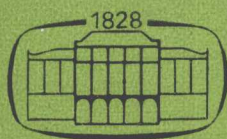


FUNDAMENTAL TRAITS OF SOCIALIST LABOUR LAW

WITH SPECIAL REGARD
TO HUNGARIAN LEGISLATION

BY ANDOR WELTNER



AKADÉMIAI KIADÓ, BUDAPEST

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AKADÉMIAI KIADÓ, BUDAPEST 1970

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CONTENTS

Abbreviations used in the Notes	6
§ 1. <i>Social relations controlled by labour law and the principles of labour law</i>	7
§ 2. <i>The structure of the socialist enterprise and the worker's legal position in the enterprise</i>	26
§ 3. <i>Industrial democracy; the workers' and trade unions' right of participation</i>	52
§ 4. <i>Collective legal relations and the collective of the enterprise</i>	76
§ 5. <i>The system of labour-law regulation</i>	90
§ 6. <i>Workers as subjects at law, the right to work, and expedients promoting employment</i>	96
§ 7. <i>Legal title of employment</i>	116
§ 8. <i>Function of the labour contract and its necessary content elements</i>	124
§ 9. <i>Mandatory (cogens) content of employment</i>	131
§ 10. <i>The method of concluding the labour contract</i>	141
§ 11. <i>Duration of employment and the site of the performance of work (working-place)</i>	146
§ 12. <i>Voidness of the labour contract</i>	152
§ 13. <i>Rights and obligations of employer and worker</i>	164
§ 14. <i>Principal obligations of the enterprise</i>	167
§ 15. <i>The worker's obligation to perform work</i>	172
§ 16. <i>Amendment and modification of the labour contract</i>	188
§ 17. <i>Termination of employment</i>	194
Author Index	211
Subject Index	213

ABBREVIATIONS USED IN THE NOTES

Periodicals

<i>Acta</i>	<i>Acta Facultatis Politico-Iuridicae Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae</i>
<i>A</i>	<i>Die Arbeit</i>
<i>AI</i>	<i>Állam és Igazgatás</i>
<i>ÁJ</i>	<i>Állam- és Jogtudomány</i>
<i>AR</i>	<i>Arbeitsrecht</i>
<i>A.u.S.</i>	<i>Arbeit und Sozialfürsorge</i>
<i>EOP</i>	<i>Ekonomika i Organizacja Pracy</i>
<i>G</i>	<i>Gewerkschaftsaktiv</i>
<i>J</i>	<i>Die Justiz</i>
<i>JK</i>	<i>Jogtudományi Közlöny</i>
<i>K</i>	<i>Kommunist (Коммунист)</i>
<i>KSz</i>	<i>Közgazdasági Szemle</i>
<i>MJ</i>	<i>Magyar Jog</i>
<i>MSz</i>	<i>Munkaügyi Szemle</i>
<i>NJ</i>	<i>Neue Justiz</i>
<i>N.Pr</i>	<i>Nowe Prawo</i>
<i>P</i>	<i>Profsoyuzi (Профсоюзы)</i>
<i>PIP</i>	<i>Państwo i Prawo</i>
<i>PO</i>	<i>Právni Obzor</i>
<i>PZS</i>	<i>Przegląd zagadnień socjalnych</i>
<i>RID</i>	<i>Rechtswissenschaftlicher Informationsdienst</i>
<i>SGP</i>	<i>Sovetskoe Gosudarstvo i Pravo (Советское Государство и Право)</i>
<i>S.u.R.</i>	<i>Staat und Recht</i>
<i>TSz</i>	<i>Társadalmi Szemle</i>
<i>VE</i>	<i>Voprosi Ekonomiki (Вопросы Экономики)</i>
<i>VF</i>	<i>Voprosi Filosofii (Вопросы Философии)</i>
<i>ZG</i>	<i>Życie Gospodarcze</i>

Others

IAN	Izdatelstvo Akademii Nauk (Издательство Академии наук) (Publishing House)
Introductory Decree	Introductory Decree to the Hungarian Labour Code
Yur. Lit.	Yuridicheskaya Literatura (Юридическая Литература) (Publishing House)

§ 1. *Social relations controlled by labour law and the principles of labour law*

I. The socialist legal system forms a unity of correlated, still relatively independent, branches of law. One of these independent branches of law is labour law. Hence the definition of the subject-matter of labour law does not require merely the enumeration of the conditions of life brought by it under regulation and of their economic and social content. In fact also the relations existing between labour law and other branches of law have to be explored, and at the same time the lines drawn separating labour law from all other branches of law.¹

¹ Much has been written on the subject-matter of labour law in socialist literature. The many authors define the sphere of social conditions underlying regulation by labour law and also the discipline of labour law, sometimes in a narrower, at others in a wider sense, sometimes in a more generalized, at others in a more concrete form. A review or an analysis of the many opinions would exceed the scope of the present work. Therefore, the author confines himself to an exposition of his own opinions and, without any claim to completeness, gives a survey of the relevant socialist literature below.

(Aleksandrov, N. G.) Александров, Н. Г.: Теоретические проблемы кодификации советского трудового права (Theoretical problems of the codification of labour law of the Union Republics), *SGP*, 1957, No. 4.

(Aleksandrov, N. G.) Александров, Н. Г.: Советское трудовое право (Soviet labour law), Учебник для юридических факультетов и институтов, Госюриздат, Moscow, 3rd ed., 1963, pp. 15 et seq.

(Aleksandrov, N. G. ed.) Александров, Н. Г. ред.: *Трудовое право*. Учебник для юридических институтов и факультетов (Labour law. Textbook for the faculties of law and institutes of higher education), Госюриздат, Moscow, 1966, pp. 536 and 542.

(Antimonov, B. S. and Fleishits, E. A.) Антимонов, Б. С. и Флейшиц, Е. А.: Авторство и трудовое правоотношение (Copyright law and employment), *SGP*, 1956, No. 5.

(Astrakhan, E. S., Nikitinski, V. and Stavtseva, A.) Астрахань, Е. С., Никитинский, В. и Ставцева, А.: *Трудовое право. Пособие для судей*. (Labour Law. A handbook for judges), Госюриздат, Moscow, 1967, p. 280.

(Baru, M. I.) Бару, М. И.: *Охрана трудовой чести по советскому законодательству* (Safeguard of the dignity of work in Soviet legislation), Госюриздат, Moscow, 1966, p. 102.

Câmpianu, V. I.: *Dreptul muncii* (Labour law), Didactică și Pedad, Bucharest, 1967, p. 446.

Československé pracovní právo (Czechoslovak labour law), Orbis, Prague, 1967, p. 446.

Chysky, L.: *Předmět československého pracovního práva* (The subject-matter of Czechoslovak labour law), *Stát a Právo*, Nakladatelství Československé akademie věd, Prague, 1957, III, pp. 123 et seq.

Das Arbeitsrecht der Deutschen Demokratischen Republik, Staatsverlag, Berlin, 1968, p. 526.

1. When by way of introduction we set out from the conditions of life governed by labour law and their economic and social content, the following conclusions will have to be drawn:

(a) Labour law brings under regulation all conditions of the performance of work which for the discharge of obligations of the various economic, administrative and social organizations and for the enforcement of the right to work permit the coupling of the working capacity of the citizens with the means of production

Denisov, A. I.: *Labour Law, Encyclopedical Dictionary*, 1963, pp. 492 et seq.

Farkas, J.: *Munkajogunk fejlődése a felszabadulástól a Mt-ig* (Development of Hungarian labour law from the liberation to the Labour Code), Jogi és Államigazgatási Könyvkiadó, Budapest, 1952.

Gersdorf, M.: *Pods Tawowe zagadnienia stosunku pracy w spółdzielniach* (Principal problems of cooperative employment), *PZS*, 1954, No. 10.

Görner, K.: *Vom sozialistischen Arbeitsrecht*, *A*, 1953, No. 1.

Hähnert, R.: *Das Recht der landwirtschaftlichen Produktionsgenossenschaften—ein selbständiger Rechtszweig*, *S.u.R.*, 1955, No. 1.

(Karinski, S. S.) Каринский, С. С.: *Основные черты развития советского трудового права* (Fundamental traits of the evolution of Soviet labour law), *SGP*, 1957, No. 11.

(Leviant, F. M. and Pashkov, A.S.) Левиант, Ф. М. и Пашков, А. С.: *Возникновение советского трудового права* (Origin of Soviet labour law. Forty years of Soviet labour law), Изд. Ленинградского Университета, Leningrad, 1957.

Mennicke, K.: *Der Gegenstand des Arbeitsrechts der DDR*, *AR*, 1957, No. 8.

Mikos, F., Nagy, L. and Weltner, A.: *A Munka Törvénykönyve és végrehajtási szabályai* (The Labour Code and its rules of enforcement), Közgazdasági és Jogi Könyvkiadó, Budapest, 1955.

(Mirkov, D.) Мирков, Д.: *Трудово право на Народна Република България* (Labour law of the Bulgarian People's Republic), Наука и изкуство, Sofia, 1964.

(Mironov, V. K.) Миронов, В. К.: *Трудовое право европейских социалистических стран* (Labour law of the European socialist states), Учебное пособие, МГУ, Госюриздат, Moscow, 1963.

Nagy, L.: *A csehszlovák munkajogászok konferenciája* (Conference of the Czechoslovak labour lawyers), *MSz*, 1957, No. 6.

(Pasherstnik, A. E.) Пашерстник, А. Е.: *Вопросы советского гражданского и трудового права* (Problems of Soviet civil law and labour law), IAN, Moscow, 1952.

(Pasherstnik, A. E.) Пашерстник, А. Е.: *Теоретические вопросы кодификации общесоюзного законодательства о труде* (Theoretical problems of the codification of the all-Union labour legislation), Госюриздат, Moscow, 1955.

(Pasherstnik, A. E.) Пашерстник, А. Е.: *Некоторые проблемы советского трудового права* (Certain problems of Soviet labour law), *SGP*, 1956, Nos. 5–6.

(Pashkov, A. S.) Пашков, А. С.: *Советское трудовое право* (Soviet labour law), 1966, pp. 3 et seq. Изд. Ленинградского Университета, Leningrad.

Pätzold, E.: *Das Arbeitsrecht in den europäischen Ländern der Volksdemokratie*, *A.u.S.*, 1954, Nos. 1–2.

Pielarski, M.: *Die Mitgliedschaft in der Produktionsgenossenschaft und das genossenschaftliche Arbeitsverhältnis*, *RID*, 1951, No. 12.

Radenović, P.: *Međunarodna Organizacija Rada i priznanje prava na rad* (The right to work under the conditions of socialist democracy), *Jugoslovenska Revija za međunarodno Pravo*, 1967, Nos. 1–2, pp. 139–147.

within the framework of the various socialist organizations (economic, administrative and social).²

(b) The scope of labour law includes the conditions of remuneration (distribution) which allow of a sharing by the workers, through the intermediary of the socialist organizations, in the national income proportionate to the quantity, quality and social utility of the work performed by them, hereincluded the welfare and social services extended by these organizations.

(c) Labour law brings under regulation the conditions of financial and disciplinary liability concomitant with employment, and the conditions of the settlement of disputes under labour law.

(d) Labour law defines the rules of labour regulation and of the relations of management and supervision within the limitations of which in connexion with the organization of work central governmental control, planning, organization, guidance and supervision prevail on the one part, and the social activities of the trade unions acting on the upper levels, on the other.

(e) Labour law brings under regulation also the conditions of industrial democracy. Industrial democracy provides opportunities for the workers' participation, in particular within the framework of economic organizations, directly or through the intermediary of the enterprise branch of the trade union, in the

(Raduilski, L.) Радуйлски, Л.: *Трудово право на Н. Р. България* (Labour law of the Bulgarian People's Republic), Наука и изкуство, Sofia, 1957.

Rákos, F.: *Munka és a munkajog a Magyar Népköztársaságban* (Work and labour law in the Hungarian People's Republic), JK, 1951, p. 72.

Rühl, H.: Zum Gegenstand des Sozialversicherungsrechts, AR, 1957, No. 12.

(Ruskol, A. A.) Рускол, А. А.: *Колхозное право* (The law of cooperative farms), Госюриздат, Moscow, 1955.

Schaum, G.: Entwicklung des Arbeitsrechts in der DDR, A.u.S., 1956, No. 5.

Schlegel, R.: *Leitfaden des Arbeitsrechts*, Deutscher Zentralverlag, Berlin, 1959.

Schneider, P.: *Geschichte des Arbeitsrechts in der DDR*, Deutscher Zentralverlag, Berlin, 1957.

Szászy, I.: *International Labour Law*, Akadémiai Kiadó, Budapest, 1968, pp. 3 et seq.

Szubert, W.: *Ochrona Pracy* (Labour safety), Warsaw, PWN, 1966, p. 304.

(Tolkunova, V. N.) Толкунова, В. Н.: *Право женщины на труд и его гарантии* (The right of women to work and its guarantees), Госюриздат, 1967, p. 192.

Weltner, A.: Munkajogunk fejlődése az alkotmány életbelépése után (Evolution of Hungarian labour law after the introduction of the Constitution), JK, 1951, No. 1.

Weltner, A.: A munkajog fogalma (The notion of labour law), JK, 1958, Nos. 3-4.

Weltner, A.: *A magyar munkajog* (Hungarian labour law), Tankönyvkiadó, Budapest 1960, Vol. I, pp. 3-65.

Weltner, A. and Nagy, L.: *A magyar munkajog* (Hungarian labour law), University textbook, Tankönyvkiadó, Budapest, 1968, Vol. I, pp. 13 et seq.

Witz, K.: *Československé pracovní právo* (Czechoslovak labour law), Orbis, Prague, 1967.

² Already in this connexion we should like to note that Hungarian labour law, and so also the labour law of other socialist countries, brings under regulation employment with both socialist organization and private employers.

planning and organization, management and control of the activities of a socialist organization and in the regulation of their conditions of work.

(f) The scope of regulation under labour law includes social insurance, i.e. the conditions of financial assistance in the event of loss, total or partial, of the working capacity.

The relations of a personal and collective nature here surveyed are inseparable from one another. In conjunction and through interaction these relations determine the internal organizational and operative order of the workers' collectives and within the framework of this order, the legal position of the workers.

2. When now the economic and social functions of socialist labour law and its tasks in legal policy are made the starting-point of the present discussion, the conclusion will suggest itself that socialist labour law has as its objective the discharge of two closely interrelated functions, viz.:

(a) On the one hand socialist labour law, by bringing under regulation the social relations referred to, prompts the economic and other organizations to contribute to the satisfaction of the material and cultural needs of society as a whole at the highest possible standard.

(b) On the other hand labour law contributes to the exercise and enjoyment by the citizens of the fundamental civic, economic, social and cultural rights coming within the scope of labour law and guaranteed them by the law to the greatest possible extent.³

II. However, this enumeration of the social conditions constituting the subject-matter of regulation under labour law and the science of labour law is partly narrow, partly vague.

1. The above listing includes social relations within rather narrow limits, as labour law also regulates conditions of performance of work and of distribution which come into being outside the scope of socialist organizations. So e.g. labour law controls the working conditions of workers employed by private employers. Still what is undoubtedly typical is that the citizen takes part in the work of society within the scope of a socialist organization and as a member of the collective of workers of the organization, and shares the national income through the intermediary of such organizations.

2. On the other hand the enumeration is more or less vague as the conditions of the combination of the means of production and the working capacity, socialist distribution, management of labour and industrial democracy are in a very close correlation with the relations of state power, public administration and financial

³ For details see Weltner, A.: *A magyar munkajog* (Hungarian labour law), Tankönyvkiadó, Budapest, 1960, Vol. I, pp. 10 et seq.

Weltner, A.: *A munkajog fogalma* (The notion of labour law), *JK*, 1958, Nos. 3, 4 and 5. It should be noted that the discipline of labour law studies a wider sphere of social relations, namely within the wider framework of complexity, as it makes use of the results of the science of work, and of other related sciences.

law, agricultural and craftsmen's cooperatives, and also those of civil law. As a matter of fact a socialist organization is only a relatively independent part of the uniform economic, social and political order, which discharges its activities within the framework of socialist planned economy in a way that it cooperates with other socialist organizations and encourages the citizens to participate in its activities. Hence the activities and conditions of socialist organizations come of necessity also within the scope of regulation of other branches of law, in close connexion and harmony with labour law, and by methods indispensable in a regulation of comprehensive character. However, the question may be asked, how within this complexity the branches of law and the body of legal provisions applicable to them are related with, or segregated from, the social conditions regulated by labour law.

(a) There is an interrelation between constitutional law and labour law in so far as the constitution has formulated the cardinal principles of participation in the work of society and sharing in national income (the right to work, to socialist distribution, to rest and recreation, etc.) which will "devolve" on other branches of law, whereas the social conditions suitable for the actual realization of these principles in the sphere of the organization of work have been brought under regulation by the provisions of labour law. On this understanding the principles of labour law incorporated in the constitution take a shape as relations under labour law,⁴ i.e. the body of detailed legal rules applicable to these relations comes within the scope of labour law. Essentially the same applies also to the relations of the trade unions as social organizations of extreme importance. As a matter of fact socialist labour law, with a view to promote the activities of the trade unions in the safeguard of professional interests, on an all-social, trade and enterprise level imposes obligations on the government agencies and the employers. At the other end this manifests itself in a way that the trade unions, without being burdened by labour law with obligations, are vested with a rather extensive competence and consequently also rights in respect of government organs and employers, in general within the scope of the socialist working organization, in particular within that of industrial democracy. The fundamental conditions of the trade unions, as significant factors of the socialist order of society come within the scope of regulation of constitutional law, and the study of these conditions is part and parcel of the discipline of constitutional law. However, the activities the trade unions discharge in the scope of the socialist organization work in connexion with the employment and working conditions of the workers are given effect to by the provisions of labour law. Consequently, the legal relations here referred to will also come within the scope of regulation of labour law and their study also belongs to the subject-matter of labour law.⁵

⁴ Beér, J., Kovács, I. and Számel, L.: *Magyar Államjog* (Hungarian constitutional law), Tankönyvkiadó, Budapest, 1960, p. 13; Szabó, I.: *Az emberi jogok* (Human rights), Akadémiai Kiadó, Budapest, 1968.

⁵ For details see § 3.

(b) Administrative and financial laws come into contact with labour law in two respects, viz. as far as economic management on an all-society level is concerned, and, secondly, in respect of the employment of civil servants.

(aa) After the victory of the socialist revolutions in the overwhelmingly largest section of national economy citizens come to be related with their productive activities with the means of production in social ownership, mainly within the scope of socialist economic organizations, in the first place state enterprises. (Economic organization is identical for practical purposes with state enterprise and will be hereinafter used in this sense.) This is the guarantee of a planned organization of the productive activities of society through the agency of the state, and, secondly, of the appropriation of the results of the productive activities of the overwhelming majority of the members of society in a manner free of exploitation.

The social ownership of the means of production, planned economy relying on social ownership, further the unfolding and evolution of socialist democratism provide the ground for, moreover postulate, the planned organization of the work of society not only as far as the economic organizations are concerned, but on an even higher, all-social level. On the one side of the economic and organizational activity, to be more precise in the relation existing between the economic organization and the state, we encounter the managerial activity of the socialist state which on an all-society level guides, organizes and supervises the economic functions of society and within them the operations of the economic organizations (enterprises, etc.). In general this function of the state is discharged within the field of administrative and financial law relations. There are, however, social relations of a managerial character which directly operate towards an organization of the conditions of work and distribution. So e.g. the Ministry of Labour directs labour force economy and professional training. It also has extensive competence in the matter of the establishment of wage and bonus systems. The National Council of Trade Unions is in charge of the organization of labour safety and of the functions of social insurance. All these come within the relatively distinct sphere of labour administration and are so closely related to the activities of the socialist labour organization that eventually these functions enter the scope of labour law.

Also the financial rules defining the financial autonomy of the economic organizations, the organization of the money funds to be formed of the enterprise proceeds, in particular the proceeds share funds and their appropriation, are of particular importance. Consequently, labour law will have to deal with the financial conditions which determine or influence the remuneration of the workers, and the various labour safety, welfare, cultural, etc. services appropriable for their benefit.

(bb) Employment of civil servants constitutes a special problem.

The state exercises its sovereign, administrative, judicial, etc. functions through the activities of its employees.

However, even under the conditions of people's democracies the gap is gradually narrowing not only between physical and intellectual, urban and rural workers, but also between civil servants and workers in enterprises. As a matter of fact it

is uniformly and fundamentally characteristic of employment of the socialist type that through the intermediary of the various economic, administrative and social organizations it actually becomes a condition of the participation in the work of society and sharing in the national income to which the principles of labour law are uniformly applicable. Hence, there is no more need for bringing under regulation employment in civil service and industry in different branches of the legal system. Moreover, both types of employment can be regulated fundamentally only within a uniform branch of law, i.e. within labour law, here the case of social conditions of a uniform character being basically present.

However, differences may exist between employment in civil service and in industry and commerce even under socialist conditions. But this is a problem of differentiated regulation only, and not a settlement apart. As a matter of fact differences may arise in many respects even in employment of a socialist type. So e.g. differences may develop owing to the peculiarities of particular branches of economy, occupations, professions, and even assignments. However, all these differences will merely call for a differentiated regulation of these categories of employment by the legal system by taking into account the differences and with the uniform principles of labour law in view. All this applies also to employment in civil service. Without exception all socialist labour codes, and so also the Hungarian, are based on this understanding. The Hungarian Labour Code applies to employment of all categories, but under the heading "Miscellaneous provisions" it enumerates the most significant departures from the general regulation in the agencies of state power and public administration, the judiciary, the procurators' offices and other organs of the administration of justice, in transport and communication services and the Post Office. Other provisions departing from the general have been laid down in the regulation of the Minister of Labour governing the enforcement of the Labour Code in organizations financed by the state budget. Provisions differentiating among the categories of employment have been formulated also by heads of government departments in their enacting clauses to the Labour Code. Hence employment in civil service is also governed by labour law, thus the science of labour law will have to deal with it.⁶

(c) Agricultural and craftsmen's cooperatives also constitute economic and social organizations and legal forms which have been created for the organization of social work and socialist distribution, and are directed at implementing cooperative democracy in a manner conforming with the principles of socialist democ-

⁶ An essentially similar position was taken by the congress of civil servants at Fonyód in 1957.

For details see: *Az államigazgatás néhány kérdése és a közalkalmazottak munkajogi helyzete* (Some problems of public administration and the situation of civil servants under labour law), *Közalkalmazottak Szabad Szakszervezete*, Budapest, 1958.

Chysky, L.: *Připravuje se zákoník práce* (In preparation for the Labour Code), *Právník*, 1957.

(Studenikin, S. S.) Студеникин, С. С.: *Советская государственная служба* (The Soviet civil service), 1949, documentary material, S(109)2, pp. 12-16.

racy. There are views which would have the legal relations of agricultural cooperatives incorporated in labour law. Also ideas may be encountered according to which the law of agricultural and craftsmen's cooperatives, together with the set of legal provisions applying to other cooperatives (e.g. farmers' cooperatives, home building cooperatives, etc.), constitute a uniform cooperative law. Finally there is a position which would have the rules governing craftsmen's cooperatives included in civil law. No view which may be considered predominant has yet been formulated on this point. However, even today a number of common traits can be discovered in the legal relations which define the internal and external conditions of state economic organizations and agricultural cooperatives, and the relations of their membership. Actually the following differences still manifest themselves with equal force. They arise primarily from the fact that the agricultural cooperatives are the working peasants' associations, that the exploited means of production are mainly in cooperative ownership, and that particular proprietary, organizational and operative relationships are embedded within the framework of membership relations. This may explain why in socialist countries special legislation has been introduced to regulate those conditions in agricultural cooperatives which are thus no parts of labour law.

Consequently, in socialist jurisprudence the law of the agricultural cooperatives is regarded as an autonomous branch of law. At the same time, in particular as far as the performance of work and its remuneration are concerned, the common traits stand out ever more decisively, whereas the differences still existing between the state economic organizations and the agricultural cooperatives are gradually disappearing.⁷

The situation is altogether different in craftsmen's cooperatives. Here, too, specific membership (ownership, organizational and operative) conditions exist; but these peculiarities, departing from enterprise employment and being characteristic even today of agricultural cooperatives, appear in the craftsmen's coopera-

⁷ (Aleksandrov, N. G.) Александров, Н. Г.: Теоретические проблемы кодификации советского трудового права (Theoretical problems of the codification of Soviet labour law), *SGP*, 1957, No. 4.

A. A. Ruskol too has adopted the position that cooperative employment is not a subject-matter of autonomous regulation, but one of the elements of a complex cooperative relation.

(Ruskol, A. A.) Рускол, А. А.: *Колхозное право* (Kolkhoz law), Moscow, 1954, p. 7.

See also (Aleksandrov, N. G.) Александров, Н. Г.: *Теоретические вопросы кодификации общесоюзного законодательства о труде* (Theoretical problems of the codification of the labour law of the Union-Republics), Госюриздат, Moscow, 1957.

(Dembo, L. I.) Дембо, Л. И.: О принципах построения системы права (On the principles of legal systems), *SGP*, 1956, No. 8.

Gersdorf, M.: *Podstawowe zagadnienia stosunku pracy w spółdzielniach* (Principal problems of cooperative employment), *PZS*, 1954, No. 10.

Hähnert, R.: *Recht der Landwirtschaftlichen Produktionsgenossenschaften—ein selbständiger Rechtszweig*, *S.u.R.*, 1955, No. 1.

Pielarski, M.: *Die Mitgliedschaft in der Produktionsgenossenschaft und das genossenschaftliche Arbeitsverhältnis*, *RID*, 1951, No. 12.

tives in by far fainter hues and shades. Therefore it does not seem to be justified to consolidate the legal relations of these cooperatives into an autonomous branch of law. Consequently civil law deals with the ownership and organizational conditions of craftsmen's cooperatives, whereas labour law governs their working conditions and the system of remuneration.

The Hungarian Code expresses this by laying down that although a special statute defines the rules of the performance of work by the member of agricultural cooperatives, this statute is grounded on the principles of the Labour Code. As regards the craftsmen's cooperatives the Labour Code decrees that problems connected with the performance of work by the members have to be settled in conformity with the provisions of the Labour Code, however, with due regard to the characteristics originating from membership relations.⁸

(d) In many respects the separation of labour law from civil law implies serious problems.

(aa) A problem of major importance as regards the line of division is that civil law brings under regulation the formation, organization, operation and winding up of the state economic organizations in conjunction with constitutional law, the law of public administration and financial law. Here, in a broad sense, we have to set out again from the assumption that these branches of law govern the relations existing between the state economic organizations and the state (constitutional law, administrative and financial law) on the one part, as well as between one economic organization and another or others and further the citizens on the other (civil law). On the other hand it is labour law that deals with the internal conditions of economic organizations.

(bb) Another problem of making a division arises in connexion with the performance of work. Civil law brings under regulation a number of legal relations where the one party realizes the object of contract by performing work. A contract of this type is e.g. one of commission or one for work, labour and materials. However, these legal relations are in the first place directed at the performance of a definite act or acts, or at the production of a definite result, i.e. essentially at the delivery of a specified commodity or the production of a result appearing in the form of a commodity without the need on the person's part for making his working capacity available. The fact that work is required for the production of the result is a secondary characteristic only. For this reason the legal relations referred to in this connexion are those of turnover in terms of money in a wider sense, so that in the relation of performance and counter-performance, at least as a trend, the principle of the equality in value, i.e. the transaction of the exchange of performances of equal value, in the relation between the parties the principle of coordination, i.e. the method of a settlement in the form of commodities, will prevail.⁹

⁸ Labour Code, § 7.

⁹ Cf. Világhy, M. and Eörsi, Gy.: *Polgári jog*, I.k. Általános rész (Civil law, Vol. I, General Part), Tankönyvkiadó, Budapest, 1954, pp. 10 et seq.

Even in the literature of socialist economy there is reference to “labour market”, to the influence on the movement of the labour force by means characteristic of the market, further to the circumstance that labour conditions have elements close to commodity relations. Despite this, in our opinion socialist labour law relations are not essentially commodity relations. As a matter of fact under labour law the worker does not sell his working capacity, he does not make it available as a commodity, nor can the employer dispose of it as a commodity. It also follows that there is no room here for the private appropriation of the surplus value, inasmuch as all value produced by the workers is distributed directly among the workers, or is made use of, though indirectly, still in its entirety, in the interest of the workers. As a matter of fact it is the essence of socialist employment under labour law that the worker in order to implement his right to work makes use, as a rule, of his working capacity within a specific economic, administrative or social organization by undertaking the performance of regular, continuous and personal work for the discharge of duties coming within the scope of a certain post, joining meanwhile in the activities and collective of the organization concerned. It also follows that, as will be discussed later in more details, in the employment, or in the relation between performance and counter-performance, the principle of socialist distribution (i.e. the principle of remuneration by the quantity, quality and social utility of the work performed) will prevail. In the relationship between the parties as regards the performance of work, the principle of coordination will be superseded by the principle of subordination to instructions.

What is of even greater importance is that in socialist employment the person or personality of the worker comes into prominence. Socialist labour law regulates employment not as a commodity relation, but in the first place as the condition for a personal participation in the work of society, i.e. as a personal relationship. It is quite another affair that even socialist employment has financial aspects of moment. For the regulation of the financial aspects, socialist labour law also relies on the law of value, but in a manner departing in many respects from civil law. As a matter of fact, recourse to the law of value is subordinate to labour law principles which primarily and fundamentally define the method of regulation of socialist employment, or in other words it is subordinate to economic and social regularities which are expressed by these principles.¹⁰

(cc) Already in this connexion it should be pointed out that in the peripheries of labour law certain other legal relations directed at the performance of work will emerge, which although they imply performance of work, cannot be ranged among the typical labour relations discussed so far. Nor can these be considered civil law relations, for here the personal elements come into prominence as against financial considerations, so that on the whole the principles of labour law prevail. Hence these have to be considered specific cases of employment or labour relations

¹⁰ For details see Csanádi, Gy.: *A megbízási jogviszony egyes kérdései* (Certain problems of the contract of agency), Közgazdasági és Jogi Könyvkiadó, Budapest, 1959, p. 170.

Závacký, M.: *K otázke predmetu pracovného práva* (To the problem of the subject-matter of labour law), *PO*, 1958, No. 5.