

Horecký, J., Blažek, M. (2019). Dependent work and internship. *Central European Journal of Labour Law and Personnel Management, 2 (2), 7-20.* doi: 10.33382/cejllpm.2019.03.01

DEPENDENT WORK AND INTERNSHIP

Jan Horecký¹ – Michal Blažek²

¹ Faculty of Law, Masaryk University in Brno, Czech Republic

² Faculty of Law, Masaryk University in Brno, Czech Republic

Received: 02. October 2019, Reviewed: 14. November 2019, Accepted: 05. December 2019

Abstract

The law of the Czech Republic does not explicitly regulate the rights of the university students participating in internship programme. Nor does it regulates the obligations and rights of the internship programme providers. Without the existence of any specific legal regulation, the issue has to be addressed by most of the universities since internship is a necessary requirement for graduation. The absence of legislation makes unclear the legal background of internship programmes. The authors of the article deal with those legal norms that should apply in internship practice and present several arguments supporting the fact that the internship programme should be regulated by labour law Act No. 262/2006. The article also draws attention to the consequences of this conclusion. The aim of the paper is to support the opinion above, providing several arguments. To achieve this objective, the concept of „dependent work“ will be analyzed using deductive research method based on the existing theoretical labour-law knowledge, as well as an inductive method will be applied with the Supreme Court and the Supreme Administrative Court of the Czech Republic.

Key words

professional practise, dependent work, remuneration for work, insurance.

DOI: 10.33382/cejllpm.2019.03.01

JEL classification: J80, J83, K31

Introduction

Studying at university is often complemented by acquiring practical skills through applying for internship programmes. At some universities, the fulfillment of internship is an obligatory condition to obtain a degree that means successful completion of university studies. The internship programme itself takes place under different conditions. Those providing internship are convinced that professional practice is not a subject to standards of any private law obligation. In most of the cases, unnamed contracts about conducting internship are signed, in which it is stipulated that the activity provided by the student is voluntary without financial reward provided by the professional practice provider.

However, the present article is trying to find an answer whether the applied practice is correct and in accordance with the legal norms of the Czech Republic. The authors are trying to present the facts, why it is necessary in certain cases to assign the professional practice under the standards of Act No. 262/2002 Coll., of the Labour Code (hereinafter referred to as a „Labour Code“). Assigning to protectionist norms of the Labour Code entails innumerable obligations for those providing internship practice (employer *de facto* and *de iure*), for example, the obligation for student (employee) to provide wage, salary or remuneration for work and the obligation to compensate for material and non-material damage. Both topics mentioned will be discussed in details in further parts of this article.

The aim of this article is to draw attention to a fundamental legal loophole, start discussion on the issue and propose possible solutions. The legal opinion and findings of this article might help convince the Czech legislature to define more explicitly the legal nature of professional practice in the Czech law. The authors of the article expect that the proposed changes will contribute to higher legal certainty and respect of legal norms, as well as securing (social and economic) persons – students, who often replace or supplement the regular employees of the company. The introduced topic would certainly deserve a lot more attention. The present article is trying to address the basic line of the problem and structure the arguments. The chosen methods of work make the article transparent and persuasive.

Theoretical background

Contemporary approach to the issue

Domestic scientific literature addresses almost no attention to the issue of internship. According to our opinion, this happens, because with an exception of § 391 of the Labour Code, there are no legal norms specifically defining this form of employment relationship.

An insight into the phenomenon was introduced by Andrea Hrdličková. She presented several piece of information, which instead of the analysis of current legal norms deals with the considerations on conducting internship *de lege ferenda*. Hrdličková names entities participating in professional practice and calls for legislation that should ensure a smooth, administratively less demanding and quality provision of professional practice, in which neither of the participating entities will be disadvantaged. Hrdličková is also emphasizing that those providing professional practice should apply the same rules as generally employers do in terms of personal data protection and employee monitoring. She also proposes a written confirmation of commitment between the parties, and tax advantage for the service provider in order to motivate the service provider to conduct this activity (Hrdličková, 2013).

Tereza Eréney and Daniel Vejsada also address the issue of professional practice. They advocate the possibility of conducting professional practice not as a part of the basic labour-law relationship and propose to fall it under volunteering activity or the legal norm of Act No. 89/2012 Coll. of the Civil Code (hereinafter referred to it as „Civil Code“) without being entitled to receive any financial remuneration. The authors of the article recommend to service providers to apply the possible minimum amount of instructions towards the students and apply in fields where they find it necessary. As an example, the authors mention workplace health and safety. The authors do not consider this legal construction to be convincing and might be an effective legal regulation, and therefore they make an attempt to provide further definition

on the issue in this article (Eréney and Vejsada, 2015). Other authors as well do not provide a convincing argument confirming their opinion about the possibility of an internship without remuneration (Klega, 2006; Mynářová, 2018).

Historical overview

Interesting inspiration on the issue can be found in the text from the mid 20th. century. Already in 1937, JUDr. Karel Ballenberger in his article refused the idea of internship with no remuneration provided. In his paper, he introduces the legal regulation applied and comments on it. In his work, he defined three types of contracts we would classify today as quasi employment relationship contracts resp. *sui generis* contracts. He distinguishes learning, volunteer and internship contracts that are based on intensity of the work. The contracts were however defined on theoretical basis. Certain circumstances allowed to provide financial remuneration for the apprentice/volunteer/trainee for their conducted activities.

There was no detailed elaboration of theories described in quasi-internship contracts, neither by the initiative of professionals. Ballenberger called for an improved legal regulation considering the younger generation. It seems that absence of legislation regarding professional practice characterized the era. For more details, the reader should study the literature of this period (Ballenberger, 1937).

Foreign literature

Part Nine of the Labour Code, Act, No. 311/2001 about the agreements on work performed outside employment relationship specifically regulates the discussed issue. In contrast to the Czech Labour Code, in addition to the Work Activity Agreement or Performance Contract, the Slovak Labour Code also included the Agreement on Temporary Job of Students. All three agreements covered in this section shall be a subject to common legislation referred to in § 223 - § 225. The Agreement on Temporary Job of Students is specifically regulated in § 227 - § 228. According to § 227 (1) an employer may conclude an agreement on temporary job of students with a natural person who has the status of a secondary school student or a student in full-time higher education under applicable legislation and the person is under 26 years of age (Barancová, 2017). According to § 227 (2) work under an agreement on temporary job of students shall not exceed 20 hours per week on average; the average for the purposes of the maximum admissible working time shall be calculated from the whole period covered by the agreement up to a maximum of 12 months. An employer shall be obliged to conclude an agreement on temporary job of students in writing, otherwise it is invalid. The agreement must include: the agreed work, the agreed reward for the work performed, the agreed extent of working time and the period for which the agreement is concluded. The employer shall be obliged to issue the employee with one copy of the agreement on temporary job of students (§ 228 (1)). If a trainee is completing his studies and the natural person reaches 26 years of age while continuing to work for the employer, the agreement on temporary job of a student will automatically be transformed into an employment contract. Agreement can be concluded only for definite period, and that is max. 12 months (srov. § 228 odst. 2).

Thus, unlike the Czech legislation, the Slovak legislation *de lege lata* determines the performed activity of the student in form of internship by the Labour Code (Act, No. 311/2001 Coll.). It lays down the conditions under which the traineeship is to be carried out, including the obligation to pay for the performed work. The Slovak legislation is also calculating with real situations in

which it is appropriate that the existing relationship between the student and the service provider should no longer be provided as an agreement on temporary job of a student, but its legal nature has been changed and subsequently classified as a „classic“ employment relationship. The agreement on temporary job for a student is a bilateral synallagmatic commitment.

In contrast to the Slovak legislature, the French legislature laid down the rules for conducting traineeship not in the labour code but in the document *Code de l'éducation*. The French *Code de l'éducation* contains a special regulation standardizing the traineeship as an irregular performance of dependent work. Internship is a three party relationship according to the French concept. The parties involved are the university, the university student and the organization ensuring traineeship. The traineeship has both pedagogical and work profile. If the educational aspect of traineeship is abandoned, the relationship actually changes into performance of dependent work, and the trainee is entitled for change of the existing contract into employment contract. If the trainee fails in the process to change his contract with the contractor, he may request this from the *Conseil de prud'hommes* - Court of First Instance, responsible for labour disputes (Pélissier, Gilles and Dockès, 2013). According to French standards, the job agreement between the trainee and the organization providing traineeship may not exceed 6 months during an academic year (L 124-5 Code de l'éducation). If the traineeship determined in 6 months is exceeding this period by two months, the employer has to pay the trainee an extraordinary remuneration (L-124-6 Code de l'éducation), which is different from the ordinary wage of an employee of the organization. The amount of extraordinary remuneration depends on the concluded collective agreement in the given field. However, it may not be lower than the minimum guaranteed by the state. In addition, the trainee is entitled to get the same benefits as the other employees of the organization. The right to equal treatment is applied. The trainee receives meal vouchers, commuting allowance to and from workplace, which are paid by the employer (Pélissier, Gilles and Dockès, 2013).

Material and methods

The main objective of this article is to summarize the traineeship activity in accordance with the currently valid regulations in the Czech Republic. At present, avoidance of law occurs in certain situations, when no financial compensation is provided for the student's work. The authors will try to reject or confirm this assumption in the chapter of Results and Discussion.

As the main and primary source of the following considerations (in addition to the above discussed historical overview and the foreign literature addressing the issue) we used: Act No. 26/2006 Coll., of the Labour Code, Act No. 89/2012 Coll., of the Civil Code, Act No. 435/2004 of the Employment Law and Act No. 198/2002 Coll., about the Voluntary Service, as well as amendments to certain acts, consequently the decision-making practice.

To get as close as possible to the concept of dependent work, an analysis was applied based on the practice of the Supreme Court (Decision of the Supreme Court on 18 December 2001, 21 Cdo 615/2001; Decision of the Supreme Court on 30 November 2016, 33 Cdo 645/2016); the Supreme Administrative Court (Decision of the Supreme Administrative Court on 29 September 2011, 4 Ads 75/2011; Decision of the Supreme Administrative Court on 23 March 2012, 4 Ads 175/2011; Decision of the Supreme Administrative Court on 27 April 2012, 4 Ads 177/2011; Decision of the Supreme Administrative Court on 13 February 2004, 6 Ads

46/2013), where the authors identified the essential characteristics of this term. Analyzed was as well the decision of the European Court of Justice, 7 September 2004, the case C-466/02, Michel Trojani vs. Centre public d'aide sociale de Bruxelles (CPAS). The concept of dependent work was analyzed and was subsequently assessed by the authors. The authors did not make conclusion solely based on grammatical interpretation of the law. They also applied logical and teleological methods. Applying these methods of interpretation, they could draw the conclusion summarized below. The article also uses sources lacking the characteristics of formal source of law, such as the Recommendation of the International Labour Organization No. 198 about the employment relationship in 2006 and the Explanatory Memorandum to § 1746 No. 89/2012 Coll., of the Civil Code. As a secondary source can be listed the scientific work of Andrea Hrdličková (Hrdličková, 2013) and the work of other few authors (Eréney and Vejsada, 2015) as well as the articles of scientific journals.

The sources have been incorporated to support the opinion of the authors. General conclusions were drawn from the law cases and doctrinal knowledge using the method of induction. The knowledge of different sources has been processed by the method of analysis and synthesis, as well as the authors contributed with their arguments.

Results and discussion

Facts

Some faculties of Masaryk University in Brno are among those institutions that require professional practice from their students to complete their master's degree. Traineeship can be mastered at any provider of this possibility offering different conditions. According to the experience of the author as well as the general public, it can be said that most of the organizations offer traineeship for free. The state administration sector offers traineeship for free. At this point, however, the question should be raised whether conducting dependent work is similar to traineeship, and therefore the person conducting the work is entitled to wage, salary or remuneration for his job.

Professional practice conducted assumes a two-party or three-party legal relationship. In the first case, we talk about the situation, when the traineeship was initiated by the student, and anything similar was not required by the educational institution. In the latter case, the university itself enters into a relationship through a particular faculty imposing a student an obligation to enter an internship. The faculty as a third party acts as an initiator of internship. The other side of the triangle is represented by a natural or legal person, where the student is conducting internship – provider of internship. We suppose that it is always the person, who acts as an employer. During our research, it was not detected that this person was of different position. The third side of the triangle is the student of the college resp. university.

The three-party relationship is manifested externally through the behaviour of the parties involved. Regarding the content of this relationship - traineeship – these are the rights and obligations of individual entities. The initiator controls the fulfillment of the traineeship. However, the bulk of the content can be defined in the relationship of the internship service and the student. It depends what type of internship is conducted. It is possible to distinguish between voluntary and obligatory internship, whether the student is completing internship based on own initiative or it is the request of the faculty.

The traineeship can also be distinguished based on the nature of the activity conducted by the trainee. In the case of the first model, which can be called a distance model, the student does not work, only gets acquainted with the office activity and observing the professional expert, e.g. supervisor of sport club, teacher in the classroom. The second model is a model of professional practice, where the student is performing activities related to his/her studies. The third model is represented by the administrative model. The university student does not carry out professional tasks. The work of a student consists of looking after clients and other office members, archiving files, photocopying documents etc. The introduced models will probably lap one another. The work conducted by the student can be characterized both administrative and professional. The student will also learn by observing the work conducted by more experienced colleagues. The job description will determine the different categories.

Analysis of the term „dependent work“ according to § 2 (1) of the Labour Code

Labour law protection is activated by subordination of any human activity reflecting to dependent work. In such circumstances, the relationship between the parties is governed by the regulations of the Labour Code. *A contrario*, it is not possible to apply the regulations of the Civil Code solely to the relationship. Dependent work is a basic defining feature of the basic labour relations. The Labour Code defines three such labour relations. In addition to the employment relationship, it is an agreement to perform work and an agreement to complete job.

It may happen that the activity does not fulfill the characteristics of dependent work, and consequently it is not possible to subordinate the given activity to the Labour Code. In this case, it is considered to be an independent work (Bělina, 2015), which will be a subject to the regulations of Civil Code, specifically the contracts regulating the relationship based on the contract of work.

The literature is addressing the concept of dependent work performed by the employer for the employee in a creative and innovative way. Different authors approach the concept in different way. Dependent work helps to uncover the obscure legal acts, where work is performed without payment of adequate financial reward. It also makes it possible to distinguish the activities regulated by the Labour Code from altruistic human assistance (Podhrázký, 2014).

According to the Employment Relationship Recommendation, 2006 (No. 198), states should consider defining the employment relationship based on the following identifiers: superiority and subordination, integration of subordinate person into the organizational structure, personal performance of work for the benefit of a supervisor at a particular location, specified period of time and determined financial remuneration. However, recommendations are not binding on member states. They provide a guidance for implementing international standards in the field they are related to. Another source can be listed the Decision of the Court of Justice of the EU on 07.09 2004 - C-466/02. The activity of the employee should be provided for a certain period, for the benefit of the employer, and remuneration is provided for the employee based on the performed activity. The activity is controlled by the employer, and the work conducted should be effective. The court is emphasizing to take into consideration all the existing and absent facts that may lead to confirmation or termination of employment relationship between the parties.

According to § 2 (1): „*Dependent work is conducted in the superior position of the employer and subordinate position of the employee on behalf of the employer, according to the instructions of the employer, the employee is performing the work personally.*“ In addition to this, the Supreme Administrative Court introduced a further feature of dependent work being long-term (systematic).

The characteristic features specified by law will not be analyzed in this article. The article will address the practice of courts and the doctrine-driven features.

In the context of „personally conducted dependent work“, the personal nature of labour-law relationship may also be encountered, thus asserting that the legal relationship between the partners is not merely a working relationship but brings the concerned parties closer. It is confirmed that work in terms of the relationship between the employer and the employee (the person acting on behalf of the employer) is also crucial in terms of overall satisfaction with life of the employee. However, we must reject characterizing dependent work in terms of personal bond. As already mentioned, dependent work is performed on the basis of labour-law relationship that includes employment relationship, agreement to perform work and the agreement to complete job (Vysokajová, 2015). An agreement to complete a job can be concluded for a one-day performance of dependent work (work task assigned individually) or work performed for several short-term occasions. In these cases, we cannot talk about personal bond of the parties involved. Personal bond between the employer and the employee exists if employment contract or agreement to perform work is concluded between the parties. Misconceptions could lead to elimination of the presence of dependent work that the Labour Code wants to regulate. The legal relationship established by the agreement to complete work is one of the basic labour relations, and it is necessary to protect the employee.

The Supreme Administrative Court states that an occasional work or a certain task for one occasion provided for the employer cannot be considered to be a personal bond. The approach of the Supreme Administrative Court is based on § 2 (1) that dependent work is „conducted“. The Supreme Administrative Court emphasizes that it is necessary to proceed with caution and assess each specific case carefully. We can agree with the approach of the Supreme Administrative Court, but also with the proved correction of certain aspects. Certainly, the imperfect definition provided by the legislature has to be taken into account. The imperfect definition should not be expanded into more extensive meaning that could be misinterpreted by the Supreme Administrative Court. Since the language itself can set limits, the lawyers should not rely solely on grammatical interpretation. More comprehensive approach is needed to formulate a regulation. Systematic activity may also be performed in a civil relationship between supplier and the customer. Long-term activity may be the activity of the volunteer looking after disabled person or someone taking care about the nature and environment. An occasional cooperation or a certain work provided for one occasion stands as an opposition to consistency. The Supreme Administrative Court classifies the very short term activity conducted as a dependent work (Bělina, 2015). Moreover, dependent work must be conducted from the beginning to the end of the employment relationship (Kieler, Stádník, 2012). Immediately after taking up the work, the employee follows the instructions of the employer, acts on his/her behalf, conducting the work personally etc.

Economic dependence can be considered as a further feature. In case of the Supreme Administrative Court, it is a feature identified to show similarities with other features characterizing dependent work (Supreme Administrative Court 6 Ads 46/2013). Being long-term unemployed will decrease social standards of the individual and the family as well as will increase the social risk (Stránský, 2012). This also applies for the relationship between two individual entities. If the supplier has no one to reach due to disappearance of the manufacturer from the market, might find himself in difficult situation due to income loss. The division between the relationships is created by a possible distribution of business risk. *„If the person for whom the work is conducted is solely responsible for risk, then the person conducting work is in economically dependent position. An independent position shows the opposite, if directly in the environment of the person occur beneficial or unfavourable consequences of entrepreneurial risk“* (Stránský, 2012, COFOLA).

Indeed, economic dependence can be the clue for determining dependent work. However, it cannot be defined as a definite sign of dependent work for the following reasons. The feature described is not explicitly mentioned by the Labour Code. The remuneration linked to economic dependence is determined only as a condition for the performance of dependent work (Horecký, 2012). The legislation has decided not to deteriorate from the previous legislation, where financial remuneration received for work was a feature of dependent work. Work without financial compensation is also classified as dependent work. The introduced fact is excluding the economic dependence as a characteristic feature of dependent work. If the employee is not remunerated, cannot be economically independent.

To conclude this part of the article, it is also necessary to reject the inclusion of volunteering among the implicit features of dependent work (Štefko, 2013). If the opposite standpoint was approved, forced labour would be excluded from the Labour Code. It cannot be assumed whether a legal interest exists to make the employee to conduct work in fear, under psychological pressure, resp. physical pressure meaning not voluntarily, deprived of the protection provided in the Labour Code.

The analyzed features cannot be identified with the legally defined features of dependent work. Therefore, the personality, length, continuity, economic dependence and voluntary nature can be classified as supporting signs that help in identification of dependent work. The individual features will often appear when performing dependent work. However, their absence cannot lead to conclusion that it is not a relationship we can identify as dependent work. It is impossible to add artificially created features via doctrines or the legal practice. If we decide to follow this direction, we could conclude in certain relations that the given legal relationships should not be protected by the Labour Code standards, even though some of these relationships are protected by labour law regulations.

Reward for work in a broader context

According to current legislation, dependent work must be conducted for wage, salary or remuneration (Galvas, 2015). *„If financial compensation is considered to be a defining feature, there would be a high risk of concluding that if someone in a subordinate and dependent position is conducting work, for which there is no financial remuneration, we cannot talk about dependent work.“* (Stránský, 2012, COFOLA). The unpaid performance of dependent work will still represent a dependent work, even it is treated as illegal work in the Czech legal environment. The Labour Code enables the employee to remunerate beside the financial

compensation with natural wage. The remuneration interpreted by the Labour Code does not constitute praise or gaining experience. These forms of remuneration cannot be categorized neither a financial remuneration nor a natural wage, which can only be represented by product, work performance or service. The right for receiving remuneration (in wider scope of meaning) cannot be given up by the employee (Vysokajová, 2015).

Summarizing the characteristics of dependent work on the legal basis

The trainee acts in a subordinate position towards an employer. The superior (employer) organises the work of the student and ensures the job description. The employer will also determine when and where the activity will be realized. The work for the student is ensured by the provider or the student should be informed what kind of work to be conducted for the employer, who will control the work activity. In that case, the student commits something in contrary to internal regulations, and the employer might terminate the agreement existing with the student. Student in internship does not decide about the tasks conducted, although he/she makes available his/her skills and knowledge to be employed. The trainee must obey the instructions of the employer. Otherwise, the student is again threatened to be dismissed by the employer before termination of the work agreement. The student does not provide the activity to benefit himself/herself, as well as does not make his/her own profit. It is the employer who supplies the student with work equipment and furnishes the office the student works in (Stádník, Kieler, 2014). The work is performed as the employer's business activity. The student conducts his/her internship personally, the death of the student results in end of the employment relationship. The student has to work to gain more than theoretical knowledge. In form of internship, the student is completing a requirement to complete the state exam.

In addition, other supporting features of dependent work are often present. If it fulfills long-term character, several hours of work, the sooner it has to meet several days of professional practice. The student voluntarily chooses the provider of internship. The student in a legal relationship is definitely not the one who should bear the burden of business risk. During the internship, the parties might come to conclusion to continue cooperation, at least some providers pay financial remuneration for the performance of student work, respecting the legislation practice of the Czech Republic.

The performance of internship, when the student is not conducting work in a distance model is defined as a dependent work, according to current legislation and the regulations of the Labour Code. Therefore, professional practice must be performed in form of one of the labour relations, where the student is entitled for wage, salary or other form of financial remuneration. It depends what kind of contract agreement was made between the parties. If agreement about performing a job was not signed, it does not mean that the student-employee is not entitled to get financial remuneration for work performed.

Moreover, the student meets the definition of an employee, and is a person who is committed to performing dependent work. The provider resp. employer is the person for whom the natural person has committed to carry out dependent work. According to his/her instruction, the work is conducted. By subordinating these terms as well, the legal relationship on behalf of professional practice is confirmed.

Based on the current legislation, there is nothing to prevent any of the three above-mentioned contracts from being concluded on professional practice. At least no obstacle was found. For

long-term internship, it is definitely recommended to conclude employment contract, while for short-term, work agreement to complete a job is enough. In accordance with the principle of freedom of contracting, there is no need to restrict the contracting parties. Entities will choose the legal relationship beneficiary for both parties. In case of the work conducted on the basis of agreement to complete a job (also contract about performance) is possible to negotiate all aspects and no restrictive practice is applied. The contract in any case requires written form. The employer is strongly recommended to conclude one of the contracts about performing a dependent work with the student.

According to our opinion, the legislation was wrong when wanted to allow professional practice without financial remuneration for the student since it did not make exception for professional practice.

Exclusion of internship under the Voluntary Service Act

Not only we have confirmed conducting internship according to the Labour Code, as a supporting confirmation to this statement, arguments excluding professional practice according to other effective regulations can be cited. Internship cannot be classified as a voluntary service. In an effort to help the individual or contribute to the society as a whole, the volunteer helps people in difficult situations, or for example supporting the sustainable development of the environment by a volunteer activity. The most important characteristics of volunteerism include: solidarity, altruism and similar principles, collectively referred to as human values. The Volunteer Service Act, § 1(1) defines that the volunteer carries out his/her activity on a volunteer basis, without being entitled to financial remuneration. Volunteers perform their service based on their volunteer decision (belief) for the benefit of another person, accepting that there is no financial remuneration for their work. If there were no special regulations and rules about this relationship between the parties involved, it could be categorized as an undeclared/illegal work.

Standards, as well as higher principles regulating the performance of volunteer service are diametrically opposed to professional practice. The student who is choosing internship does not have an intention to contribute to better situation of individuals or benefit the society. These are the reasons why internship cannot be classified as a volunteer practice. The legislation identifies relationship between the parties, where work performance is carried out without an obligation for financial remuneration. There is no similar exemption for traineeship in the currently existing legal practice.

Exclusion of internship in the regime of unnamed contract of the civil law

Entities shall not be prevented from concluding, on behalf of the principle of autonomy of the will of the parties, in the case that their relationship is less common, an agreement that does not conform to any lawful contractual type (Švestka, 2014). Some atypical contracts due to their peculiarity and lower frequency applied cannot be categorized under any of the contract types regulated by private law standards (Stránský, 2014). The classification of the contract as a particular type, cannot be influenced by the parties. Their will determines the content of the contract, but what type of contract this content represents, it is not possible to modify by them. Negotiated unnamed contracts are not in the vacuum. If the parties did not negotiate a partial question among themselves, even in this case it is necessary to rely on something (Supreme Court 33 Cdo 645/2016). Standards of the contractual type that are closest in content and

purpose are used (Explanatory Memorandum to the Civil Code, Kudrna, 2001). When we search for closeness, we ask for the economic and social function of the contract, which is reflected in the law-adjusted contract type. Then it is analyzed whether the contract is not in conflict with mandatory provisions of the contract type, whether it is contrary to good morals and public order (Švestka, 2014).

If we were to determine the essentials of a professional practice contract, we would probably identify them as the day of starting the practice, the place of practice and the type of activity the student will perform, the scope of working time and the period for which the practice is concluded. Answers for the following questions will be provided: „Where the internship activity is delivered? What is the starting date of the activity? What is the length of this activity? What will be included in job description? It is not possible to view professional practice as an unnamed obligation according to the Civil Code since its essentials do not come close to the definition of any civil code of a more detailed contract type. The essentials of the professional practice contract are by far the essentials of labor obligations (§ 2401 of the Civil Code).

Exclusion of internship in the regime of unnamed contract of the labour law

The current link between the labour and civil law allows the parties to sign unnamed contracts. Unnamed contract cannot be concluded where the Labour Code operates with a closed calculation. This situation is defined in § 3 of the Labour Code. The legislation used the expression „exclusively“, thus making the calculation of basic relationship enumerative.

There is no other, even unnamed, basic labour-relationship included in the Labour Code beyond the employment relationship and legal relationship based on agreement to complete a job and the agreement to perform work, in which dependent work could be performed does not exist. Thus, the law does not allow the parties to negotiate a new, unnamed labour-law obligation in which they would remove pay as a condition of performing dependent work.

Using the existing partial liability regulation as an additional supporting argument

In the case of subordination below the scope of labour law, the following arguments can be supported. The legislature itself foresaw a liability relationship similar to the nature of the relationship that occurs in an explicitly standardized basic labor relationship in the sub-standard concerning the liability of the student for damages, but also the providers of internship.

According to § 391 of the Labour Code, university students are liable to the university for damage caused by them during their studies or internship in the framework of study programme run by the university or in direct connection with it. If the damage was caused during the study, the internship or in direct connection with it by another legal or natural person, the students should be liable to the natural or legal person, where their study or internship took place. The student has responsibility towards the provider in a similar way as it is in the employee-employer relationship. According to § 319 (4) of the Labour Code, the university is responsible for the damage caused by the university student resulting from breaching legal obligations or an accident during their studies or internship in the study programme realized by the university or in close connection to it. If the damage was caused during the study or the internship and in close relation to the mentioned activities, the responsibility is taken by the natural or legal person conducting his/her study or internship. The provider is also liable for the damage to student, similarly to the employee-employment relationship.

Conclusion

The scientific paper introduced arguments supporting the opinion that internship in the model of professional practice and the model administrative practice must be performed based on one of the basic labour relations regulated in the Labour Code. The authors of this article came to this conclusion by applying analysis of supporting characteristics of dependent work. They also excluded the possibility of internship under other effective law of the Czech Republic. The possibility of a professional internship conducted with innominate (unnamed) contract was also analyzed and refused.

The legislation should react for this state of situation. The inspiration of *de lege ferenda* can be found in the Slovak legislation. A new traineeship agreement should be formulated beside the currently existing agreement on work done outside employment relationship. It would be certainly efficient to stipulate law about an internship of university students, where the student is conducting the work actively and not in distance form.

The conclusions adopted by the authors of the article correspond with the protection of the individual. The Requirement of the International Labour Organization about the sufficient conditions of life (Srov. Horecký, 2019) and providing work-life balance might contribute to securing social standards and eliminating all forms of unpaid work. The issue of unpaid practices has also been the subject of debate in the field of 101. The International Labour Organization Conference in 2012 adopted a resolution aiming at ensuring paid traineeship (ILO, 2012). The conclusions presented by the authors correspond not only to the global trend, but also to the direction and objectives of the European Trade Union Movement. The proposals discussed correlate with the findings of the Committee on Youth and the European Youth Forum (Observations of the European Trade Union Confederation, 2018), which draw attention to unfair practices in the implementation of traineeship under the slogan „Traineeship can be either fair or unpaid, not both“, as well as the decision-making practice of the European Ombudsman (Case 454/2014/PMC), which evaluates the unpaid traineeship as a discriminative practice, since only those who have sufficient financial resources can conduct this as an unpaid activity. The analysis of the European Parliament – Policy Department: Economic and Scientific Policy (Broek, 2017), warns the attention of the possible dangers on the labour market resulting from unpaid traineeship that might put ordinary employees into disadvantaged situation. The results of the study reflect the conclusion of the authors – the traineeship should be a paid employment relationship between the employer and the trainee.

The issue addressed in this article and the conclusions adopted reflect the current efforts to ensure social standards.

References

1. Ballenberger, K. 1937. Pojem smlouvy učební, volontérské a praktikantské. *Pracovní právo. Časopis pro výklad pracovních a sociálně pojišťovacích zákonů*, 16 (1), 4-7.
2. Ballenberger, K. 1937. Pojem smlouvy učební, volontérské a praktikantské. *Pracovní právo. Časopis pro výklad pracovních a sociálně pojišťovacích zákonů*, 16 (2), 19-21.
3. Barancová, H. 2017. *Zákonník práce: komentár*. Bratislava: C. H. Beck, 1398.
4. Bělina, M. a kol. 2017. *Pracovní právo*. Praha: C. H. Beck, 1152.
5. Bělina, M. a kol. 2015. *Zákonník práce. Komentář*. Praha: C. H. Beck, 1154.

6. Broek, S. and coll. 2017. *Skills Development and Employment: Apprenticeships, Internships and Volunteering*. Brussels. European Union, 18.
7. Burchill, F. 2016. International and Comparative Employment Relations: National Regulation, Global Changes. *E-journal of international and comparative studies* 5 (2), 140-156.
8. Colnar, S., Dimovski, V., Bogataj, D. 2019. Knowledge Management and the Sustainable Development of Social Work. *Sustainability*, 11 (22), 50-68.
9. Currie, Gr; Spyridonidis, D., Oborn, E. 2019. The influence of HR practices upon knowledge brokering in professional organizations for service improvement: Addressing professional legitimacy and identity in health care. *Human Resource Management*, 1 (1), 85-87.
10. Dolzhenko, RA., Karpilianskii, VA., Hady, RA., Didenko, AS. 2019. Young scientists' motivation for research activity in Russian regional universities. *Obrazovanie i nauka-education and science*, 21 (9), 122-153.
11. Eréney, T., Vejsada, D. 2015. Neplacené praxe a stáže – aktuální vývoj z pohledu rizika nelegálního zaměstnávání. *Personální a sociální právní kartotéka*, (2) 7, Wolters Kluwer ČR, 4-15.
12. European committee of social rights. *Observations of the European Trade Union Confederation – Collective Complaint European Youth Forum (YFJ) v. Belgium, Complaint No. 150/2017*. from 16th of April 2018.
13. Galvas, M. a kol. 2015. *Pracovní právo*. Brno: Masarykova univerzita, 117.
14. Horecký, J. 2019. *100 let od vzniku Mezinárodní organizace práce – důstojná práce*. Praha_Sondy, 8-11.
15. Horecký, J. 2012. Závislá práce. *COFOLA 2012. Sborník příspěvků z mezinárodní konference pořádané Právnickou fakultou Masarykovy univerzity*, 1635.
16. Hrdličková, A. 2013. *Odborná praxe v prostředí vysokého školství*. Brno: Masarykova univerzita, 5-15.
17. ILO. International Labour Office. 2012. *The youth employment crisis: A call for action*. Geneve, 7-19.
18. Kieler, P., Stádník, J. 2012. Nejvyšší správní soud – nelegální práce a koncentrace řízení. *Práce a mzda*, 4 (7), 9-16.
19. Klega, J. 2016. Neplacená praxe ve firmách: studenti i zaměstnavatelé na hraně zákona. [online] [cit. 2019-09-04] Available on: <https://www.epravo.cz/top/clanky/neplacena-praxe-ve-firmach-studenti-i-zamestnavatele-na-hrane-zakona-100528.html>
20. Kudrna, K. 2001. Přípustnost inominálních a smíšených smluv v českém právu soukromém. *Právní rozhledy*. 7 (11), 16-18.
21. Mynářová, T. 2017. Očima zaměstnavatelů. Má se stážista platit? [online]. [cit. 2019-09-07] Available on: <https://www.penize.cz/zamestnani/321730-ocima-zamestnavatelu-ma-se-za-staz-platit>
22. Péliissier, J., Gilles, A., a Dockès, E. 2013. *Droit du travail*. Paříž: Dalloz, 6.
23. Podhrázký, M. 2014. K posuzování nelegální práce (znaky závislé práce). [online]. [cit. 2019-09-07] Available on: <http://www.bulletin-advokacie.cz/k-posuzovani-nelegalni-prace-znaky-zavisle-prace>
24. Stádník, J., Kieler P. 2014. Závislá práce a odměna jako její znak. *Práce a mzda*, 9 (5), 9-12.
25. Stránský, J. 2012. Pojem závislá práce a jeho význam pro vymezení předmětu pracovního práva. *Pracovní právo 2012. Závislá práce a její podoby. Sborník příspěvků z mezinárodní vědecké konference*, 22-41.

26. Stránský, J. 2012. Základní identifikační znaky závislé práce. *COFOLA 2012. Sborník příspěvků z mezinárodní konference pořádané Právnickou fakultou Masarykovy univerzity.* 16-23.
27. Stránský, J. 2014. *Vývoj a postavení pracovního práva jako soukromoprávního odvětví.* Brno: Masarykova univerzita, 18-25.
28. Štefko, M. 2013. *Vymezení závislé a nelegální práce.* Praha: Univerzita Karlova v Praze, Právnická fakulta, 15 - 35.
29. Švestka, J. a kol. 2014. *Občanský zákon: komentář.* Praha: Wolters Kluwer, 88 - 110.
30. Vysokajová, M. a kol. 2015. *Zákoník práce. Komentář.* Praha: Wolters Kluwer, 15 - 90.

Authors contact:

JUDr. Jan Horecký, Ph.D., Masaryk University Brno, Faculty of Law, Department of Labour Law and Social Security Law, Veveří 158/70, 611 80, Brno, Czech Republic. Email: jan.horecky@law.muni.cz

ORCID: <https://orcid.org/0000-0001-8933-6624>

Mgr. Michal Blažek, Masaryk University Brno, Faculty of Law, Department of Labour Law and Social Security Law, Veveří 158/70, 611 80, Brno, Czech Republic. Email: michal.blazek@law.muni.cz

ORCID: <https://orcid.org/0000-0001-9147-4233>