

Labour Discipline And Internal Control – Interaction And Boundaries

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Abstract

This article examines some current issues related to the institutes of labour discipline and the application of control in the observance of labour discipline in the energy sector companies. Emphasis is placed on the modern aspects of these concepts due to the current conditions for employment, as well as the need to define boundaries from a legal and economic point of view. The presented work is an interdisciplinary study, compiling legal aspects and economic analysis in their necessary interrelation. The combination is conditioned by an objective public need for up-to-date regulation in the legal framework of the existing social relations and economic processes. In conclusion, summaries have been formulated and specific proposals have been made for the application of the norms and for the improvement of the legislation.

Keywords

labour discipline, internal control, employer control, employer authority
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Introduction

Labour discipline is a basic concept of labour law, which accompanies the process of provision of the workforce and is invariably associated with the quality of labour provided. Historically, labour discipline is a concept that not only determines the measure of due behaviour of the employee but also reflects the achievements of society through the mechanisms that ensure its observance. In the Bulgarian labour legislation, the concept undergoes a process of evolution and transformation, which correspond to the historical stages in the development of the country (H. Banov, 2018). The legal doctrine pays significant interest to the topic of labour discipline, control over its observance and disciplinary responsibility. This is justified given the importance of the issue and its multifaceted nature, which requires scientific research from different points of view in order to have a comprehensive knowledge of the institutes.

At the present stage of development of society factors such as the fourth industrial revolution, digitalization (Andreeva, 2018) and artificial intelligence (Andreeva & Asenov, 2020) require a rethinking of the legal concepts (Andreeva & Yolova, 2021) their adaptation to the digital world (Andreeva & Yolova, 2020) where we live, linking them to the economic processes and at the same time creating the necessary guarantees to protect the rights of the subjects (Blagoycheva, Andreeva, & Yolova, 2019; Bogdanov, Marinov, & Boshnakov, 2019; DeDominicis, 2020). In the context of the presented topic, the issue is particularly sensitive, given the modern technological capabilities that allow control over the labour process and compliance with labour discipline, many times exceeding the limits set by the legislator. On the one hand, this is a sign of technical progress and guarantees the interests of employers to the maximum extent, but on the other hand, the ethical issue of human rights and unregulated intrusion into the personal sphere of people is no less important.

It is these questions that provoke the interest of the authors of an interdisciplinary study and presentation of the issues from the legal and economic points of view. The aim is to find common ground, to explore the concepts with the tools of different fields of science and thus objectively present the ongoing processes in their scientific analysis as proposals, both for lawful application of norms and for improvement of legislation.

The topicality of the researched issues is complex and can be presented as follows:

First of all, in its interrelation, the question of labour discipline and control is not studied in the modern legal and economic theory in their collaboration of economic and legal interrelations. And this need is especially urgent in view of the link between the results of the labour process and the economic indicators. This requires not only justification of a positive financial result and profit from the point of view of employers, but also reciprocal benefits for the employees, both economically expressed by adequate wages (H. Banov, 2018), as well as working in modern, safe and healthy working conditions, and respecting the boundaries of the work process and personal freedom.

Secondly, topicality is associated with the global processes dictated by technological progress, in which digitalization is no longer only present in all spheres of life, but also transforms concepts and values. This determines the interdependence of *discipline-control* to be studied and presented in the legal and economic analysis.

Thirdly, the quality and efficient control over the observance of the labour discipline, by controlling the observance of the labour process in a given company contributes to the achievement of the goals of the organization, through higher labour productivity. That is why legal and economic cohesion is so important and should be seen as a common component of a whole and not as self-contained individual elements.

The purpose of this article is to examine some current issues related to the institutes of labour discipline and the control of its observance in the national legislation. Emphasis is placed on the modern aspects of these concepts, which are determined by the current conditions for employment, as well as the need to define boundaries from a legal and economic point of view.

In conclusion, summaries have been formulated and specific proposals have been made for the application of the norms and for the improvement of the legislation.

The subject of study is the current legislation of the Labour Code, related to the institutes of labour discipline and internal control, and the companies in the energy sector are the object of study.

To achieve this goal, **the following research tasks** are implemented:

- 1) legal analysis of the institute of labour discipline in the context of current social processes and the impact of digitalization
- 2) clarification of the interdependence *discipline-internal control* in the labour process through interdisciplinary research binding legal and economic aspects
- 3) formulation of summaries, conclusions, specific proposals for application of the norms and improvement of the legislation

The research **methodology** includes the complex application of legal and economic methods applicable in the scientific research: legally dogmatic, normative, induction and deduction.

The following limitations are presented in this study:

1. Of all types of companies, the scope of the survey includes companies from the energy sector, as they have an established system of internal control and their internal control reports are electronically available to external users of information.
2. The study covers the period from 2018 to 2020, as this is the last officially published reporting period by companies in the energy sector, presented in a summary report by the Ministry of Energy. The material is in accordance with the current labour legislation as of June 30, 2021.

Labour discipline - contemporary legal aspects

The current stage of development of Bulgarian labour law is associated with the social development of the country after 1989. At this stage, the transformation of labour law institutes is subject to the idea that they correspond to the market economy, and respectively, to ensure the transition from the planned economy to the new relations (Martínez & Martineau, 1998). This is the goal set in the amendments to the Labour Code from 1992. At the same time, however, the national labour law is also influenced by rapidly evolving global processes and international legal achievements. This determines the frequent changes and additions in the labour law institutes, which, unfortunately, in the period of long transition are not complete and radical, but fragmentary and largely inconsistent. These include the changes in the main labour law institutes that serve the labour process. Labour discipline is a legal institute that stands out among the general process with its relative stability in times of change and at the same time is called to ensure stability in the legal law relations. In the period of technological progress - the fourth industrial revolution - and the entry of artificial intelligence (AI) in the labour process, labour discipline should guarantee both parties - employee or employer that the assigned work will be performed qualitatively and at the same time without intruding the personal life of the carrier of the labour force. The economic interests of the parties should be combined with universal principles and rights in a harmonious unity - this is the challenge facing the modern legal institute - labour discipline. Being a basic initial concept with which many other institutes are connected, labour discipline is even more important at the present stage, when the human factor is mixed with AI in a common symbiosis in the labour process. In this sense, it is inconceivable that this institute should not follow the pace of development of society and should not reflect the new forms of work. In our labour law theory, the ambiguous nature of the concept has been studied by the authors (Ma, Cai, & Wu, 2019; Nedyalkova, 2018) but this nature is dynamic. This is connected and derives from its essence - to have a union of norms regulating, on the one hand, the obligations of employees (M. D. Banov, Landrum, Moore, & Szabo, 2021; Nedyalkova, 2020) and at the same time norms containing the consequences of non-fulfilment of obligations under the employment contracts. Admittedly, the actions of employers must not violate the labour rights of their workers (Andreeva & Yolova, 2020; Klapkiv, Niemczyk, & Vakun, 2017; Ma et al., 2019).

In our national legislation, there is no legal definition of the term labour discipline, and it is derived

by interpretation, and in this sense the definition is doctrinal. Various arguments can be given for this decision of the legislator not to commit to an explicit normative definition. On the one hand, this gives freedom to the parties in the employment relationship, and in particular to the employer, to bring in the specifics of the labour process corresponding to the activity carried out by him (H. Banov, 2018; Hochschild, 2009; Keller & Sörries, 1999). On the other hand, the connection between labour discipline and its violation is revealed. It is in this connection of concepts that their essence intertwines. Through it, they clarify each other (Usman, Inuwa, Iro, & Dantong, 2012; Vasileva, Strashilov, & Yordanov, 2019).

In this sense, we consider the right legislative approach in which labour discipline is more flexible and adaptable to the changing social realities. In the process of negotiating the labour process, more and more often the imperative side of the labour legal relationship gives way to the possibility for the parties to settle their relations on an equal base. The essence of the labour process is the combination of opposing interests in a common construction guaranteeing the high quality of the work performed. Labour discipline is included exactly as an institute that ensures this. It combines various functions - from prevention, prophylaxis and prevention of labour violations to disciplinary liability for violations.

The employer's legal capacity includes a commitment to the organization of the labour process and it is, precisely, as part of this obligation of the employer that the labour discipline appears. The specifics of its definition when it comes to companies, institutions, etc, is precisely related to the employer, who assumes the responsibility to provide safe and healthy working conditions, to ensure the protection of life and health of employees who are engaged in employment and at the same time to accomplish his subject of activity in the most efficient way possible. The correlative relationship between the legal norms regulating labour discipline and economic results is present. It is the observance of the norms of this legal institute that creates the necessary preconditions for economically good financial results.

However, labour discipline is not an isolated legal institute, on the contrary, its nature requires it to correspond to the regulation of institutes such as working hours, overtime work, safe and healthy working conditions, control. From the law point of view, this correspondence assumes that the observance of labour discipline will combine the lawful observance of all related institutes. However, the issue of connectivity has not only a legal side from the point of view of the normative mechanism, but also has another side expressed in the managerial function of the employer in the application of the employer's power granted to him. When regulating the labour discipline, as a normative complex in the *Regulations for the internal labour order* in the company, the employer must coordinate this with the representatives of the employees.

In this sense, a conclusion can be made about the relationship between labour discipline, both with dispositive and imperative institutes of labour law. All of them are subordinated to the main goal of ensuring the normal course of the labour process and respecting the rights of the parties. Labour discipline can be semantically identified and associated with an order, obedience, and organization of labour. All of them are part of the doctrinal development of the institute (Ginsburgs, 1987; Reich, 1964).

In our legal theory, labour discipline is studied not only as a legal institute in a narrow sense but also the issue of ethical aspects and the connection with ethical norms is analyzed as a source. Generally, a legal sanction is not applied in case of violation of ethical norms. The consequence in such cases is a moral reproach (Blagocheva et al., 2019; Bogdanov et al., 2019; Serafimova, 2017). At the same time, a number of professions have their own Codes of Ethics, whose role is important for the performance of labour functions.

Labour discipline should also be analyzed from the point of view of the subjects of the employment relationship. From this position, we can deduce its subjective projection (Chan & Xiaoyang, 2003; Colnar, Dimovski, & Bogataj, 2019; Usman et al., 2012) which reflects the observance of the established work order (Drinot, 2014; Wallenborn, 2010) by the employee. In this subjective aspect, the vertical subordination is clearly distinguished, which is generally absent in private law relations, but it reveals the specifics of labour law - the subordination of the employee to the employer and the implementation of his legal orders.

Labour discipline is directly related to disciplinary liability, which can be presented as a consequence of non-compliance with the former. On the other hand, liability in labour law should be seen as an institute with a supporting function, which is applied in cases where the normal course of the labour process cannot be ensured in any other way. The usual activity of the employer as a manager and organizer presupposes the predominant development of control in order to ensure compliance with labour discipline.

The last decades have been marked by the sign of transformations, social and technological, which have their impact on society and the labour process. The requirements for employees are "modernized" and go beyond the traditional requirements for the performance of labour functions. Lifelong learning is now considered a necessity (Peicheva, Kraeva-Miteva, & Harizanova, 2017) and digital skills are a must in most areas of performance. All this is an integral part of the technological revolution. At the same time, the process has another side, as well - psychological, which reflects the perception and impact of these processes on the human psyche - fear, insecurity, conflict, aggression - these are just some of the problems that accompany the path of digital transformation of the labour process. Human communication and interpersonal relationships are mediated by communication through electronic means; technology and AI accompany the teamwork and are permanently established in between the subject relations in the employment relationship. These processes invariably affect labour discipline and, in particular, they affect the non-compliance with it in various options, from disciplinary violations to graduation in crimes. It is in view of this aspect that the control function is important. Not only control in the narrow sense of the word for the observance of labour discipline, as a legal institute, but also control over the behaviour and relations in the work team. In the traditional understanding, the disciplinary violation is a human act (action or inaction) that violates the established labour discipline. At the same time, the issue of liability caused by robots and AI systems in the labour process, and possible mutual harm between a person and a technology, is still unexplored. As part of the process of ensuring compliance with labour discipline, the role of control, which will be presented in its economic aspect, is quite important.

Specifics of internal control over the observance of labour discipline and labor productivity

Each enterprise carries out its economic activity through the main factor of production - the work done by the employees. The whole labour process depends on the proper observance of labour discipline by the workers and/or the employees. On the other hand, labour discipline has a direct or indirect effect, namely, through the labour process and on labour productivity. For this reason, internal control, seen as a means to achieve the company's goals, focuses on the following more important areas:

- observance of labor discipline
- proper implementation and realization of the labour process
- achieving the desired norms of the labour productivity indicator

This part of the study deals with the problems of internal control in the companies of the energy sector regarding the achievement of high labour productivity. The researcher focuses on the energy sector in Bulgaria, as these companies have a very well-established internal control system, which covers both the financial management and control system and the quality management system. For each company, whose activity is aimed at providing goods and services to the society / i.e. the final user /, is essential to track and reach normal production capacity without significant losses. The analysis of production capacities is a comprehensive and complex matter. This study examines one of the main indicators that are important for determining the production capacity, namely, labour productivity.

Labour productivity should be considered as an economic indicator, which expresses the ability

of labour to produce a certain volume of production for a unit of working time. It is presented as a ratio between the quantity of production and the number of persons employed in the production process, i.e.:

$$LP = \frac{QP}{NPE}$$

Where:

LP – Labour productivity

QP – Quantity of production

NPE – Number of persons employed in the production process

The indicator is essential for manufacturing companies because it represents not only the change in production relative to labour input but also indirectly represents the organization of production, the technology, the work capacity in the company, and last but not least, the compliance with labour discipline and work order. The indicator cannot directly give the connection between the work order and the labour discipline with the number of produced products, but it is a prerequisite for observing this indicator internally - the control persons will direct their attention to the human factor, i.e. to the condition of the staff. The problem of productivity is considered in another work by Nedyalkova (Nedyalkova, 2018), but in this work the problem of control over the quality of goods is considered more than control over the work process.

Internal control seeks to reliably control and cover all processes, procedures and situations related to staff. The overall control process is aimed not only at achieving the goals of the human resources management system, but also at achieving the goals of the organization (DeDominicis, 2020; Deisinger, 2004)(Dineva, 2014). Therefore, the internal control reveals labour-legal problems that are due to non-compliance with labour discipline and work order. Internal control must very well identify and distinguish the problems that are caused by the actions of the employer (including problems related to personnel management) from the problems that are a consequence of the actions of the staff itself. Also, internal control must very well examine the extent to which these problems affect labour productivity.

Internal control in energy sector companies is a systematic and continuous process. It covers the labour productivity under monitoring, analysis and control, which contributes to the achievement of high competitiveness and sustainable development of companies in the energy sector. The sustainable growth is aimed at protecting the environment, developing and implementing new energy-saving technologies and providing energy-efficient services. The provision of energy efficient services is regulated in the Energy Efficiency Act. According to the law, "energy services aim to combine the supply of energy with energy-efficient technology and/or with an action that covers the operation, maintenance and management necessary to provide the service and lead to a verifiable, measurable or assessed increase in energy and/or saving primary energy resources".

According to the data provided by the National Federation of Energy - CITUB in the report "Analysis of social dialogue and collective bargaining in the Energy sector - Production and distribution of electricity and heat and gaseous fuels" for 2020, the labour productivity in the energy sector is 4.5 times higher than the average for the economy and almost the same level higher than in the industry sector. The high numbers, according to the report, are also due to the fact that "over 60% of all employees in the sector are under Collective Work Contract at the company or under Branch Contract. For Bulgaria, the average level, which the European Commission warns us about, is 30%, and in some sectors less than 20%." In the energy sector, as well as in other sectors of the economy, the mixed (centralized and decentralized) model of Collective Work Contract is applied.

In 2018, labour productivity per 1 employed person in the energy sector increased by 49.5% and

reached BGN 114,421 in 2018 compared to BGN 76,514 in 2010. Compared to the dynamics of this indicator at the level of the economy as a whole /52.6%/ , there is a certain slowdown of about three percentage points. The realized higher dynamics of labour productivity is a result of the reduction of employment in the sector by 7.1% for the period, which compensates for the effects of the slower dynamics of Bulgarian State Standard. For the studied period from 2010 to 2018, there is a restructuring between the different groups of companies. A strong increase in "employment is observed in micro and small companies: in micro-companies (0-9 employees), the number of employees increased by 72.0%; in the group of companies (10-19 employees) the increase is by 58.4%, in the small companies (20-49 employees) respectively by 42.2%. At the other pole are large and medium-sized companies, where there are processes of contraction of employment in the range of 12.3 - 13.0%". Therefore, "the efficient use of labour as an imperative for the market functioning of the sector is achieved by reducing employment. The main source of efficiency in a relatively significant lag behind the general economic dynamics is not the growth, but the contraction of the labour force", this can be defined as a weakness of the energy sector and misuse of all other resources in this sector, including control mechanisms and control activities. Based on the data from the survey, it should be assumed that the established control activities in the energy sector for each company should be analyzed very carefully. The reduction in the number of staff and the reduction in the number of employees in the energy sector may be due to various circumstances, and it should be determined whether these processes are necessary (needed) in terms of overstaffing or to determine whether this is an indication of a problem regarding human resource management and a problem regarding the systematic dismissal of highly qualified personnel. In this regard, control should be aimed at:

1. Evaluation and analysis of operational policies, practices and processes in the field of human resources.
2. Review of current human resources indicators (number of vacancies, the time needed to find a new employee, employees' satisfaction, internal complaints, number of legal complaints, percentage of absence from work, etc).

The implementation of these two stages by the management of the companies in the energy sector is carried out through the application of a highly specialized type of control, which is the audit of human resources. The audit should be considered as a type of control, which, when it comes to the connection and dependence between the object and the subject, can be considered as internal and external. The internal audit is "an independent and objective activity of providing assurance and consulting, designed to benefit and improve the activities of the organization. It helps the organization achieve its objectives by applying a systematic and disciplined approach to assessing and improving the effectiveness of risk management, control and governance processes". The audit of human resources is part of the scope of the internal audit. The audit of human resources is aimed at identifying, evaluating and presenting solutions to problems related to the staff (human resources). The audit of human resources can also be considered as part of the social audit process, in which one of the main areas of accountability is related to the practices applied by the employer to ensure the protection of the employees' rights and working conditions. The audit of human resources also seeks to establish the proper implementation and realisation of the labour process, as well as to identify problems regarding compliance with labour discipline.

Problems with the implementation of the labour process and compliance with labour discipline have been identified through the two main audits - compliance audit and audit of good practices. With the help of the compliance audit in the energy sector the compliance and the observance of the normative acts (laws, decrees, decrees, etc) are checked. The audit of good practices verifies established internal practices and procedures, and internal auditors seek to support the organization by improving the overall performance of the organization. In 2020, the internal audit found 35% of discrepancies in compliance with labour legislation compared to 2019, where the

internal audit found that the discrepancy in compliance with labour legislation amounted to 45%. Compliance with labour legislation is a good basis for achieving high productivity by improving the working capacity of the employees.

The empirical study examined the results presented in the audit reports of the audits of energy sector organizations, which found that internal auditors make the following key recommendations to the management of energy sector organizations in order to increase productivity, namely: systematic implementation of qualification and retraining of the staff, systematic analysis of data from various structural units through the use of specialized software, more efficient management of the resources of the organizations. They also recommend the management to have high-tech equipment and to direct their investments to environmentally friendly energy sources.

Based on all the above, it can be assumed that the internal control, aimed at keeping and applying the labour legislation, as well as being aimed at compliance with labour discipline, is a comprehensive and quite complex process. This control is realized through the audit of human resources, as well as through the parallel control of labour productivity standards, which determine the efficiency and quality of human labour usage. The compilation of objects that are subject to control also determines the specifics of the control, namely, that only one type of control cannot cover all these objects. It is necessary to apply a set of control activities and procedures that occur in different time periods, so as to reveal the features and specifics of the observed objects. The internal control in the energy sector organizations skillfully applies this rule, combining both internal audit procedures and internal control. This determines the nature and specificity of this sector, as well as the reliability of the final results. In this way, the security of the working environment and the creation of favorable working conditions in this sector are guaranteed.

Conclusion

Labour discipline and control are issues that accompany the development of labour law and reflect the achievements of society. These issues have not only legal significance in terms of their legislation and the development of doctrine, but they are of immediate economic importance given their functions. It is this interpenetrating action that is the subject of research and analysis in the present work.

As a result of the analysis, some conclusions and proposals can be formulated concerning the interrelation of ***discipline-internal control*** in the combination of legal and economic aspects and points of contact.

The authors can also formulate the following conclusions and suggestions:

1. On the one hand, the need for legislative updating of labour discipline in terms of its better connection with other labour law institutes, such as working hours, employment contract, safe and healthy working conditions, etc.
2. Regulation of the boundaries of employers' internal control in order not to interfere in the privacy of the employees.
3. Expanding the subjective rights of the employees by supplementing new ones, due to the new digital transformation of the labour process.
4. Setting elements in the labour discipline binding the human-robot interaction (a system with AI).
5. Regulating the hypotheses of violation of labour discipline by robots.
6. Internal control through its documentation, different types and forms, identifies weaknesses and violations in the implementation of labour legislation, both by the employer and by the employees. In order to clarify some aspects of human resource management, it is permissible in practice to conduct a human resources audit. The two processes of internal control and internal audit are complementary, as internal audit of human resources is accepted as a systematic

process through which the process is systematized, analyzed and provides information to managers about the state and quality of human resources available to the company.

7. The control should identify the cases when the normal course of the labour process is not carried out correctly and is a violation of legal norms, and labour discipline should be considered as a consequence/result of these actions, as it is accepted as an institute with a supporting function.

The present study does not claim to be exhaustive on the subject. It aims to raise the most urgent issues, which require a legislative adjustment that is also considered and tailored to the economic side of the issues.

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