



# The fragmented regulation of the traineeship in Hungary

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## ABSTRACT

The situation of young workers is determined by the legal regulation of work. Of particular interest in this context is the traineeship, which is statistically proven to be the basis for many young people entering the labour market. In this context, it is especially important that national regulations are clear and stable to ensure the security of young workers. The Hungarian national regulations will be examined in this study, starting with statistical data, i.e. the extent to which traineeships are present, and examining the related legal relationships based on the EU conceptual background, with the aim of exploring whether the Hungarian legal framework guarantees status security for young trainees. Based on the legislation, case law and relevant literature, it can be concluded that the Hungarian national legislation on traineeship is fragmented, non-transparent, complex, and generally does not provide an impeccable basis for improving the labour market situation of young people from a labour law or social security perspective, and shows a number of inconsistencies in national and EU labour law.

## KEYWORDS

Hungary, traineeship, labour law, social security, young workers

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## 1 INTRODUCTION

The world of work is a complex web of many factors. It is influenced by several areas of law, as work creates value, is the driving force of the economy, and is a source of livelihood and dignity for the individual. Of particular importance is how people, as workers, view the legal environment in which they work, be it labour law or social security law, as a means of ensuring fair and equitable work.

When it comes to young workers, we must be particularly careful, as in many countries their labour market situation is worrisome. The European Commission has also stated in its proposal on traineeships Article (1) of the Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships [QFT] (2014), in the following: that youth unemployment rates have achieved historical peaks in the past years in many Member States, thus fostering the employability of young workers is in fact key to bringing them onto the labour market. In Europe, we are witnessing ageing societies in which the emergence of young workers in the social supply chain network is particularly important. If young workers are valued players in the overall labour market, they can contribute to sustaining the national economy at a higher level and with greater efficiency, even in the face of increasing demographic challenges. This is a particularly important objective, and it is therefore necessary to examine the employment sectors that often become the framework for the work of young labour market actors, looking at whether these specific forms of work are actually properly regulated and capable of guaranteeing young workers a fair and equitable working environment.

This is particularly important because, if they are not traditionally employed as employees, young workers face difficulties accessing the labour market and the stable living conditions.

Traineeships have received particular attention from the European Union in 2023. EU research has shown that the extent and quality of regulation of traineeships varies between Member States, there is a diversity of approaches and legal bases regarding the numerous types of traineeships (Müller 2022), even though it affects many young people starting their careers, determining their first steps towards the labour market, and diversity and different security conditions are also a major obstacle to international free mobility. This disparity is illustrated by the fact that, on average, only 61% of respondents in each Member State surveyed stated that they had full or partial access to social protection during their traineeship. This low rate is certainly a cause for concern and has prompted the Council of the European Union to call for the updating of the quality framework for traineeships to be one of the key outcomes of the European Year of Skills (European Commission 2023a). This way in 2014, the Council formulated guidelines for its member states on how to improve the quality of what it chose to call 'traineeships' (Stewart et al. 2021). The European Commission itself urges that differences in the rights and conditions of traineeships should be explored and addressed to ensure equity for all trainees (European Commission 2023b). In addition to the Commission, other EU bodies such as the European Parliament are also committed to the cause, which has "repeatedly underlined the importance of ensuring implementation of quality traineeships" (Müller 2022: 8).

## 2 METHOD

The focus of the research is on the specific employment structures related to young workers, namely traineeships, with a particular focus on Hungary. The reason is that comprehensive labour law regulation and social security are essentially linked to traditional employment in labour law systems following the Fordist tradition. The special form of employment under study – traineeship – falls outside the category of traditional employment relationships in Hungarian legislation, and it is therefore worth examining the research question of whether it nevertheless guarantees young workers an appropriate legal framework and social security. The hypothesis of the research is that this is not the case in the Hungarian legal system, given the predominance of the typical employment relationship in the detailed and extensive legislative processes in Hungary. Our hypothesis is that the regulation of traineeship in Hungary is too complex, complicated, almost incomprehensible for the young workers, and inconsistent, and thus does not provide an adequate framework for the atypical, yet frequent employment as trainees of young workers.

This assumption is to be substantiated or refuted by examining national case law and literature, as well as national legal sources using comparative legal methods, which are a common type of qualitative legal research methodology. Before doing so, existing statistical data will be presented to justify the importance of investigating this issue, pointing out the large number of people involved.

For the conceptual framework, we use the EU conceptual toolbox. The QFT (2014) states in the Article (27) that for the purpose of the Recommendation

“traineeships are understood as a limited period of work practice, whether paid or not, which includes a learning and training component, undertaken in order to gain practical and professional experience with a view to improving employability and facilitating transition to regular employment”. Following this conceptual background, we should see that two types of traineeships are relevant to this research, as they fall within the scope of the QFT: Active Labour Market Policy (ALMP) Traineeships and the Open market traineeships (OMT). The Active Labour Market Policy Traineeship is nothing less than “traineeship is offered to (young) unemployed or those at risk of becoming unemployed to increase their employability/skills with a view to supporting their entry into the labour market” (European Commission 2023b: 2). Traineeships as part of *active labour market policies*, are this way based on a tripartite agreement with the aim to help unemployed or inactive young people into employment. There is usually a public institution, Public Employment Services acting as an intermediary between the host organization and the trainee and also supervises the traineeship. On the contrary, Open Market Traineeships are defined as bilateral, non-mandatory, and private agreements between a trainee and a traineeship provider. They do not have a formal connection to education or training and opposite to the Active Labour Market Policy Traineeship, there is no third party in this relationship in addition to the trainee and the traineeship provider.

Of course, individual Member States may have a few other traineeship formats, as there is no standardized regulation. The present research is limited to the presentation and evaluation of those forms of traineeships which fall within the

scope of the QFT, i.e., which are the focus of EU research and are known in the Hungarian legal system. For example, we do not examine traineeships that are part of the curricula of formal education. These are optional or mandatory work-based forms of learning and are often concluded with the involvement of the educational institutions. These traineeships do not fall within the QFT scope, “as it is considered that those traineeships are of better quality, due to the quality assurance by the educational institutions involved” (European Commission 2023b: 2).

### **3 RESULTS**

#### **3.1 STATISTICS ON THE EMPLOYMENT OF YOUNG WORKERS**

Both the European Union and the national statistical offices monitor employment policy trends and labour market developments in national labour markets. In the following lines, we focus on traineeships as a form of employment tailored to young workers, targeting those just starting their careers, and its data. The European Parliamentary Research Service in 2022, based on 2016 data, has established the share of young population (15–34 years old) with at least one traineeship experience, which can be an important cornerstone to assess the share of young workers affected by traineeships and their legal regulation. It shows that almost half (46%) of the social group surveyed is affected by traineeships in the EU average, which is similar for Hungary (45%) (Müller 2022).

More recent results are available in a Eurobarometer survey, that took place between 15 and 24 March 2023, and 26 334 people participated, between 18 and 35 years from all EU Member States. This survey reveals that traineeships

are a very important stepping stone for young workers into the labour market. The research concluded that 78% of young people surveyed participated in at least one traineeship. It should also be noted that 19% of young workers surveyed said their first work experience was a traineeship (Eurobarometer 2023).

There seems to be a high participation of young people in traineeships, which may be based on a different legal status, as national regulations, especially in terms of social security, vary widely.

#### **3.2 THE COMPLEX REGULATION OF TRAINEESHIPS FOR YOUNG WORKERS IN HUNGARY**

In order to improve the Community framework for traineeships in all Member States, it is necessary to examine the legal framework for traineeships from the employment perspective. This need is also substantiated, for example, by a 2019 decision in a complaint procedure, which draws attention to the widespread phenomenon of unpaid internships in Belgium (Hajdú 2022). In this paper, we present the Hungarian system of Open Market Traineeship and Active Labour Market Policy Traineeship, exploring the above hypothesis that currently in Hungary young people are faced with a complex and inconsistent set of rules, inadequate and fragmented labour legislation, uncertain social security frameworks.

If we look at traineeships in the Hungarian legal system, we can see that traineeship employment is governed by a complex and complicated set of rules. The focus of the research is on two types of traineeship based on the methodology described above: Active Labour Market Policy Traineeships and the Open market traineeships:

### **A. Legal categories and regulation of Open Market Traineeship in the Hungarian system**

Within the category of Open Market Traineeships, there are two types of legal relationship available in the Hungarian legal system. First, there is a student employment contract under the Article 44 of the Act CCIV of 2011 on National Higher Education (2016). Student employment contracts regulate in the case of Article 44(1), point a) the dual training, therefore, they are not covered in this research. However, according to the Article 44(1), point b), in this relationship the student may work on the basis of a student employment contract in the higher education institution or in a business organisation with the participation of the higher education institution, in the core activity of the higher education institution, in a field unrelated to the study programme. This regulation therefore falls within the scope of the OMT, and must be examined in this research.

The legislator has established the following rules in relation to the legal relationship. According to the reasoning of the law, this case will allow for a more flexible possibility of student employment by allowing the student to be employed by their higher education institution under a student employment contract in a field not strictly related to the course of study, for example in the study office. Students working under a student employment contract are subject to the provisions of the Labour Code and are therefore considered employees, but not in every case. Open market traineeships may be covered typically by normal employment contracts with full employment and social protection. However, the Government intended lay down more favourable conditions

for students than those provided for in the Labour Code when determining the rules relating to student employment contracts. This intention has resulted in, based on the amendment, from 18 December 2018, a student does not need to conclude a student employment contract in the case of work not directly related to the training programme in the higher education institution or in an economic organisation established by the higher education institution (so in case of Article 44 (1) point b)), and the higher education institution may employ the student by means of an assignment contract in such cases, as explained in the reasoning of the Act. This also means that the remuneration is based on the agreement of the parties, there is no mandatory minimum (Hajdú 2022).

The second relationship in the category of OMT, employment with a scholarship, is regulated by Act CXXIII of 2004 on Promoting the Employment of Young People Starting out on Their Careers, Unemployed People over Fifty Years of Age and People Looking for Work after Caring for a Child or a Family Member, and Employment with a Scholarship [Act CXXIII] (2022). Employment with a scholarship may be concluded by the scholarship holder and their employer, if the scholarship holder is a person under 30 years, within two years of receiving a diploma, who is not employed in a private or a public employment relationship, and the employer may be either a private employer under the scope of the Labour Code, or any public employer under the scope of any public employment Act. The employment rules are contained by Articles 9–16 of Act CXXIII (2022), and many provisions of the Labour Code listed by Article 15 of this Act. Although this is a special employment relationship with the aim

of participating in work training, most of the employment protection of the Labour Code applies to it. Formally the trainee although is not an employee, as the parties do not enter into an employment relationship (for example, they are not covered by a collective agreement which covers the employer).

Examining the employment statuses of these trainees, we can find differences between the two regulations, as well as in the case of social security regulation. When we think about the legal obligation of the general remuneration, in the case of the student employment contract we can find the legal obligation in general, but occasionally traineeships in a budgetary body may take place without a student employment contract and without remuneration, by agreement. Although in the case of the employment with a scholarship we cannot talk about the employee status, specific regulation still exists about the obligation in connection with the general remuneration. Based on that, the sum of the monthly scholarship may not be less than the current minimum statutory monthly wage for full-time employees.

Other types of regulation can be observed when examining of the compensation for the trainee. In the case of student employment contract, the training centre may, at its discretion, provide the student with other allowances and benefits (e.g. travel allowance, meal ticket or voucher), but the extent of these and the conditions under which they are granted must be specified individually in the student's contract. In comparison regarding the employment with a scholarship, the compensation is paid by the "employer", and the rules on the reimbursement of expenses in the Labour Code apply to the amount in this case.

The trainees in these two relationships are in a similar situation in terms of social security legislation. In the cases of accident and occupational injuries and sickness and healthcare, the trainee is liable to pay contributions and therefore has access to these benefits based on their status as a trainee and is considered as a person covered by social security. The situation is similar for unemployment benefits, where the contribution is borne by the trainee, as well as for old-age benefits and maternity benefits, in particular infant care allowance. A similarity between the two traineeships is that both require a written agreement indicating allowance or compensation, amount, and how the trainee or the traineeship provider can terminate the traineeship. An important difference in the purpose of traineeships is that in the case of employment with a scholarship the tasks allow the trainee to work towards their learning and training objectives, however, this is not the case with the student employment contract, where the student works for the organisation or university but not in the field of activity related to their profession.

### ***B. Legal categories and regulation of traineeships as part of active labour market policies in the Hungarian system***

ALMP traineeships with the involvement of the Public Employment Service do not exist in Hungary. There are three other forms of work, closely related to the concept of an ALMP traineeship, but without involvement of the Public Employment Service. In view of this, this is the subject of the present study.

Traineeships as part of active labour market policies are regulated by Act LXXVII of 2013 on Adult Education

(2023) in the form of the adult education contract. Articles 1 and 12/A-13/B of this Act regulates, that the scope of the Act extends over training and education provided by natural person, individual entrepreneur, private company, organization, legal person as a business activity, internal training, adult training. Adult education legal relationship may be established by a written adult education contract by the service provider and the recipient person, thus we can speak of a bilateral legal relationship in the context of this traineeship.

Thinking of the employment status, the adult education legal relationship may exist at the same time as an employment contract in case the employee of that company receives the training. This situation also makes the social security of the trainee more complex, because, if there is an existing parallel employment relationship, the employee (trainee) is an insured person based on the employment, also is entitled to all social security services. However, if the person receiving training in an adult education legal relationship is not an employee at the same time, the trainee will not have any employment protection and social security. This way the trainee is not entitled to social security services based only on this relationship.

The second type of this category of traineeships is the vocational training employment. The Act LXXX of 2019 on Vocational Training [Vocational Training Act] (2023) regulates vocational training employment contract in Articles 83–90, which may be concluded by the public vocational training institution and the student, or an adult person receiving training. In the latter case, i.e. when the adult person receives training, they must have an adult education legal relationship. The employees in a voca-

tional training employment contract are formally employees with employment and social security protection. Analysing the legal relationship and employment status, we can find that the vocational training employment contract is regulated by the Labour Code as *lex generalis*, so it is applied in the lack of a special provision in the Vocational Training Act. The Vocational Training Act (2023) is the *lex specialis*, supplemented by its implementation decree. In view of this, this legal relationship is an employment relationship between the employer, i.e. the vocational training institution and the trainee (employee), who can be a student or adult person receiving training. This specific relationship may be established from 2020 only for professions included in a public register and is provided in the public education system. It may be concluded for the entire period of the training, and also once per year for a period of 4–12 months.

As a third category, we can find a very specific and even more problematic traineeship that is the part of the active labour market policies on the side of the state administration. Although it is a specific traineeship outside of the private sphere, its regulation is quite confusing. It is called the Hungarian Public Administration Scholarship Program, which is a specific professional training in the field of public services. The Act CXXV of 2018 on Government Administration [Kit.] (2021) provides for fellowships in Article 88, and the Act CXCIX of 2011 on Civil Servants [Kttv.] (2023) also regulates this type of scholarship in Article 47. On the basis of these, the Government establishes a scholarship to support administrative internships. The purpose of this relationship is to ensure a supply of suitably qualified, professionally committed professionals with

practical experience and commitment to the national public administration, in accordance with Government Decree No. 52/2019 on Hungarian Public Administration Scholarship Program (2022), which lays down the detailed rules. The government decree defines the scholarship period (10 months) as a traineeship. The period of scholarship counts, for example, towards the period required for the recognition of service, the period of practical training for the administrative professional examination and the period of administrative practice. The fellowship is therefore a *sui generis* special working relationship of limited duration between the trainees and the traineeship provider, partly for the purpose of acquiring professional skills and experience and partly for the performance of tasks. Scholarship holders must be young people starting their careers, under the age of 30, and may not enter any other employment relationship, either at the time of application or during the period of the scholarship. This scholarship relationship is a special, three-way relationship. The Minister for Administrative Quality Policy and Personnel Policy is responsible for the operation of the scholarship program, conducting the application procedure, drawing up the program's rules and regulations, and concluding, amending, and terminating scholarship contracts, among other tasks. At the same time, however, the host institution is in fact the employer in the legal relationship, not the host institution according to case law, see below in the discussion. The person who has been awarded a scholarship is in fact undergoing a traineeship at the specified host institution within the framework of the scholarship program. The host institution may be an administrative body subject to the Kit.

(2021) or the Kttv. (2023). It is therefore a tripartite obligation. The rights and obligations of the traineeship are laid down in a contract between the trainee, the host institution and the mentioned Ministry. No detailed rules on this contract or on the quality of the working relationship resulting from it can be found in the aforementioned acts, but the Ministry's position is available on its website. According to the latter, the legal relationship of a scholarship holder does not constitute an employment relationship, and therefore the scholarship holder is not an employee, as published on the website of the Hungarian Government Scholarship Program. This stipulates that the person awarded the scholarship will participate in a traineeship under the Programme and will be a scholarship holder. The scholarship recipient who meets the application criteria will receive a scholarship awarded by the Minister, taking into account the recommendation of the Programme Management Committee. The monthly amount of the remuneration is determined by the Minister.

In the three traineeships mentioned above, although they are all part of the active labour market policy, we can see a varied picture of how they are regulated. Status security starts with income, yet general remuneration is not legally required as part of the adult education contract. In the vocational training employment contract, there is a legal obligation, and the remuneration has to be equal to the monthly amount of the cost price of the specialised education as defined in the Act XXV of 2022 on the Central Budget of Hungary in the Year of 2023 [Act on the Central Budget] (2023), up to a maximum of 168% of the cost price. In the third type, the Hungarian Government Scholarship program, the



monthly amount of the scholarship is set by the Minister. The amount of the scholarship for the domestic part of the programme is HUF 250,000 net per month, while the amount for the international part varies, averaging HUF 450,000 per month. It is paid by the host institution. The remuneration of the scholarship in this final form is not subject to social security contributions and the scholarship holder is therefore not insured under the contract. The scholarship holder is exempted from daily work and other obligations during the period of illness certified by a doctor, but no scholarship is paid for this period.

The compensation for the trainee is possible only in the vocational training employment. The trainee is entitled to the benefits provided for employees in the dual training place with the qualifications required for the profession chosen by the trainee (working clothes, reduced meals, travel expenses, personal protective equipment, cafeteria). Other allowances shall be granted at the same rate as the allowance for persons employed in a job with the qualifications required for the profession chosen by the student, up to a maximum of 168% per year of the monthly amount of the monthly cost of the vocational training as defined in the Act on the Central Budget (2023). The minimum income is also set for Vocational training employment alone, but it is not linked to the statutory minimum wage.

In the context of social security, the legislation makes it clear that adult education status alone does not entitle you to social security benefits. In the case of Vocational training, being an employment relationship, benefits and allowances are linked to this status, the trainee is considered to be socially insured in the Hungarian legal system.

For the Public Administration Scholarship Program, the remuneration of the scholarship is not subject to social security contributions and the scholarship holder is therefore not insured under the contract. The scholarship holder is exempted from daily work and other obligations during the period of illness certified by a doctor, but no scholarship is paid for this period. However, this legal relationship is particularly problematic, as illustrated by the case law below.

#### 4 DISCUSSION

Based on the above results, it can be concluded that for many young people, traineeships are the first point of contact with the labour market, which can then determine their long-term employment, and therefore the experience of traineeships is undoubtedly an attitude-forming experience. The development of a young worker's pattern of behaviour should be a soft aspect in creating a framework through which employee satisfaction can be achieved, and through which commitment, loyalty and confidence in the young worker to a life-defining job can be developed, thereby making goals such as developing the need for lifelong learning and securing similar long-term goals in the face of the challenges of an ageing society more certain. Given such a multifaceted impact of traineeships, which intersect multiple goals for both the worker, the employer and the state, how a nation regulates traineeships is particularly important. Above, we have presented the definitional framework of QFT, i.e. which relationships are considered by the European Union as particularly vulnerable and deserving of focus.

On this basis, we have shown that young workers can encounter two types of rights in the OMT. In the case of the

student employment contract under examination, it is a form of student employment that is not related to the purpose of the training, but rather focused on the student's livelihood, which it supports. It is a form of strict employment that offers stability and guarantees in terms of labour law, but from 2018, following the government's move, students can also be employed outside of this legal relationship in specific units, as we have shown above. The question arises as to whether this trend towards flexibility is consistent with the need for secure employment in terms of status, since if an assignment contract is concluded, for example, the minimum wage and other protections in the Labour Code may be circumvented. In the case of employment with a scholarship, although we are not formally talking about an employee, the concept of worker under the EU case-law system includes this young person working in an traineeship relationship, as it corresponds to the 'Lawrie Blum formula'. According to settled legal precedent – under the 'Lawrie Blum formula' – the crucial aspect of the employment relationship is that, for a certain period of time, one person provides services for and under the supervision of another individual in exchange for which the worker (in this case trainee) receives remuneration. It is of major importance that a person (worker, trainee) acts under the guidance of the employer as regards, in particular, their freedom to choose the time, place, and nature of their work (Risak and Dullinger 2018). So, in my view, despite the fact that in Hungarian law we can not formally speak of an employee, there is a category of worker based on the assessment of EU case law, which may create an internal tension and uncertainty between the

application of EU law and Hungarian labour law.

In the context of the category traineeships as part of active labour market policies, we looked at three legal-relationship regulations. The aim of all three is to promote the employment of young people, yet the regulations are questionably different, varied and somewhat uncertain. In the case of the adult education contract, social security does not arise in the situation of the trainee unless he is simultaneously employed by the company under a parallel legal entity, so that social security is not linked to the contract itself. Vocational training employment is perhaps the most regulated, with social security and employment protection linked to the legal relationship, yet its complexity and multiple layers of regulation make the precise framework of the legal relationship difficult for the citizen to follow, thus increasing the vulnerability of the young person. In support of this, the Szeged Tribunal's decision No. K. 700.470/2022/9. is worth highlighting. In this case, the court found a breach of the rules against the training institution in relation to the working conditions and remuneration of a person employed under a vocational training contract. In the specific case, the training centre committed three breaches of the rules: firstly, it paid the wages of the trainees in cash, which is possible under the rules of the Labour Code but is not permitted under Article 85. Second, it violated the rules on rest periods by not guaranteeing the required amount of rest time between the break and the two working days, but by providing the complainant students with a shorter rest period; thirdly, by requiring the pupils concerned to pay compensation for their employment by reducing their wages, in breach of the general prohibition of

compensation laid down in Article 5 of the Government Decree.

Thirdly, perhaps one of the most objectionable trainee statuses is the Hungarian Public Administration Scholarship Program and the situation of the trainee working in it. This person can certainly be considered a worker according to the Lawrie Blum formula described above, but according to the status laws and the information published by the responsible ministry, this person is not an employee, and thus the young graduate, who has undergone a high degree of screening, is deprived of general labour law guarantees. Such a lack of service and protection is unprecedented in the context of a special government traineeship programme to replenish the public service.

To some extent, the court also highlighted this situation in a labour law dispute between the ministry and the trainee concerning the traineeship. In 2020, case law has established the status and relationship of a scholarship holder as a civil servant for procedural law purposes, which does not affect the substantive law aspect. It is interesting to note that, despite the fact that the relationship was classified as a civil service relationship only from a procedural law perspective, the related line of argument referred to the substance of the relationship. The Supreme Court classified the relationship as a public service relationship for the purposes of the procedural law, with which the parties to the litigation (the scholarship holder and the Ministry) disagreed, as they considered that the relationship was not a public service relationship. The parties later appealed again to the Supreme Court to have the unlawfulness of this decision established, but in its decision of November

2022, the Supreme Court did not accept the dispute.

Returning to the merits of the case, on 13 April 2017, the applicant entered a scholarship contract with the Prime Minister's Office, as the body involved in the implementation of the Hungarian Public Administration Scholarship Program, and the Ministry of National Economy, as the host institution. According to the contract, the parties shall establish a scholarship relationship for a fixed term from 18 April 2017 to 18 February 2018 pursuant to Article 47 of the Kttv. (2023). The parties claimed that their relationship did not constitute a civil service relationship. However, the Supreme Court considered this to be unfounded and ruled that the employment relationship with the Ministry, which was based on a scholarship, constituted a public service relationship within the meaning of Article 4 of the Code of Administrative Procedure, which is nothing other than a relationship between the State or a body acting on behalf of the State and a person employed on behalf of the State for the purpose of employment or the performance of services, which is a public service relationship with specific obligations and rights defined by law.

In support of this procedural qualification, which does not affect the substantive character of the relationship, the related reasoning of the Supreme Court referred to the content of the relationship, justifying its creation of a public service relationship under procedural law by the following. In its order for reference, it relied on the fact that, according to the legislation, the scholarship relationship with the Ministry is governed by the provisions of the Kttv. Thus, the rule that a scholar must perform the duties in the public interest in accordance with the law, professional

ethics and management decisions is also applicable to the scholar's employment.

On the basis of the foregoing, the scholarship relationship with the Ministry, as a special employment relationship partly for training and experience and partly for the performance of duties, the purpose of which is to provide a supply of new government employees, is a public service relationship according to the Supreme Court. In addition, according to Article 47 of the Kttv. (2023), the public administration is obliged to employ the scholarship holder, to provide the necessary working conditions, to provide the information and guidance necessary for the performance of the duties of the post, and to pay the scholarship holder's salary and other allowances as provided for in this Act. The Ministry is therefore the facilitator, the coordinator, who provides methodological guidance and monitoring for the implementation of the programme, but the host institution is responsible for the tasks, exercising the powers of an employer, while the scholarship holder is required to carry out these tasks in accordance with the law, the host institution's internal rules and instructions, and to attend meetings and other programmes and training courses provided for by the host institution.

The reasoning of this decision clearly points towards a substantive public employment status, however, since the decision only qualifies the relationship from a procedural point of view, and since the substantive employment rules do not provide otherwise, and since the Act CXXII of 2019 on the Persons Entitled to Social Security Benefits and the Coverage of these Benefits [Social Security Act] (2023) does not include scholarship relationship among the relationships giving rise to an insurance

obligation, the position of the Ministry as explained above, which does not associate an insured status to this relationship and does not consider the scholarship holder as an employee, should be followed.

On the basis of the above, we consider that the scholarship holder does not qualify as a public sector employee, and thus not as an insured person, since the Social Security Act (2023) does not mention the scholarship holder among the legal relationships with an insurance obligation, but at the same time, we can speak of a *de facto* worker in the case of these persons, as the court indirectly states. For example, the legislation provides that, under a fellowship contract, a scholar is required to carry out the tasks assigned to the scholar by the host institution in accordance with the law, the host institution's internal rules and regulations, the instructions and the programme of professional practice, to attend meetings and other programmes prescribed by the host institution and to attend training courses and other programmes organised for scholarship holders by the Minister. The scholar may not be employed or otherwise engaged in a public service relationship during the period of the fellowship contract. The scholarship holder shall undertake in the scholarship contract to maintain his/her relationship with the employer government administration for a period of 10 months from the date of nomination. The traineeship shall be carried out in the normal working hours of the host institution. During the period of the in-country programme, he/she shall be required to work eight hours per day in accordance with the rules of the Kit. (2021), for a total of forty hours per week.

These traineeships linked to active labour market policy, similarly to the

OMT, therefore present a varied picture through the lens of labour law and social security, whether in terms of guaranteed pay or entitlement to social security benefits. The statistics show a slightly higher level of stability in the employment of young Hungarian trainees than the EU average from the two perspectives mentioned above, but looking at the detailed rules, we can still paint a worrying national picture. It is questionable to what extent these regulations described above are reflected in stronger legal protection of trainees. Based on this, we see the hypothesis of the research as being undermined, and traineeship in the ALMP and OMT categories can be considered as a precarious status in the Hungarian legal system as a whole. The European Parliamentary Research Service considers it particularly important to implement, among other things, the Guarantee of a minimum wage and the Coverage by social protection schemes. We see that this is not uniformly implemented in the different legal contexts. This is in no way compatible with EU intentions.

The conclusion that can be drawn from the legislation is clear, yet national literature on this worrying phenomenon is scarce. Hajdú (2022), who also notes the seriousness of the Hungarian situation, is worth highlighting, as he states, based on case law, that in Hungary the term 'trainee salary' does not even exist in the minds of many company managers or HR professionals, who see in trainees not the promise of the future, but rather a free temporary worker.

According to the Eurobarometer survey, although the level of social security (with a special focus on guaranteed pay) is higher than the EU average, a high percentage of Hungarian workers still reported unpaid work experience and that

they were not entitled to social security benefits, or not for all benefits (Eurobarometer 2023). Unfortunately, this is not surprising given the above legislative landscape and should certainly spur national and EU legislation to action. In this context, Hajdú (2022) sees the only regulatory solution for traineeships as being purely employment-related, with which we can agree on all grounds.

## 5 CONCLUSION

Traineeships are of crucial importance. Whether we think of the challenges of an ageing society or of vulnerable social groups such as young workers without experience and capital, all the evidence suggests that the conditions of employment of young people in early careers are particularly important, especially in terms of livelihood security, labour law guarantees and social safety nets. Statistics show that throughout the European Union, and in Hungary too, there are problems in meeting this need. Even though many young people start their active years on the labour market with a traineeship, many of them do this work for free – of course not as part of voluntary work – or in a special job that is not covered by social security provisions.

With this in mind, we have primarily examined the legal framework of Hungarian traineeships from the perspective of labour law and social security status within the limits of the EU conceptual framework. First, the two categories of OMT, i.e. the student employment contract and the employment with a scholarship, were presented in detail. Due to the government's intentions of flexibility, students are increasingly vulnerable in the former, as they are not obliged to conclude an employment contract. The two types of traineeships

present a different picture in terms of their labour status, but social security and access to social security benefits are relatively uniform and guaranteed. However, this is not the case for the three forms of traineeship under the ALMP, which have also been analysed. Neither the labour law nor the social security guarantees are uniform, leaving young people working in this type of relationship vulnerable.

In examining Hungarian case law, we have drawn attention to the internal contradictions that affect the different employment statuses of trainees, which is particularly problematic in relation to the public sector trainee scheme. Some trainees are not considered to be insured or employed, while in other traineeships these guarantees exist. There are also examples of traineeships where national law does not provide for labour law protection in the absence of

an employment relationship, but where the EU conceptual framework allows us to speak of a worker.

Therefore, based on the above analysis, there is no comprehensive labour law protection or social status security in the Hungarian legal system linked to traineeship as a general category of employment policy, which, moreover, affects a vulnerable and valuable social group, i.e. young people starting their careers. There is also a difference in the existence of substantive legal employee status and procedural legal employee status in the public sector trainee scheme. This overall picture suggests that there are legislative and legal development objectives for traineeships, where the way forward, in line with national literature, is to think in terms of the employee category. Labour and social legislation has to support young people in a weakening labour market.

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# Fragmentarno regulisanje radnih praksi u pravu Mađarske

## SAŽETAK

Položaj i status mladih radnika u Mađarskoj u vezi je sa i uslovljen javnopolitičkim i pravnim okvirom kojim se reguliše oblast rada i zapošljavanja. S tim u vezi od posebnog značaja jeste institut radne prakse, koji je i statistički potvrđen kao važan za ulazak mladih na tržište rada. Pravna adekvatnost nacionalne legislative o radnim praksama preduslov je za osiguranje stabilnosti zaposlenja i sigurnosti rada, kao i delotvorne radnopravne zaštite ranjivih kategorija radnika, uključujući i one koji prvi put ulaze u svet rada. U radu se primenom pravnoteorijskog i uporednopravnog metoda, a polazeći od statističkih podataka o zastupljenosti različitih oblika radnih praksi, analizira normativni okvir u Mađarskoj, na osnovama koncepcijskog pristupa u pravu Evropske unije. Analizom relevantne literature, zakonodavstva i sudske prakse utvrđeno je da mađarski normativni i institucionalni okvir u domenu radnih praksi jeste fragmentaran, odnosno nepotpuno regulisan, a pored toga ga odlikuje i svojevrsno odsustvo transparentnosti čime se, u krajnjem, ugrožava status i zaštita prava mladih radnika, uzimajući u obzir osnovne postulate radnog prava i prava socijalne sigurnosti. Osim toga, u radu se ukazuje i na neusaglašenost nacionalnog odnosno mađarskog i prava Evropske unije u ovoj oblasti.

## KLJUČNE REČI

pravo Mađarske, radna praksa, radno pravo, pravo socijalne sigurnosti, mladi radnici