

THE RELATIONSHIP BETWEEN SOCIAL SECURITY LAW AND LABOUR LAW

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Abstract: *This paper deals with the relationship between social security law, a branch of public law that bears many features of private law, and labour law, a branch of private law that bears features of public law. There is countless feedback between the two branches. The paper focuses particularly on the issue of important personal obstacles to work on the part of an employee, in the regulation of which the two branches are closely interconnected in terms of subject-matter. While labour law regulates an employee's right to be provided time off from work by an employer when these obstacles to work arise, social security law regulates the right to material welfare of an employee. The relationship between the branches is examined in the context of a brief analysis of the main issues of social security law and labour law. When examining the relationship between private and public law, we will arrive at the conclusion that the dualism between private and public law is increasingly more relativized.*

Keywords: *Social security law, labour law, social event, social insurance, state social support, obstacles to work*

INTRODUCTION

Social security law is a branch of public law that partially encompasses some private law regulations; labour law is a branch of private law that bears many public law features.

Social security law and labour law are related, complementary branches; each of them has its own history and its contemporary regulation, but there is countless feedback between the two. Legal rules of each of them specify and expand on the economic and social rights enshrined in Chapter 4 of the Charter of Fundamental Rights and Freedoms (“the Charter”), thus enabling the realisation of these rights.

The interconnection between the two branches is so significant that they are sometimes collectively referred to as “social law” in the objective sense, which is usually understood as an aggregate of legal rules comprised in labour law and an aggregate of legal rules comprised in social security law. At present, “social law” is perceived as an integrative concept for the fields of labour and social security law¹ rather than a separate legal branch.

Most contemporary theorists separate labour law and social security law, and consider them to be two independent branches of law. At law schools in the Czech Republic, labour law and social security law are taught separately as two independent subjects.² At the same time, however, it must be noted that the contemporary legal theory admits that there are

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¹ See also BĚLINA, M. et al. *Pracovní právo*. [Labour Law]. 6th edition. Praha: C. H. Beck, 2014, p. 4.

² As of the winter semester of the 2017–2018 academic year the teaching of the issues of legal relationships in employment at the Faculty of Law of Charles University, which have been taught in the labour law course, is shifted to the social security law course.

numerous elements in labour law that are closely connected with social security law. Some authors are beginning to use the term “social law” when referring to the legal regulation of the systems of social protection in the wide sense. They are, in particular, Doc. Kristina Koldinská³ and Prof. Igor Tomeš.⁴ These conceptual questions will certainly be the subject of many discussions. It is necessary to distinguish whether they merely concern issues related to teaching, or the creation of a new branch of social law that would include, in addition to institutions of contemporary social security law, also a number of institutions mainly from labour law, as well as from other branches.

European Union documents use more general terms “social policy” or “social aspect”. These wider concepts however cover not only labour law and social security law but also other institutions and measures that sometimes indirectly incorporate the protection of employees.⁵

It must also be noted that the independence of the two legal branches is relative in the sense that all legal branches are interrelated through countless feedback and relationships, so they constitute subsystems of one system, i.e., of legal system.

Both systems are also characterised by a very dynamic development, which is particularly true in the case of social security law. In relation thereto, I want to mention that what most lawyers consider one of the most important legal values is the long-term stability of the legal system which provides citizens with desired peace and certainty. This contribution aims to primarily focus on the subject-matter interconnection of the two branches in the context of basic issues of social security law and labour law.

1. BASIC ISSUES OF SOCIAL SECURITY LAW

Security of persons found in unfavourable social situations caused by social events, such as disease, accident, disability, old age, loss of a subsistence provider, as well as pregnancy and maternity, is an issue in any society. Any society must be concerned and deal with it. However, the forms and the standards of a solution thereof are significantly different at different times; they depend on the degree of development of a society. Forms of economic activities and political circumstances influence not only the way and standard of living of those members of the society who work, but also of those who do not work for various reasons, be it too low or too high age, long-lasting ill-health, or pregnancy and maternity.

Besides their own unquestionable particularities, all national social security systems have a lot in common. They all are influenced by many of the same or very similar prob-

³ For example KOLDINSKÁ, K. *Sociální právo*, [Social Law]. 2nd edition. Praha: C. H. Beck, 2012.

⁴ For example TOMEŠ, I. *Předmět práva sociálního zabezpečení*. [Subject of Social Security Law]. In: TRÖSTER, P. et al. *Právo sociálního zabezpečení*. [Social Security Law]. Praha: C. H. Beck, 2013, pp. 5–6.

⁵ The close relationship between labour law and social security law, which often leads to the use of the term “social law” for both legal branches, is mentioned also by Prof. von Maydell in his work: VON MAYDELL, B. RULAND, F. (Hrsg). *Sozialrechts – Handbuch (SRH)*. Darmstadt: Luchterhand, 1988, p. 59. Prof. Pierre-Yves Greber says on the issue: “In French speaking countries, there is a tendency that social law encompasses both social security law and labour law. In German speaking countries, social law usually does not cover labour law. The term used is Sozial- und Arbeitsrecht.” In: GREBER, P.-Y. *Droit international et européen de la sécurité sociale: ONU, OIT et Conseil de l'Europe*. Bâle: Helbing & Lichtenhahn, 2011, p. 12.

lems; in Europe, for example, it is the ageing of the population. The basic features that influence standards of the national social security systems are mainly economic, political and demographic development, as well as tradition of social welfare, and most recently also the economic crisis. Social security is an important tool for the implementation of social policy.

The regulation of social welfare as a part of social policy of the European Union does not interfere in the substance of the national systems of social security; unlike, for example, labour law, they are not harmonised but co-ordinated. The aim of the co-ordination of the systems is to provide migrating persons with one the four EU freedoms, namely the freedom of movement. The aim is that the already acquired social security entitlements remain preserved to the migrating persons. The national social security systems remain.

Article 34 of the Charter of Fundamental Rights of the European Union regulates the complex of social security provided to an individual in the case of various social events. The Article does not expressly anchor the right of an individual to social security benefits in defined social events; it words the entitlement as follows: “The Union recognises and respects the entitlement to social security benefits and social services.” The Charter is based on the European Social Charter and the Community Charter of Fundamental Social Rights for Workers. Access to social security benefits is implemented in accordance with the rules laid down by EU legislation and national legal regulations and practices.

The national social security systems are also influenced by a number of international instruments, particularly those of the United Nations, International Labour Organisation and Council of Europe, which have been ratified by individual states.

Social security may be defined as an aggregate of institutions, legal rules, facilities and measures through which the consequences of social events impacting individuals are prevented, mitigated and removed. Social security law is the aggregate of legal rules that regulate the said systems.

1.1 Social security system in the Czech Republic

Social security system in the Czech Republic, which is, like any legal system,⁶ a uniform and at the same time internally differentiated system, can be divided into three subsystems, or pillars:

- social insurance
- state social support
- social aid

1.1.1 Social insurance

The first and the most important subsystem is the **social insurance** that was re-introduced in the Czech Republic (following several decades without it) on 1 January 1993. It is a mandatory financial scheme through which citizens prepare themselves, or someone else does it on their behalf (usually employers or, in the case of health insurance of persons

⁶ See also GERLOCH, A. *Teorie práva*. [Theory of Law]. 6th edition. Aleš Čeněk: Plzeň, 2013.

determined by law, the state), for dealing with future social events. The citizens set aside a part of their own personal consumption for the resolution of social events that will arise in the future. These events are mainly a disease, accident, pregnancy, maternity, disability, old age, loss of a spouse or a subsistence provider, etc.

The foundations of social insurance in the territory of the contemporary Czech Republic were laid in acts adopted within the framework of the so-called Taaffe's reform, which introduced the mandatory social insurance for workers in the Austrian part of Austria-Hungary. In 1888, two acts were adopted: the act regulating accident insurance of workers (Act No. 1/1888 of the RGBl), and the act regulating sickness insurance of workers (Act No. 33/1888 of the RGBl). In 1889, the act on comrade insurance offices ("*bratřské pokladny*") under the General Mining Act (Act No. 127/1889 of the RGBl) was adopted. These three acts introduced mandatory, public-law insurance. Insurance contributions were paid by both employees and employers.

In the Czech Republic, there are two types of insurance contributions. The first is social security insurance contributions and contributions to the state policy of employment. The other is health insurance contributions. The social security insurance contributions include sickness insurance contributions and pension insurance contributions. While the payment of sickness insurance contributions is mandatory for employees, it is optional for self-employed persons. A feature typical of the participation of persons in pension insurance is that it is mandatory, i.e., if the statutory requirements are met, a duty to participate in pension insurance arises. In the Czech Republic, no exemptions from pension insurance (so-called opt-outs) apply, i.e. it is not possible to opt out from pension insurance by virtue of sufficient income.

Social security insurance contributions constitute budget revenues. The purpose thereof is to raise funds to cover the costs of sickness benefits and pension insurance benefits, as well as costs connected with the implementation of sickness and pension insurance. The payment of health insurance contributions is mandatory.

Social insurance encompasses sickness insurance, pension insurance and health insurance. Benefits provided therefrom are insurance benefits, i.e., they are only paid to insured persons. Benefits paid from sickness insurance are sickness benefits, attendance and nursing allowances, maternity benefits, and compensating benefit in pregnancy and maternity.⁷ Benefits paid from pension insurance are either direct pensions, i.e., old age and disability pensions, or derived pensions (survivorship pensions), i.e., widow's, widower's and orphan's pensions. All of these benefits are pecuniary.⁸

The health insurance covers, to the extent prescribed by law, the costs of medical care, food for special medical purposes, etc. incurred by insured persons.⁹

⁷ As of 1 February 2018, a new benefit will be provided – post-natal paternity allowance, the so-called "*otcovská*" (paternity allowance).

⁸ Act No. 187/2006 Sb., on sickness insurance, as amended.

Act No. 155/1995 Sb., on pension insurance, as amended.

⁹ Act No. 48/1997 Sb., on public health insurance, as amended.

1.1.2 Non-contributory social security subsystems

The other two pillars of the social security system are non-contributory subsystems. They are state social support and social aid, previously referred to as social care. A person applying for benefits from these subsystems does not need to be insured.

The **state social support** comprises benefits/allowances intended primarily for families with dependent children. It was implemented by Act No. 117/1995 Coll., on the state social support. Benefits granted from this subsystem are either income-tested benefits (child benefit, housing allowance, birth grant), which depend on the income of the recipient of the benefit, or non-tested benefits (parental benefit, burial grant), which do not depend on the income of the recipient. The income of the family with respect to qualifying for income-tested benefits includes only those types of income that are enumerated in section 5 of the State Social Support Act; the overall means are not taken into consideration. The benefits are granted to persons permanently residing in the Czech Republic; in cases stipulated by law, it is sufficient for foreigners to reside in the Czech Republic under a special law. Citizenship is not a decisive factor.

The **social aid** comprises benefits and services intended for persons who find themselves without means to secure their basic living needs, for persons in unfavourable social situations, and for persons with disabilities. The main purpose of these benefits/allowances is to prevent social exclusion.¹⁰

2. KEY ISSUES OF LABOUR LAW

2.1 Outline of the development of labour law

The first general regulation of modern employment relationships in the territory of the contemporary Czech Republic was contained in the Austrian General Civil Code (“ABGB”) of 1811. Being a civil law regulation, it laid down conditions for the conclusion of wage-labour contracts, but it could not determine working conditions. In the 19th century, particularly in its first half, the working conditions put the health, and sometimes also life, of workers at stake. Regulations aimed at the protection of employed persons, initially of children in particular, started to be adopted. The entire 19th century was marked by efforts to regulate working conditions, especially working hours, which originally amounted to 16 hours per day and were gradually shortened. Fixing working hours at 8 hours per day was carried out no sooner than in 1918, after the independent Czechoslovak Republic was established.

The protective legislation gradually developed into labour law; the protective function was the reason for the creation of labour law, and it still remains its main function. Another important function of labour law in recent decades has been the organisational function

¹⁰ On the issue of division of social security system see also: ŠTANGOVÁ, V. Vývojové tendence sociálního zabezpečení v ČR na počátku 21. Století. [Development Tendencies in Social Security in the Czech Republic at the Beginning of the 21st Century]. In: GAJDOŠÍKOVÁ, L. – WEISSOVÁ, T. (eds.). *Sociálne zabezpečenie – na rázcestí?* [Social security – at the crossroads?]. Ústav štátu a práva SAV – SAP [Institute of State and Law SAS-SAP], 2014, p. 43 et seq.

aimed at protecting the interests of employers, and at creating the conditions for fulfilling their tasks. A comprehensive regulation of labour law occurred in the mid-1960s. The Labour Code of 1965 abolished traditional ties with civil law and regulated all general issues itself, although it paraphrased to a certain extent the institutions contained in the Civil Code. It contained numerous mandatory rules. No subsidiary use of other legal branches, with the exception of constitutional law, was allowed. The Labour Code was amended many times, especially in the context of the then forthcoming accession of the Czech Republic to the European Union. Labour law and EU law were gradually harmonised. Despite that, the Labour Code was often criticised and considered an obstacle to the development of employment relationships.

Following long discussions, a new Labour Code was adopted in 2006 (Act No. 262/2006 Sb.), which was aimed in particular at the implementation of one of the basic principles expressed in Article 2 (3) of the Charter: “Everyone may do that which is not prohibited by law; and nobody may be compelled to do that which is not imposed upon them by law.”

The new Labour Code (“the LC”) was interconnected with the Civil Code, initially on the principle of delegation, i.e., provisions of the Labour Code directly referred to particular provisions of the Civil Code that were to be applied to employment relations. Since the judgment of the Constitutional Court of the Czech Republic, published in April 2008 under no. 116/2008 Sb., the traditional principle of subsidiarity between the Labour Code and Civil Code, which is expressly declared in section 4 of the Labour Code and became effective on 1 January 2012, has applied. Employment relations are governed by the Labour Code; if this Code cannot be applied, they are governed by the Civil Code, always in compliance with the basic principles of employment relations, a demonstrative list of which is provided in section 1a (1) of the Labour Code. The most important principles include special statutory protection of an employee’s status, satisfactory and safe working conditions, equal treatment of employees, and a ban on discrimination against employees.

The Constitutional Court emphasised that civil law is general private law (or rather that the Civil Code is a general legal regulation) subsidiary to other branches of private law. Regulations governing those branches have, as a matter of principle, priority over civil law. However, if there is an issue that these do not regulate, the general civil law regulation applies. This also corresponds to the historical development of private law, which was originally undivided, but business law, labour law, and family law gradually separated from it.¹¹

2.2 Concept of labour law

Labour law is composed of a set of legal rules that basically regulate three areas. The most important of them, and historically the oldest one, is **individual labour law**. It is usually perceived as an aggregate of legal relationships in which the labour of individuals is used for remuneration by another entity, an employer, that can be either a legal entity or another individual. This branch is concerned with relationships between employers and employees. The key legal regulation governing individual labour law is the Labour

¹¹ See also ŠTANGOVÁ, V. *Rovné zacházení a zákaz diskriminace v pracovním právu*. [Equal Treatment and Prohibition of Discrimination in Labour Law]. Plzeň: Aleš Čeněk, 2010, pp. 38–39.

Code, which regulates legal relations when performing dependent work. The Labour Code was discussed above.

The second area of labour law is **collective labour law** which is an aggregate of rules that regulate relationships between bodies representing groups of employees on the one hand and individual employers, or associations of employers, on the other hand. Their main aim is the improvement of working and wage conditions of the employees.

The main legal regulation dealing with collective labour law is Act No. 2/1991, on collective bargaining, as amended. It sets out rules of proceedings for the parties involved in collective bargaining, the aim of which is to conclude a collective bargaining agreement. Substantive conditions for the conclusion of collective agreements are set out by the Labour Code.

The third area of labour law is the **area of employment** which regulates relationships arising when individuals exercise their right to acquire the means of their livelihood by work, which is enshrined in Article 26 of the Charter. The principle legislation regulating this area is Act No. 435/2004 Coll., on employment, as amended. Relationships regulated by this Act are mainly the relationships arising between the Labour Office of the Czech Republic and its regional offices and citizens, or, as the case may be, employers. It also regulates, for example, arranging of employment, provision of unemployment benefits while retraining, and the activities of labour agencies. This branch of law bears numerous public law features; it is close to administrative law.¹²

2.3 Protective function of labour law and its development tendencies

Labour law, (we mainly mean individual labour law that was discussed above), is a branch of private law. Nevertheless, it can be said that due to its protective function, there is restricted contractual freedom. Of course, the protective function of labour law is evolving; originally it aimed mainly at the protection of life and health of employees, which is the traditional concept of the protective function. At present, safety and protection of health at work are still important, but in the context of social and economic development, the protective function is changing and broadening. It aims, for example, at the protection of employees when their employment is terminated by the employer, the creation of suitable working conditions for certain employees (particularly for women in connection with pregnancy and maternity), the limitation of damages for harm caused by employee's negligence, etc.

Restricting the contractual freedom in favour of an employee, i.e., economically weaker party to the contractual relationship, is a typical feature of labour law worldwide. The extent of the restriction is however different in different countries. The scope of restriction of the contractual freedom in labour law is so intense that it constitutes one of the fundamental principles on which labour law is based; it permeates the whole regulation of employment relations. The restrictions on contractual freedom are implemented both by legislation and by obligations imposed by collective agreements.¹³

¹² On the concept of labour law, see also BĚLINA, M. *Pracovní právo*. [Labour Law]. 6th edition. Praha: C. H. Beck, 2014, pp. 3 and 4.

¹³ *Ibid.*, p. 7.

Although the new Labour Code has brought about certain liberalisation of employment relations and reinforced the principle of contractual freedom of the parties thereto, it must be noted that it still contains a lot of mandatory provisions. The aim of the mandatory provisions is to provide an employee with at least minimal protection against the absolute contractual freedom that could be abused by an employer to the detriment of the employee, and lead to the creation of unsuitable working conditions. The prevailing part of EU labour legislation, particularly directives, is also driven by an effort to protect the status of an employee. Historically, the protection of the status of an employee was mainly an effort to reach social consensus. The principle of the protection of the status of an employee is accompanied by the principle of proper exercising of work duties by the employee in compliance with legitimate interests of the employer. It is thus a balanced regulation of an employment relationship, not only the protection of the employee but also the protection of the legitimate interests of the employer.

The Labour Code still contains mandatory provisions which reflect the protective function of labour law. It is mainly the regulation of minimum working conditions that employers must adhere to, and in the case of which a less favourable regulation than the statutory one cannot be agreed on with employees; these are, for example, distribution of working hours, the maximum number of working hours, minimum rest periods, provisions regarding safety and protection of health at work, special working conditions for women, adolescents and the disabled. Another key area is the regulation of termination of employment where, in the pursuit of stable employment, the employers may unilaterally terminate the employment only for reasons enumerated in the Labour Code.

The increased protection in employment relations should continue to be provided to pregnant women and mothers of young children. However, determination of the scope of the protection of these women is not easy. On the one hand, it is necessary to protect eligible interests of these women; on the other hand, the excessive protection of these women should not discourage employers from employing them. In compliance with the principle of equal treatment and prohibition of discrimination it is necessary to regulate the status of employed men and women in the same way everywhere where it is possible.

The question is how long can the protective function of labour law as it is approached today stand the test of contemporary conditions of industrial society in which new forms of employment come to existence, employers prefer untypical (or so-called 'precarious') employment, which is less protected by law? The need for greater flexibility of employment relations has been long emphasised. Further increase of robotic automation of manufacturing processes, and the like, is expected. These issues imminently influence the development of labour law and they will certainly be the subject of many discussions and studies.¹⁴ It is highly probable that progressing computerisation and robotic automation

¹⁴ These issues were looked into, for example, at the 31st employment symposium called "Co-determination 4.0" [*Mitbestimmung 4.0*] organised by the Wolfgang Hromadka Foundation (Foundation for the Theory and Practice of Labour Law) in cooperation with the department of civil and labour law of the University of Passau Law Faculty, that took place on 22–23 June 2017 in Passau. Presenters said that designation 4.0 has not yet been fully established and explained as a term, however, it is used. It is interpreted as the 4th industrial revolution that will bring about important changes into the world of work.

will soon bring about important changes into the world of employment. These changes will mainly be the new forms of employment, new approach to working hours, and new forms of work management. It is necessary to get ready for these expected changes.

3. WHERE IS THE SUBJECT-MATTER CONNECTION BETWEEN SOCIAL SECURITY LAW AND LABOUR LAW MOST VISIBLE?

The relationship between the two legal branches is best visible in the area of obstacles to work. What are they? When the parties to basic employment relationships exercise their mutual rights and fulfil their duties, situations may arise when an employee cannot fulfil part of their obligation consisting in the performance of work, because certain circumstances have come about which make this performance either impossible or very difficult. Such circumstances occur both on the part of an employee and on the part of an employer, and under legal regulation they give rise to different legal consequences.¹⁵

An obstacle to work is a legal event when an employee does not perform work that they should be performing at a given time, be it for objective or subjective reasons recognised by law or, as the case may be, agreed on in a collective bargaining agreement. These reasons give rise to certain rights and duties of employees and employers, i.e., the legal regulations associate them with set legal consequences. It is a temporary suspension of the performance of work.

The Labour Code divides obstacles to work into two groups: obstacles on the part of an employee and obstacles on the part of an employer. The obstacles on the part of an employee are further subdivided into important obstacles of a personal nature (sections 191-199 of the LC) and obstacles to work for public interest reasons (sections 200-205 of the LC). We will now be concerned with important personal obstacles to work regulated by sections 191-198 of the LC, in which the relationship between social security law and labour law is most noticeable.¹⁶

Labour law regulates an employee's right to take time off from work for important personal obstacles to work which can be described as important situations of a personal nature on the part of an employee caused by social events, such as a disease, accident, short-term care of a child that is not older than 10 years of age or another family member (in the future there will also be long-term care), as well as pregnancy, childbirth and maternity.

The Labour Code imposes a duty on employers to excuse employees' absence from work in such cases, and grant them a leave. While an obstacle to work lasts, an employee is not entitled to the compensation of wages but is entitled to benefits paid from sickness insurance, i.e., sickness benefit, attendance/nursing allowance, maternity benefit, as well as to parental benefit paid from the state social support. Social security law legislation thus regulates the entitlement to material welfare of these employees through the payout of relevant benefits.

¹⁵ BĚLINA, M. et al. *Pracovní právo*. p. 257.

¹⁶ Section 199 of the LC regulates other important personal obstacles to work, i.e. the ones other than those regulated in sections 191–198.

Important personal obstacles to work (sections 191–198 of the LC) are as follows:

- temporary incapacity for work or quarantine
- maternity and parental leave
- taking care of a child not older than 10 years of age or another (sick) household member

During **temporary incapacity for work or quarantine**, an employee receives the basic benefit paid from the sickness insurance, i.e., the **sickness benefit**, as of the 15th day of the temporary incapacity for work or quarantine. Between the 4th and 14th day thereof, the employee receives compensation of wages or salary that equals to the sickness benefit from their employer. The employee is not entitled to the compensation of wages for the first 3 days of their temporary incapacity or quarantine; this period is referred to as a ‘waiting period’, i.e., the period of waiting for a benefit to be paid. However, the employer may agree with the employee that the benefit will be paid even during said period; the amount of compensation of wages or salary may be determined by an internal regulation.

The sickness benefit is paid to a person temporarily incapacitated for work by the relevant District Social Security Administration Office. A period of indemnity, i.e., a period for which the benefit is payable, is 380 calendar days; there is a statutory right to be paid the benefit, it is of a mandatory nature. If the said period expires but the health issues last, the District Social Security Administration Office may, upon an application by the insured person, prolong the time for which the sickness benefit is paid, however, by no more than 350 calendar days in total. Individual prolongations should not exceed 3 months; an opinion of a doctor of a sickness insurance authority is always required. In these cases, the sickness benefit is of an optional nature; it is thus a discretionary benefit.

The sickness benefit is provided in the amount of 60% of daily assessment base per calendar day. In cases provided for by the Sickness Insurance Act, the benefit is only 50% of the daily assessment base; this is the case, for example, if the insured person suffered temporary incapacity for work in consequence of the wilful involvement in a combat, or in direct consequence of their drunkenness or abuse of intoxicating or psychoactive/psychotropic substances.

When dealing with the sickness benefit, it is also necessary to mention a rather disputable connection between the two branches. This connection concerns the termination reason enshrined in section 52 (h) of the LC, effective as of 1 January 2012, where an employer may terminate the employment with an employee on the grounds of a breach of a duty to comply with the prescribed treatment regime of an insured person temporarily incapacitated for work in an exceptionally severe way. The main issue here is that this provision represents a non-conceptual invasion into the regulation of the termination of employment. Violations of duties prescribed by public law (the Sickness Insurance Act) are resolved within the private law field. A breach of a public law duty is followed by the highest possible labour law sanction an employer may use, i.e., termination of the employment. This represents sanctioning of breaches of duties imposed in one legal branch using the methods of another legal branch. What is more, for breaches of these duties between the 4th and 14th day of the temporary incapacity for work, there are different sanctions, i.e., decreasing or not providing the compensation of wages or salary, although the sanctions may cumulate.

From the opinion of the Constitutional Court, which dealt with an application of a group of the then opposition deputies that said provision be repealed, it is clear that employers are entitled to terminate the employment given the fact that they provide the compensation of wages or salary to employees in the first two weeks of temporary incapacity for work and the employees are cheating them. However, the breach needs to be essential, such as building a house or carrying out hard work in the garden, not only merely spending more time on a walk that has been allowed by a doctor. Particular cases are decided on by general courts. If the employers do not opt for the termination of employment, they can either lower the compensation of wages provided during the time of temporary incapacity for work or not provide it at all.

In connection with advanced pregnancy, childbirth and care for a newly born baby, a female employee is entitled to **maternity leave** amounting to 28 weeks; if she gave birth to 2 or more children at the same time, she is entitled to 37 weeks of maternity leave. It usually starts to run at the beginning of a 6-week period before the expected delivery date, however, no sooner than at the beginning of the 8th week prior to this date.

Czech maternity leave is one of the longest in Europe. This fact is sometimes criticised by both theorists and practitioners of labour law for being a sort of an obstacle to a quick return of the female employee to work after delivery. However, it must be emphasised here that maternity leave can never be shorter than 14 weeks, and in no case can it end before 6 weeks will have passed since the delivery date (section 195 (5) of the LC). The remaining part of maternity leave, i.e., another 14 weeks, may but does not have to be taken by the woman. It depends on her decision as it is her right, not a duty.

For the time of maternity leave, a woman is not entitled to wages or compensation of wages; however, if she satisfies statutory requirements set out by the Sickness Insurance Act, she is entitled to **maternity benefits**. The maternity benefit is a mandatory benefit paid from sickness insurance. It is provided to women who cannot work by virtue of advanced pregnancy, childbirth and care for a newly born baby.

In cases determined by law, the benefits may also be received by fathers, or spouses of mothers. It is the case mainly when the insured person takes care of a child whose mother has died or whose mother cannot care for the child because of serious, long-term illness. An insured person who cares for a child and who is the father of the child or spouse of the woman who gave birth to the child can receive the benefits also in cases when he enters into a written agreement with the mother that he will take care of the child. This agreement can come into effect no sooner than at the beginning of the 7th week after the delivery of the child.

Maternity benefits are paid in the amount of 70% of daily assessment base.

To enhance the childcare, an employer is obliged to grant a female and male employee, upon their application, leave from work, without the entitlement to the compensation of wages – a parental leave. Unlike the mother, who is entitled to **parental leave** after the expiration of maternity leave, the father is entitled to it as of the delivery date in the extent they apply for, however, no longer than until the time when the child reaches 3 years of age.

Material welfare of the female or male employee during the parental leave is paid from the state social support system. When the statutory conditions are met, one of the parents

is entitled to a **parental benefit**. It is a mandatory state-paid benefit provided to one of the parents until the total amount not exceeding CZK 220,000 is reached and not longer than until 4 years of age of the child. In practise, the provision on the length of the payment of the parental benefit is wrongly interpreted in the way that the entitlement to parental leave lasts until 4 years of age of the child. It is not the case: under section 196 of the LC, parental leave may be taken no longer than until the time when the child reaches 3 years of age.

In compliance with the relevant international documents, both labour law and social security law in the Czech Republic reflect a tendency to regulate the status of a biological mother and of a woman who took over the permanent care of a child in the same way; at the same time, a need for the identical legal status of a biological father of the child and a man who took over the permanent care of the child is emphasised. In connection with this trend, the Labour Code regulates the granting of maternity leave and parental leave when taking the child as foster parents. Persons entitled to maternity leave and parental leave are also a female and/or male employee who took a child into foster care based on a decision of the relevant public body, or who took over a child whose mother has died. In these cases, a female employee is entitled to maternity leave as of the date of the taking of the child; the leave lasts for 22 weeks, or 31 weeks if she has taken two or more children, however, no longer than until the time when the child reaches 1 year of age. Like a biological mother, also this woman is entitled to maternity benefits provided that she satisfies the statutory conditions therefor. After the maternity leave ends, the female employee is entitled to parental leave until the time when the child reaches 3 years of age at the latest. If a child has been taken into foster care after it reached 3 years of age, however no later than after it turned 7, a person taking the child is entitled to parental leave in the length of 22 weeks. This regulation should enable female and male employees who take care of a foster child to establish the first important relationships with the child. If a male employee has taken a child into care substituting the care by parents, or a child whose mother has died, he is entitled to parental leave as of the date of the taking of the child until the time when the child reaches 3 years of age.¹⁷

When speaking about maternity and parental leave, a comment should be made with respect to paternity leave. It has been presented very intensively by the media basically since the end of 2016. However, has paternity leave been actually introduced in the Czech Republic? Effective as of 1 February 2018, a new benefit paid from the sickness insurance will be provided – a **post-natal paternity allowance** (the so-called “*otcovská*”). The Sickness Insurance Act has been amended, however, the institution of paternity leave has not been included in the Labour Code. Paternity leave for the length of 1 week may be taken by a father of a child any time from the date of birth of the child to the end of the 6th week after the childbirth; the indemnity period is thus one week. The amount of the allowance will be the same as the amount of maternity benefit, i.e., 70% of daily assessment base. How should a father who wants to receive this benefit proceed? He will apply to the em-

¹⁷ See also ŠTANGOVÁ, V. *Mateřská a rodičovská dovolená*. [Maternity and Parental Leave]. In: BĚLINA, M. et al. *Pracovní právo*. pp. 268–270.

ployer for parental leave for the period of one week during which the benefit will be paid to him. Therefore, paternity leave as it exists in a number of EU states is not regulated in the Czech Republic.

Rules of labour law and social security law make it possible for mothers of the youngest children to decide how long their maternity leave will last, whether they will apply to the employer for parental leave or whether they will return to work as soon after the childbirth as possible. The legal regulation creates the conditions for a woman to make an active decision. It thus creates conditions for female and male employees to harmonise their professional and family lives.

An employer is obliged to excuse an employee's absence from work also for the time when they take care of a child that is not older than 10 years of age, or of another member of the household, for reasons stipulated in the Sickness Insurance Act. If the conditions set out by this Act are satisfied, the employee is entitled to the **nursing/attendance allowance**.

In the case of a child who is not older than 10 years of age, it is not necessary that the child be ill in order for the entitlement to the allowance to accrue. The entitlement accrues to the employee also if, for example, the school or pre-school facility which the child attends is closed for accident or quarantine, or if an individual who otherwise takes care of the child became ill, suffered an injury, gave birth, or was put in quarantine. The state of health of a person over the age of 10 must be such that care by another person is necessary. For the attendance allowance for health reasons to be provided, a recommendation by a doctor is required.

A prerequisite for the entitlement to attend to another family member is that the sick family member lives with the employee in common household, except for cases where a parent attends to, or cares for, a child younger than 10 years.

The nursing/attendance indemnity period in the same case cannot exceed 9 calendar days. In the case of a lone employee who permanently cares for at least one child younger than 16 who has not finished compulsory education yet, the nursing allowance is paid for the period not exceeding 16 calendar days. The entitled persons may only swap once in the same case of nursing/attending to a family member. Unlike some regulations abroad, the Sickness Insurance Act does not set a limit to how many times in a calendar year an employee is entitled to nursing/attendance allowance.

The amount of nursing/attendance allowance is the same as the amount of sickness benefit, i.e., 60% of daily assessment base.

With effect from 1 June 2018, a new benefit paid from sickness insurance will be introduced – a **long-term attendance/nursing allowance**. It will be paid to an insured employee caring for an individual who has suffered a severe health disorder that required hospitalisation, and in the case of which medical care lasting at least 7 consecutive days after the release from the hospital was provided. At the same time, it is assumed that the health condition of the person after having been released to home care will require long-term care lasting at least 30 calendar days. This allowance will be provided to a wider circle of persons than short-term nursing/attendance allowance for the period not exceeding 3 months. The amount of the long-term attendance/nursing allowance per calendar day is 60% of daily assessment base.

With effect from 1 June 2018, the Labour Code will incorporate, in section 191a, a provision according to which an employer is not obliged to give a written consent to the absence of an employee at work for the duration of long-term care for a family member only if he proves that this is not possible for serious operational reasons.

CONCLUSION

This paper focused on the subject-matter interconnection of two legal branches – social security law, which is a public law branch, and labour law, which is a private law branch. It dealt with the issue in the context of a brief analysis of basic issues of the two branches. It is clear from the paper that each branch has its own legal regulation and history.

The interconnection of the two legal branches is the most visible in the area of important personal obstacles to work on the part of an employee, in which case the Labour Code provides for the entitlement of an employee to be granted leave by an employer, and rules of social security law provide for the entitlement to material welfare while the obstacles last.

Looking at the relationship between public law and private law, I would like to emphasise that in the dimension of ‘publicization’ of law, social security law affects, in particular, its private law counterpart, i.e. labour law. In conclusion, it must be noted that the relationship between public law and private law has always commanded special attention; however, differences between the two are becoming blurred. Dualism of private law and public law is increasingly more relativized.