the angle of the employer's obligations. Unlike in respect to the other employees, it is again the directive organ that must meet the "employer's" obligations toward the manager, i.e. must provide the conditions required for performing the managerial tasks.

And if we analyse the manager's rights and obligations as an employed person, the duality, the Janus-face, of the manager's legal status becomes wholly and completely obvious.

Formulated in general terms, the manager's basic duty is to ensure by his directive, organising and controlling activity, the proper, planned, and economical operation of the economic unit he is heading. And if we scrutinize this duty in more detail, it appears that this duty in the general sense, and the specific tasks arising from it, constitute the object and the content of a legal relation in a dual sense:

a) On the one hand, the manager must perform these duties on the basis of his legal relation with the state, as the "employee's" obligations toward the state. Yet the same tasks, in the same connection, appear as the "employee's" rights as well in the sphere of enterprisal and managerial independence, because the manager is vested also in his relation to the state with powers on the basis of which he can perform his directive, organising and controlling activities towards the collective and its members independently, but within the compass of the law.

b) The manager is in a legal relation with the state as the directive organ, but is the leader, the top executive organ of the enterprise at the same time. From this it follows, too, that he is entitled to exercise rights and to meet obligations that are due to, and fall upon, the enterprise as an employer; it is the manager who is entitled and obliged to do so in the name, and on behalf of the enterprise, in relation to the collective and its members, at least on the top level of direction, organisation and control.

Hence the legal status of the manager cannot be interpreted as being restricted to a legal relation existing solely with the directive organ, or with the collective of the enterprise and its members, the peculiar situation, which is typical of state enterprises as a rule, is reflected in his legal status in both relations. The socialist enterprise is independent in its relation to the state within the sphere defined by provisions of law, but must exercise its rights and meet its obligations in such a way that its activities be successful, conform to the provisions of law, and, in the last analysis, to the interests of society. From all this we may draw the conclusion that the actions and attitudes which – connected and disconnected – play an itermediate part between central direction, the state enterprise as a juristic person, and the collective and its members, meet organisationally and legally in the rights and obligations which belong to the independent activity sphere of the state eeterprise; and that they meet on the personal plane in the manager's rights and obligations.

7. A capitalist enterprise as an economic-social phenomenon is inevitably divided into two spheres without being a legal unit. One sphere comprises the owner with his proprietary and employer's rights; the other sphere the emplo-

yees with their rights and obligations as employees. Within a socialist economic unit the part-owner and employee status is not separated, at least not in the sense that only a certain group of persons enjoys proprietary and employer's rights, while another group of persons have only rights and obligations as employees. Namely a socialist state enterprise forms a unit – from the economic-social and legal point of view alike – which comprises also the employees, the members of the collective; and in respect to the means of production, to the tasks of the enterprise, and to the goods produced, the employees are basically in an economic-social and political situation of the same content and nature. It follows from this that very substantial rights are due to the collective – through their trade union – in respect to the planning, organisation, direction and control of enterprisal activities; within the framework of state enterprises, no separate owner exists as the subject of proprietary and emloyer's rights and obligations. In the field of enterprisal management the state enterprise as a juristic person is the subject of all proprietary and employer's rights and obligations delegated by the state for exercising; hence these rights and obligations must be distributed in some way among the manager, leading and other employees, the trade union committee, and the internal bodies operating under its guidance.

It therefore follows from the nature and structure of a socialist state enterprise that the whole internal organisational pattern of the economic unit, the authority of the various internal bodies, the rules of the operation and co-operation of all these, must be defined by provisions of law and by statutes of organisation and operation.

Other rules define the rights due to the production conferences, the works committee dealing with labour disputes, the workshop court, etc. in connection with the organisation of the internal activities of the state enterprise.

The authority of the trade union is closely connected with these questions; this will be discussed in more detail later. Provisions of law and trade union statutes define the rights due to trade unions in the direction, organisation and supervision of the internal activities of state enterprise; on the other hand, they define the trade union rights – based on the internal conditions of the trade union – which are due to the employees to enable them to take part – through the trade union – in the direction, organisation and control of the activities of the state enterprise, including the organisation in a broad sense of individual employment relations, even the regulation of such relations within limits defined by provisions of law.

Thus the legal status of each member of the working collective also includes an organisational relation as a matter of necessity; this defines the employee's legal status within the enterprise's internal organisational and functional order. his rights and obligations in this respect. It defines the rights due to the employees individually – and on the basis of their organisational relations with the aforesaid bodies, and through them – for exerting influence on the operations of the enterprise. Hence the member of the collective not only exercises his right to work, not only gets his share from the national income, he also is in an organisational relation in accordance with the organisational and functional order of the enterprise, has a share in enterprisal independence both materially and legally.[8]

8. Let us consider in brief also the question of the development of the social facet. When we analyse the structure of a state enterprise, we must attach much more importance to the social aspect, i.e. how the members of the collective take part – directly, and indirectly through the trade union and various internal bodies – in the management of enterprisal operations.

Legal attitude and practice still are inclined to regard the participative and organisational rights due to the members of the collective, and especially the trade union, as something external, something which interferes quasi from outside with the manager's authority activity, with the exercise of his rights and discharge of his obligations. Yet in reality the tendency of development appears to be quite different, and in fact, it must be different. The organisational framework of the economic unit is filled up by the collective of the employees. The employees' collective in the state enterprise represents that social, human content of which the structure of the enterprise is only the form, the legal framework. In our opinion the internal bodies under the direction of the trade union, including the trade union committee, belong to the structure quite as much as the manager, or the organisational and functional order of the enterprise. Moreover, in this respect the external and internal organisational relations of the trade unions in part also belong to the structure of the state enterprise, in so far as it is these relations that determine how the employees can influence the activities of the trade unions – of the internal bodies directed by them – and, through this, the activities of the enterprise. Various social organisations, together with the organs of the state belong to the structure of our social system; similarly, the social organisation, i.e. the party organisation, the Communist Youth Organisation, and the trade union, are, in addition to the manager, also parts of the structure of the state enterprise. This is very important, because it is through these links that the social element, socialisation, penetrates into the organisation and function of the economic unit. The state enterprise is gradually becoming a state-social organisation in this way.

We believe therefore that, standing on the ground of reality of our present, but taking into account the trends of development as well, we may essentially draw the conclusion that state-public ownership is increasingly transforming into all-social joint ownership, and that the social facet of the state enterprise is gradually getting stronger. Thus a state enterprise is operating on the basis of a legally organised structure created by the state, supplied with separated assets, and within the scope of independence granted to it, in order to accomplish tasks in the interest of society. It is headed by the manager as the top executive organ, having the rights and obligations of one-man leadership, and being responsible to the state and the enterprisal collective.

The employees are not simply the subjects of labour relations; on the basis of their part-owner status they become members of the enterprise collective; on the basis of organisational relations taking shape in this way, and within the system of workshop democracy, they take part in the management of enterprisal activities, in the discharge of the enterprise's obligations, according to their particular jobs and authority defined by the organisational and functional order of the enterprise, and according to their trade union relations.

The structure of the enterprise includes the manager, the trade union, the internal bodies functioning under the guidance of the trade union, the produc-

tion conference, the labour dispute committee, the workshop court; their positions within the structure, their interrelationships, authority, are determined by provisions of law, and – in the spehere mentioned – by trade union statues. The state and social character get interwoven within the framework of the economic organisation in this way.

Thus the institutions of workshop democracy guarantee that the employees, as members of the enterprise collective, can take part – usually through the trade union – in the exercise of proprietary and employer's rights delegated to the sphere of authority of the enterprise.

III.

1. It follows from the ideas we have exposed so far that trade union rights and internal social organs functioning within the framework of the enterprise are highly important in respect to social ownership and also in respect to proprietary rights to be exercised by the enterprise.

Namely the Hungarian People's Republic not only guarantees the freedom of trade union organisation, but also grants the trade unions a wide scope of authority, in accordance with the Constitution. These rights are called trade union rights. And provisions of law obligate state organs and enterprises to display a behaviour that respects trade union rights, i.e. to do everything in their respective spheres to promote the activities of trade unions, to promote the enforcement of trade union rights.

Trade union rights are exercised on various levels, and in various legal forms.

Trade union rights are exercised on the national level by the Central Council of Hungarian Trade Unions (CCHTU hereinafter),

on the industrial branch level by the various branch trade unions,

on the enterprisal level by the trade union local organ, by the trade union council, by the trade union committee (workshop and department committee, trade union group, trade union steward).

The level on which a particular trade union organ must be active to exercise certain trade union rights is determined by the statutes of the CCHTU and other trade unions within the limits defined by the Code of Labour and the Enacting Decree of the Code. Within the compass of one enterprise, these questions are often regulated by the collective agreement.

Let us have a closer look at the most important trade union rights:

a) Trade unions are entitled to engage in regular activities on the national, industrial-branch and enterprisal level within the sphere defined by the Constitution, the Code of Labour, and the trade union statutes. The Code of Labour provides that trade unions – as the organisations for representing employees and protecting their interests – shall have the right to engage in regular activities for improving the financial, social and cultural standards of employees, for protecting and enforcing their rights and interests relating to their living and working conditions, to draw employees into these activities, and to keep them informed of these questions.[9] The importance of this right is that no permit is required from state organs or enterprises for displaying these activities, that nobody is supposed to hinder these activities. Moreover, the Code of Labour

imposes the obligation of active co-operation on state organs and enterprises providing that state organs and enterprises are under the obligation to collaborate with trade unions and to promote their activities.[10]

b) Trade unions have the right to make suggestions on any level for regulations, decisions and measures, to make comments of protesting, amending or supplementing character on existing rules, decisions, measures, etc., in any question that affects the living or working conditions of employees. In this wide sphere, the suggestions or comments of the trade union have no legally binding force on state organs or enterprises. Yet to leave trade union suggestions and comments without any legal effect would not be good practice either. Thus it is a very important new provision of the Code of Labour that the suggestions and comments presented by trade unions to state organs and enterprises have the legal effect of obligating these organs and enterprises to state their position and its reasons.[11] This means in practice that even if state organs and enterprises are not obliged to comply with trade union comments and suggestions, they are not supposed to put them simply aside, may not leave them unanswered, but must study them; and if they disagree, or are not able to carry them through, they are obliged to state their views and reasons.

Thus the enterprise, or the manager, is under the obligation to give reasons in case of a rejection of suggestions or comments, i. e. is under the obligation to consider whether his standpoint would hold. In the second place, rejection amounts to a deliberate shouldering of political responsibility, of criticism and disapproving qualification, and all this moves the manager to exercise consideration.

c) Hungarian labour law guarantees trade unions a wide scope of action — equivalent to that of the organs of state administration in many a respect — in the regulation of the living and working conditions of employees, in order that the trade unions should play their part without any restriction, should actually be the organisations that protect and represent the interests of the employed population. As concerns the regulation of the living and working conditions of employees, we must distinguish various levels and types of the right to participate; these are the rights of making suggestions, comments, of consent, of joint regulation and of independent regulation.

aa) It follows from the authority of trade unions presented in paragraph *c)* that they have the right to make suggestions for regulation in any question. On the side of the state organ or enterprise the counterpart of the right to make suggestions is the obligation to consider the suggestion and to make known the position taken, and its reasons.

bb) In connection with the legislative function of the Council of Ministers, Hungarian labour law grants the right of opinion to the CCHTU. The Code of Labour provides that the Council of Ministers shall regulate the questions connected with the living and working conditions of employees by considering the opinion of the CCHTU. It follows from the nature of the right to opinion that the Council of Ministers is only obliged to request the opinion of the CCHTU; there is no legal obstacle to reaching a decision that differs from the opinion of the CCHTU, because the legislative acts of the Council of Ministers, performed on the highest level of state administration, cannot be made conditional on the consent of a social organisation. Yet in practice, agreement is reached in most cases, even if after a debate; moreover, important decisions affecting the

living and working conditions of employees are issued by the Council of Ministers and the CCHTU together, in a joint decision,[12] especially if the enforcement of such a decision requires the co-operation of state and trade union organs.

cc) It is a general rule allowing of no exception that questions connected with the living and working conditions of employees can be regulated by the minister only in agreement with the trade union concerned. The consent of the trade union organ of the enterprise is required for the validity of any regulation of normative character on the enterprisal level.

As concerns the legal form, the regulation is made and issued in such cases by the minister or the manager alone; but if the regulation is issued without the preliminary consent of the trade union organ concerned, or departs from it, the regulation is null and void.

dd) We must make a distinction between the right to consent and the right to joint regulation where the state organ or enterprise may issue a regulation only acting in agreement with the trade union. This system is practiced at present in connection with the collective agreement which is concluded on the part of the enterprise by the manager, and on the part of the employees by the trade union.

d) As a consequence of growing enterprisal independence, of enterprisal interestedness in profits, the interestedness of the enterprise's collective is growing, too. This is felt in several respects. Novel developmental trends emerge, hitherto latent problems rise to the surface and call for solution.

Perhaps the most important of these is a developmental process of social and psychological nature, which is manifest in the fact that today the employees show greater interest in the succesfulness of enterprisal operations. It follows from this that they wish to avail themselves more powerfully of the opportunities offered by workshop democracy which enables them to take part – through the trade union, and within the scope defined by provisions of law – in the planning, organisation, direction and control of enterprise activities, in the regulation of their working conditions, and in the decision of general questions affecting the collective. To promote all this, trade unions are increasingly expected to attend to their tasks of interest representation and interest protection in the socialist sense. These legal possibilities have been created practically by the new Code of Labour. Also in these respects the problem presents itself more on the economic-social side; how it is possible to create and increase this interestedness and interest, to coordinate individual and enterprise interests optimally, in such a way that the activity of the employees should actually improve enterprise operations, and, proportionally, the financial, welfare and cultural standards of the employees. The Code reacted to all this by expanding those legal relations of collective nature which guarantee for the collective the participation in the regulation, management and control of enterprise activities, without, of course, impairing the theory and practice of one-man management.

Compared to all this, it is a secondary, but nevertheless important, problem that since the introduction of the economic reform clashes of interest are more likely to arise between enterprise, enterprisal management and the collective, or its groups or members.

Also in this respect the new Code of Labour has started or furthered social processes which require novel legal solutions. Consequently it is a very important problem how to regulate within an enterprise the relationship and the

spheres of authority between management and the employees' collective, or the trade union representing it. One important requirement and objective of the economic reform can be formulated like this: to develop simultaneously and in their interaction one-man managerial authority on the one side, and workshop democracy on the other, i.e. to expand the participation of the working collective in the improvement and control of enterprise activities, and accordingly to extend the authority of the trade union organ as the representative of the collective. In theory, and in an objective manner, there is always a solution which is based on common interests; or which, if there is a clash of interests, at least optimally reconciles the interests of the enterprise, of the collective and of the individual employees. Yet in concrete cases it is not always certain that a view or endeavour agreeing with the common interests, or with the harmony of interests, will be expressed in the thinking, will and attitude of the carriers and representatives of different interests; it may even happen that the interests of employer and employee cannot be reconciled at all, as for example in cases where employment is terminated unilaterally. It is therefore of special importance that provisions of law should demarcate and regulate the authority of the manager, of the trade union, of the collective and of the individual employees in a clear-cut manner, they should also regulate the settlement of clashing interests, and the legal forms of co-operation for bringing about a harmony of interests.

What is of primary importance in this respect is regulation on the enterprisal level, i.e. the collective agreement, and the labour safety regulations of the enterprise. Also the provisions in the working order of the enterprise which affect the working conditions of the employees may be ranged here. As we have shown, the system employed in this sphere creates a relationship of co-ordination between the manager acting on behalf of the enterprise, and the trade union acting on behalf of the employees. This is manifest in that the enterprise can regulate questions only in agreement with the trade union if these relate to working conditions and are subject to regulation by the collective agreement, or the labour safety regulations, or by the organisational and functional statutes (working order). Neither party can force its will on the other in this respect. All this provides the possibility for the trade union to protect the interests of the collective efficiently because with the help of the aforesaid forms of regulation it can frame norms that serve the interests of the collective, and can prevent the introduction of norms that would violate the interests of the collective.

It is not possible, however, to regulate every question in advance, and with general validity, by abstract norms, i. e. by means of objective law. There may arise problems which must be settled or decided upon in respect to the whole collective or its part, or in respect to the individual employee, with general or specific validity at a time when this becomes necessary; for instance, whether reorganisation is necessary, and, if so, who the employees should be to whom the enterprise gives notice; or what type of schedule should be introduced, whether it should be part-time or full-time, uniform or non-uniform system, or which employees should work on what schedule if the later is not uniform for the whole enterprise.

In accordance with the dissimilar character of these problems, the Code of Labour regulates the manager's authority, the powers of the trade union organ,

their interrelationships, and the forms of co-operation, in various ways. The basic principle observed by the Code of Labour is that in individual cases, or in problems that affect only a minor group of the employees, one-man managerial authority should be exercised; accordingly, the Code provides that in such cases the manager is authorised to reach a decision without the preliminary agreement of the trade union. But the more a particular problem is likely to affect a major group of employees, i.e. the more a problem is of general nature, the stronger will be the trade union's right to participate. The Code of Labour distinguishes four groups of cases on this basis:

aa) The consent of the local trade union organ is required for the settlement of questions of general nature which affect the enterprise as a whole, or its major units, relate to employment, but are not regulated in the collective contract.[13] For example, the question whether a major reduction of the staff is necessary can be decided by the manager only in agreement with the trade union.

bb) When carrying into effect rules relating to employment, and of decisions in agreement with the trade union pursuant to pragraph *aa)*, – provided that these affect major groups of employees – the opinion of the local trade union organ must be asked for.[14] This means that rules and general principles, framed in the collective contract, as well as decisions reached in agreement with the trade union according to paragraph *aa)*, are carried into effect by the manager, and there is no legal obligation on his part to secure the trade union's co-operation for these measures. If, however, the implementation affects major groups of employees, he is under the obligation to consider the trade union's opinion before taking these steps.

cc) If the implementation of rules relating to employment, or of decisions reached in agreement with the trade union according to paragraph *aa)*, only affect individual employees or minor groups of employees, the trade union's consent is not required, and, moreover the manager is not even legally obliged to ask the trade union's opinion. For instance, trade union agreement is not necessary for deciding on a minor reduction of staff; nor is the trade union's opinion to be asked for in the matter of whom the enterprise should give notice in such a case.

dd) The local organ of the trade union takes independent decisions on the manner of spending social and cultural funds, but is under the obligation to consider the enterprise's opinion before reaching such decisions.[15]

A number of problems can arise in practice in connection with the grouping we have described. In concrete cases, for instance, it might become doubtful whether the problem to be settled affects the enterprise as a whole or its major units. It may become problematic in concrete cases whether the implementation of decisions reached in agreement with the trade union affects a major group of employees. In general terms, one only can start from the principle that the question of delimitation must be resolved with due consideration of the given case.

e) We are confronted with one of the strongest types of trade union rights when the trade union labour inspector can reach a decision independently which is binding on the enterprise, the manager, with the same effect as a decision of the supervisory organ. Obviously, the possibility of such a measure is kept within narrow limits, in the field of labour safety. Under the law, trade

unions have the right to "take measures" directly whenever the carrying into effect of labour safety regulations is neglected, and these decisions are legally binding on the enterprise, the manager.

f) One of the trade unions' very important tasks of interest protection is to promote the observance by various state organs and enterprises of the rules relating to the living and working conditions of employees. As appears also from what we have said, the independence of the enterprises has grown since the introduction of the economic reform, and one-man managerial authority has increased accordingly. In view of this fact, the Code of Labour has extended the possibilities for trade unions to attend to their tasks of interest protection. For this purpose the Code has vested the trade unions with important rights, namely the right of inspection, the right of summons, and the right to initiate proceedings.

aa) The unimpaired exercise of the trade unions' right of inspection is served by the rule according to which the trade union has the right to supervise the observance of the regulations relating to the living and working conditions of employees. Within this scope they are authorised to request information from the organs concerned on the implementation of regulations relating to employment, and are authorised to hold investigations at enterprises. Enterprises are under the obligation to supply information necessary for such investigation, and to make available the necessary data.[16]

bb) Inspection in itself contributes greatly to the observance of provisions of law. Yet it would not be sufficient if the trade union's authority only comprised the right of inspection. In view of this, the law provides that the trade unions can call the attention of the organs responsible for implementation to the deficiencies and neglects found during inspection; and if these organs fail to take the necessary measures in due time, the trade union may initiate proceedings as required by the case. The organ conducting such proceedings is under the obligation to inform the trade union of the outcome.[17]

On the basis of this provision, for example, the trade union can – in the employee's interest, in his name and on his behalf, with or even without the employee's authorisation – file a complaint with the committee of labour disputes. In serious cases the trade union can suggest to take disciplinary action against the person who had committed the fault or neglect delinquently. If the fault or neglect constitutes an offence or a criminal act, the trade union may initiate criminal procedure. In cases defined by law the trade union can initiate proceedings before the workshop court.

g) The right to object is a novel and powerful legal means granted to trade unions. The law provides that the local trade union organ shall have the right to object to any measure of the enterprise if it violates the rules relating to employment, or is not in conformity with treatment as required by socialist morals.[18]

Objection is in several respects a more powerful means than the complaints employees can file with the labour dispute committee. Here we only point out that the employee's complaint has no delaying force on the implementation of the measure regarded as injurious, unless otherwise provided by law.[19] By contrast, once the trade union has exercised its right to object, the measure may not be carried into effect until the decision of the proper organ.[20]

Provisions of law also define the sphere within which the right to object is due to the local trade union organ. The Code of Labour distinguishes two groups of cases:

The first group includes the cases in which the measure of the employer enterprise has violated rules relating to employment. Hence any measure can be objected to if it violates personal, subjective rights of one or more employees, or violates rights of collective character. For example, the trade union can raise objection if the enterprise dismounts a safety device of general use which serves the protection not of one specified employee, but of – say – an entire department of the works; or it may raise objection if the enterprise had taken steps without the consent of the trade union, although it ought to have obtained it, because the measure in question affects the whole of the enterprise, or its major unit, or relates to employment in general, but had not been regulated in the collective contract. Objection may be raised also in cases when some measure is contrary to the "general provisions" of the Code of Labour. for example, if the measure of the enterprise fails to realise the harmony of social and individual interests although the objective conditions to do so are given; or if the measure does not meet the social purpose of the right on which it is based, or even constitutes abuse of rights.

The second group of measures that can be contested by objection comprises cases in which the measure is contrary to treatment as required by socialist morals. This rule is of extreme importance. Namely it means – in both theory and practice – that the trade union can raise objection not only if the measure in question violates a provision of law, i. e. rights of individual or collective character, but can do so also beyond this sphere. Yet social morals involve a number of requirements, and that all these cannot be enumerated in provisions of law is obvious. What serves therefore as principal guidance in this respect is the principles of labour law defined in the Constitution. We emphasize this particularly because of the fact that these principles are characterised in a cerrain sphere, in certain aspects, by the very circumstance that their requirements cannot be formulated in every case in the form of subjective rights of individual or collective character. Thus the right to object assumes special significance by the possibility that the trade union can raise objection also in cases where no explicit violation of rights has occurred, but the manner of treatment is contrary to the basic principles of labour law which also define the most important precepts of socialist morals in the field of labour law.

Yet the right to object cannot be restricted to cases where basic principles are violated; objection may be raised in any case where the connexion with the law does not exist even to such an extent, but the contradiction between socialist morals and the measure in question is of such extent that it constitutes a violation of the rules of treatment according to socialist morals; a manner of treatment, for example, that insults the human dignity, self-esteem or the morals of employees.

The term "measure" must be interpreted in the widest sense; thus the term applies to any decision, order, instruction which in any way affects the position of the collective, or the individual employee within the enterprise.

Objections are submitted by the local trade union organ to the enterprise. If the enterprise does not agree with the objection, it is obliged to submit it –

with its opinion attached – for decision within three days, and to forward a copy of its opinion to the local trade union organ at the same time.[21]

As concerns the further procedure, the law makes distinctions depending on how broad a circle of employees is affected by the measure objected to:

aa) If the measure objected to affects the whole collective of the enterprise, or a group of employees, the objection must be judged by the supervisory organ of the enterprise and by the superior organ of the trade union.[22] If the supervisory organ of the enterprise and the trade union organ of higher level decide in agreement that the objection is not founded, they reject it, and the measure in question can be carried out. If, however, they decide that the objection is well-founded, this decision is binding on the enterprise, which means that the measure may not be carried into effect; and if implementation has taken place already, the enterprise is under the obligation to restore the original state.

bb) If the measure objected to relates to an individual case, it is decided by the labour dispute committee in a procedure prescribed for such disputes, with the difference, however, that the case comes under the jurisdiction of the regional labour dispute committee right away, and is not dealt with by the committee on the enterprise level.[23]

As we have seen, the institution of objection offers the possibility to prevent infringement of lawful rights of both individual and collective nature, even to prevent interference with individual and collective interests through a manner of treatment that is contrary to socialist morals; and it provides the possibility to settle disputes of this nature.

h) The possibilities available to employees for enforcing their rights, the organs settling disputes, and the manner of settling them, are essential questions in any branch of law, but especially in the field of labour law. One important manifestation of workshop democracy is the circumstance that the trade unions participate in the institution and work of committees that settle labour disputes, and can exert their influence on decisions in labour disputes in this way.

i) To make the protection of employees' interests efficient, the Code of Labour has vested the trade unions with very wide powers of representation. The law provides that trade unions can represent employees in court before other authorities and bodies, in questions that bear on the living and working conditions of employed persons. In questions affecting service relations, the trade union can act in the interest of the employee – in his name and on his behalf – even without the employee's special authorisation to do so.[24]

Thus the trade union is the organ for protecting the employees' interests *ex lege*. In this connection we may draw a distinction between general and individual interest protection.

When the trade union takes part in the regulation and decision of questions affecting the employees' living conditions, when it promotes the observance of the law, etc. it acts on its authority of general interest protection and representation, representing the collective of the enterprise.

We speak of individual interest protection when the trade union act on behalf of the individual employee. The power of representation is due to the trade union *ex lege* also in this respect, which means that the trade union can act without the express authorization or request of the employee, can turn to

the labour dispute committee, can resort to a legal remedy against a disciplinary decision, against a decision for damages, a decision of the labour dispute committee, etc., i. e. can avail itself of all means of enforcement and legal remedies which are due to the employee.

j) Trade union officials may get into contradiction with the manager of the enterprise while attending to their tasks. Adequate legal protection must therefore be afforded them, lest they should be exposed to retaliation. Care had to be taken, too, to prevent abrupt changes, as a result of which certain trade union functions would be attended to by nobody. The Code of Labour contains several provisions in this respect:[25]

aa) The consent of the immediate superior trade union organ is required in case of an elected trade union official:

for assigning him to another post;

for the discontinuance of his employment by the the employer enterprise through giving notice, or through disciplinary dismissal;

for fixing the time of taking up his new post in case of transfer.

bb) The superior trade union organ must be notified in advance if an elected trade union official, employed at a changing place of work, is assigned to another post.

In cases enumerated in paragraph *aa)*, the measure taken by the enterprise is null and void if the consent of the superior trade union organ has not been obtained.

In cases coming under paragraph *bb)*, the employer enterprise is not under the obligation of notification, hence the failure to give notification does not result in the invalidity of the measure.

2. The full development of workshop democracy is served by the highly important institution whereby the state makes possible the setting up of internal bodies in enterprises to attend to specific tasks with the co-operation of the employees, and usually under the guidance of the trade union; the participation of the employees in the planning, organisation, direction and control of enterprise work is promoted in this way. These organs and institutions of workshop democracy are the following: production conferences, organisation of social labour safety inspection, committee of labour disputes, workshop court, social security council, and committee of disability cases.[26]

a) Production conferences are an important institution of workshop democracy. Their purpose is to make possible the direct participation of the members of the collective in the planning, organisation, direction and control of production.

In the field of production, communications and trade, in the field of economic activities in short, production conferences must be held quarterly at least, and by small production units within the framework of the enterprise. A production conference must be convened whenever this is requested by the majority of the employees concerned, by the trade union organs, or is considered necessary by the economic or technological leaders.

The duty of the production conference is to discuss the most important tasks of the enterprise, or of the production unit, as a result of the discussion to shape the best methods for accomplishing the tasks, to reach decisions on competitive pledges and their most expedient forms. Another duty of the production conference is to evaluate the work of management and of the collec-

tive performed in the past period, to evaluate the fulfilment of tasks, the realisation of competitive pledges; to pass judgment and to make suggestions on this basis for improving the work of the collective; and to express aprreciation of successful work.

The production conference has authority to give expert opinion, to make suggestions and to reach decisions for the realisation of tasks described above;

aa) in the spehere of economic activities and management, the production conference's authority is usually restricted to giving opinion and making suggestions;

bb) the production conference has authority to decide three types of question, viz. acceptance of competitive pledges, employment of forms of competition that best meet local conditions, and awarding the distinction "Eminent Worker" and the title "Socialist Brigade".

Preparation and holding of the production conference is the joint responsibility of the economic manager in charge of the unit and the trade union; the report is to be made by the economic manager.

To keep a record of the comments and suggestions made at the conference, to realise appropriate suggestions, is the responsibility of the economic manager. For this purpose he must take action in the matter of comments and suggestions, notify the employees within 15 days of the wiews taken of these, and must submit a report of the steps taken to the next production conference. The enterprise manager and the supervisory organ are obliged, and the trade union has the right, to supervise all this. If the economic managers fail to meet these obligations, the trade union may initiate disciplinary action with the superior organ.

In the technological, administrative and other divisions of economic units, as well as institutions and offices, not production conferences but work-meetings must be held; the rules described above apply to these, with differences as required.

b) One very important manifestation of workshop democracy and of the participation rights of the collective is that within enterprise the function of labour safety inspection is performed besides the trade union labour inspectors by voluntary inspectors who are employees of the enterprise. Although in a narrower field than the trade union inspectors, voluntary inspectors have authority not only of inspection, but also of taking measures directly, giving instructions that are binding on the enterprise, in order to ensure the observance of labour safety regulations.

c) Disputes connected with the rights and obligations of employment, and arising between employee and the employer enterprise, are dealt with in the first instance – except the disputes of employees in higher leading positions – by committees organised within the enterprise. Their decisions have the same binding force as decisions passed by courts of first instance. These labour dispute committees are made up of the employees of the enterprise. This means that labour disputes, at least, in the first instance are settled by the employees themselves. This right to participate is also an important manifestation of workshop democracy.

d) Important interests of the enterprise collective are involved in ensuring that disciplined work should be done in the enterprise, that social property should be protected and increased, and that the requirements of socialist co-

operation and mutual help should be met. To promote all this, several sanctions are available to the enterprise, even disciplinary sanctions in serious cases. To exercise disciplinary authority is the right of the manager in the first place, and of the employees in leading positions to whom the manager delegates this right. Yet it follows from the nature of a socialist enterprise, and – accordingly – from the development of workshop democracy, that Hungarian labour law grants the right of praticipation also to the employees' collective, to enable them to promote the realisation of the aforeasaid requirements in their own interest. This purpose is served – among others – by the institution of workshop courts. A workshop court is the elected body, of the employees; its duty is to educate the employees to do conscious, disciplined work, to protect social property; and to promote mutual respect for the employees' human dignity, property and rights. In order to accomplish all this, the workshop court can employ various measures of educative effect, even milder legal sanctions, within a sphere defined by provisions of law. Employees can be admonished or censured. The court may rule that an employee should not get rewards for one year at most. The court may withdraw part (not more than half) of the profit share, or reward of this nature, payable to next time. The court can recommend to the manager to transfer an employee to some other post by disciplinary action, or to dismiss him summarily.

e) At enterprises where the employees receive the social security services and family allowances at what is called works payment-offices, social security councils must be set up from among the employees. Such councils are organised by the local trade union organs; their duty is to assists and supervise social security administration, and to attend to social security tasks assigned to them. In addition these councils act as bodies of legal remedy of first instance in cases when employees file a complaint in connection with sick insurance and family allowance services.

f) To keep a check on the conditions of employees with a reduced capacity for work, and to promote their rehabilitation, enterprise committees must be set up. Upon an initiative of the employee or the enterprise, the committees make recommendations, according to which the manager is obliged to take proper measures for rehabilitation.

3. It may happen that the manager, or employees in leading positions, do not rely on the community of employees in defiance of legal provisions relating to state enterprises; that they do not respect the trade union's rights of interest protection and representation; that they do not meet their obligation to cooperate with the trade unions as provided by law; moreover, that they decidedly break their obligations towards the collective or the trade union. It is therefore noteworthy in this connection that the legal rules on state enterprises provide for an evaluation of the activities of managers and their deputies, to be made by the supervisory organ once a year at least. Such evaluation is affected most adversely if the manager or his deputies had broken their aforesaid obligations repeatedly or gravely, as a consequence it may happen that the supervisory organ – which exercises the employer's rights towards them – reduces or withdraws their premium, imposes disciplinary sanctions and in extreme cases – discontinues their employment by giving notice, even with immediate effect. All this can be recommended also by the trade union explicitely; in such cases – as we have set forth in paragraph 2 – the head of the supervisory organ

is under the obligation to consider the recommendation, and if he disagrees with it, he must give his reasons. The same applies to cases where the trade union makes such recommendation to the manager in respect to an employee in a leading position.

IV.

From this roughly outlined description of the institutions of workshop democracy and trade union rights it is evident that powerful rights are due in a very broad field to enterprise collectives and to the trade unions representing them. But it is just as evident that the necessity to ensure the one-man management system draws the limits, equally discussed above, beyond which such rights cannot go.

It is obvious, on the one hand, that, especially within the sphere of enterprisal economic activities, it is the manager who reaches decisions in the last instance, acting on his one-man managerial authority, and within the scope defined by provisions of law, i.e. by taking into account also the limits set by the rules of workshop democracy presented in the foregoing. On the other hand, the enterprise collective, its members, or the trade union acting on their behalf, and on the basis of rights due to them, participate in enterprise activities directly or indirectly, and exert influence on the ways in which the enterprise exercises the proprietary and employer's rights delegated to it.

NOTES

[1] Világhy, Miklós, Political Science and Jurisprudence, 1964, vol. VII. 1. p. 23.

[2] Eörsi, Gyula: Branches of Law of Owners and Collectives – Differentiation and Integration in the Socialist Legal System. Hungarian Academy of Sciences, Proceedings of the Department of Social-Historical Sciences, 1963, vol. XIII, 1 – 2.

[3] Eörsi, Gyula: The Legal Aspects of Changing Over to the New Economic System. Közgazdasági és Jogi Kiadó, Budapest, 1968, pp. 173, 174, 198.

[4] Weltner, Andor: The Socialist Labour Contract, 1965. p. 14 ff.

[5] Although a planned economy affects the law of value in certain respects.

[6] For example, pursuant to Section 1 of the Hungarian Code: "The purpose of this Act is to regulate on the basis of principles laid down in the Constitution the order of participating in the work of the socialist society, and, within this scope, in particular the rights and obligations of enterprises and employees arising from employment relations, as well as the employees' participation through their trade unions in the regulation of questions affecting their living and working conditions, in the development and supervision of the activities of the enterprise. "Section 18 of the Czechoslovak Code says: "an inseparable feature of socialist democracy, and a precondition of the successful activities of the organisation, is the participation of the employees and their collectives in the development, direction and control of the activities of the organisation..." and this "is first of all organised and developed by the basic organisations of the Revolutionary Trade Union Movement, their works committees, whose status is laid down in the statutes of the Revolutionary Trade Union Movement..." The 1966 amendment to the Code of the GDR even goes farther in so far as it not only regulates the entire internal structure and functioning of enterprises, including the legal status of the manager and employees in leading positions, the collective's various organs and conferences active within the framework of the enterprise, but also the relationship existing between the directive organ and the enterprise or manager, and even the rights and obligations of the directive organs in connection with organising work.

[7] Government Decree 34/1967. (X. 8) Korm.

[8] Also S. N. Bratus and S. Alekseiev explain that the management of an enterprise is not confined to the person of the manager. The manager relies on the activities of his deputies whose spheres of authority must be defined in an act on socialist enterprises; he relies on the administrs-

tive departments, workshop administration, etc. Trade union organisations play no small role in the organisation and safety of work. Wider and wider strata of employees are drawn into the administration of production. The programme of the Soviet Communist Party demands a further expansion of socialist democracy also in the economic field. All this does not reduce the role of the manager as the leader and director of enterprise activities, nor the importance of his one-man responsibility. But it is necessary to draw a distinction between the rights of the enterprise as a social formation (organisation) – which follow from the economic role the enterprise plays in the system of expanded socialist reproduction in the present stage of communist building work, and from the role of the enterprise's production collective – and the rights arising from the personal office of the enterprise manager. An overestimation or an underestimation of the manager's role – the one-man leader in the economic sphere – may have harmful consequences. Elaboration of Legal Problems in the Direction of the People's Economy. Pravogyennije, 1963. Vol. 4. Külföldi jogi cikkgyűjtemény (A collection of articles on foreign law) 1964. vol. 3. p. 384 ff.

[9] Code of Labour, Section 11 (1)
[10] Code of Labour, Section 11 (2)
[22] Code of Labour, Section 13 (1)
[12] Code of Labour, Section 12 (1)
[13] Code of Labour, Section 13 (2)
[14] Code of Labour, Section 13 (3)
[15] Code of Labour, Section 13 (4)
[16] Code of Labour, Section 14 (1)
[16] Code of Labour, Section 14 (1)
[17] Code of Labour, Section 14 (2)
[18] Code of Labour, Section 14 (3)
[19] Code of Labour, Section 64 (2)
[20] Code of Labour, Section 14 (3)
[21] Code of Labour Enacting Decree, Section 8 (1)
[22] Code of Labour Enacting Decree, Section 8 (2)
[23] Code of Labour Enacting Decree, Section 8(3)
[24] Code of Labour, Section 15 (2)
[25] Code of Labour, Section 16.
[26] Government Decision 1001/1965 (I. 16) Korm. Chapter II.

ZUSAMMENFASSUNG

Hinsichtlich der Analyse des wirtschaftlich-sozialen Inhaltes des gesellschaftlichen Eigentums und der Eigentümerrechte, die von den sozialistischen Wirtschaftsorganisationen ausgeübt werden können, sowie bezüglich der Ausgestaltung ihrer Organisations- und Rechtsformen ist die staatsrechtliche, verwaltungsrechtliche, finanzrechtliche und zivilrechtliche Annäherung an diese Fragen eine sehr wesentliche wissenschaftliche Aufgabe. Eine mindestens so wichtige Frage ist, aber, wie die Werktätigenkollektive der Unternehmen unmittelbar oder durch Vermittlung der Gewerkschaften oder anderer gesellschaftlicher Organe an der Ausübung der Eigentümerrechte teilnehmen können, die den Unternehmen übertragen worden sind. Zu diesem Zweck ist zu analysieren bzw. entsprechend zu regeln, über was für Mitwirkungsrechte, die Werktätigenkollektive auf Unternehmensebene und teils auch auf höherem Niveau – unter Aufrechterhaltung des Prinzips der Einmannleitung – bei der Planung und Organisation, bei der Leitung und Kontrolle der Tätigkeit der Unternehmen, weiters bei der Regelung, Organisierung und Entwicklung ihrer Lebens- und Arbeitsverhältnisse usw. verfügen sollen. Es ist auch eine wichtige Frage, wie und unter Anwendung welcher Rechtsformen sich die Unternehmenskollektive und ihre Mitglieder – durch Vermittlung der Unternehmen – am Nationaleinkommen, bzw. am Gewinn des Unternehmens beteiligen.

Zwecks Klärung all dieser Fragen übernimmt die Wissenschaft des Arbeitsrechtes sozusagen am Tor des Unternehmens die Staffel vom Staatsrecht, Verwaltungs- und Finanzrecht sowie vom Zivilrecht und untersucht in erster Reihe, wie sich das innere wirtschaftlich-soziale Substrat des sozialistischen Unternehmens und die dementsprechende Unternehmensstruktur, die organisationsrechtliche Stellung des Kollektivs und seiner Mitglieder gestalten.

Aufgrund der Übersicht der Einrichtungen der Betriebsdemokratie und der Gewerkschaftsrechte kann festgestellt werden, dass dem Unternehmenskollektiv und seinem Vertreter, der Gewerkschaft, auf einem sehr weiten Gebiet recht bedeutende Rechte zukommen. Andererseits

ist es aber klar, dass die Notwendigkeit der Gewährleistung der Einmannleitung jene ebenfalls erörterten Grenzen bestimmt, die durch diese Rechte nicht mehr überschritten werden können.

So ist es z.B. einerseits offensichtlich, dass insbesondere auf dem Gebiet der Wirtschaftstätigkeit des Unternehmens undzwar im Rahmen der Rechtsvorschriften, d.h. unter Beachtung der schon erwähnten Regeln der Betriebsdemokratie letzten Endes der Direktor als Einzelleiter seine Entscheidung trifft. Andererseits arbeiten aber das Unternehmenskollektiv, seine Mitglieder bzw. die in seiner Vertretung vorgehende Gewerkschaft aufgrund der ihnen zukommenden Rechte unmittelbar oder mittelbar daran mit, bzw. nehmen Einfluss darauf, wie das Unternehmen die ihm übertragenen Unternehmer- und Arbeitsgeberrechte ausübt.

РЕЗЮМЕ

С точки зрения анализа экономическо-общественного содержания собственнических правомочий, осуществляемых общественной собственностью и социалистическими хозяйствующими организациями и с точки зрения формирования организационно-правовых форм, существенной научной задачей является государственно-правовой, административный, финансовый и гражданско-правовой подход к этим вопросам.

Не менее важным вопросом является, каким образом могут коллективы рабочих на предприятиях принимать участие непосредственно или же через посредство профсоюзов и иных общественных органов в осуществлении собственнических правомочий, предоставленных предприятиям. В интересах этого нужно анализировать, вернее соответствующим образом регулировать то, — соблюдая принцип единоличного управления — каким правомочием должны обладать коллективы рабочих, чтобы на уровне предприятий и в частности на высшем уровне содействовать в планировании, и организации, управлении и контроле, далее в регулировании и устройстве, в развитии и д. предприятий.

Важным вопросом является и то, как и при помощи каких правовых форм коллективы предприятий и их члены — через посредство предприятий — получают из национального дохода, вернее, каким образом участвуют в прибыли предприятий.

В интересе выяснения всех этих вопросов наука трудового права, как будто у ворот предприятия, принимает эстафетную палочку от государственного права, административного права, финансового и гражданского права, и главным образом исследует, как формируется внутренний хозяйственно-общественный субстрат социалистического предприятия и соответствующая этому структура предприятия, организационное положение коллектива и его членов с точки зрения вышеупомянутых вопросов.

На основе институтов заводской демократии и схематического изложения профсоюзных правомочий можно установить, что заводскому коллективу и его представителю-профсоюзу принадлежат большие правомочия. С другой же стороны ясно, что необходимость обеспечения единоличного управления определяет те намеченные рамки, выше которых эти правомочия уже не могут распространяться.

Так, например, с одной стороны ясно, что по высшей инстанции директор решает в правовой сфере единоличного управления, особенно в отношении хозяйственной деятельности предприятия, а именно в рамках правовых норм, т. е. принимая во внимание рамки, определенные вышеуказанными нормами заводской демократии. А с другой стороны коллектив предприятия, его члены, вернее в качестве их представителя профсоюз, на основе принадлежащих им правомочий непосредственно или косвенно, но содействуют, влияют на то, каким образом предприятие осуществляет возложенные на него собственнические и занимательские правомочия.