EMPLOYMENT RELATIONSHIP BETWEEN SCHOOL COOPERATIVES AND THEIR MEMBER: THE STEPCHILD OF EMPLOYMENT

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This paper presents a specific form of employment between school cooperatives and their member. The SCs have a long history and comprehensive function. Initially, regulations on the SCs had a social function only. Nowadays, however, these cooperatives have become significant players in the labour market. This gave rise to tension between temporary agencies and SCs in a short time due to the similarity of employment. Apart from that, the members of SCs—under “basis of solidarity”—have automatic eligibility for social insurance of health service. This regulation creates an advantageous position for the SCs contrary to temporary employment agencies—as employers. In the meantime—to resolve above mentioned tensions—the legislator changed the legal status of members (students) of SCs. Namely, the regulation of employment between school cooperatives and their member was transferred from the Labour Code to the Act on Cooperative. Consequently, the members of SCs are not employees but so-called “fulfilment assistant”. However, it is questionable that this solution complies with the EU requirements. The ECJ emphasized, that the concept of employee must be defined in accordance with objective criteria which distinguishes the employment relationship by reference to the rights and duties of the persons concerned.

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INTRODUCTION

School Cooperatives (hereinafter: SCs) have a long and colourful history in Hungarian law system and economic life. The roots or sources of the Hungarian regulation of cooperatives can be divided into multiple stages. The origins of the law on cooperatives were based on Act XXXVII of 1874 on the Commercial Code. This Act regulated “Commercial Companies”, and “cooperatives” were one type of these companies. Section 223 of the above mentioned act stated that, “For the purpose of this act ‘cooperatives’ shall mean any company which consists of an indefinite number of members, and which is set up to mutually promote the credits, wages or economic activity—within joint business management.” The cooperatives received detailed and demanding regulation. The next important step was the creation of the Act XXIII of 1898 on the Economic and Industrial Credit Cooperatives. This Act was completed with regulation on cooperatives.

The regulation of cooperatives made the operation of cooperative effective. The most significant example, the “HANGYA” (Ant) Production, Trade and Consumer Cooperative, was founded in 1898 by count Sandor Károlyi, the “apostle of cooperation”. The General Consumer Cooperative (AFOSZ), founded in 1904, was popular among workers, mainly in Budapest and in bigger cities. In terms of our theme, the most important year was 1911. Namely, the first Hungarian Student Cooperative was founded in that year, which played a significant role in developing social policy. Right after World War II, the legislation was not yet influenced by political consideration. This circumstance was reflected in Act XI of 1947 on Cooperatives. The concept of “cooperative” was similar as in Act XI of 1874 on Cooperatives, and the rules of this code remained applicable in the new act of cooperative. However, after the “Year of Change” the so-called State-Party (Communist Party) controlled all the economic processes and eradicated any autonomy. Nevertheless, as result of a “new economic mechanism”, in the late sixties, Act III of 1971 entered into the force.

As far as school cooperatives concerned, the first so-called modern

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3 See in detail Rezső Nyers, Visszapillantás az 1968-as reformra (Back to Look at the Reform in the Year 1968), 8 Valóság 9—26 (1988).
Student Cooperative was established in 1983 (UNIVERSITAS). This Student Cooperative was established at the University of Economic Studies. It is emphasized that the aim of this cooperative was to help students to relevant work. Today, this Cooperative has about 30,000 members. To this end, the State was forced to regulate the legal status and operation of School Cooperatives. Under the regulation on the SCs, the aim of activity of SCs is training of students for self-sufficiency, community life, exercising democratic rights, and perform productive servicing and sales work in their spare time. It is remarkable, that the regulation does not define the legal status of the working student. It seemed that the student could work on the basis of membership of a cooperative. In other words, this is a *sui generis causa* of this type of work.

I. THE AMBIGUOUS FUNCTION OF SCs

The function of SCs is comprehensive. Initially, regulations on the SCs had a social function only. Their task consisted of providing help for students to find an opportunity to work. It is no coincidence that, later on, SCs were regulated as a type of so-called social cooperatives. During their work, SCs established a number of connections with undertakings, and in addition, the emergence of the first temporary agency undertaking also had an influence on their operation. For this reason, a number of SCs have pushed the social aspects into the background and began to focus on economic activity and economic goals. This gave rise to tension between agencies and SCs in a short time, which was further strengthened by the legislation; namely, in 2011 the employment relationship between school cooperatives and their members was regulated in the Labour Code (hereinafter LC).

This regulation was necessary on the one hand, but it was a mistake on the other hand. It was necessary to regulate the operation of SCs because, due to the lack of legal rules, these cooperatives were exposed to hard attacks. However, the legislator established that the construction of employment in the framework SCs is similar to a temporary agency employment. The student, as an employed person, has *triple* legal status. The first status belongs to the so-called “background relationship”: she/he is a student. The second status is bound to the cooperative: this is a “legal

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5 Decree16/1986. (V. 16.) of the Council of Ministers.
6 See Attila Kun *supra* note 4, at 75.
7 Attila Kun, *supra* note 4, at 75.
Finally, the third status is in connection with the real activity of the student: she/he is an employee. This triple legal status presented difficulties regarding both the evaluation of the legal status of SCs and social (security/insurance) law. As far as the SC is concerned, the question is what type of employer status does the cooperative have? In other words, whether it is a special status of employer? If not, the employer status of the SC is similar to the legal status of the agency as an employer.

The student and the employment’s relationship constituted an ambiguous situation in social security law. In this context it is necessary to refer to Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services (hereinafter: Act on SSB). Section 4 regulates the definitions and interpretative provision. Under Section 4, “Employing person“\(^8\), for the purpose of this act, shall mean “any natural and legal person, private entrepreneur, other organization, agency funded by the central budget, any association of persons, if they provide employment to an insured person”. Section 5 regulates the so-called “insured persons”: “cooperative members, if participating in the cooperative’s activities in person under contract of employment, contract of agency or personal service contract, not including the persons pursuing a full-time course of study in a school cooperative group, also during the period of suspension of his student relationship before reaching the age of twenty-five years, and members of cooperatives performing work in a social cooperative in the framework of member’s work relationship. It is no less than the SCs enjoying “full immunity” from social security contribution.\(^9\) In this context it is necessary to refer to some features of the financing system of social security. Section 16 regulates the eligibility for health service. Under this rule, in addition to persons insured under this Act and persons eligible for health services under Section 13, health services are also available to: Hungarian citizens of legal age pursuing full-time course of study in the regular school system or in daytime courses of study in a public education institution provided for in the Public Education Act, or in institutions of higher education governed under the Act on the National Higher Education System pursuing a full-time course of study, foreign nationals in scholarship or student relationship under a scholarship program.

\(^8\) The concept of “employing person” is not similar to the concept of “employer”. Employer is defined in Act I of 2012 on the Labour Code. The concept is the following: “Employer” means any persons having the capacity to perform legal acts who is a party to contract of employment with employees. Section 33 in the LC.

\(^9\) Attila Kun, supra note 4, at 76; Gábor Kártyás, Az iskolaszövetkezeti munkaviszony hely a foglalkoztatási formák között (The Place of SCs Employment in the System of Employment Relationships), 1 Pécsi Munkajogi Közlemények 82—84 (2013).
provided on the basis of an international agreement or by the minister in charge of education, persons covered by the Act on the Ethnic Hungarian Population of Neighbouring Countries, attending institutions of higher education governed under the Act on the National Higher Education System, pursuing publicly funded full-time course of study under State scholarship or under (limited) financing provided by the Hungarian State.

In other words, the above mentioned persons, under “basis of solidarity”, have automatic eligibility for social insurance of health service. \(^{10}\) This regulation creates an advantageous position for the SCs contrary to temporary employment agencies as employers. \(^{11}\) Due to the rules of social security, students became cheaper employees than temporarily employed employees. Remarkable is the evaluation by Kun who stated, that “the student’s work via SCs represents the cheapest lawful human resource supply in the Hungarian labour market”.

In addition above mentioned regulation the SCs enjoyed other advantages deriving from the approach of the LC. Namely the provisions of labour law generated a most flexible kind of employment for the SCs.

II. THE REGULATION OF EMPLOYMENT BY SCs IN HUNGARIAN LAW

The development of regulation of employment by SCs can be split into two periods. In the first period (2011-2016), the regulation of employment relationship between SCs and their member could be found in the LC. Since 1\(^{st}\) September 2016 these rules were transferred to Act X of 2006 on Cooperatives. The new regulation changed the legal status of students. The student—as a member of cooperative—performs a so-called personal involvement under the rule of Civil Code. In other words, in this relation the cooperative acts as a principal (instead of employer) and the student as an agent (instead of employee).

A. The Regulation of Employment by SCs in the Labour Code

As far as the first period concerned, the employment relationship between SCs and their member was based both on the general regulation of cooperatives and partially on the rules of labour law. First of all, the placement of this regulation, in terms of structure and editing, is remarkable. The rules of employment by SCs follow the provisions on temporary agency

\(^{10}\) Attila Kun, supra note 4, at 76.

\(^{11}\) See in connection with this rule the decision of the Hungarian Constitutional Court Number 19/B/1999. AB.
work. Consequently, both types of employment are evaluated as a typical employment.

This mixed character of content of the rules is reflected in Section 223(1). Under this rule a school cooperative (employer) and its full-time student (employee) may enter into a fixed-term employment relationship so as to permit such student to perform work at a third party (customer) with a view to supplying services to such third party.

This rule should be compared with the provisions on the parties of temporary agency work. Section 214 in the LC regulates the main definitions of temporary agency work. Under this rule “temporary agency work” means that an employee is hired out by a temporary-work agency to a user enterprise for remunerated temporary work, provided there is an employment relationship between the worker and the temporary-work agency (placement). “Temporary-work agency” means any employer who places an employee, with whom it has an employment relationship, under contract to a user enterprise for temporary work supervised by the user enterprise. “User enterprise” means any employer under whose supervision the worker performs temporary work. “Temporary agency worker” means a worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user enterprise to work temporarily, where employer’s rights are exercised jointly by the temporary-work agency and the user enterprise (worker). Finally “assignment” means that the temporary agency worker is placed at the user enterprise to work temporarily.

Section 218 of the LC expresses the essence of the contract of employment. Namely, the contract of employment is to contain a clause indicating that it was concluded for the purpose of temporary work, (as well as a description of the work and the base wage). In other words: the employee himself is the subject of loan. This fact is reflected in the contract of service between the temporary work agency and the user enterprise.

I note incidentally that a similar relationship is concluded between the SC and a third person (in temporary agency work: user enterprise), this is also a contract of service. However, during the performance of this contract the student (employee) is involved as a “fulfilment assistant” (see below).

The fact of the loan is important in the agreement between the temporary work agency and user enterprise. This agreement specifies the material conditions of placement and the sharing of employer’s rights. Employment may only be terminated by the placement agency. The contract for the rental of the employee is also indicated by other elements of the agreements. The user enterprise has the obligation to inform the temporary-
work agency in writing about:
(a) Its normal course of work;
(b) The person exercising employer’s rights;
(c) The manner and the time frame within which to supply the information necessary for the payment of wages;
(d) The qualification requirements pertaining to the work in question; furthermore;
(e) All aspects that are considered significant in terms of the employment of the worker in question.

Unless there is an agreement to the contrary, the user enterprise shall supply the temporary-work agency by the fifth day of the month following the current month all information required for the payment of wages, and for carrying out tax declarations, data submission and payment obligations relating to the employment relationship. The user enterprise shall supply the above information to the temporary-work agency within three working days from the last day of employment, if employment is terminated during the month.

The rental of the employee is also supported by the contract of employment. Under these rules, the temporary-work agency shall provide the following information in writing to the employee, before the assignment:
(a) The identification data of the user enterprise;
(b) The beginning date of the assignment;
(c) The place of work;
(d) The normal course of work at the user enterprise;
(e) The person exercising employer’s rights on the user enterprise’s behalf;
(f) The particulars on travel to work, room and board.

In summary it can be argued that the implementation of the directive has been perfectly successful, and the structure of temporary employment is clear. The structure of this kind of employment contains a so-called triangular relationship, which consists of two legal and one factual relationship. The essence of the temporary agency employment is the rental of the employee.

How is the employment relationship between SCs and their members regulated, compared to temporary agency employment? The first striking feature is the dual legal relationship between the SC and its member, which is regulated by Act X of 2006 on the Cooperatives (hereinafter: Act on Cooperatives).

The first relationship is based on a “membership agreement”. Section 8(4) in the Act on Cooperatives stets out that at least eighty-five per cent of
the school cooperative’s membership is to be made up of natural persons attending a pedagogical and educational institution or a higher education institution. Additionally there must be another legal relationship pursuant to Section 7(1). Under this rule, SCs are set up to provide students attending secondary schools, colleges, basic schools of art provided for in Act CXC of 2011 on the National Public Education System (referred to collectively as “pedagogical and educational institution”), as well as students of higher education institutions under Act CCIV of 2011 on National Higher Education, with the opportunity to perform work and to facilitate their practical training. Consequently the second relationship between SCs and their member is based on the contract of employment, which is regulated in detail in the LC.

However, this contract of employment has a number of peculiar features. The first one is that such a contract consists of several phases. The first phase or the first part of this contract is actually a framework agreement. Section 223(2) in the LC requires the employment contract to specify:

(a) A description of the responsibilities undertaken by the employee;
(b) The threshold of the employee’s base wage for the duration of work performed at the customer;
(c) The agreed means of communication during the period when the employee is not required to work.

This structure is similar to the solution of call for work. The second phase is connected to the effect of the contract of employment, or in other words, to when performance starts. Under Section 223(3) in the LC, work may be initiated when the parties have reached an agreement in writing concerning:

(a) The person of the customer;
(b) The job to be performed;
(c) The base wage;
(d) The place of work;
(e) The date when work is to commence;
(f) The duration of work.

The employer’s obligation of information is attached to the time of taking up work. Namely, the employer is obliged to inform the employee in writing concerning:

(a) The regular work hours;
(b) The date of payment of wages;
(c) The functions of the job;
(d) The person delegated to give instructions.

This regulation contains many uncertainties and raises a number of
questions. It is not clear who shall exercise the employer’s rights; thus, the legal status of the student as an employee becomes uncertain. In the case of temporary agency employment, the employer’s rights are divided during the assignment, and supplemented with the provision that employment relationship may only be terminated by the temporary work agency.

Regarding the exercising of employer’s rights in the course of employment by SCs, Section 224(1) in the LC contains a vague sentence: “the customer—as a <third party> shall be entitled to give instructions to the employee.” Consequently the question is, under whose direction does the employee perform the work? If the contract of service is concluded between the SC and its customer, and if the employee acts as a fulfilment assistant in the performance, the employer should exercise the employer’s rights, including direction. However, instead of providing a clear regulation, the LC contains additional ambiguities. Section 224(2) in the LC states that the customer must cooperate with the employer, including, in particular, in providing access to the employer’s representative to the place of work, and in making information available to the employer in connection with issues concerning the work. Under Section 224(3), during the period of work performed by the employee, the customer shall exercise the employer’s rights and meet obligations relating to compliance with the provisions on:

(a) Occupational safety;
(b) Employment of women, young workers and persons with reduced ability to work;
(c) Working time, rest period and the records of these.

Nevertheless, the main question remains unanswered: who directs the work of employees? In addition, what does “the employer’s representative” mean? And one more thing: must the employer’s representative be constantly present at the customer’s premises where the work is done? This volatile legal situation is further complicated by the content of Section 224(4-5) of the LC. Under these provisions, the basic working and employment conditions of the school cooperative’s employee, as set out in Subsection (2) of Section 219, must be, for the duration of work assignment at the customer, at least those available to the workers employed by the customer under employment relationship (sub4). The employer and the customer are jointly and severally liable in respect of obligations under Subsection (4) thereto.

The first question is, which contract can be amended or terminated: The framework agreement or the contract containing the terms and conditions? The next problem is related to the amendment and termination
of contract of employment. The requirements for giving reason and justification of termination are not clear. It is highlighted that the membership agreement and the contract of employment are concluded for a fixed term. Finally, the cited regulation does not reveal whether or not the general provisions of the LC can be applied.

In respect of general rules, it is an important feature that the student as an employee is not entitled to annual paid leave, sick leave, maternity leave and unpaid leave on the basis of employment relationship with the SC. This differentiation is arbitrary and for this reason discriminatory at the same time. The possible reasons for lack of the above provisions are analysed in detail by Kártyás who referred to, among others, the decision of the ECJ. As far as the annual paid leave is concerned, the entitlement of this leave cannot be made subject to a minimum period of employment with the same employer. The exclusion of sick leave is completely unjustified; namely, the incapable employee receives a so-called sickness benefit, which is less than the sick-leave pay. Finally, the lack of unpaid leave is incomprehensible, as there may be circumstances when the employee is unable to perform work.

As a summary, it can be concluded that the regulation of employment by SCs is flawed and doubtful. It is necessary to compare the structure of temporary agency work and employment by SCs again. As I have pointed out, temporary agency employment has a triangular relationship. There is a service of contract between the temporary-work agency and the user enterprise. The subject of this service is the lending of the employees themselves. It is emphasised, that the temporary-work agency, as the undertaking acting as employer, does not perform any work activity for the other undertaking (acting as user enterprise). With the expression of the Roman law, it is a locatio conductio “rei”, with the remark, that “rei” is a human. We have to admit, that in spite of every effort of the legislator, the employment by SCs is essentially close to temporary agency work. Kun analysed in detail similarities and differences between agency work and SCs. I would not like to go into a detailed analysis here, just to make a short remark. There is no doubt that a number of discrepancies can be

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12 See in detail Gábor Kártyás, supra note 9, at 82—84.
13 Section 227(3) in the LC.
14 C.173/99.BECTU [2001] ECR 1-4881 para 6. Article 7(1) of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time does not allow a Member State to adopt national rules under which a worker does not begin to accrue rights to paid annual leave until he has completed a minimum period of 13 weeks’ uninterrupted employment with the same employer.
15 Attila Kun, supra note 4, at 87—89.
detected in the legislation. The concept of the regulation would be acceptable if the SCs’ original function had remained. If this would have been the case, the student as a member of SC would be able to work occasionally in their spare time, gain experience on the labour market and find a job easier after finishing studies. This function of SCs can be classified as a social one. However, empirical surveys have confirmed other activities too. The SCs have become more and more important players on the labour market. Now students may be employed for all kinds of tasks, the majority of which are irrelevant in terms of the future careers of the student. Finally, it can be established that those students who build their future career during their studies do not choose an SC, but another type of employment.

The structure of regulation also contributes to economic efficiency and flexibility of SCs. Namely, the contract of employment, as a framework agreement, specifies the scope of the tasks undertaken by the employee and does not deal with a specific task or job. Consequently, students can be mobilised quickly, their employment (assignment) is easier than in the case of temporary agency employment.

The questions mentioned above have also arisen on the side of the European Commission. The Commission investigated a claim regarding the lack of annual paid leave; however, the question was rather more comprehensive. The Commission consequently referred to Directive 2008/104/EK on temporary agency work. So, it could be assumed that the Commission would draw a parallel between employment by SCs and temporary agency employment. The Commission analysed the scope of the Directive. The Pilot-letter strongly refers to Art 1(1) which says, “This Directive applies to workers with a contract of employment or employment relationship with a temporary work agency, who are assigned to user undertakings to work temporarily under their supervision and direction.” The third question of the Commission was as follows: “Please clarify whether, under Hungarian law, members of the SCs are considered to be temporary employees.” The fourth question was, “If the answer to the third

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17 Kun Attila, supra note 4, at 86.
question is negative, please justify this.” Finally, the Commission asked for a description on how can the consonance between the Hungarian rules and provisions of Directive 2008/104/EK be established.

B. The Regulation of Employment by SCs in Act X of 2006 on Cooperatives; A Real Change of the Concept or a Diversion?

In view of the contradictions arising from those rules, the legislature decided to place employment on other grounds. The substance of the new concept of regulation is to strengthen the roots of the classical principle of cooperatives. The amendment of the Act on Cooperatives (2014) relied basically on the provisions of the new Hungarian Civil Code (Act V of 2013, hereinafter: CC). Section 3: 325 of the CC gives the general definition of “cooperative societies”: “A cooperative society is a legal person established with a capital made up of the members’ contributions; it operates under the principle of open membership and variable capital with the objective of lending assistance to its members, so as to satisfy their economic and societal needs, where the obligation of its members toward the cooperative society covers the provision of capital contribution and their personal involvement as provided for in its statutes. Members shall not bear liability for the cooperative society’s obligations. The activities of cooperative societies may include sales, purchases, production and services.” On the basis of the provisions of the CC, the Act on Cooperatives states that the provisions of this Chapter shall apply in conjunction with the Civil Code. Under Section 3 of the Act on Cooperatives, the membership agreement concluded between the cooperative society and its member may provide for —within the framework of the statutes—tasks and commitments to be carried out within the economic cooperation between the cooperative society and its members and the services available to members.

The Act on Cooperatives classifies the SCs as a special type of cooperatives. In this context, the Act emphasizes again that the provisions of the Civil Code governing cooperative societies shall apply to the special types of cooperatives covered by this Act, subject to the exceptions set out there. The main rules in respect of SCs specifically are following. The name of a school cooperative must contain the identification “school cooperative”. Section 7(3) emphasizes that “the activities of school cooperatives shall be consistent with the educational and training objectives of the pedagogical and educational institutions and higher education institutions, without compromising the functioning of, and the education provided in, the pedagogical and educational institutions and higher education institutions.”
The content of Section 7(6-7) is very important regarding distinction or confusion of employment by SCs and “employment” on the basis of a “trainee contract”. The legal institution of the “student contract” of “trainee contract” is regulated in Act CLXXXVII of 2011 on Vocational Training. In this case, there are actually two contracts. The first contract (trainee contract) is concluded between the school and the trainee [Section 42]. The other contract (cooperation agreement) is concluded between the school and the “training organizer undertaking” [Section 56]. The training organizer undertaking pays the allowance to the trainee during the period of vocational training [Section 63]. In the context of the above mentioned regulations it can be stated that the training organizer undertaking cannot be evaluated as employer in a de iure sense. There is no contract of employment between the undertaking and the trainee.

Nevertheless, the SCs can take part in the system of vocational training. Under Section 6 of Act on Vocational Training, technical requirements specified by the higher education institution relating to practical training shall be made available by the school cooperative and the service recipient collectively. Section 6a) states that where practical training is organized through a school cooperative, students referred to in Subsection (1) shall have the option—by way of derogation from Subsection (1) of Section 44 of Act CCIV of 2011 on National Higher Education—to obtain practical experience on the basis of a membership agreement relating to external services provided for in Subsection (2) of Section 10/B. This is nothing but employment by SCs.

After this short detour, I need to present the essence of employment by SCs—apart from the above trainee relationship. The Act on Cooperatives regulates the economic cooperation between the SCs and their member, a kind of personal involvement which is to be laid down—within the framework of the statutes on SCs—in the membership agreement. The membership agreement provides for specific responsibilities within the scope of personal involvement of SCs members. This text may be familiar from the previous regulation in the LC. The substance of the conceptual change can be found in the Section 10) b1. Under this provision “students of SCs receiving full-time education may fulfil the requirement of personal involvement also within the framework of the provision of services by the school cooperative to a third party (hereinafter referred to as ‘external service’)”. Section 10) b2 provides the definition and the legal status of such personal involvement. The essence of this rule is the following: “The legal

19 See Section 223(2) of the LC: The Contract of Employment Shall Specify a Description of the Responsibilities Undertaken by the Employee.
relationship for the provision of external service is a relationship entered into on the basis of a membership agreement relating to external services between a school cooperative and its students receiving full-time education, where students of SCs receiving full-time education perform their personal involvement, and for which the relevant provisions of the Civil Code relating to personal service contracts and the provisions of Act I of 2012 on the Labour Code (hereinafter referred to as ‘Labour Code’) indicated in this Act shall apply."

Consequently, the legal status of the student is based on the so-called personal service contract which is regulated in the CC. For this reason, the student cannot be regarded as an employee. However, because of the objections raised, some rules of the LC still apply. As I have previously highlighted, the subject of the contract of service is to carry out some kind of task (e.g.: IT-work, carriage, sales, customer service, etc.) and not to lend a student. Nevertheless, under Section 10) b3, in the performance of the external service, the recipient of the external service has the right to give instructions directly to the students of school cooperative groups receiving full-time education. The right to give instructions shall cover, in particular, the method, time and scheduling of the performance of the work. Such a provision would be unimaginable for a real service contract.

The regulation of personal involvement is made even more doubtful by the application of certain rules of the LC. Here are some examples. Students of SCs receiving full-time education shall be allowed twenty minute break if the daily working time exceeds six hours and another twenty-five minute break if the daily working time exceeds nine hours. In addition, students of SCs receiving full-time education, if working two consecutive days, shall be afforded at least eleven hours of rest after the conclusion of daily work and before the beginning of the next day’s work.

The paid annual leave has to apply regarding students. The Act on Cooperatives provides that the provisions of the LC on paid annual leave shall apply to school cooperative members who are students receiving full-time education, as well as to members without a student relationship, providing personal involvement, with the derogation that time spent in the provision of external service shall be recognized as time spent at work, where one day of paid holiday is to be given for each thirteen days at work.

The regulation of personal involvement on the basis of the CC has another sensitive point, namely wages. The question is whether the

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20 Section 10/B (4) of Act on Cooperative.
21 Section 10/B (4) of Act on Cooperative.
22 Section 10/B (5) of Act on Cooperative.
provisions concerning mandatory minimum wage is to be applied or not? The Act on Cooperatives left nothing to chance: the remuneration due to specific work performed for the recipient of the external service may not be lower than the minimum amount provided for in the decree adopted by authorization delegated under Section 153 of the LC.\textsuperscript{23} By this provision, the legislator made the student’s legal status even more ambiguous. Nevertheless, similar solutions are not entirely unknown. I would like to refer to the legal status of the economically dependent person (arbeitnehmerähnliche Person) in the German, and the distinction between employee and worker in the English labour law.\textsuperscript{24} The essence of these solutions can be summarized as follows. There are persons who perform their work personally or basically without the involvement of other employees, on the basis of a contract of service. They perform their work predominantly for the same person. Finally, more than half of their income is earned from this activity (i.e. from the same recipient).\textsuperscript{25} These persons have an economically dependent status and perform their work on the basis of the civil law. It is emphasized that this relationship is not to be classified as bogus employment. These are so-called self-employed persons. Nevertheless, this relationship has a particular feature. Such persons are not actually present in the real business market; they are tied to a single customer and have no chance to perform a service for more customers. For this reason, they need social protection. Consequently, the provisions of paid annual leave, minimum wage, rules of prohibition of termination of legal relationship are to be applied to the persons concerned.

However, there is a significant differentiation between the legal status of a self-employed person and a student acting as fulfilment assistant. The legal status of the self-employed is clear; \textit{de iure} she/he is an independent person, while the student is a member of an SC. Of course, there is nothing to prevent the parties from agreeing on the application of the minimum

\textsuperscript{23} Section 10/B (6) of Act on Cooperative. The mandatory minimum wage and the so-called guaranteed wage minimum are determined by the government after consultation in the National Economic and Social Council.

\textsuperscript{24} The regulation of the legal status of economically dependent persons was raised during the elaboration of the new LC. \textit{See in detail:} György Kiss, \textit{A munkavállalóhoz hasonló jogállású személy szabályozásának problematikája az Európai Unióban és a szabályozás hiánya a magyar munkajogban (The Problem of Regulation of Person Having Similar Legal Status as Employee (Worker) and Absence of Regulation of This Legal Status in the Hungarian Labour Code), in RECENT DEVELOPMENTS IN LABOUR LAW 259—279 (2013).

\textsuperscript{25} \textit{See the German Collective Agreement Act (Tarifvertragsgesetz) §12a; Daniela Pottschmidt, Arbeitnehmerähnliche Personen in Europa (2006); Nicol Neuvians, Die arbeitnehmerähnliche Person 22—27 (2002); Hugh Collins, Independent Contractors and the Challenge of Vertical Disintegration to Employment Protection Laws, OXFORD JOURNAL OF LEGAL STUDIES 354 (1990).}
wage. As a matter of fact, this is actually ordered so by the legislator, since it can be concluded that the student, as a member of an SC and performing work as a fulfilment assistant is actually an employee.

III. PERSPECTIVE FOR THE FUTURE; CONCLUSION

Apparently, the regulation of employment has changed significantly. The legislator modified the legal status of the student: from a worker, she/he became a fulfilment assistant. The question is, however: whose competence is it to determine and classify the employee’s status. In this context, I must refer to the Balkaya-case.\(^{26}\) In this case the EJC stated, “It is apparent from the settled case-law of the Court that the concept of ‘worker’ (employee) must be defined in accordance with objective criteria which distinguishes the employment relationship by reference to the rights and duties of the persons concerned. In that regard, the essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he receives remuneration.”\(^{27}\) In my opinion the student’s performance of work corresponds to these criteria. Consequently, a similar argument can be expected in connection with the structure of the relationship between SCs and their members.\(^{28}\)

Why the attack against employment by SCs? In my opinion there are several reasons. First of all, the main reason is the changing function of the SCs. These cooperatives have become significant players in the labour market. This situation, in itself, would not cause problems. The second reason is that SCs enjoy advantages that other players of the labour market do not get. Thirdly, the regulation has been unable to make a significant distinction between temporary agency work and employment by SCs.

Kun called this employment policy and the regulation concerning SCs a “Hungaricum”.\(^{29}\) It would be difficult to argue this evaluation; the question is whether the contradictions described can be solved at all? For this, the whole employment policy applicable to cooperatives should be changed. This seems hopeless in the short term, because this type of employment has taken root in the Hungarian labour market, despite all the tension. As long as the situation does not change, employment by SCs remains a stepchild of the Hungarian labour market.

\(^{26}\) C-229/14 Ender Balkaya v. Kiesel Abbruch-und Recycling Technik GmbH.
\(^{27}\) C-229/14 Ender Balkaya v. Kiesel Abbruch-und Recycling Technik GmbH, para. 34.
\(^{29}\) Kun Attila, *supra* note 4, at 90.