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Regulation of Internship in Georgian and EU Legislation

The internship contract is among of new legal institutes regulated by the Labour Code of Georgia based on amendments of September 29, 2020.

There are different types of internships, including open-market traineeship. This latest is concluded based on direct relationship between an employer and an intern. Such a model is rarely subject to legal regulation in European countries or is not allowed.

The article reviews the characteristics of an internship; various types of internships are described; model of regulation by the Labor Code of Georgia is studied and evaluated; the EU approach and European practice is presented; Controversial questions are initiated for future research and analysis.

Key words: *Internship/traineeship, Labour Code of Georgia, the EU, open-market internship.*

1. Introduction

The labor market requires relevant and profitable professions, qualifications, work skills for the production process. In view of labor market order, the countries are pursuing the education policy that promotes employment and develops in-demand professions. The professional growth, knowledge enhancement and strengthening of practical work skills are also carried out by the private sector, business in the format of joint cooperation with the state or independently. An employer is interested in teaching a person (of both professional and behavioral aspects) under those conditions and organizational arrangements of labor which is established by the employer itself, and then decides to hire that person (of course, based on by mutual consent) who is actually prepared by an employer to be useful in employer's business and manufacturing. Issuing from the above, an internship/traineeship is used in the modern labor market.

On September 29, 2020, amendments were made to the Labor Code of Georgia (hereinafter LCG), on the basis of which the institution of internship was established in the Georgian labor legislation. In fact, the internship was used in practice, although until this period its legal regulation did not exist within the LCG. Thus, Georgian labour law science and studies are lacking the information about the internship contract. So, it is subject of utmost importance to start with deep cognition of the essence of new legal institute.

Issuing from the abovementioned, the article aims to study the legal nature of the internship, to assess the validity and purpose of its normative establishment in private labor relations. To this end, the article discusses the characteristics of internship, types of internship, EU approaches and recommendations, compliance of Georgian legislative policy with the European practice.

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2. The Legal Nature and Signs of Internship

Internship or traineeship is an important transition period and a bridge from education/training to employment, especially in high-income countries. Recently, there has been a tendency to increase the use of an internship, as it plays a positive role both in the production process and in the professional development. At the same time, there are dangers and risks of using internships in order to replace an employment and to make a labour cheap.¹

The modern labor market is characterized by segmentation – formal and informal, primary and secondary. There are companies in the labor market that offer stable and long-term employment. One of the assets of such companies are to develop labour skills and knowledge of employees. But, at the same time, there are enterprises that are focused on short-term labor relations and hiring of unskilled workers. Thus the segmentation changes the practice and consequences when using internship relationships (it is either positive or negative).²

An internship is a combination of teaching and work, in other words – learning through practice. It is especially used with students/youth. It is integrated into university programs, according to which students are placed/distributed in various businesses to reinforce the knowledge and apply theoretical teaching in practice. In Europe, the tripartite relationships are mainly used for internships: employer, intern and educational institutions/universities.³

It should be emphasized that the internship is of an age nature. It is mainly aimed at young people to be able to have stable and sustainable employment in the future after completing the teaching/apprenticeship process. In addition to students, internships become essential for any person in a changing industrial or digital world to master new professions or new job skills. Thus, the internship is an opportunity to learn ever. As much as internship is part of the work and teaching of young people, it is becoming more and more subject of interest within the youth policy. Call for a ban on unpaid internship has been noted as one of the tools to strengthen the rights of young people in the European Union.⁴ The European Parliament resolution on Youth Guarantees states that unpaid internship is a form of exploitation of young people and a violation of their rights.⁵

Internship is characterized by an unpaid relationship. However, internships are also paid. This is regulated differently within the policies of public services or private companies. It is also worth emphasizing that the internship in this context is separated from the probationary period, which is an employment contract (specific/special), which inevitably means that the work is remunerative.⁶

¹ *Stewart A., Owens R., Hewitt A., Nikoloudakis I.*, The Regulation of Internships: A comparative Study, Employment Working Paper, International Labour Office, ILO, 2018, V, <https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_635740.pdf> [20.01.2022].

² *Ibid.*, 6.

³ <<https://www.eurofound.europa.eu/publications/article/2011/strengthened-regulation-of-internships>> [20.01.2022].

⁴ <<https://www.euractiv.com/section/politics/news/european-parliament-calls-for-ban-on-unpaid-internships/>> [20.01.2022].

⁵ Resolution on the Youth Guarantee, European Parliament, 08/10/2020. <https://www.europarl.europa.eu/doceo/document/TA-9-2020-0267_EN.html> [20.01.2020].

⁶ Organic Law of Georgia “Labour Code of Georgia”, 17/12/2010, The Legislative Herald of Georgia, 75, 27/12/2010. Article 17.2. (in Georgian).

There are cases when an internship is paid for by an intern. Students pay an impressive amount of money in educational institutions to gain experience in prestigious enterprises and companies with the help/offer of universities/institutes. Young people also pay intermediary/brokerage companies to help to do internships in relevant companies. In addition, interns have additional indirect costs. For example, when they have to refuse paid employment on the grounds that they have to complete a compulsory internship during university studies.⁷

Internship is distinguished from volunteering. The voluntary work is also unpaid, but the goal is different. The work here is done for the sake of faith, it is not done for gaining experience and improving future employment opportunities, or the work is performed in order to serve/benefit others.⁸

The internship, by its very nature, does not bind the parties to future legal consequences and does not give rise to an obligation on the part of the employer to conclude an employment contract after the internship is completed, no matter how professional or desirable the intern is (unlike probation period, where the examination of a person with regard to the compatibility with the work is a precondition for concluding an employment contract⁹). Thus, during the internship period, the intern is not under special examination and observation by the employer.

Internship can also be characterized by a large number of contractors/interns. As far as internship is concerned, the development of knowledge and skills in the context of practical work, makes it possible for several interns to train together in a specific work space, in the context of a specific job, under the guidance of a specific person.

3. Regulation Aspects of Internship in Georgian Labour Law

An internship may have negative results and effects.¹⁰ It can be used by the employer to avoid employment and save/reduce costs. In such a case, the **intern may perform a fixed and permanent function of the enterprise/company**. The employer may use such labor multiple times and continuously. **Apparently it seems**, in order to eliminate this negative practice, an internship became the subject of legislative regulation in Georgia. Based on the amendments to the LCG of September 29, 2020, article 18 regulated aspects related to internship. **However, the explanatory note of the organic law/LCG mentions the follow:** *“The draft law regulates hitherto unregulated or incompletely regulated labor issues. In order to ensure the harmonization of national legislation with the legislation of the European Union and international standards, the draft law addresses the following*

⁷ See Stewart A., Owens R., Hewitt A., Nikoloudakis I., The Regulation of Internships: A comparative Study, Employment Working Paper, International Labour Office, ILO, 2018, 23, <https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_635740.pdf> [20.01.2022].

⁸ Ibid, 15.

⁹ Organic Law of Georgia “Labour Code of Georgia”, 17/12/2010, The Legislative Herald of Georgia, 75, 27/12/2010. Article 17.1 (in Georgian).

¹⁰ Internship Needs Survey, Report, Friedrich Ebert Foundation, Young Socialists, 2019, <<http://library.fes.de/pdf-files/bueros/georgien/16011.pdf>> [20.01.2022] (in Georgian).

issues: ... *Legal status of the intern "...*" *The draft law regulates the legal status of the intern and the intern within the scope of the Labor Code.*"¹¹

Explanatory note did not clearly and transparently reflect the grounds for the need to arrange internship and it did not indicate the existing situation in Georgia (neither qualitative nor quantitative research data were attached); besides, it mistakenly indicated that the news related to the internship is due to the approximation with the European Union legislation. The EU legislation does not regulate internship through binding/compulsory legislation. The EU has only a recommendation document.¹² Georgia did not have an obligation in the internship part and such an obligation did not appear in the Association Agreement.¹³ As well the explanatory note called the process of approximation with the EU legislation by a wrong term "harmonization" instead of the "approximation".¹⁴ The lack of informative or misleading information on the explanatory note does not/cannot clarify the purpose of the legislator in initiating the norms of internship regulation.

According to the article 18 (1) of the LCG *An intern is a natural person who performs for an employer a particular work, whether paid or not, in order to upgrade his/her qualifications and to gain professional knowledge, skills or practical experience.* This definition emphasizes that the intern performs the job for the employer, although performing such work is combined with the **goal of gaining by an intern the knowledge, skills, experience.** Of course, the latter is also obtained within labor relations, although the primary goal of labor relations is employment. Article 18 (4) establishes the **form of the internship agreement**, in particular, the internship agreement must be concluded in writing. The same article focuses on the **content of the contract**, in particular, the internship contract must describe in detail the work to be performed by the intern.

It was stressed above that internship is not only a using theoretical knowledge in practice, but also a process of teaching and knowledge generation, which implies the employer's obligation to the intern – teach, train, explain, etc. In this regard, article 18 (4) leaves open reference to the scope of the employer's obligations regarding the content of the internship contract. However, this may be due to the fact (**perhaps the legislator thought so**) that the intern needs protection as a weak part whose work should not go beyond the legislative goals and provisions which need to be examined a done work in comparison of internship contractual terms. **This will be one of the subjects of control and evaluation by the labor inspection in the future.**

According to the articles 18 (2) and 18 (3) an employer shall not use an intern's labour in order to avoid entering into an employment agreement; An intern shall not replace an employee; an

¹¹ Explanatory Note on the Draft-Organic Law of Georgia on Amendments to the Labour Code of Georgia. <<https://info.parliament.ge/file/1/BillReviewContent/247835?>> [20.01.2022] (in Georgian).

¹² See discussion below.

¹³ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, 27/06/2014, [https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830\(02\)](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830(02)) [20.01.2022].

¹⁴ *Kardava E.*, Georgian Labour Law Reform under the European Integration and Association Agreement Obligation, Tbilisi State University, Tbilisi, 2018, 161-173, <https://www.tsu.ge/assets/media/files/48/disertaciebi4/Ekaterine_Kardava.pdf> [20.01.2022] (in Georgian).

employer shall not have the right to hire an intern to replace an employee with whom labour relations were suspended and/or terminated; duration of unpaid internship shall not exceed 6 months, and the duration of paid internship shall not exceed 1 year. A person may do an unpaid internship with the same employer only once.

The aboveposted prohibitive and restrictive provisions in the LCG confirm the reality of the threats or the existence of the practice caused by the internship relationship. Such norms have both a preventive function in order to protect the intern, as well as the function of imposing liability on the employer in case of violation of legal requirements.

The second sentence of article 18 (3) is misleading: “*A person may do an unpaid internship with the same employer only once*”. The LCG imperatively regulates that an internship contract without pay may not be re-entered into, but the issue of the number of paid internship contracts is not subject to direct regulation. There remains a space of freedom which, through wrong practice, may develop and come into conflict with the provision of Article 18 (1) of the LCG (goal of the internship). An internship contract involves the performance of work for the purpose of teaching. Internships should not become a means of bypassing stable, long-term, classic employment contracts. Thus, in order to prevent the abuse of power by the employer, the legislature considered it necessary to legislate the internship in the context of time limitation. The legal provisions governing internship confirm the goal that the institution of internship should not be used indefinitely/unlimited, should not be likened to employment in the name of internship, should not be transformed from a place of acquiring knowledge and raising qualifications into a fixed or permanent function of an enterprise. In view of the above, article 18 (3) of the LCG should be interpreted and applied in practice in accordance with the principle of balance. If there is the case of re-hiring the remunerated Intern, it is important to assess and analyze the specifics of the situation: why did it become necessary to continue and re-play the internship with the same employer (for the additional one year)? Was not it possible the process of acquiring knowledge and raising the qualification be completed? Did the intern replace the employee? Was such an internship a way to bypass the conclusion of an employment contract? etc. In each particular case, this should be the subject of a labor inspection or court assessment.¹⁵

According to the 18 (5), all the minimum standards of protection provided for by the LCG Law shall apply to agreements concluded with interns except: Chapter VII and Article 48. Chapter VII of the LCG (articles 37-40) regulates pregnancy and childbirth leave, childcare leave, adoption leave, additional child care leave. Article 48 regulates the aspects of prior notice of termination and compensation for termination. At the discretion of the legislator, the standard of protection set forth in these articles does not apply to interns. However, a ban on the dissemination of other LCG provisions on the internship, has not been established. At the will of the legislator, the other standards set out in other articles of the LCG apply to interns. Such an approach could be problematic and obviously, is it necessary to test and evaluate in order to settle the good legal practice: A) Should the standard of protection of annual paid leave, annual unpaid leave and paid leave for to harmful and hazardous work

¹⁵ *Kardava E.*, Labour Law Bulletin № 3, Friedrich Ebert Stiftung, Association “European Time”, July, 2021, 3-4 (in Georgian).

effect to an intern?¹⁶ B) How or in what part of the leaves mentioned in the above paragraph should be extended to unpaid internships and paid internships? C) Is it possible to terminate the internship contract at any time? If so, under what conditions and on what grounds? D) Is the internship period included in the total length of service?

According to the articles 18(6) and 18(7), it is established the scope of regulation: *The norms of this article shall apply unless otherwise determined by special law... This article shall not apply to public institutions, including legal entities under public law. So, Some aspects of specific internships are regulated by other normative acts of Georgia, which won't be regulated by the LCG. For example, according to Article 10 (1.c) of the Law of Georgia on Lawyers, a lawyer is required to undergo a mandatory professional internship and the details of such internship are regulated by the this law.*¹⁷ Internship issues at the public service are regulated in a unified manner by a resolution of the Government of Georgia.¹⁸ Also, the orders of various ministers regarding the rules of internship have been approved. The Law of Georgia on Employment Promotion considers the internship institute in the context of eliminating of unemployment and obliges the state to take care of it. Here, *an intern is a natural person who is temporarily sent to the relevant internship for a period of not more than 6 months in order to develop professional skills and practical skills.*¹⁹

4. General European Practice of Regulation of Internship

Internship arrangements are different in EU member states and the regulatory framework set up different types of internships. Many countries do not have clear and transparent aspects towards the open-market traineeships, which sometimes make it difficult to separate internship from ordinary labor.²⁰

Internship issues in the EU are regulated by the recommendation of the Council of the European Union on Framework for Traineeships²¹. According to this recommendation, internship (traineeship) is for a limited time, paid or unpaid, which include a teaching and training component in order for the intern to gain practical and professional experience to improve employability and facilitate the transition to regular employment. The EU recommendation is not binding for member states. Thus, at the national level, some European countries have a legal definition of internship in law, some do not. In any case, in countries where there are regulatory norms, there is a strong link between education /

¹⁶ Organic Law of Georgia “Labour Code of Georgia”, 17/12/2010, The Legislative Herald of Georgia, 75, 27/12/2010, Article 31 (in Georgian).

¹⁷ Law of Georgia on Advocates, 20/06/2011 (in Georgian).

¹⁸ Resolution of the Government of Georgia № 410, on the Approval of the State Program on the Terms of the Internship at the Public Service, 18/06/2014 (in Georgian).

¹⁹ Law of Georgia on Facilitation of Employment, 14/07/2020 (in Georgian).

²⁰ Traineeships under the Youth Guarantee, Experience from the ground, European Commission, 2018, 2, <<https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8163&furtherPubs=yes>> [20.01.2022].

²¹ Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships, (2014/C 88/01), <[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014H0327\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014H0327(01)&from=EN)> [20.01.2022].

training and work, both internship interests – work and training – are interrelated and discussed in a single context.²²

There are 4 main types of internships in Europe: Internship within the educational curriculum; Internship as a mandatory part of professional training; Internship as part of Active Labor Market Policies (ALMPs); Open-market internship.

The first type of internship is carried out under the auspices of educational programs and with the help of educational institutions. The second refers to the internship of an employee who has to undergo training in order to develop and progress. ALMPs Internships in EU Member States are included in the field of public service employment services. The aim is to promote the development of the labor market and to train unemployed youth. For the purposes of the LCG, the object of interest is an open-market internship. The latter is organized directly by the employers and is based on the contract between the parties. These types of internships deserve the most criticism, because they are either not regulated or are poorly regulated by national labor laws, resulting in free employment, replacement of staff with internships, inadequate training, non-compliance with social security norms, etc. On the other hand, open-market internships are less used in Europe and big companies.²³

According to a report from the European Commission, only four countries (Belgium, Lithuania, Poland and Romania) have set an internship limit of up to 6 months, while in most countries the duration is not regulated or the law allows for an extension of more than 6 months.²⁴ There are countries where open-market internships are not allowed. According to an ILO report, in France, where an internship is based on a direct agreement between the employer and the intern, it is prohibited. Internships are allowed here only under a tripartite agreement involving an educational institution. The same approach is used in Brazil and Argentina.²⁵

The recommendation of the council of the EU has been criticized by trade unions and youth organizations. In their view, the recommendation fails to provide concrete mechanisms that would actually eliminate the unfavorable practices in some EU countries.²⁶

5. Conclusion

The article revealed the positive role of internships in the professional advancement and promotion of interns, as well as the possible negative consequences of internships in the segmented labor market.

²² Traineeships under the Youth Guarantee, Experience from the ground, European Commission, 3, <<https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8163&furtherPubs=yes>> [20.01.2022].

²³ Ibid, 4.

²⁴ Commission Staff Working Document Applying the Quality Framework for Traineeships, Strasbourg, 4/10/2016, 13, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0324&from=EN>> [20.01.2022].

²⁵ See *Stewart A., Owens R., Hewitt A., Nikoloudakis I.*, The Regulation of Internships: A comparative Study, Employment Working Paper, International Labour Office, ILO, 2018, 45, <https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_635740.pdf> [20.01.2022].

²⁶ Fraudulent Contracting of Work: Abusing Traineeship Status, (Austria, Finland, Spain and UK), Eurofound, 2017, 2, <https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1717en5_1.pdf> [20.01.2022].

The internship has strong signs that distinguish it from labor relations, probationary period, volunteering. A special feature are a) learning / training and practical performance of work together; b) Internship is a tool for training young people and their future employment.

There are several types of internships, namely: A) internships within educational curricula and with the help of educational institutions; B) Compulsory internship for already employed persons (under company policy); C) internships aimed at increasing employment opportunities and combating unemployment, administered by the state; D) Open-market internship, which arises on the basis of a direct agreement between the employer and the employee. Exactly, **the latter is regulated by the Labor Code of Georgia. Internships within educational programs are widespread in Europe. The open market internship model is almost unregulated in European countries. Only a few states have mere regulatory norms in labor laws. At the same time there are countries that completely ban the use of this type of internship.**

The European Parliament and the Council of the EU adopted non-binding documents related to internship, noting the risks of internships for young people. The European Parliament has considered unpaid internships as a form of exploitation and a violation of the rights of young people.

LCG regulatory norms are new, the practice of their use has not yet been tested. At the same time, there are unanswered questions such as in what dose, in what part and how the general norms of the LCG (except for Chapter VII and Article 48) apply to the internship contract, whether paid internships are allowed continuously and repeatedly, and so on.

The establishment of an internship institute in Georgian Labour law, law is not required by the Association Agreement, nor does the EU regulate the issue under normative secondary legislation. However, a decision has been made at the national level and from now on, in order to establish a fair internship practice in Georgia, the Labor Inspection Service will have an important function and role to check the proper application of the norms of the LCG.

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