

Tomasz Duraj

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Tomasz Duraj*

CANDIDATE INTERNSHIP IN COOPERATIVES AND AGRICULTURAL COOPERATIVES

INTRODUCTION

The institution of candidate internship (adaptation period) has been known in labor law for a long time. We can find it at the stage preceding employment and also in the case of a professional internship regulated in Article 53 of the Act of 20 April 2004 on the promotion of employment and labor market institutions¹, as well as in the initial phase of the employment relationship in relation to employees who start employment with a given employer. This is the situation e. g. in the case of local government employees or civil servants taking up for the first time an employment position as an official in public administration units. The categories of employees indicated here have a statutory duty to perform the preparatory service², which results respectively from Article 19 of the Act of 21 November 2008 on Local Government Employees³ and Article 39 of the Act of 21 November 2008 on civil service⁴. The basic goal of all candidate internships, regardless of the name used by the legislator, is the theoretical and practical preparation of

* Dr hab., prof. University of Łódź.

¹ Unified text, Journal of Laws of 2017, item 1065 as amended.

² Seemoree.g.: H. Szewczyk, *Zatrudnienie w służbie cywilnej*, Bydgoszcz-Katowice 2006, p. 46-49; J. Stelina, *Prawo urzędnicze*, Warsaw 2009, p. 113-114 i 182-183.

³ Seemoree.g.: H. Szewczyk, *Zatrudnienie w służbie cywilnej*, Bydgoszcz-Katowice 2006, p. 46-49; J. Stelina, *Prawo urzędnicze*, Warsaw 2009, p. 113-114 i 182-183.

⁴ Seemoree.g.: H. Szewczyk, *Zatrudnienie w służbie cywilnej*, Bydgoszcz-Katowice 2006, p. 46-49; J. Stelina, *Prawo urzędnicze*, Warsaw 2009, p. 113-114 i 182-183.

the participant in the internship to perform the duties and tasks resulting from the position held properly. Also the Cooperative Law (hereinafter Cooperative Law)⁵ provides for the institution of the candidate period in respect of candidates for members of a work cooperative, organizations that base their activities primarily on the activity of their own members. The subject of this study is a detailed analysis of candidate internships at work cooperatives and agricultural production cooperatives⁶. Whereas the legislator in Article 200 of Cooperative Law regulates the rules and manner of holding a candidate internship in work cooperatives, there is no analogous standardization in cooperatives engaged in agricultural production, which raises significant interpretation doubts in the legal and practical doctrine.

CANDIDATE ADAPTATION PERIOD IN COOPERATIVES

The aim of the candidate internship in cooperatives is to check the suitability of the candidate for membership and employment in a cooperative organization, both professionally and socially. By providing this institution, the legislator also excused *expressis verbis* in Article 199 of Cooperative Law the possibility of applying to the cooperative employment contract the provisions of the Labor Code on the conclusion of employment contracts for a trial period. Such a solution should be regarded as obviously justified taking into account the fact that the institution of the candidate internship fully exhausts the needs of the work cooperative in the scope of assessing the suitability of a specifically designated job candidate in a specific position.

The candidate's internship in worker cooperatives is only optional. The legislator leaves the cooperative far-reaching freedom to use this legal structure, referring to the statutory provisions in this regard. This results directly from Article 200 § 1 of Cooperative Law in accordance to which the statute of a cooperative may decide to accept a candidate for a member only after the internship. In this case, the statute should indicate the authority of the cooperative entitled to accept candidates and determine the duration of the candidate internship. In practice the institution of the candidate internship is relatively rarely used in cooperatives, and if such provisions are introduced into the statute then the internship of the period of 1 year is most often envisaged. This is an incomprehensible situation as *the prima facie* legal structure under consideration is much more favorable for a cooperative than a trial contract (unacceptable in these organizations), under which the employer – in accordance with Article 25 § 2 of the Labor Code (hereinafter LC)⁷ – cannot check the qualifications of an employee and the possibility of his/her employment in order to perform a specific type of work for a period longer than 3 months.

⁵ Act of 16 September 1982- Cooperative Law, unified text, Journal of Laws of 2017, item 1560 as amended.

⁶ Agricultural production cooperatives are organizations whose main activity is to run a joint farm and activities for individual members of the farm. They may also supplement another business activity (Article 138 of Cooperative Law).

⁷ Act of 26 June 1974, Labor Law, unified text. Journal of Laws of 2018, item 108 as amended.

On the other hand, it should be remembered that the termination of a candidate's employment relationship during the internship is subject to the rules provided for in the Labor Code for the termination of the contract concluded for an indefinite period of time. Therefore the workers' cooperative will have to justify its decision in this matter, which will be discussed in more detail later in this report.

The way of shaping the candidate's internship in the provisions of Article 200 of Cooperative Law points to the existence of a duality of legal relations connecting a candidate for a member with a workers' cooperative. The first legal relationship is the candidate's relationship of a legal-civil nature, which arises when the person is admitted to the internship by the workers' cooperative body indicated in the statute and lasts for the time specified in the provisions of the statute. The other relationship is the employment relationship, which the cooperative should establish immediately with the candidate based on a fixed-term employment contract. When the candidate relationship is established, the candidate is entitled to enter into such an employment contract for the duration of the internship, even if the statute of a workers cooperative does not include any provisions on this matter⁸. In my opinion, this interpretation results from the categorical wording of Article 200 § 3 of Cooperative Law, which stipulates that the employment relationship between the candidate and the cooperative can be terminated earlier, subject to the deadlines and rules provided for in the Labor Code provisions for the termination of the contract concluded for an indefinite period. Both legal relationships listed above are independent of each other, which means that separate legal actions are required to establish and resolve them. In practice, it seems that the best option would be to combine the two legal relationships listed above. A cooperative at the moment of accepting a given person for internship by the cooperative body designated in the statute should simultaneously conclude with the candidate a contract of employment for a definite period, coinciding with the internship period.

When a temporary employment contract is concluded with the candidate, provisions of the Labor Code (pursuant to Article 200 § 3 Cooperative Code) concerning persons employed under a contract of employment concluded for a definite period are applied. However, the employment relationship between the candidate and the cooperative can be terminated earlier, subject to the deadlines and rules provided for in the provisions of the Labor Code for the termination of the contract concluded for an indefinite period. Firstly, this means that the period of notice for a fixed-term employment contract depends solely on the seniority in a given cooperative and is 2 weeks if the employee has been employed for less than 6 months or 1 month if he/she has been employed for at least 6 months (Article 36 § 1 of the Labor Code in relation to Article 200 § 3 of Cooperative Law). Currently, following the changes introduced by the Act of 25 June 2015

⁸ Among others M. Gersdorf [in:] M. Gersdorf, J. Ignatowicz, *Prawospółdzielcze. Komentarz*, Warsaw 1985, p. 329.

amending the Act – Labor Code and some other acts⁹, the Labor Code unifies the length of the period of notice in the case of both types of employment contracts, so there is no need to refer to the provisions governing the solution in this respect for a contract of employment concluded for an indefinite period. Secondly, the legislator in Article 200 § 3 of Cooperative Law orders a workers' cooperative which wants to terminate a fixed-term employment contract for a candidate for a fixed period of time, to apply the terms and principles provided for in the Labor Code to terminate the contract for an indefinite period. This means that there will be a code-based provision introducing universal protection of the employment relationship, and therefore the situation of the candidate during the internship is more advantageous than other employees employed under a fixed-term employment contract, which can now be resolved without giving reasons justifying such a decision (see Article 32 of the Labor Code). Reference in Article 200 § 3 of Cooperative Law to the code-based rules of terminating employment contracts for an indefinite period, the workers' cooperative, when terminating a fixed-term employment contract, must indicate the specific and actual reason for its decision (Article 45 of the Code of Civil Procedure in relation to Article 200 § 3 of the Cooperative Law. The reason may lie on the side of the cooperative (financial difficulties of the organization, liquidation of the job or department) and on the part of the candidate (it is the culpable and non-culpable circumstances), as well as the consultation with the trade union representing the candidate of the intention to terminate, if there is one operating in a cooperative (Article 38 of the Labor Code in relation to Article 200 § 3 of Cooperative Law).

I find this legal solution unconvincing, because a workers' cooperative should have an unlimited right to the termination of a fixed-term employment contract at any time during the internship, if it considers the candidate's unsuitability to work or they lose confidence in him/her. Such restrictive regulation in practice leads to a great reluctance of cooperative organizations to apply this legal structure.

It seems that in the event of a defective termination of a fixed-term employment contract by a cooperative, the provisions of the Labor Code regarding this particular contract are applicable. Therefore, the provisions regulating contracts for an indefinite period are not applicable here, because the reference to these provisions – in accordance with Article 200 § 3 Cooperative Law - concerns only the dates and principles of termination of this contract and as an exception to the rule it cannot be treated in an extensive way¹⁰. This means that the candidate is not entitled to any claims regarding the dismissal or reinstatement, and the only claim that may be filed before the labor court will be a claim for damages in accordance with Article 50 § 3 of the Labor Code in relation to Article 200 § 3 of

⁹ Journal of Laws of 2015, item 1220.

¹⁰ Such an interpretation, referring to the literal interpretation of Article 200 § 3 of Cooperative Law relaxes the aspects of the candidate's internship which are unfavorable for the cooperatives. On the other hand, a different (teleological) interpretation cannot be completely ruled out, indicating that the candidate should be granted claims in this case regarding the dismissal ineffective or the reinstatement. Only such claims fully guarantee the effectiveness and efficiency of universal protection of the permanence of the employment relationship, which the employees during the period of the internship are under.

Cooperative Law. He/she may demand compensation in the amount of remuneration for the time until the contract was to last but not more than for three months (Article 50 § 4 of the Labor Code in relation to Article 200 § 3 of Cooperative Law). However, the above limitation does not apply to a candidate who at the time of termination of the employment contract is pregnant or on maternity leave, and also if using the protection of employment under the provisions of the Trade Unions Act. In this case he/she may appeal to the labor court for declaring his/her dismissal as ineffective or for the reinstatement (Article 50 (5) of the Labor Code in relation with Article 200 § 3 of Cooperative Law).

The earlier termination of a fixed-term employment contract with a candidate does not affect the existence of a candidate relationship. This means that the relationship is still valid and the decision to terminate the employment relationship can only be a condition for the subsequent refusal to accept the candidate after the end of the internship as a member of the workers' cooperative. Therefore, it is important that the provisions of the statute introducing the candidate adaptation period clearly regulate this issue, indicating that terminating the candidate's employment contract for a definite period during the candidate adaptation period is tantamount to terminating the candidate relationship.

If the workers' cooperative after the end of the candidate internship and termination of the fixed-term employment contract at the time of cessation of the period still allows the candidate to work in the cooperative without accepting him/her as a member, it must be assumed that the parties conclude a *per facta concludentia* agreement for an indefinite period of work. Of course, this circumstance has no influence on the establishment of a membership relationship, which can only be achieved when the competent authority of the cooperative has adopted a resolution on admission as a member (Article 17 of Cooperative Law).

During the internship candidates employed in a workers' cooperative on the basis of a fixed-term employment contract benefit from protection and all privileges and rights that the provisions of the Labor Code guarantee to employees. In addition, pursuant to Article 200 § 4 of Cooperative Law, the statute may grant the candidates certain rights and obligations of the members of the cooperative, both those of an organizational and property nature. In particular, the provisions of the statute may guarantee them the right to participate in the general meeting of workers' cooperatives, of course without the possibility of voting, or the right to submit explanations to cooperative bodies dealing with the candidates' matters. In this respect, their situation in the internship will be closer to the situation of members of a workers cooperative.

A cooperative can introduce provisions into the statute guaranteeing candidates who have successfully completed the internship the right to establish a membership and employment relationship on the basis of a cooperative employment contract according to their professional and personal qualifications and current economic opportunities of the cooperative. In the absence of the above regulations it should be assumed that after the internship the candidates have no

claim to be admitted as members of a cooperative that they could pursue in court proceedings. In the case of a negative decision they can of course, on the general principles of Cooperative Law, refer to the cooperative body indicated in the statute. According to Article 17 § 4 of Cooperative Law, the statute should indicate the authority to appeal against the decision refusing admission, and specify the time limits for lodging and reviewing the appeal. However, it should be remembered that the decision of a cooperative to include a given person as a member, in accordance with the principle of self-governance of cooperative organizations, is autonomous and in the absence of separate statutory provisions or statutory provisions the cooperative does not have to establish a membership relationship. If, however, the workers' cooperative wants to accept the candidate as a member, the resolution of the competent authority on this subject should be taken within one month from the date of the end of the internship (Article 200 § 2 of Cooperative Law), unless, of course, a relevant membership declaration has been submitted in writing, under pain of nullity. The candidate should be notified in writing of the resolution on being admitted as a member and on the resolution refusing admission in writing within two weeks from the date of its adoption. Notification of refusal should contain justification (Article 17 § 3 of Cooperative Law). Of course, if the candidate does not submit the relevant declaration by the end of the internship (in accordance with the statute in practice most often he/she must do so already at the moment of the beginning of the internship), the monthly period for adoption of a resolution on admission will start to run on general terms only from the day of submitting a written declaration (Article 17 § 3 of Cooperative Law).

Alternatively, the statute of a cooperative can guarantee the candidates a priority of employment in a cooperative, according to their professional and personal qualifications and economic opportunities of cooperatives, before other persons who are not members of the cooperative. They will be able to use it in a situation where after the end of the internship the membership relation in the cooperative has not been established.

The legislator in Article 200 § 5 Cooperative Law provides for an exception to the obligation to complete a candidate internship unless of course the statute of a cooperative makes the admission to the membership subject to such an internship. What is more, Article 200 § 5 of Cooperative Law introduces an exception to the general principle that the decision of a cooperative to include a given person as a member is autonomous and belongs to the discretion of the cooperative body empowered in the statute. According to this provision, a workers' cooperative cannot refuse to accept an employee a member who is employed in it for a period of at least twelve months on the basis of an employment contract concluded for an indefinite period, if he/she meets statutory requirements and the cooperative has the option of further employment. This means that such an employee can successfully challenge in court a resolution of the cooperative refusing him to enter into a membership relationship. However, justified doubts arise from the

fact that this regulation is included in Article 200 Cooperative Law, which regulates the institution of the candidate internship¹¹. This is a general rule applicable to all workers' cooperatives, including those that do not provide in their statutes for decisions making the admission to the membership subject to the candidate adaptation period. It seems therefore, that due to its importance it should be included in a separate article of Cooperative Law.

THE PROBLEM OF INTERNSHIP IN AGRICULTURAL COOPERATIVES

In the literature on the subject and practice, the problem arose as to whether the institution of the candidate internship is admissible in the agricultural production co-operative. Its purpose should be to check the suitability of the candidate as a future member of the cooperative in terms of professional abilities and the ability to interact with other members of the cooperative. In practice, these types of internships are implemented in agricultural production cooperatives, and their length is usually 1 year¹².

An important voice in this case was taken by the Supreme Court in the resolution of February 2, 1993 stating that despite the lack of explicit legal regulations in this area Cooperative Law, apart from determining the necessary content of the cooperative statute, leaves cooperatives free to form other statutory provisions, in particular as to determine the requirements to be met by the person applying for membership as a member of a cooperative¹³. Therefore, it should be concluded that the statute of an agricultural production cooperative may make the admission into the membership subject to the candidate adaptation period¹⁴. In the opinion of J. Iwulski¹⁵, the candidate's internship is widely used in other types of cooperatives (e.g. in housing cooperatives), and its establishment in cooperative organizations was and is approved by court practice¹⁶. The Supreme Court in a quoted resolution of 2 February 1993 said that 'in practice, in view of the fact that the decision to admit a member to an agricultural production cooperative is reserved by law to the competence of the general assembly; the introduction of the member candidate institution permits the admission of the candidate by the management board of the cooperative to perform work, if such permission of the management board is provided for in the statute of the cooperative'. According to this concept, the basis for employment of a member candidate in an agricultural production cooperative will be a contract for candidate internship, which obliges the candidate to work in a cooperative on a basis available for members. According to M. Gersdorf, it is a civil law contract, one of the flexible

¹¹ As in M. Gersdorf [in:] M. Gersdorf, J. Ignatowicz, *Prawospółdzielcze. Komentarz*, Warsaw 1985, p. 331.

¹² As in M. Gersdorf, *Prawo zatrudnienia*, Warsaw 2013, p. 138.

¹³ III CZP 164/92, OSNC 1993, no. 7-8, item 127.

¹⁴ III CZP 164/92, OSNC 1993, no. 7-8, item 127.

¹⁵ III CZP 164/92, OSNC 1993, no. 7-8, item 127.

¹⁶ III CZP 164/92, OSNC 1993, no. 7-8, item 127.

forms of employment¹⁷. According to the Supreme Court, this is an agreement *de facto* similar to a fixed-term employment contract to which however, labor law protection regulations do not apply. During the internship, a member candidate - according to the Supreme Court - is treated, within the scope of his/her duties as a member of an agricultural production cooperative, and yet he/she has no member rights guaranteed. The employment of a member candidate in an agricultural cooperative therefore takes place within a civil law relationship close to that of a membership and his/her remuneration for the work in the cooperative should be shaped according to the rules applicable to its members.

Considering the far-reaching benefits of applying the candidate internship in agricultural production cooperatives, especially when it comes to the ability to check the candidate's suitability as a future cooperative member, which is intended to protect the cooperative organization from hastily accepting people who do not guarantee proper participation in production and socio-occupational tasks of the agricultural production cooperative, I think, however, that the use of internships in this type of co-operatives is not *de legalata* possible and raises a number of interpretation doubts. First of all, this is demonstrated by the literal interpretation of the provisions of Cooperative Law. The legislator provides for the candidate's internship only in workers' cooperatives, giving the person implementing it an obligatory employee status, as discussed in more detail in point 2 of this study. If the legislator wanted to extend this institution to other cooperative organizations, it would normalize the candidate's internship in the common rules applicable to all cooperatives, or at least in the regulations governing the membership in agricultural cooperatives. The lack of appropriate legal solutions, assuming that we are dealing with a rational norm giver, leads to the conclusion about the inability to use the candidate internship in agricultural cooperatives.

There are also doubts about the notion of a person employed on a basis available to members, adopted in the above-mentioned resolution of the Supreme Court of February 2, 1993, the concept unknown to Cooperative Law. Under this resolution a candidate internship in an agricultural cooperative would be the only source of work in a cooperative organization on a membership basis, outside the employment relationship, and the member candidates would not be under any protective regulations of labor law, unlike the legislator suggests in Article 200 § 3 of Cooperative Law. This means that an agricultural cooperative establishing in the statute a candidate's internship would equip people aspiring to the membership in the cooperative only with the right and obligation to work for the cooperative and the right to participate in profits, not guaranteeing them either a membership or other employment protection in exchange. Therefore, we would deal with an unfamiliar legal form of the work of persons in the cooperative excluded from any protective regulations. In the doctrine of labor law this kind of concept has met with obvious opposition. M. Gersdorf in a critical voice to the resolution of the Supreme Court of February 2, 1993¹⁸, considering this

¹⁷ M. Gersdorf, *Prawo zatrudnienia*, Warsaw 2013, p. 138-139.

¹⁸ OSP 1993, no. 11, item 212.

concept as dangerous, stated that ‘the presented practice unjustifiably eliminates labor law norms from those spheres of economic activity where they should be used due to nature of the work provided.’ J. Iwulski¹⁹ goes further in his judgments. In the concept of a candidate internship adopted by the Supreme Court he sees an attempt to circumvent labor law in order to avoid additional burdens by the agricultural cooperative related to worker protection guaranteed by labor legislation. According to the author, the use of this institution allows the cooperative to protect itself from ‘(...) many benefits normally due to employees such as benefits in connection with termination of employment for reasons related to the employer’. Moreover, the Supreme Court itself clearly states in the quoted resolution that the reason for using in the candidate’s internship institution in the agricultural cooperative is to limit the amount of excess wage tax and to reduce social security contributions (ZUS).

Another argument against the possibility of using the candidate internship institution in agricultural cooperatives is related to the specificity of cooperative functioning and in particular to the subjective scope of membership in these organizations. According to Article 139 of Cooperative Law, the members of agricultural production cooperatives should be first of all farmers with a legal title to specific agricultural lands, and also other people who do not have agricultural land but they have qualifications useful to work in a cooperative organization. With regard to the first (dominating) group of members of the cooperative it is difficult to imagine the possibility of making the acquisition of membership in an agricultural cooperative subject to a successful candidate internship. This would lead to the unjustifiable differentiation of entitlements in the scope of acquiring the membership status depending on the property status of farmers bringing certain lands to the cooperative and consequently would be contrary to the principle of equal rights of cooperative members under Cooperative Law²⁰.

Significant doubts as to the issue of introducing to agricultural cooperatives – by analogy to the solutions applicable in workers’ cooperatives (Article 200 of Cooperative Law) – the institution of candidate internship also results from the fact that the regulation of permissible forms of employment in these organizations, in my opinion, has been comprehensively regulated by the provisions of Cooperative Law and there is no legal loophole here. The legislator has exhaustively regulated the legal basis for providing work for agricultural cooperatives in articles from 155 to 157 of Cooperative Law. When it comes to the members of these cooperatives, the work is carried out on the basis of a civil legal relationship of the membership in an agricultural cooperative (Article 155 of Cooperative Law)²¹. In turn the basis for employment in the cooperative of their family

¹⁹ OSP 1993, no. 11, item 212.

²⁰ As in M. Gersdorf, opinion to the resolution of the Supreme Court of 2 February 1993, III CZP 164/92, OSP 1993, no. 11, item 212.

²¹ Since the members of agricultural cooperatives have been obliged by law (Article 155 § 1 of the Labor Law) to provide their own labor resulting *expressis verbis* from their membership in that organization, therefore, under the applicable law, the legal basis of their employment in the cooperative cannot be work or a civil law contract, in particular a mandate contract or a contract for specific work. Such a position is common in the science of law (see e.g.:

members may only be a civil law contract (Article 156 of Cooperative Law)²².

In accordance with Article 157 of Cooperative Law, apart from family members the cooperative may employ, depending on its needs, also other persons on the basis of a contract of employment or under another legal relationship whose object is the provision of employment. Therefore, there are no reasons to introduce other forms of employment to agricultural cooperatives that do not have a clear statutory authorization. Such a form is the construction of a civil law contract for candidate internship that is unknown under Cooperative Law, which would oblige a candidate to work in an agricultural cooperative on a basis available for members. Applicants for membership in this cooperative should be treated as ‘other people’ within the meaning of Article 157 of Cooperative Law²³. This means that the basis for their employment in an agricultural cooperative, depending on the specifics of the work provided to the cooperative and the preferences of the employing entity, may be both a contract of employment (most often it will be a contract of employment for a trial period or for a definite period) or civil law contract for the provision of services similar to the mandate contract concluded on the basis of Article 750 of the Labor Code or more rarely, a contract for specific work.

CONCLUDING REMARKS

Summarizing the considerations, it should be stated that the institution of the candidate internship is a very useful way to check the suitability of candidates for membership and employment in cooperative organizations, both in terms of professional and social aspects. Accordingly, under the *de lege ferenda* postulates, comprehensive solutions should be introduced into the provisions of Cooperative Law regarding the possibility of using, on a voluntary basis, internships

J. Ignatowicz [in:] M. Gersdorf, J. Ignatowicz, *Prawospółdzielcze. Komentarz*, Warsaw 1985, p. 251; M. Gersdorf, *Wynagradzanie członków rolniczych spółdzielni produkcyjnych*, part I, p. 14-15; There, *Regulacja prawna zatrudnienia osób pracujących w rolniczych spółdzielniach produkcyjnych na zasadach członkowskich. Rozważania de lege ferenda*. IPiSS, *Studia i Materiały*, Warsaw 1990, p. 83 and following.; There, *Prawo zatrudnienia*, Warsaw 2013, p. 133 and following.; J. Iwulski, *Opinion to judgment of the SC of 2.02.199, III CZP 164/92, OSP 1994, no. 1, item 4*; A. Stefaniak, *Prawo spółdzielcze oraz ustawa o spółdzielniach mieszkaniowych. Komentarz. Orzecznictwo*, Warsaw 2009, p. 149; K. Kwapisz, *Prawo spółdzielcze. Komentarz*, Warszawa 2012, p. 235, as in judicial jurisdiction (see e.g.: judgment of SC of 13 March 1985, IV CR 76/85, Lex no. 686428; judgment of SC of 16 November 2000, I CKN 311/00, Lex no. 52413; judgment of SC of 25 April 2012, I UK 384/11, Lex no. 1212661; decision of SC of 9 January 2008., III UK 92/07, OSNP 2009, no. 5-6, item 80; judgment of SC of 5 June 1968, I PR 183/68, Lex no. 13972; judgment of SC of 6 March 1981, III CZP 7/81, OSNC 1981, no 8, item 146; judgment of SC of 6 May 1988, III CZP 32/88, OSNC 1989 No. 10, item 152; judgment of Supreme Administrative Court of 20.03.2003 r., II SA/Ld 2276/01, *PrawoPracy* 2003 no. 9, p. 42; judgment of SC of 23.08.2005, I UK 312/04, Lex no. 989238; judgment of SC of 21 October 2009, I UK 115/09, Lex no. 558571; judgment of Administrative Court in Gdańsk of 28 April 2014, III AUa 1237/13, Lex no. 1466747; judgment of the Administrative Court in Szczecin of 3 October 2012, III AUa 227/12, Lex no. 1237968). The only basis for the work of members of agricultural cooperatives for these organizations may be the civil law relationship of membership in the cooperative. See more T. Duraj, *Podstawa prawna świadczenia pracy członków rolniczych spółdzielni produkcyjnych* [in:] *Tendencje rozwojowe indywidualnego i zbiorowego prawa pracy*, Księga Jubileuszowa Profesora Grzegorza Goździewicza, Toruń 2017, p. 141 and following.

²² As in J. Ignatowicz, in: M. Gersdorf, J. Ignatowicz, *Prawo spółdzielcze*, 1985, p. 254; A. Stefaniak, *Prawo spółdzielcze*, 2009, p. 150.

²³ As in J. Iwulski, *opinion to the resolution of the SC of 2 February 1993, III CZP 164/92, OSP 1994, no. 1, item 4.*

in cooperatives. This should be done by establishing general rules of using this institution with particular emphasis on the legal status of candidates participating in the internship and the legal basis of their activity on a given cooperative organization. Regulations currently in force in this area are only fragmentary and concern only workers' cooperatives. Comprehensive normalization of this issue in a way that would not raise any doubts would contribute to clarifying a number of interpretative doubts, which are reported both in the legal doctrine, judicature and practice on the basis of applying the candidate internship in cooperative organizations and perhaps would result in the spread of this institution.

Bibliography

- Duraj T., *Podstawa prawna świadczenia pracy członków rolniczych spółdzielni produkcyjnych* [in:] *Tendencje rozwojowe indywidualnego i zbiorowego prawa pracy*, Księga Jubileuszowa Profesora Grzegorza Goździewicza, Toruń 2017.
- Gersdorf M., *Opinion to resolution of SC of 2 February 1993*, III CZP 164/92, OSP 1993, no. 11, item 212.
- Gersdorf M., *Prawo zatrudnienia*, Warsaw 2013.
- Gersdorf M., *Regulacja prawna zatrudnienia osób pracujących w rolniczych spółdzielniach produkcyjnych na zasadach członkowskich. Rozważania de lege ferenda*. IPiSS, Studia i Materiały, Warsaw 1990.
- Gersdorf M., *Wynagradzanie członków rolniczych spółdzielni produkcyjnych w świetle zmian ustawy Prawo spółdzielcze, part. I*, PiZS 1996, no. 4.
- Gersdorf M., Ignatowicz J., *Prawo spółdzielcze. Komentarz*, Warsaw 1985.
- Iwulski J., *Opinion to resolution of SC of 2 February 1993*, III CZP 164/92, OSP 1994, no. 1, item 4.
- Kwapisz K., *Prawo spółdzielcze. Komentarz*, Warsaw 2012.
- Stefaniak A., *Prawo spółdzielcze oraz ustawa o spółdzielniach mieszkaniowych. Komentarz. Orzecznictwo*, Warsaw 2009.
- Stelina J., *Prawo urzędnicze*, Warsaw 2009.
- Szewczyk H., *Zatrudnienie w służbie cywilnej*, Bydgoszcz-Katowice 2006.

Summary: The subject of the study is a detailed analysis of the candidate internship institution in workers' cooperatives and in agricultural cooperatives. The former primarily base their activity on the personal activity of their own members, while the latter are characterized by the fact that their basic subject of functioning is running a common farm and activities for the benefit of individual farms of members. While the legislator in Article 200 of Cooperative Law regulates the rules and manner of holding a candidate internship in workers' cooperatives, there is no analogical regulation in agricultural cooperatives. This raises important interpretative doubts in the legal doctrine and practice and the fundamental question about the admissibility of using the candidate internship in these organizations. Apart from the internship structure in cooperative organizations, the author also analyzes the legal situation of the candidates taking part in it.

Key words: internship, adaptation period, trial period, cooperative law, workers' cooperative, agricultural cooperative, candidate.

STAŻ KANDYDACKI W SPÓŁDZIELNIACH PRACY I ROLNICZYCH SPÓŁDZIELNIACH PRODUKCYJNYCH

Streszczenie: Przedmiotem opracowania jest szczegółowa analiza instytucji stażu kandydackiego w spółdzielniach pracy oraz w rolniczych spółdzielniach produkcyjnych. Te pierwsze swoją działalność przede wszystkim opierają na osobistej aktywności własnych członków, zaś te drugie charakteryzują się tym, że ich podstawowym przedmiotem funkcjonowania jest prowadzenie wspólnego gospodarstwa rolnego oraz działalności na rzecz indywidualnych gospodarstw rolnych członków. O ile jednak ustawodawca w art. 200 Prawa Spółdzielczego reguluje zasady i sposób odbywania stażu kandydackiego w spółdzielniach pracy, o tyle brak jest analogicznego unormowania w rolniczych spółdzielniach produkcyjnych. Rodzi to zarówno w doktrynie prawa, judykaturze, jak i praktyce istotne wątpliwości interpretacyjne, w szczególności zaś powstaje zasadnicze pytanie o dopuszczalność wykorzystywania stażu kandydackiego w tych organizacjach. Autor poza konstrukcją stażu w organizacjach spółdzielczych, dokonuje także analizy sytuacji prawnej kandydatów biorących w nim udział.

Słowa kluczowe: Staż kandydacki, staż adaptacyjny, okres próbny, prawo spółdzielcze, spółdzielnia pracy, rolnicza spółdzielnia produkcyjna, kandydat