SUPERVISION AND CONTROL AS A FORM OF ENSURING LABOR DISCIPLINE

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ABSTRACT

Objective: This scientific article aims to explore the importance of supervision and control as mechanisms for ensuring labor discipline. It analyzes existing scholarly views on the concept of labor discipline, offers a novel perspective, and discusses the theoretical approaches to understanding “supervision” and “control” in the context of labor discipline.

Methods: The research is based on a comprehensive approach, employing logical-semantic analysis to uncover the essence of key concepts. It uses the analytical and documentary analysis methods to understand supervision, control, and labor discipline. The study is founded on legislative norms and previous works in labor law.

Results: Labor discipline is defined as a system of legal norms that govern the behavior and obligations of employees, emphasizing conscientious work, adherence to legal requirements, and the protection of property and company secrets. The article outlines the role of labor discipline in ensuring stable and orderly social relations within the workplace and examines different scholarly interpretations of the concept.

Conclusions: Labor discipline is crucial for maintaining an efficient work environment. Supervision and control are essential tools for enforcing labor discipline. Supervision focuses on ensuring compliance with labor laws and regulations, while control encompasses a broader range of activities, including intervening in the workplace to address deviations and violations promptly. Although these terms share similarities, they differ in nature, subject, methodology, and application. The article highlights the significance of supervision and control for employers and employees, serving to protect rights, interests, and maintain discipline in labor relations.

Keywords: supervision, control, form, labor law, provision, labor discipline.

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SUPERVISÃO E CONTROLE COMO FORMA DE GARANTIR A DISCIPLINA TRABALHISTA

RESUMO

Objetivo: Este artigo científico tem como objetivo explorar a importância da fiscalização e do controle como mecanismos de garantia da disciplina laboral. Analisa as visões acadêmicas existentes sobre o conceito de disciplina do trabalho, oferece uma nova perspectiva e discute as abordagens teóricas para a compreensão da “supervisão” e do “controle” no contexto da disciplina do trabalho.

Métodos: A pesquisa baseia-se em uma abordagem abrangente, empregando análise lógico-semântica para descobrir a essência dos conceitos-chave. Utiliza métodos analíticos e de análise documental para compreender a supervisão, o controle e a disciplina do trabalho. O estudo está fundamentado em normas legislativas e trabalhos anteriores em direito do trabalho.

Resultados: A disciplina trabalhista é definida como um sistema de normas legais que regem o comportamento e as obrigações dos empregados, enfatizando o trabalho consciente, o cumprimento dos requisitos legais e a proteção da propriedade e dos segredos da empresa. O artigo descreve o papel da disciplina laboral na garantia de relações sociais estáveis e ordenadas no local de trabalho e examina diferentes interpretações acadêmicas do conceito.

Conclusões: A disciplina laboral é crucial para manter um ambiente de trabalho eficiente. A supervisão e o controle são ferramentas essenciais para impor a disciplina laboral. A supervisão centra-se em garantir o cumprimento das leis e regulamentos laborais, enquanto o controle abrange uma gama mais ampla de atividades, incluindo a intervenção no local de trabalho para resolver prontamente desvios e violações. Embora esses termos compartilhem semelhanças, eles diferem em natureza, assunto, metodologia e aplicação. O artigo destaca a importância da supervisão e do controle para empregadores e empregados, servindo para proteger direitos, interesses e manter a disciplina nas relações trabalhistas.

Palavras-chave: fiscalização, controle, forma, direito do trabalho, prestação, disciplina trabalhista.

1 INTRODUCTION

The effectiveness of the functioning of any enterprise, institution or organization depends on many factors, both external and internal. Among the external factors that do not depend on the will of business entities, the following should be distinguished: 1) political, which are associated with non-systematic and irrational changes in legislation, political conflicts and other unforeseen events (military aggression; revolutions, etc.); 2) economic, - changes in the national or world economy, inflation, exchange rate fluctuations, increase in the cost of raw materials; 3) technological, - the rapid pace of technological development, changes in information technologies and innovations; 4) socio-cultural related to changes in social trends, consumer tastes, demographic shifts. However, there are also internal factors that can be influenced by the employer and the employees themselves. Among the latter, an important place is given to such an institution
of labor law as labor discipline. The main purpose of labor discipline, as a legal phenomenon, is to ensure the regulation of social relations between people that arise in the process of performing their labor functions, in order to ensure the normal functioning of social production. This is achieved by obliging employees to act in a specific manner, i.e. to comply with a certain regime, procedure which is recognized in specific conditions and circumstances as necessary and most expedient in the performance of their labor functions. In turn, ensuring labor discipline requires the implementation of effective control and supervision activities in the relevant field.

2 THEORETICAL FRAMEWORK

The problem of supervision and control over compliance with labor legislation has been the subject of research by many scholars. In particular, it has been paid attention to by: N. B. Bolotina, V. S. Venediktov, M. I. Inshyn, M. M. Klemarskyi, K. Yu. Melnyk, L. V. Mohilevskyi, O. M. Obushenko, O. I. Protsevskyi, O. V. Tyshchenko, O. M. Yaroshenko and many others. At the same time, it should be noted that despite significant theoretical achievements, there is a lack of scientific research in the legal literature devoted to the characteristics of supervision and control as a form of ensuring labor discipline.

3 RESEARCH METHOD

In the course of preparation of the article, with the help of which it was possible to comprehensively approach the achievement of the ultimate goal of scientific research. Thus, with the help of the logical-semantic method, it was possible to reveal the essence and content of key concepts, in particular: "supervision", "control" and "labor discipline". In order to reveal the essence of supervision and control as a form of ensuring labor discipline, the analytical method and the method of documentary analysis were used. The normative basis of the work is legislative and by-law normative legal acts, the norms of which establish the normative basis for supervision (control) in the field of labor. The theoretical background is made up of the works of specialists in the field of labor law, who dealt with the problems of supervision and control over compliance with labor legislation, as well as the issue of labor discipline.
4 RESULTS AND DISCUSSIONS

When starting a scientific study, it should be noted that in the general sense of discipline, it is a strict order, a regime that subjects should follow in their behavior and actions, accordingly disciplined is that behavior that is implemented in accordance with the requirements of a certain order, regime. It is clear from the above that discipline is a very important tool for ensuring the stability, orderliness and security of social relations. Labor discipline is one of the specific elements of national discipline. At the current stage of the historical development of Ukrainian society, when there is a transition to market relations, with still low wages and an imperfect system of material incentives, one of the means of ensuring labor discipline continues to be legal liability measures that can be applied to employees who do not comply with the established internal labor regulations (Pylypenko, 2006).

The concept of discipline has been extensively researched in the field of labor, as evidenced by a number of theoretical approaches to its interpretation. For example, Yu. P. Dmytrenko defined labor discipline as a system of legal norms that regulate internal labor regulations, establish the powers of the parties to an employment contract, and provide for rewards for success in work and liability for improper performance of labor duties. The author emphasizes that it is based on the conscious and conscientious performance of labor duties by employees and is a prerequisite for highly productive labor (Dmytrenko, 2009: 39). Some authors assume that the essence of labor discipline is the conscious and immediate performance of duties by employees, direct implementation of orders and instructions of their superiors, perfect knowledge of their work and constant performance. A. Yu. Pasherstnyk cites the following points in which the labor discipline of employees is manifested: 1) to show the necessary initiative in the implementation of the assignment entrusted to him; 2) to strictly comply with the laws, orders and rules in force at enterprises and institutions; 3) to maximize their working day, not to waste a single minute of working time; 4) to protect property, meet the established production standards; 5) to ensure high quality of work; 6) to strictly keep state secrets entrusted to them in their official capacity. As for the management, their labor discipline obliges them to: 1) to set an example for their subordinates in the performance of their duties; 2) to provide all conditions for uninterrupted work; 3) to issue clear orders and instructions, 4) to check their implementation and apply to subordinates both incentives and disciplinary measures (Pasherstnyk, 1941: 182-183). According to O. A. Hrishnov, labor discipline
can be considered both in a narrow and broad sense. In the first case, discipline is compliance with the rules of internal labor regulations of the enterprise. Perfect fulfillment of all technology requirements for each production process constitutes technological discipline. Timely and accurate implementation of production tasks, performance of job duties, proper operation of equipment, and compliance with health and safety rules are covered by the content of production discipline. As for the broader understanding of labor discipline, in addition to the above requirements, it also includes the conscientious and timely performance of all official duties by employees (Hrishnova, 2009: 238).

N. B. Bolotina notes that in scientific literature, labor discipline is interpreted as a legal category, which should be interpreted in four aspects: as one of the main principles of labor law; as part of the employment relationship; as an institution of labor law; as actual behavior, that is, the level of compliance with labor discipline by all employees in production. The scientist emphasizes that as an institution of labor law, discipline should be considered as a set of legal norms that regulate internal labor procedures, establish the labor duties of employees and the owner or a body authorized by him, and also determine incentive measures for success in work. Since it is a question of liability for violation of labor duties, the rules providing for disciplinary liability of an employee create a separate legal institution in the field of labor law (Bolotina, 2006: 426).

In view of the above, we can state that labor discipline is a special state of organizational and legal nature, which reflects the system of requirements and rules that are set for employees and regulate their behavior in the course of labor activity. This discipline is based on legal obligations and requires employees to comply with these requirements. From the legal point of view, labor discipline is of a binding nature, which implies mainly the fulfillment of the duties assigned to the employee, which should be divided into the following groups: first, personal attitude to the performance of labor duties in the manner prescribed by the employment agreement or contract, including honest and conscientious work, timely and accurate execution of the employer's instructions; secondly, the performance of labor functions in accordance with the requirements of the current labor legislation, including compliance with labor and technological discipline and labor protection requirements; thirdly, careful treatment of the property of the owner with whom the employment contract was concluded.
Labor discipline at enterprises, institutions, and organizations is ensured through a number of tools, in particular 1) through clear regulation of labor relations, based on the conclusion of collective agreements and contracts, as well as individual employment contracts; 2) by creating a system of motivation of employees to properly perform their duties by establishing: premiums, bonuses, as well as other non-material incentives; 3) continuous development of employees as individuals and professionals, which is realized through professional training, advanced training, etc. 4) building an effective system of supervisor-subordinate communication. A separate and special place in the system of relevant measures belongs to supervision and control, since the latter is considered to be possible not only to detect violations of labor discipline, but also to establish the reasons that led to the emergence of relevant negative situations and prevent them in the future.

In accordance with the common etymology of the words "supervision" and "control", in both cases, the terms describe activities in the sense of checking a certain object, as well as the subjects of the control function. It is this ambiguity of understanding that leads to incorrect further interpretation and lack of proper criteria for distinguishing between these concepts and the phenomena they describe. For example, O. Yu. Salmanova points out that supervision is a control aimed at determining the compliance of administrative authorities' actions with legal norms. It is an important component of administrative activity and includes monitoring the legality and appropriateness of actions, as well as their assessment from the point of view of law, science, socio-political aspects and organizational and technical parameters (Salmanova, 2016: 338). That is, the scientist actually reveals the content of supervision through control, which, in our opinion, is not entirely correct from the point of view of the etymology of these terms. Therefore, supervision over compliance with labor legislation involves activities related to the systematic monitoring of supervised objects in order to establish the facts of violation of the requirements and provisions of Ukrainian labor legislation.

No less scientific interpretations in the legal literature have been formulated regarding the concept of "control". Thus, S. S. Vitvitskyi emphasizes that it is quite common to define the concept of "control" as a system of monitoring and verification of compliance of the process of functioning of the managed object with the management decision; identification of the results of management impacts on the managed object and as an integral part of management of objects and processes in order to verify compliance of the monitored object with the desired and necessary position provided for by laws,
instructions, other regulations, as well as programs, plans, contracts, projects, agreements (Vitvitskyi, 2014: 95). In turn, S. H. Stetsenko advocates the view that control is an organizational and legal means of ensuring legality and discipline, characterized by monitoring and verification of the legality of the object of control and the actual responsibility of certain actions to the requirements of current legislation with the ability to intervene in operational and economic and production activities to eliminate the identified shortcomings (Stetsenko, 2007: 196-198). Thus, control over compliance with labor legislation, compared to supervision, has a broader meaning, since it is aimed not only at verifying the legality of the activities of a particular entity, but also at ensuring the efficiency and effectiveness of its work. Control activities are carried out on an ongoing basis and more quickly, which makes it possible to directly influence the functioning of the controlled entity.

As for the correlation of the content of the categories "control" and "supervision", several basic concepts have been developed in the scientific field: first, supervision is considered as an element of control, or a more specific type of the latter, and is used in a clearly defined list of cases; second, supervision is a broader category, and control is its component, which takes place in legal relations between clearly defined entities that are in managerial and organizational subordination; thirdly, control and supervision are fully identified as completely equal, synonymous legal categories; fourthly, control and supervision are completely different legal phenomena, as they involve types of activities, each of which has its own object, subject, functions, purpose, tasks, etc.

In view of the above, it can be stated that supervision and control are similar to each other, as they are aimed at checking the state of compliance with the law of the respective controlled/supervised objects, but are different categories in their internal nature and content, due to the following factors:

− firstly, supervision and control lead to legal relations between different groups of subjects, each of which has a corresponding legal status, degree of subordination to each other, number of mutual rights and obligations, etc;
− secondly, supervision does not allow interfering with the current work of the supervised entity and provides only the right to promptly correct, direct, protest, and initiate prosecution. Control, in turn, is a more functional activity that provides for the possibility of interfering with the operational, i.e., current work
of the controlled object in order to identify deviations and violations in it, as a result of which the guilty parties may be brought to justice.

- thirdly, supervision does not provide for the simultaneous, immediate cessation of violations in the work of the supervised object, but only their detection and objective assessment, while control involves a direct response to violations and the use of legal measures to stop them at the time of detection.

- fourthly, supervision and control have different methodologies, as they are realized with the help of their own, specific set of tools and means.

The above features are inherent in control and supervision over compliance with labor legislation, but at the same time, both categories are unique, primarily due to the specificity of the vector and scope of their application. In addition, it is difficult to immediately point out the specifics of the categories, which is further complicated by the lack of proper regulatory characterization. In particular, the main legislative document in the labor sphere, the Labor Code of Ukraine No. 322-VIII dated 10.12.1971 (hereinafter - the Labor Code), is rather limited and abstract in defining the essence and content of control and supervision over compliance with labor legislation. Thus, Article 259 of Chapter XVIII of the Code states the following: "State supervision and control over compliance with labor legislation by legal entities regardless of the form of ownership, type of activity, business, and individual entrepreneurs using hired labor shall be carried out by the central executive body implementing the state policy on supervision and control over compliance with labor legislation and its territorial bodies in accordance with the procedure established by the Cabinet of Ministers of Ukraine. Central executive authorities exercise control over the observance of labor legislation at enterprises, institutions and organizations under their functional subordination, except for tax authorities, which have the right to exercise such control at all enterprises, institutions and organizations regardless of ownership and subordination, and local self-government bodies - at enterprises, institutions and organizations that are in the communal ownership of the relevant municipalities. Public control over compliance with labor legislation is exercised by trade unions and their associations" (Code of Labor Laws of Ukraine № 322-VIII, 1971). In fact, the Labor Code only states the existence of supervision and control over compliance with labor legislation, and emphasizes that these are different categories, but does not explain in any way what exactly their difference is.
In this context, it should be noted that scholars have repeatedly tried to correct the legislative gap and formulate a precise and structured description of each of the above concepts and phenomena described by them. For example, according to the scientific approach of I. Yu. Kailo, supervision over compliance with labor legislation is described as follows: 1) supervision is a means of ensuring the labor rights and interests of employees; 2) supervision is a tool for analyzing and anticipating the misconduct of legal entities of public and private law, individual entrepreneurs using hired labor. With regard to the understanding of supervision as a means of ensuring labor rights and interests, it can be used in three areas: compliance with prohibitions, fulfillment of duties and the possibility of exercising rights provided for by labor law. Labor law also covers a significant number of regulations, such as those on the length of the working day or the permissible amount of chemicals in the air. Detecting violations in these areas is quite difficult, as no direct violation may occur during a one-time inspection. Supervision of compliance with the prohibitions is usually carried out by trade unions, as it is the rights of employees that may be violated. In addition, according to the scientist, supervision as a tool for analyzing and predicting misconduct in compliance with labor laws is associated with analyzing the activities of the subject of the inspection in order to identify problematic and critical issues (Kailo, 2019).

O. M. Yaroshenko, O. Ye. Lutsenko, O. M. Hanchenko, Yu. M. Hryshyna and other authors of the textbook on Labor Law of Ukraine are unanimous in the opinion that supervision over compliance with labor legislation is an exclusively state function and includes activities of the central executive authorities authorized by law, their territorial bodies, state collegial bodies, executive authorities of the Autonomous Republic of Crimea, local state administrations and local self-government bodies within the limits of their powers granted by law. The purpose of this activity is to detect and prevent violations of the law by business entities and to protect the interests of society. This includes, in particular, ensuring the proper quality of products, works and services, as well as reducing the level of danger to the public and the environment (Yaroshenko, 2022).

Studying the issue of control, A. V. Melnyk interprets control over compliance with labor legislation as an independent or externally initiated activity of specially authorized state or non-state bodies to check the functioning of enterprises, institutions, organizations, which is aimed at obtaining factual data on the objects of control; applying
measures to prevent offenses; assisting in the restoration of law and discipline; establishing the causes and conditions that contribute to the violation of legal requirements; taking measures to bring the perpetrators to legal responsibility (Melnyk, 2019). According to Yu. P. Dmytrenko, control is the activity of special bodies and officials who, in accordance with the current legislation, check compliance with labor legislation both at enterprises, institutions, organizations directly subordinate to them and those not under their direct jurisdiction, with the right to interfere in internal economic activities. In addition, in the opinion of the author, it is also a system of monitoring measures and verification of compliance by the parties to the collective agreement with the norms of the current legislation and the terms of the agreement (Dmytrenko, 2009).

Scholars have repeatedly tried to draw parallels between the two categories in order to establish their main differences. Thus, K. Yu. Melnyk points out that supervision and control over compliance with labor legislation is one of the ways to protect the labor rights of employees. Such supervision and control is carried out by authorized state bodies, public organizations and individuals. In the course of supervision and control activities, these entities identify violations of labor legislation committed by the employer and/or persons authorized by the employer, restore or initiate the restoration of employees’ labor rights, and bring or initiate the prosecution of those responsible for violating these rights. A distinction is made between state supervision and control over compliance with labor legislation and public control over compliance with labor legislation. Control and supervision are in some ways related categories, since in a general sense they mean monitoring of compliance with certain rules by certain entities, which is carried out through verification measures. At the same time, control as a form of state activity differs from supervision in that it is exercised both in relation to non-subordinate entities and in relation to subordinate entities. Supervision, on the other hand, is carried out exclusively in relation to non-subordinate entities. Supervision and control over compliance with labor legislation is the activity of authorized state bodies, public organizations and individuals to verify compliance with labor legislation by employers, prevent and detect violations of labor rights, and bring or initiate prosecution of those responsible for violations of these rights (Melnyk, 2019).

It is also advisable to take into account the scientific position of O. H. Sereda, who has deeply studied the variety of categories of control and supervision over compliance with labor legislation. The scientist identifies both distinctive and common features of
each of them. The latter include the fact that supervision and control over compliance with labor legislation may take the form of state or public. State supervision and control over compliance with labor legislation are the main functions of a democratic and legal state. Supervision and control over compliance with labor legislation is carried out with the aim of ensuring legality in the exercise of rights, freedoms and legitimate interests of labor law subjects, and achieving the state of protection of subjects of labor relations. At the same time, the author proposes to distinguish between supervision and control over compliance with labor legislation by the following criteria. Supervision is external to the objects under supervision: the subjects and objects of supervision are elements of a divergent system of bodies. Control may also be exercised "within" the system (departmental or intra-departmental control) (Sereda, 2015).

5 CONCLUSION

Thus, the conducted scientific research allows us to conclude that supervision and control as a form of ensuring labor discipline is an activity carried out by public authorities and, in fact, by business entities themselves, and which is aimed at determining and verifying compliance with the rules and requirements for labor discipline at a particular enterprise, institution or organization as set out in the labor legislation and internal labor regulations. The peculiarities of supervision and control in the context of the presented issues are as follows:

− firstly, it has a single purpose, which is to ensure the normal functioning of an enterprise, institution or organization by checking the state of compliance by employees with the rules governing labor.
− secondly, it involves the use of a special set of tools and means that are both incentive and punitive in nature.
− thirdly, it is aimed at influencing the behavior of subjects of labor relations and preventing them from committing any violations of labor discipline.
− fourthly, the legal basis for such supervision and control is provided by the provisions of the Labor Code and local regulations.

Therefore, the use of supervision and control as a form of ensuring labor discipline is important: firstly, for the employer, since it makes it possible to identify deviations from the normal work of employees, thereby ensuring the efficiency of the business entity; secondly, for the employees themselves, since the presence of clearly regulated
control and supervision enables them to protect their rights, freedoms and interests from illegal actions of employers.
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