



Munich Personal RePEc Archive

The labour inspectorate as a supervisory authority on compliance with labour legislation

Andreeva, Andriyana and Yolova, Galina and Dimitrova, Darina

2022

Online at <https://mpra.ub.uni-muenchen.de/113246/>
MPRA Paper No. 113246, posted 31 May 2022 13:29 UTC

THE LABOUR INSPECTORATE AS A SUPERVISORY AUTHORITY ON COMPLIANCE WITH LABOUR LEGISLATION

ANDRIYANA ANDREEVA¹

GALINA YOLOVA²

DARINA DIMITROVA³

Abstract

The study researches a set of problems regarding the role of the Labour Inspectorate in its capacity as a supervisory authority on compliance with labour legislation in Bulgaria. In view of the objectives they have set, the authors trace back in logical sequence the historical development of the supervisory authority and its current regulations. The study performs an up-to-date normative analysis of the main legal tools for exercising control of compliance with labour legislation. Based on the research, summaries and conclusions of practical importance are formulated so that the legal framework may be updated.

Keywords: control of compliance with labour legislation, Labour Inspectorate, coercive administrative measures.

JEL Codes: K23, K31

Introduction

Control and supervision of the compliance with labour legislation is a specific activity of the state in order to ensure legality at the various stages of the appearance and development of employment relationships. Its importance directly relates to the ensuring of stability in the application and exercising of labour rights and obligations of the parties in the employment relationship in a manner that ensures stability, justice, security and legality. In this connection the study is definitely topical, as it places in the field of doctrinal studies the regulatory analysis through the prism of the regulations' relevance and adaptability to the new social realities. Beyond a shadow of doubt, employment relationships evolve in an environment of serious social challenges, with processes of digitalization radically transforming classical employment institutions, which are adapting to the new forms of work and the various ways of exercising and performing workforce. All of the above also calls for a certain update of the control mechanisms, so that they are adequate as a means of guaranteeing the right to work and its associated subjective labour rights.

In order to examine and assess the adequacy of the state's response, in its role of a supervisory mechanism of compliance with labour law regulations, the authors review, in a

¹Juris Doctor, Associate professor at University of Economics – Varna, Head of department Legal Studies, Director of Master Degree Centre; e-mail: a.andreeva@ue-varna.bg

ORCID iD<https://orcid.org/0000-0001-6632-3695>

²Juris Doctor, Associate professor at University of Economics – Varna, Deputy head of department “Legal Studies”; e-mail: ina_yolova@ue-varna.bg

ORCID iD<https://orcid.org/0000-0003-1976-3692>

³Juris Doctor, Chief assistant professor at University of Economics – Varna, “Legal Studies” Department; e-mail: darina@ue-varna.bg

ORCID iD<https://orcid.org/0000-0002-0613-1840>



This work is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License.

logical and historical sequence, the creation and functioning of the Labour Inspectorate as well as the current controls it uses. This aim is set both among the research tasks, and the internal structure of the current study. The said study is limited as a subject matter, on the one hand because of the volume of the present text, but on the other – because of the fact that the study is actually part of a larger scale monographic research under a project intended as a doctrinal analysis of the overall state control of compliance with labour legislation in its legal and economic aspects.

The results presented in the present study are part of a research performed by the authors, as members of the team of a national scientific project NPI № 43/2020 on the topic of “Legal and Economic Aspects of State Control of Compliance with Labour Legislation“.

The aim of the present work is to analyze the peculiarities and the essence of the Labour Inspectorate (LI) as a specialized authority, in view of its historical development, current regulations, and the specifics of the legal tools for exercising control of compliance with labour legislation.

The object of research is the normative regulation of control of the compliance with labour legislation in the section dedicated to the Labour Inspectorate.

To achieve the said objectives, the authors have formulated the following research tasks:

1. To put forward and summarize chronologically the separate stages in the historical development of the LI as a specialized control authority corresponding to the social processes in Bulgaria.
2. To analyze the present legal framework pertaining to the LI’s peculiar functions, competences and control mechanisms.
3. To summarize the applied tools and mechanisms for exercising controlling authority.
4. To formulate generalized conclusions about the work of the Labour Inspectorate and the update of its regulatory framework.

Research methodology is based on the combined use of common scientific methods – analysis, synthesis, induction and deduction, accompanied by methods pertaining to legal research – normative analysis, comparative legal analysis, as well as historical and system analyses.

Content is consistent with the applicable legislation as of April 2022.

1. Historical roots

Control of compliance with labour legislation guarantees observance of the constitutional right to work. Its significance for the branch of labour law is undeniable. On the one hand, control can be viewed as ushering in the appearance and differentiation of an independent legal branch, and on the other – as an activity that ensures the observance of the rights between the subjects of the employment relationship. The institution of control undergoes a genesis of development which is invariably associated with the authority this specific activity is assigned to. Control was initiated in the years after the liberation of Bulgaria when the economic foundations of the third Bulgarian state were laid. In the 1890s the need was seen for the “establishment of the inspection of labour in factories and any other workshops” – p. 9 in the First programme of the Bulgarian Social Democratic Party (BSDP)⁴ in 1892.⁵

From a terminology point, over the years of development of this institution, labour

⁴ In 1891 Bulgarian Workers’ Social Democratic Party was created. And 1904 saw the beginning of the first trade unions in Bulgaria: The Common Workers’ Trade Union and the Free Workers’ Common Union.

⁵ See Bulgarian Communist Party (BCP). Documents of the central governing bodies, tome 1. Sofia, 1972, p. 39–40

legislation has used a number of terms – “labour safety control”, “supervision over the execution of the Labour Code (LC)” and the expression currently adopted: control of compliance with labour legislation, which features in the LC – chapter nineteen “Control of compliance with labour legislation and administrative and criminal liability for its violation” (Andreeva & Yolova, 2011, p. 32).

In view of the object of the present study, the emphasis in the historical analysis will be placed on tracing back the development of the authority implementing control.

Laying the foundations and the following development of Bulgarian Labour Law is closely related to the setting up and regulations of the Labour Inspectorate. A decree of Prince Ferdinand of 3 November 1907 marked the beginning of the Labour Inspectorate⁶. According to the decree, the inspectorate is to perform functions pertaining to application of laws, regulations and ordinances concerning “instruction, commerce, crafts and workers’ protection.” Having analyzed the norms we can conclude that at its initial stage the authority had both executive and controlling characteristics. At the same time, its role for the protection of worker’s rights is clearly and definitively outlined. It is precisely the systemic structure of this body of authority that underlies the protective function of the emerging branch of labour law in Bulgaria in the post-liberation period. When juxtaposed to the European norms of the period, Bulgarian labour inspection clearly emulates the French model of a state inspection of labour. In Europe at the time there were two models for state control authority regarding compliance with labour law regulations and labour protection – a French one and an English one. Respectively, the French model is associated with the establishment and the activity of a general labour inspectorate covering all industrial branches and activities, whereas the English one envisages various specialized inspectorates according to the specifics of individual economic branches⁷.

An important step in the development of control, and, simultaneously, labour legislation is the passing of the first Bulgarian law on the safety and hygiene of labour in 1917.⁸ This law, besides its significance as a regulation of social relationships in an important historical period, also contributes to stability; it is worth noting that it was only repealed as late as 1951, when the first codified act in the field of labour law – the Labour Code of 1951 was adopted. Control of compliance with this act was assigned to the Labour Inspectorate under the Ministry of Agriculture and Trade.

These acts are the foundation stones of the first period in the development of control, as well as the building of the regulations of the labour law branch. The said stage can be defined as a capitalist one in as much as it reflects the existing social relationships regarding legislation and the need to impose acts pertaining to labour protection and control of compliance.

The second period is linked to that of the country’s socialist development after 1944.

In 1949 Bulgaria ratified Convention № 81 of the International Labour Organization about the labour inspectorate. The aim is to synchronize national regulations with the international principles and norms in the field of control. It is worth noting that until then, despite the lack of an overall structure of labour law sources, Bulgaria does have a well-established tradition of control on work activity.

In the first years after 1944, there can be seen inconsistencies between regulations and the new real-life social relationships that gain ground. Quite untypical for the previous development of control was the so called “worker’s control” initiated and introduced by the

⁶ Law of Labour Inspectorate in Bulgaria – confirmed by a decree № 182 by Prince Ferdinand I, of 03.11.1907 (publ. State Gazette issue 238/1907)

⁷ Linspecion du travail – sa mission, ses methodes. Geneve: BIT, 1971, p. 1 – 2.

⁸ Law on hygiene and labour safety – approved by a decree № 25 by Prince Ferdinand I of 01.06.1917 (publ.SG, issue 129/1917p amended)

Bulgarian Communist Party. Over the period 1944 - 1947 this control was exercised by the Fatherland Front committees (1944), “factory commissions” (1945), and “prof-committees” (after April 1945). On the one hand this kind of control aims to decentralize control and counteract state control performed by labour inspectors, and on the other – political commitment of control functions.

Workers’ control encompasses the normal course of the labour process, financial reporting of economic activity, compliance with labour legislation on the part of the private employers and other. The regulatory base of this type of control consists of: The law on establishment of reconciliation commissions regarding the interpretation and application of collective labour agreements (SG, №102, 1946) and in the Ordinance for regulating the relationships between prof-committees and employers in industrial enterprises.

In 1951 a change occurred in the affiliation of the control organization, and namely – health and safety control functions were imputed to Bulgarian trade unions⁹. This act recognizes the role of the trade unions in the building of labour law and the control of compliance with its regulations, with the process heavily influenced by Soviet practices (Aleksandrov, 1959, p. 132)¹⁰. The same year also saw the closure of the Ministry of Labour and Social Care¹¹.

In 1966 the law was passed on the Labour Health Supervisory Inspectorate at the Councils of Ministers (publ. SG issue 52/1966). In 1973, respectively – the Act of assigning Bulgarian trade unions control on labour protection (publ. SG 53/1973)

The new Labour Code of 1986 in art. 399, par. 1 stipulates that trade unions exercise overall control on compliance with labour legislation in all branches and activities (publ. SG issues 26 and 27/1986, amended)

The third period relates to the democratic changes in the country and begins in 1989. Having in mind the newly adopted fourth Bulgarian constitution, respectively the new norms regulating labour performance in the conditions of market economy, the need occurs for reconsidering the control functions regarding compliance with labour legislation, and above all – the organization of the particular authority.

Thus in 1991 the State Labour Inspectorate at the Ministry of Labour and Social Policy¹² was established. In 1992 the newly-created inspectorate was imputed with control functions concerning health and safety at work¹³. The same year the said authority was transformed into a General Labour Inspectorate¹⁴, and consequently in 2000 - into an Executive Agency General Labour Inspectorate (EA GLI) under the labour and social policy minister. In 2002 the Executive agency “General Labour Inspectorate” was assigned the specialized control activity regarding encouragement of employment¹⁵. In the following year, 2003, the specialized control activity was amended with control of compliance with legislation connected with civil service (control is exercised by state inspectors)¹⁶. Later this activity is redirected to the Ministry of State Administration (SG, issue 54 of 2006). In 2010 the specialized control on compliance with legislation referring to civil service and the obligations of parties in employment relationship was assigned to the Executive Agency “General Labour

⁹ The Labour Code repeals the Law on hygiene and labour safety of 1917.

¹⁰ In 1933 the Soviet Union closed the Commissariate of labour and the functions of control of compliance with labour legislation were taken over by the Supreme All-union Central Trade Union Council.

¹¹ A Law on repealing all laws passed before 9.09.1944, (publ.SG issue 93/1951)

¹² Decree of the Council of Ministers(DCM) № 193 of 02.10.1991 (publ. SG issue 83/1991, amended)

¹³ Law on amending the Labour Code. With the amendment in art.399 the state resumes control on compliance with labour legislation (publ. SG,issue 100/1992 .)

¹⁴ DCM № 92 of 26.05.2000 (publ. SG issue 44/2000).

¹⁵ Decree № 35 of CM for amendment of the Structural Regulations of the EA “GLI” (publ. SG 19/2002.).

¹⁶ Decree № 77 of CM, SG, issue 36/2004.

Inspectorate". In accordance with art. 6 of Convention 81 of the International Labour Organization (ILO), labour inspectors are civil servants.

Control of compliance with labour legislation is an act of power and over the years this power was exercised by competent authorities. In view of the change in the social relationships over the different historical periods there can also be observed a change in the affiliation of the authorities exercising control, a certain dynamic in the work itself. As a type of administrative control this particular control is characterized by its power-exercising character and the executive and administrative powers of the bodies authorized with control execution.

2. Current legal framework of the Labour Inspectorate

As a centralized authority on performing specialized external control, the Executive Agency General Labour Inspectorate is regulated in acts of various nature and specifics, which, being structured in the hierarchy of the legal framework, can be identified at several basic level as follows:

1. Within the general submission to the principles and philosophy of ILO's Convention 81 regarding labour inspectorate.
2. Systemic definition of the nature and competences related to executing external control within the general codified employment act – LC, where within the overall legal framework is situated and implemented the position of centralized control of compliance with labour legislation.
3. Specified regulations, directly relatable to and complementing certain aspects of labour performance, the common framework of control competences, in particular – the Labour Inspection Act and the Health and Safe Work Conditions Act (HSWCA).
4. Structural regulations of EA General Labour Inspectorate as major administrative and organizational by-laws.

This system of acts presents the overall picture of an unfolded and internally consistent legal regulation that identifies the nature, the application, as well as the measures and tools for control impact aiming effectiveness and legality in the initiation and development of employment relationships. In the above –mentioned aspects a consistent approach is developed so that a specialized form is established which is external to the organization but which safeguards fair and decent working conditions. The form of control also provides various penalizing methods in case of illegality, whereas at the same time it upgrades on the principles of an individual's freedom to exercise their right to work and the subjective labour rights therein (Banov, 2020a, pp. 59-83).

The basic aspects of regulation, upgraded and also further developed in the present ordinances of particular acts are to be found in the principles and philosophy of IOL's Convention 81 regarding labour inspectorates. It was first presented at the 30th session of the General conference of the International Labour Organization in Geneva, Switzerland on 11 July 1933 and came into force on 7 April 1950. Bulgaria ratified it with a Decree № 745 of the Presidium of the Grand National Assembly of 31 August 1949 (SG, issue 207 of 1949) and it came into force on 29 December 1950.

Control inspectorate's main fields of activity are described in art.3 of the Convention in the aspects concerning the application of the legal regulations on work conditions and workers' protection at work, providing information and technical advice to employers and employees about the most efficient methods of compliance with regulations, how to signalize competent authorities regarding mistakes or abuse which are beyond existing legal regulations. Also described are the possibilities to take measures regarding the obligation of the respective authorities to notify the inspectorate of any occupational accidents and occupational diseases according to the circumstances and under the conditions prescribed by the national legislation. It is explicitly stipulated that the Labour Inspectorate is under the supervision and control of

the executive power, therefore in principle its activity must be consistent with the overall administrative practice of the member state.

In terms of the basics of implementing control, there are outlined the inspectors' authorities which are also to be reciprocated by the ratifying state as well, taking into consideration the peculiarities of the respective national legislation. In particular these come down to the right of the controlling authorities involved to: freely enter, without preliminary notice, at any time of day or night, into any enterprise placed under the Inspectorate control, to enter premises in the daytime, as long as there is sufficient evidence to suppose they are subject to Inspectorate control; to research, check and investigate should it be deemed necessary considering the need for compliance with employment regulations. Inspectors can interrogate, either on their own, or in the presence of employer's witnesses, or that of the staff. Inspectors can familiarize themselves with registers and documents, whose maintenance is prescribed by legislation on work conditions.

In implementing their competences and above all in finding irregularities, inspectors are authorized to take direct measures to eliminate the faults found in equipment, in the structure or methods of work for which there is enough evidence to believe they can be health or safety hazards, but also to issue prescriptions on improvement of work conditions or demand that such be issued. They can also prescribe urgent measures that are to be taken immediately, should there be immediate danger for workers' health and safety.

A general regulation, though somewhat fragmentary and scarce in terms of text volume, of the Executive Agency "General Labour Inspectorate" is provided in the LC, chapter 19 'Control of compliance with labour legislation and administrative and criminal liability for its violation', Section I. Control of compliance with labour legislation (Title amended - SG, issue 25 of 2001, in force since 31.03.2001), art. 399 – 412. Pursuant to Article 399, par. 1 – 3

➤ Overall control of compliance with labour legislation in all branches and activities, including payment of unpaid wages and compensation upon termination of employment contract,

➤ Specialized control activity regarding compliance with legislation concerning the performance of civil service and the rights and obligations of the parties in employment relationship where it is absolutely forbidden for a person with a direct or indirect interest in the controlled object's activity to exercise such control.

Also directly reciprocated in texts and further updated according to the specifics of national regulations and the overall administrative activity are the control bodies' authorities envisaged in the Convention. In this sense and under art.402, par. 1 LC inspectors have the right to:

1. at any time visit ministries, other departments, enterprises and places where work is performed, premises used by employees, as well as demand from all persons present on the premises to identify themselves with an ID document;
2. require from the employer or the official responsible for appointments, explanations, information and submission of all necessary documents, papers and certified copies of the above related to exercising control;
3. get directly informed by employees on any question pertaining to exercising control, as well as demand from them to declare in writing work- related facts and circumstances, performing civil service respectively, including data referring to remuneration;
4. collect samples, specimens or other similar items for laboratory analysis, use technical devices and equipment, do measurements of working environment factors, in connection with the control over the performed labour activity;
5. identify reasons for and circumstances of occupational accidents that occurred.

Decisive powers regarding the legality and fairness of hiring are those of the inspectors about the observance of the registration mode of the concluded employment contracts and

declaring the existence of an employment relationship. Thus should there be revealed that labour performance has occurred without concluding an employment contract (art. 405a LC), the existence of an employment relationship, established by means of the admissible evidences, is declared with a resolution issued by the control authorities of the Labour Inspectorate. The decree also defines the date the employment relationship is initiated. Based on the resolution, control authorities prescribe to the employer to offer the employee to sign an employment contract, as either of the date of the occurrence of the employment relationship, or the date the resolution was issued.

In cases where parties do not conclude an employment contract the resolution replaces the said contract and it is considered concluded for an indefinite time with a 5-day working week and 8-hour working day.

In hypotheses of violated registration regime it is envisaged that the Executive Agency “General Labour Inspectorate” informs the National Revenue Agency of an official deletion of a notification sent about a concluded employment contract, when an employer or an official has failed to fulfill in due time a mandatory prescription in force, according to art. 404, par. 1, p. 11 or in the cases of art. 404, par. 5. In turn, the National Revenue Agency provides control authorities with the necessary tax and insurance information for the purposes of control of compliance with labour legislation and legislation on civil service.

To further develop and apply the Convention principles, the LC envisages a number of measures and mechanisms of control impact. Situations where they are applied vary widely in as much as they concern not only the direct violations found, but also cases of prevention and suspension of labour legislation violations, violation of civil service legislation as well as prevention and removal of resulting harmful effects. Besides, apart from the control authorities and their initiative hereby, these measures are also taken by authorities exercising external and internal department control, in particular other state authorities implementing general and specialized control on compliance with labour legislation by virtue of law or according to an act of the Council of Ministers, respectively ministers themselves, heads of other organization, as well as local government bodies who exercise control of compliance with labour legislation by specialized authorities of their own.

Should any violations be found, either direct measures are to be taken, making use of various methods of direct intervention, or mandatory prescriptions are to be issued for employers, user enterprises, appointment officials or officials responsible for elimination of violations of labour legislation, legislation regulating civil service, including regulations concerning the obligations of providing social services to employees, as well as obligations to inform and consult employees pursuant to LC and to the Act of informing and consulting workers in multinational companies, business groups and European companies, as well as elimination of irregularities in health and safety provision. Prescriptions may concern a wide range of aspects of activity, including the introduction of a special regime of safe work under circumstances of serious and immediate danger for workers’ life and safety, elimination of an irregularity associated with entering a smaller sum in the payroll, than the sum the employer actually paid, for amendment of the employment contract that was concluded as a part-time one into a full time contract, for sending notification of a concluded employment contract when the lawful deadline was not met, for payment of unpaid wages and compensations upon termination of employment relationships.

A specified form of control referring to the Labour Inspectorate (LI) is the control under the Labour Inspection Act (LIA) (Aleksandrov, 2017, pp. 13-17) (Aleksandrov, 2016, pp. 10-15). Pursuant to the text of art. 4 labour inspecting is a large- scale control including control of compliance with employment and insurance legislation and specialized control under the Law on Encouragement of Employment and the Health and Safe Work Conditions Act. In this sense paragraph 1 of the Tax Proceedings Code (TPC) also defines labour inspection as an activity,

implemented by an extensive system of control bodies at various levels, intended to find out and impose conformity between the legislative requirements and their application in places where labour or training is performed (Banov, 2020b, p. 370). Labour inspection is carried out independently or in cooperation with executive bodies or specialized administrative structures of theirs, including inspectors, civil servants, and/ or other authorized persons in the Executive Agency “General Labour Inspectorate”. A main form of control under the Labour Inspection Law is the joint inspections performed following an order by the Minister of labour and social policy or an official authorized by them and performed in accordance with the National Program for Labour Inspection, demanded by the Council of Ministers and assigned by the prosecuting authorities, proposed by the National Council of Work Conditions, in response to complaints and signals about violations of legislation, as well as in cases of factory accidents and occupational accidents resulting in death and injury of more than three workers or offences rightfully suspected to be likely to cause disability.

A special report is produced about joined inspection results, where the report contains findings, the prescriptions given and the measures taken to seek administrative and criminal liability. The report is consequently submitted to the Labour and Social Policy minister with a copy to the management of the control authorities who carried out the inspection.

At the by-law level the most essential organizational act regulating the structure and competences of the Agency is its Structural Regulations. Organizationally, the agency is an independent legal entity supported by the budget of the Ministry of labour and social policy. The agency is organized as general and specialized administration and is structured as a Headquarters and 28 territorial directorates “Labour Inspectorate” with a total personnel of 492 full- time positions. The headquarters includes general administration directorates, the Directorate- general “Labour Inspection” as well as the directorates of “Legal provision of inspection activity” and “International labour migration” and individual positions.

Specialized administration is organized in the directorates of “Legal provision of inspection activity”, “International labour migration” and a Directorate – general “Labour inspection” with 28 territorial subdivisions –Labour Inspectorate directorates located in the district administrative centres.

In view of further upgrading the acts into such of higher legal force, the LI is to operate by:

1. exercising overall control of compliance with labour legislation in all branches and activities;
2. exercising specialized control of compliance with the Health and Safety Work Conditions Act, the Law on Encouragement of Employment, the Law on Labour Migration and Labour Mobility, legislation on performance of civil service and the rights and obligations of the parties in the employment relationship, as well as other legal regulations, should the law require it;
3. providing information and technical advice to employers and employees about the most effective methods of compliance with labour legislation, about legislation regulating health and safety conditions of work and other regulations of which the control is assigned to the Agency by virtue of law;
4. exercising the right provided by the Commercial Act to file a claim for opening insolvency proceedings of a trader regarding due and unfulfilled for over two months obligations to the said trader’s employees.
5. informing competent authorities about established incompleteness and irregularities in the existing labour legislation.

The structural regulations envisage two main forms of operation and control – planned and unplanned inspection. Pursuant to art. 18 par. 1 and art. 19, plant inspection is carried out according to annual plans for directorates’ activity in order to fulfill the programs and measures

defined in the annual plan of the Agency's operations. Unplanned inspection takes place either at the initiative of the executive director, the heads of directorates of specialized administration and the inspectors' discretion, or at the initiative of subjects outside the particular structure – by order of the minister of labour and social policy, by order of court, the prosecution, the authorities performing pre-trial criminal proceedings, workers' claims and signals on issues of employment relationships, employees organizations, as well as media information, claims and signals of the appointment authorities, heads of administrative structure inspectorates and trade unions or complaints by civil servants and in order to find out the reasons for accidents occurring at work.

In the implementation of competences upon finding violation a further development has been envisaged of the concrete framework of the LC (art. 21, par. 4), and namely, that inspectors should apply the coercive administrative measures provided in the regulations, issue decrees according to art. 405a of the Labour Code for declaring the existence of an employment relationship, draw up an act for finding an administrative violation and initiate administrative criminal proceedings, as well as give oral orders in case of established administrative violation that can be eliminated in the course of the inspection.

The legal regulations we have examined in terms of the hierarchy of acts enable us to make certain conclusions. On the one hand, provided Convention frameworks are consistently complied with, there is a certain further development of the national legal regulations regarding the powers and forms of control impact. Simultaneously, there is a lasting trend of continuous improvement and upgrading of regulations, in harmony with the new social relationships and the peculiarities of hiring and implementing labour. Every single act, at its respective level complements and further develops its preceding ones and thus establishes an overall, complete and essentially consistent legal regulation. On the other hand, there is strict adherence to the hierarchy of control functions in the total structure and system of the general and specialized national administration. Synchronous forms of joint control operation have been found, while fortunately the operative independence of the Inspectorate has been preserved and so has the outstanding significance of this authority as a centralized external control authority regarding compliance with labour legislation.

3. Coercive administrative measures as a main legal instrument for exercising control of compliance with labour legislation

This country has its traditions in the regulation of the right to work, as well as in the control of compliance with labour rights. Regardless of the numerous legislative changes over the different historical, social and political periods in the restoration of Bulgarian state from 1878 to these days, this country has adhered to the international obligations it has assumed with regard to observing essential social rights, as is the right to work (Dimitrova, 2021, pp. 192-202).

The peculiarity of legal regulation of control of compliance with labour legislation is defined by the sources of labour law as a major branch in the national legal system. Among the legislative acts directly intended to regulate state control on observing rights, the Labour Code occupies a central place. Since its adoption in 1986 it has undergone dozens of amendments, including these relating to the regulations on control of compliance with labour legislation.

The Executive Agency "General Labour Inspectorate" (EA GLI) within the responsibilities of the minister of labour and social policy performs overall control of the application of and compliance with labour legislation (art. 399, par. 1 of LC). The Agency is a department in the system of executive power that does not have the rank of a ministry and is structured into a Headquarters and 28 district directorates.

Control of compliance with labour legislation is a specific part of the state's managerial activity performed by a specialized administrative authority – EA GLI. The aim of this control

activity is to ensure legal development of employment relationships, which is possible exclusively by means of really applying labour legislation.

The EA GLI's administrative control includes performing inspections and applying coercive administrative measures (CAM) on the part of the control authorities. In case violations of labour legislation are revealed as results of control, the LC also envisages imposing administrative penalties, though the administrative-and- criminal liability is not part of the control, but rather a jurisdictional activity (Balabanova, 2004 , p. 79).

The essence of CAM, their basic characteristics and types have been studied in our legal doctrine (Lazarov, 2017, p. 15-235), but have been examined in a much too general manner, as simply a type of administrative coercion and only their general characteristics as administrative legal institutions have been considered. (Dermendzhiev, Kostov, & Hrusanov, 2010, p. 362-370). There are no in-depth independent studies dedicated to CAM about the prevention and elimination of violations of labour legislation. In as much as certain authors do mention controls of compliance, they only dwell in the general issues of labour law (Mrachkov, 2018, p. 955-968).

In this sense research on the CAM imposed by the labour inspectorate is certainly insufficient. Administrative coercion in labour law has its own characteristics which have to be analyzed independently. This calls for the need for research on the subject, partly in view of filling in the doctrinal scarcity and partly it is of practical importance to facilitate labour inspectors in their control activity.

CAM are a basic instrument for prevention and elimination of violations of labour legislation. This type of administrative coercion does not have the character of a sanction. No administrative-and-criminal liability is implemented through the application of administrative coercion and no administrative penalty is imposed, as the said coercion does not entail unfavourable legal consequences for its addressees and does not aim to reform and improve them. This measure of administrative coercion represents external psychological impact on its addressee. The immediate goal is to put an end of the labour legislation violation and to stimulate the person in question to voluntarily perform their obligations resulting from their status as an employer or appointment official.

In their legal essence CAM are a set of activities and instruments competent control authorities use. On the one hand CAM are aimed at prevention and elimination of such violations, and on the other – at the prevention and elimination of the harmful effects resulting from them (art. 22 of the Administrative violations and Penalties Act). Unlike administrative sanctions which are only imposed in cases of administrative offences performed, CAM may be applied both when administrative violations have been carried out, and as a preventive measure should there be a direct and immediate danger of such violations. In order to apply this measure it is enough that any of the legal facts listed in the hypothesis of art. 404 par. 1 of the LC has occurred in the objective reality. The employer need not have intentionally violated, by their action or inaction, the regulations of the labour legislation, or be guilty of failing to fulfill certain obligations. Whereas, to impose an administrative penalty as a general rule, it is necessary that the offence is guiltily performed, i.e. not only an objective but a subjective aspect of the respective violation is available.

In view of the above, CAM for the prevention and elimination of violations of labour legislation are not means of implementing administrative responsibility of the employer or appointment officials. They act as a warning, as they have preventive character. They protect not only the addressee (the employee) but also the object of violation (the right to work, i.e. the rights resulting from performing labour). To apply these measures it is sufficient that the offence is illegal, as they are applied regardless of guilt.

Violations of the regulations on employment relationships may be revealed in various wrongful acts and affect a wide range of aspects pertaining to the subjective rights of

employees. This turns CAM into an effective tool for preventing violations of labour legislation. The kinds of CAM for prevention and elimination of labour legislation, as well as the prevention and elimination of their harmful effects, are established and described in detail in art. 404, par. 1 of the LC:

- Mandatory prescriptions;
- Stopping the commissioning of buildings, machines and facilities, production and sites;
- Stopping an enterprise's operations;
- Stopping the execution of illegal decisions or orders issued by employers, appointment authorities or officials;
- Dismissal of employees owing to their lack of required qualifications or their not being acquainted with the rules for healthy and safe work conditions;
- Introduction of a special regime of safe work in case a serious immediate danger arises for the life and health of workers if it is impossible to stop hazardous machines.

In their legal nature the acts through which CAM are applied according to the LC are individual administrative acts although the legislator uses the term “prescription”. In the hypothesis of art. 404, par. 1 of the LC the prescription is an individual administrative act, yet in certain court acts it is assumed that a prescription is equivalent to CAM¹⁷. This is imprecise – the act of CAM imposition should not be considered the same as the measure itself. Mandatory prescriptions possess the characteristics of individual administrative acts, whereas the CAM imposed with these acts can vary depending on their purpose – preventive, eliminative or restorative (Lazarov, 2000, p. 231).

The effectiveness of CAM as a means of eliminating the revealed labour legislation violations can be assessed from the content of the Annual Reports of the EA GLI. The table below shows the number of CAM imposed for the years 2019, 2020 and 2021, with 95% of them amounting to mandatory prescriptions to be executed by employers¹⁸.

Table 1. Results from the control activity of EA GLI regarding the application of CAM

year	Inspections carried out	Enterprises inspected	Labour legislation violations found	CAM applied	Penal decrees issued and agreements concluded
2019	40 216	31 412	171 826	164 538	9 109
2020	37 145	29 919	153 760	147 556	7 577
2021	40 788	33 177	187 712	181 323	8 544

Source: Prepared by the author (Summary reports on EA GLI control activity, accessible at:

<https://www.gli.government.bg/bg/taxonomy/list/371>)

Summarized reports on the control activity of EA GLI unequivocally show that the CAM applied are tens of times as many as the penalty orders issued. This definitely supports the effectiveness of CAM as a means of control on the prevention and elimination of violations of labour legislation. Seeking administrative criminal liability from employers or appointment authorities is the other form of impact when there are violations of the labour legislation. Such liability is sought from persons who fail to duly fulfill the prescriptions given, repeat the same violations again and create obstacles for the control authorities to do their job.

The imposition of CAM always occurs by means of a new independent administrative act, which generates for its addressees individual obligations that must be fulfilled and their

¹⁷Definition № 1542 of 20.07.2021 on an adm.case № 1247/2021 by the Administrative court - Burgas; Court ruling № 1114 of 20.06.2017 on adm. and crim.case. № 1125/2017 of the Administrative court - Burgas

¹⁸ Annual reports on the activity of EA GLI, accessible at: <https://www.gli.government.bg/bg/taxonomy/term/370>

execution is initiated by coercion. These measures are not applied arbitrarily, they have to be subjected to the principle of legality, and consequently they are to be applied solely in cases explicitly described in a law or decree. The said measures must be imposed in a manner and order prescribed by the legal regulation and are to be in congruence with the particular offence and the particular eventual or real damaging effects. CAM are only to be imposed by the administrative authorities pointed in the legal norm (Dimitrova, Mateeva, & Dimitrova, 2020, p. 95).

In this sense mandatory prescriptions under art. 404, par. 1 of the LC must be enacted by a competent authority (Directorate “Labour Inspectorate”), after an inspection has been performed and facts and circumstances have been clarified in compliance with articles 35 - 36 of the Administrative Procedure Code. Mandatory prescriptions have to be issued in the form prescribed by law, with the particular factual and legal grounds for producing them. Given that administrative production regulations and substantive provisions of the law have been complied with, and the lawful objective has been considered, it is assumed that issued mandatory prescriptions are legal¹⁹.

Further on, the acts with which CAM are imposed must be motivated. It is emphasized in the court practice that in the Labour Code there are two aspects of meaning in these measures - on the one hand they have a suspensive effect, aiming to discontinue a particular act which in itself is an administrative offence, and on the other – they are of preventive and deterring character, aiming to prevent the possibility for the perpetrator to commit other similar violations. Correspondingly, the mandatory prescriptions given during the control operation of the “Labour Inspectorate” Directorate have to be concrete, clear and unequivocal. Should a given prescription be too general, it generates ambiguities and does not meet the requirements of art. 59, par. 2, p. 5 of the Administrative Procedure Code (APC) and this practically prevents the possibility of its execution. Therefore, it is imperative that the prescription describes the particular activities the employer must perform in order to be considered that the necessary organization has been created for ensuring effective control, as well as the violations that have been performed in the organization of work which are to be eliminated. This means that the individual administrative acts which impose CAM under art. 404, par. 1 of the LC have to be motivated²⁰.

The above also poses the question of observance the requirements for CAM lawfulness. As Cam are objectivized in the issuance of mandatory prescriptions, which in turn are administrative acts under art. 21, par. 1 of the APC, the legal guarantee for ensuring their lawful application is the provided possibility for challenging them. Under art. 404, par. 1 of the LC CAM may be appealed in the order of APC (art. 405 of the LC).

Mandatory prescription is an individual administrative acts, consequently it can be appealed by the employer or the appointment authority to a higher administrative authority or in court. What is important to take into consideration, however, is appealing does not stop the execution of CAM (art. 405, sentence 2 of the LC) (Bogomilova, 2013, p. 58-65).

Administrative appeal is a means of exercising administrative control by the immediately superior administrative body. In the particular case the competent authority is the Executive Officer of the EA GLI. The deadline for pronouncement is two weeks from receiving the correspondence (arg. in art. 97, par. 1 of the APC). The competent authority shall issue a reasoned decision with which: it declares the contested act null and void; cancels the contested act in whole or in part as unlawful or inexpedient; or dismisses the complaint. In case the executive director fails to come with pronouncement within the two week term since receiving

¹⁹ Decision № 12381 of 03.12.2021 on adm.case. № 7758/2021., VI dept. Of the Supreme Adm.Court.

²⁰ Decision № 1230 of 01.02.2021 on adm. Case№11163/2020, VI dept. of SAC.

the correspondence, the legality of the administrative act may be contested in court via the administrative authority which issued the act (art. 95, par. 5 of APC).

However, labour inspectors' mandatory prescriptions may also be challenged directly in court, even if the possibilities for administrative challenge have not been exhausted (arg. from art. 148 of APC). CAM imposed by the "Labour Inspectorate" Directorate, as well as the decisions of EA GLI's executive director are appealed to administrative courts (arg. from art.132 of APC). The appeal is filed through the authority issuing the act to the respective administrative court (arg. from art. 152, par. 1 of APC). The court decision is rendered within a month of the final hearing. In the decision the court declares null and void, cancels in whole or in part or amends the contested act, or rejects the challenge (art. 172, par. 1 and 2 of APC). The decision of the first instance is subject of cassation appeal to the Supreme Administrative Court.

In summary, a conclusion can be drawn that CAM are an efficient tool for prevention of the violations of workers' labour rights. The provision of art. 405, sentence 2 of the LC, which states that the appeal does not stop the execution of CAM, also contributes to the effectiveness of administrative coercion, imposed under the Labour Code. By means of the Labour Inspectorate acts active impact is sought for the protection of violated labour rights so as to guarantee workers' lawful interests. It is the legislator's will to bring speed in the elimination of labour legislation violations in view of the social significance of regulated legal relations. Administrative productions of such importance require speed and immediate execution of law enforcement measures²¹.

In view of the insufficient number of publications and the unsatisfactory research on CAM as a main legal tool for exercising control of compliance with labour legislation, the author hopes to bring light to the questions examined so as to make a valuable contribution to the legal doctrine. In turn, filling the doctrinal gap will help the correct understanding of the norms and their application in the practice of control authorities.

Conclusion

On the basis of the performed historical and present-day normative analysis, the following conclusions can be formulated:

1. Control of compliance with labour legislation arises and evolves along with the development of the social relations in Bulgaria after the liberation. The progress of control is interrelated with the dynamic of the economic relations, as well as the development of the legal branch of labour law.

2. The current regulation of the centralized control authority presents an unfolded, complementary and consistent system of provisions, established in normative acts of various nature and legal force. In their entirety, these formulate a comprehensive regulation, adequate in terms of the preservation of the fundamental legal principles and regulations of control impact, but also adjustable enough to the new challenges facing social and classical employment relationships.

3. CAM are an efficient means of control to prevent and discontinue violations of the labour law. Their effectiveness is also supported by the provision of art. 405 of the LC, under which the appeal does not stop CAM execution. On the one hand, the performed analysis of the peculiarities of administrative coercion applied in the area of labour law adds valuable content to the legal doctrine, and, on the other – the authors hope to facilitate labour inspectors in their control activity.

²¹ Definition № 10764 of 04.09.2018 on adm.case № 10425/2018, VI dept.SAC.

References

- Aleksandrov, A. (2016). Prakticheski problemi na trudovoto pravo, svarzani s kontrola za spazvane i administrativnonakazatelната otgovornost za narushenia na trudovoto zakonodatelstvo. *Trud i pravo*, 11, 10-15.
- Aleksandrov, A., (2017). Mitove i fakti v trudovoto pravo - Za inspektsiyata po truda. *Trud i pravo*, 12, 13-17.
- Aleksandrov, N. G. (1959). *Sovetskoe trudovoe pravo*. Moskva: Gosyurizdat.
- Andreeva, A. & Yolova, G. (2011). *Yuridicheska otgovornost i kontrol za spazvane na trudovoto i osiguritelno zakonodatelstvo*. Varna: Nauka i ikonomika.
- Balabanova, H. (2004). *Administrativen kontrol: kontrolna kompetentnost na izpalnitelnata vlast*. Varna: VSU „Chernorizets Hrabar“.
- Banov, H. (2020a). Istorichesko razvitie na individualnite subektivni trudovi prava v balgarskoto pravo. In: *Andreeva, A., Yolova, G., Blagoycheva, H., Aleksandrov, A., Banov, H., Yordanov, Z. Zashchita za individualnite subektivni trudovi prava (na rabotnika ili sluzhitelya)*. Varna: Nauka i ikonomika, pp. 59-83.
- Banov, H. (2020b). *Trudov dogovor za obuchenie po vreme na rabota*. Sofia: Nova zvezda.
- Bogomilova, Z. (2013). Obzhalvane na predpisaniyata na inspektorite po truda. *Trud i pravo*, Issue 3, p. 58-65.
- Dermendzhiev, I., Kostov, D. & Hrusanov, D., (2010). *Administrativno pravo na Republika Bulgaria. Obshta chast*. Sofia: Sibi.
- Dimitrova, D. (2021). Istoricheski traditsii na kontrola za spazvane na trudovoto zakonodatelstvo. *De jure*, 23(2), 192-202.
- Dimitrova, D., Mateeva, Z. & Dimitrova, D., (2020). *Administrativno pravo i protses*. Varna: Nauka i ikonomika.
- Lazarov, K. (2000). *Administrativno pravo*. Sofia: Feneya.
- Lazarov, K. (2017). Prinuditelni administrativni merki. In: *Aktualni trudove*. Sofia: Siela, p. 15 – 235.
- Mrachkov, V. (2018). *Trudovo pravo (deseto preraboteno i dopalнено izdanie)*. Sofia: Sibi.