

Current Trends in the field of control over compliance with labour legislation

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Abstract. The aim of this article is to examine the new moments in the legal framework and in particular the transposition of the European norms in the sphere of control of compliance with labour legislation in Bulgaria. The practical necessity of the analysis of the control of compliance with labour rights stems from the main objective of this control activity - namely, ensuring the lawful development of labour relations. It is possible only with the actual implementation and strict compliance with labour legislation. The topic is determined by the importance of the issues concerning the legal framework for compliance with labour rights in accordance with the commitments arising from Bulgaria's EU membership. During the research inductive, deductive and descriptive-analytical methods of generalization were applied. In conclusion and as a result of the research, conclusions, summaries and recommendations are made regarding the applicable legislation concerning the issues under consideration.

Key words: labour legislation; administrative control; European Union law; Administrative Law.

Received: 21.03.2022

Revised: 29.03.2022

Accepted: 05.04.2022

Published: 29.06.2022

1. Introduction

Control over compliance with labour legislation is a specific part of the governance of the state, carried out by specialized bodies in the system of executive power. The objective of this control activity is to ensure the lawful development of labour relations, which is possible only if labour legislation is implemented and strictly complied with.

On the one hand, the formation and development of the legal framework on labour relations in Bulgaria has a history of over a century. In the first years after the Liberation, the legislative policy was undefined; the regulation of control over compliance with the labour legislation was unsystematic and with many gaps in terms of the powers and activities of the control bodies. Despite some weaknesses of the legislation, the role of New Bulgarian law in building the state and its institutions has been of great significance for the evolution of the legal system in subsequent historical periods, including the current one. This is essential for the further development not only of labour law as a major branch of law, but also of administrative control over compliance with labour rights of employees and workers (Dimitrova, 2021; Yolova, 2020; Banov, 2020).

The Labour Code, adopted in 1986 (promulgated in State Gazette No. 26 of 1986), is still the main legal act effective in the field of labour law, but it has undergone a huge number of amendments and supplements, with its latest version being published in State Gazette issue No. 109 of 2020. The main legal constructions in the field of labour law were established by the previous legislation and have been further developed and improved by subsequent legislation.

On the other hand, after Bulgaria's accession to the European Union (EU), European acts and jurisprudential decisions increasingly determine the development of our national law (Banov, 2016). The transposition of European norms into the labour legislation of Bulgaria is characterised by certain specific features, which are discussed in the context of current trends in the field of control over compliance with labour law.

Given of the above, the relevance of the topic is determined by the significance of the issues concerning the legal framework for compliance with labour rights in accordance with the commitments arising from

Bulgaria's EU membership. Currently, the selected theme is topical in view of the changed social reality of labour practices in the context of digitalisation, where employers have extended their employer power despite the lack of such regulations at the legal level. Pandemic situation and measures taken to preserve public health have changed the rules of labour law, giving other priorities. This implies increased level of administrative control by the state to ensure that labour rights of workers and employees are respected, so that to avoid arbitrariness on the employer's side.

The control over observance of the rights arising from the employment is subject to very dynamic regulation. In this sense, this article is intended to examine the new developments in the legal framework and the transposition of the European norms in the field of control over compliance with labour legislation in Bulgaria. The main task is to draw conclusions, generalizations and recommendations on the applicable legal framework concerning the issues under consideration based on legal analysis.

This work is part of a large-scale scientific study devoted to the state control over compliance with labour legislation. The development complies with the current national legislation as of 1 March 2022.

2. Basic provisions in the national legal framework regarding control over compliance with labour legislation

The legal basis of control over compliance with labour legislation has evolved, one of the main factors for its development being the recognition of the right to work as a fundamental social right and its regulation at the constitutional level. The establishment and development of the right to work as a fundamental constitutional social right is the basis of the modern regulation of control over compliance with labour legislation (Andreeva, Yolova, 2011; Andreeva, Yolova, 2018; Dimitrova, 2019a; Aleksandrov, 2020). Until the democratic changes of 1989, trade unions occupied a central place among the bodies exercising control over compliance with labour legislation. The Labour Code adopted in 1986 (promulgated in State Gazette issue No. 26 of 1986) in Chapter Three regulates in detail the organisation and operations of trade unions. The central management of trade unions has important functions - including the right to take legislative initiatives and to participate in the preparation and adoption of pieces of legislation on labour, social security and living standards. It was only in 1991, with the establishment of the State Labour Inspectorate under the Ministry of Labour and Social Policy in (later transformed into the General Labour Inspectorate and then into the Executive Agency "General Labour Inspectorate") that the state restored its control functions in safety and health at work.

In 1992, the State Labour Inspectorate was transformed into the General Labour Inspectorate (Decree No. 270 of the Council of Ministers of 30 December 1992 on the transformation of the State Labour Inspectorate to the Ministry of Labour and Social Welfare, promulgated in State Gazette issue No. 4 of 15 January 1993. – abolished State Gazette issue No. 44 of 30 May 2000), and since 2000 – into the Executive Agency "General Labour Inspectorate" under the Minister of Labour and Social Policy (Decree No. 92 of 26 May 2000 on the transformation of the General Labour Inspectorate under the Ministry of Labour and Social Policy into the Executive Agency "General Labour Inspectorate" to the Minister of Labour and Social Policy and on the adoption of its organizational regulations; promulgated in State Gazette issue No. 44 of 30 May 2000). The subsequent amendments of State Gazette issue No 100 of 1992, pursuant to § 4, item 2 of the Final Provisions of the Labour Code, repealed the Act on granting the Bulgarian trade unions control over labour protection. Overall control over compliance with labour legislation in all sectors and activities is exercised by the General Labour Inspectorate of the Ministry of Labour and Social Welfare (Article 399 of the Labour Code (LC), as amended by State Gazette No 100 of 1992).

After the assignment of the control functions to the Labour Inspection bodies, the text of Article 404 of the Labour Code, regulating the coercive administrative action as the main control means for the prevention and termination of labour law violations, has been amended and supplemented many times. In the version of State Gazette No. 100 of 1992, Art. 404 par. 1 of the Labour Code contains only five points providing for the application of compulsory administrative measures. By the amendment of State Gazette No. 25 of 2001, two new items were adopted in Art. 404, par. 1 of Labour Code - item 6 and 7. Item 8 was added to Art. 404, par. 1 of the Labour Code by the amendment of State Gazette issue No 108 of 2008, and item 9 – by State Gazette issue 7 of 2012. Items 10 and 11 of Art. 404, par. 1 of the Labour Code were added by State Gazette, issue 27/2014. The newest coercive administrative action is introduced by the text of Art. 404 par. 1, item 12 with State Gazette, issue 102 of 2017.

The regulatory analysis of the amendments and supplements to Art. 404, par. 1 of the Labour Code shows a trend towards expansion of the powers of the Executive Agency "General Labour Inspectorate" (EA GLI) both in terms of the types of coercive measures and the intensity of the administrative control exercised. The reasons are rooted in the new social relations after the democratic changes in the country, related to the transition from a

planned to a market economy and the development of private economic activity. This in turn has resulted in significant changes in the employment relationship between employer and worker or employee.

Current trends in the development of labour legislation, including the control of its compliance, cannot be estimated unequivocally. Since its adoption in 1986, the Labour Code has undergone a few dozen amendments and supplements, and in the last three decades several other legal acts regulating labour law issues have been adopted alongside the codified labour law. This has resulted in the de-codification of labour law. Thus, in addition to its powers under the Labour Code, the General Labour Inspectorate has control powers for compliance with labour legislation under other laws - Occupational Health and Safety Act (prom. SG issue No. 124 of 23 December 1997), Labour Inspection Act (promulgated in State Gazette issue No. 102 of 28 November 2008), Labour Migration and Labour Mobility Act (promulgated in State Gazette issue No. 33 of 26 April 2016), etc. As emphasized in the legal literature, the concept of "code" implies completeness of the regulation, completeness of the provided legal constructions and possibility of independent application without references (Sivkov, 2021).

On the one hand, the reason for regulating labour issues in other legal acts outside the Labour Code is the dynamics of social relations after the democratic changes in 1989 and the impossibility of including this legal regulation in a single legal act adopted under completely different historical and socio-political conditions. Given the above, the legislator may make recommendations for drafting and adopting a new Labour Code which would comprehensively regulate all labour law regulations and constructions in accordance with the current development of social relations. The codification is intended to ensure that the regulations relating to one legal issue are not fragmented. Thereby, contradictions and inconsistencies in the legal regulation of the same legal constructions in several laws are avoided, and relatively eliminates the need for reference from one law to another. This will ensure the actual implementation of applicable legal regulations by both employers and control and law enforcement authorities (Andreeva, Dimitrova, 2019).

On the other hand, after Bulgaria's accession to the European Union, European acts and judicial decisions increasingly determine the development of our national law. Since 2007, Bulgaria has been an EU Member State and, in this sense, the principles of primacy over the national law of the Member States and direct effect of the rules of European law are applicable in relation to the Union law (primary and derived). The transposition of European norms in the field of control over compliance with labour legislation in Bulgaria is characterised by certain individual characteristics.

3. Transposition of European norms in the field of control over compliance with labour legislation in Bulgaria

According to the provisions of the EU Treaty and the Treaty on the Functioning of the EU, the Union does not have exclusive competence in the field of labour and social policy. As far as labour law is concerned, the EU complements the initiatives of individual member states by setting minimum standards as regards working conditions, informing employees and consulting with them. The membership in the EU and the subsequent reforms in Member States' legislation, as well as the related processes of globalisation, bring many challenges and give rise to several fears of job losses and social injustice. Therefore, each country is responsible for upholding the rights of its citizens and workers at national level and within international institutions. While it should be clarified that the subject of the research is the control over compliance with labour legislation, where the main subject are the employers and the responsibility of the state is not considered.

Given that the EU has 27 Member States and over 240 million workers, compliance with labour rights is of direct benefit to many citizens and has a positive impact on one of the most important and significant areas of their daily lives. The observance of fundamental labour rights of workers and employees goes hand in hand with the single market. The free movement of goods, services, capital and workers must be accompanied by relevant rules to ensure that Member States and businesses compete on the basis of the quality of their products and not by lowering labour law standards (<https://ec.europa.eu/social/main.jsp?catId=157&langId=bg>). Therefore, control over compliance with labour law in both its legal and economic aspects is of great importance given the impact of globalisation on the labour market (Blagoycheva, 2016; Blagoycheva, Andreeva, Yolova, 2018; Ivanova, 2020).

The significance of the issues concerning the legal framework and the related financial and control practice for compliance with labour rights according to the commitments arising from Bulgaria's EU membership has been studied in the literature (Nedyalkova, Dimitrova, Bogdanov, 2022; Nedyalkova, 2019; Nedyalkova, 2020). These days, the topic is current given the changed social reality of considering work in the context of digitalization, when employers have expanded their employer power despite the lack of such regulation at the legal level. The pandemic situation and the measures taken to preserve public health have

changed the rules of labour legislation, giving other priorities (Andreeva, 2021; Andreeva, Yolova, 2021; Sabev, Doncheva, 2021). This implies increased administrative control by the state to ensure that labour rights of workers and employees are observed so that employers do not become arbitrary.

In the current phase, the motivation for regulatory changes in Bulgarian labour law largely stems from the obligation of Member States to implement EU law (<http://www.parliament.bg/bg/bills/ID/66447/>). Thus, the amendments and supplements to the Labour Code of 2016 (State Gazette issue No. 105 of 2016) introduced the requirements of two European Directives (Directive 96/71/EC and Directive 2014/67/EU) providing for mandatory rules for minimum protection to be observed by employers in the host country, as well as rules on administrative cooperation and control between the competent authorities of the Member States.

Directive 96/71/EC introduces mandatory rules for minimum protection to be observed in the host country by employers who post workers to perform temporary work in the territory of the Member State. Accordingly, Directive 2014/67/EU introduces a package of measures ensuring better protection of post workers in the framework of the provision of services, combating so-called 'social dumping' and a more transparent and predictable legal framework for service providers. It aims to improve the implementation and enforcement in practice of Directive 96/71/EC by introducing rules on administrative cooperation and control between Member States' competent authorities, administrative requirements for service providers and control measures at national level.

The full functioning of the EU implies that Union law is not only established but also applied and observed throughout the EU. Accordingly, Member States are obliged to adapt their national law to the requirements of European law. Given the fact that the above-mentioned acts are directives, their implementation in the domestic legal order is done by transposition into national law, as they are not directly applicable in principle and have no direct effect.

In the years after Bulgaria's accession to the EU, in addition to the directives already mentioned, the provisions of a number of other directives relevant to state control over observance of the rights of workers and employees have been transposed into national labour legislation. The Directives are the Union's main legislative tool for building the single internal market and for implementing its policies in general, and their correct and timely implementation in the Member States must therefore be ensured. The process of transposition of EU legal norms is complex and no measure can be effectively implemented as adopted by the relevant European institution or body without some administrative national measure (Popova, 2011, p. 56-70).

This intensive process of European influence on Bulgarian law has resulted in important consequences, such as the "Europeanization" (Baltadzhieva, Todorov, 2012) of national legislation of the Member States and the establishment of new common principles of European law. As a result of the direct influence of the European on national law, the legislation of member states has been enriched through transposition of directives. However, transposing European law too quickly into national law has the negative consequence of detaching domestic law from its cultural and historical traditions, and this can be detrimental to the national legal order. Among the negative consequences of hasty transposition of European law are the deprivation of the legal content of classical legal constructions, as well as lack of orderliness and contradiction between legal acts.

At the time of the development of this study, the latest amendment to the Labour Code is promulgated in State Gazette, issue 109 of 22 December 2020, and a large part of the changes concern precisely the control and sanctioning activities regarding compliance with labour legislation. The imposition of administrative sanctions by the control authorities for breaches of labour legislation provides protection for employees and ensures fair competition between enterprises, which supports the labour market functioning. The above-mentioned amendments to the Labour Code are aimed primarily at improving the adequacy of labour legislation in relation to labour market trends, the level of industrial relations reached, socio-economic conditions in the country and international instruments and standards. In this sense, it is necessary to develop labour legislation in accordance with EU law, International Labour Organisation standards and national social and economic characteristics.

Due to the changes in the labour market associated with the processes of globalization and digitalization (Andreeva, Yolova, 2019; Andreeva, 2020; Andreeva, Yolova, 2020; Blagoycheva, 2021), the number of labour relations having a cross-border element is increasing. Labour mobility and job changing is an increasingly common trend in the labour market, especially among young people looking for fulfilment and suitable employment. The adoption of the proposed Bill introduces into our national legislation the requirements of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OB, L 173/16 of 9 July 2018).

The foregoing shows that Bulgaria's EU membership has had a significant impact on the development of national law in monitoring compliance with labour law. EU labour law covers two main areas:

- working conditions, which concern working time, part-time and fixed-term work, posting of workers; and
- informing and consulting workers on collective redundancies, transfer of undertakings, etc. (<https://ec.europa.eu/social/main.jsp?catId=157&langId=bg,%20seen%20on%2027th%20Dec%202020>).

As already stated, the Union does not have exclusive competence in the field of labour law, but only complements the initiatives of individual Member States by setting minimum standards in terms of working conditions and informing workers and employees and consultation with them. However, EU labour law benefits not only workers and employees but also employers and society by providing a clear framework of rights and obligations at the place of work, protecting the health of the workforce and promoting sustainable economic growth.

In 2019, the development of EU labour law received a strong boost. EU social policy issues have been among the essential activities of all Union institutions. Two EU social policy acts adopted in 2019 receive attention because they are expected to be structurally decisive for the future development of European labour and social law (Staykov, 2021). These are:

- Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority (<https://www.consilium.europa.eu/bg/policies/labour-mobility/eu-labour-authority/>) and
- Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union (<https://eur-lex.europa.eu/legal-content/BG/TXT/?uri=CELEX:32019L1152>).

The adopted EU social law instruments are the result of a multi-year effort to tackle the many problems and challenges facing the labour market in the second decade of the 21st century. However, the analysis of the powers of the European Labour Authority results in the legal conclusion that this specialised EU agency is not an administrative regulatory body of the Union and does not exercise direct supervisory functions within the scope of its activities. It is an administrative body whose main activity is to coordinate the efforts of some other EU agencies, as well as the efforts of individual Member States, on various issues of cross-border labour mobility within the Union (Staykov, 2021).

The short regulation raises controversial issues in the legal literature. Different forms of control exist in national law for observing of rights arising from employment, as well as in terms of legal liability for their violation. The national authorities which exercise administrative control over compliance with labour law and administrative liability for its violation have national competence, i.e., territorial competence within the borders of the State concerned. The future will show to what extent stakeholders in a cross-border labour conflict will trust the intervention of the European Labour Authority (Staykov, 2021). However, the first joint inspections of Bulgarian and French inspectors in the EU, organised with the support of the European Labour Authority, have already taken place. And Labour Inspectorate experts are involved in information meetings on the rights of seasonal agricultural workers in other European countries (<https://www.gli.government.bg/bg/taxonomy/term/519>).

4. Conclusion

The foregoing shows that the control over observance of the rights arising from employment is subject to very dynamic regulation. As a result of the analysis of the new points in the legal framework and the transposition of the European norms in the sphere of control over compliance with the labour legislation in Bulgaria, the following conclusions, summaries and recommendations can be made regarding the applicable legal framework concerning the issues under consideration:

Firstly, there is a trend towards an expansion of the powers of Executive Agency "General Labour Inspectorate" (EA GLI) both in terms of the types of enforcement measures and the intensity of the administrative control exercised. This demonstrates the role and significance of administrative remedies in ensuring the appropriate level of protection of the right to work.

Second, the contemporary social circumstances of globalisation and digitalisation pose new challenges before the legal framework requiring administrative law protection of fundamental labour rights (e.g., health and safety at work, right to remuneration, right to rest and leave, etc.). The new social relations after the democratic changes in the country are, on the one hand, related to the transition from a planned to a market economy and the development of private economic activity and, on the other hand, stem from Bulgaria accession to the EU. The

national legal framework, which transposes the European norms in the sphere of control over compliance with the labour rights of workers and employees, is one of the main factors influencing the control procedures for compliance with labour legislation.

Third, despite the significant impact of European acts on the development of our national law, the EU does not have exclusive competence in the field of labour law. It is the national authorities that exercise administrative control over compliance with labour law. In this sense, the role of the General Labour Inspectorate (GLI) is very important. Unfortunately, the Labour Code adopted in 1986, despite its repeated amendments and supplements, is not in position to respond to the changes that have taken place in modern social relations. Given the above, a proposal can be made to the legislator for drafting and adoption of a new Labour Code which would comprehensively regulate all labour law norms and constructions in accordance with the current development of social relations. Of course, it should be considered that the adoption of a code in the field of labour law is not an easy task. It is one of the major branches of law regulating not only the legal relations that arise in the provision of labour and the employment of labour, but also several other relations directly related to labour, including the control over compliance with labour legislation.

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