

STATE SUPERVISION AND CONTROL OVER COMPLIANCE WITH THE LABOUR RIGHTS OF EMPLOYEES IN THE REPUBLIC OF UZBEKISTAN

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Abstract

This article examines the system of state supervision and control over compliance with the labour rights of employees in the Republic of Uzbekistan. Following the adoption of the new Labour Code, which entered into force on 30 April 2023, the legal framework governing the protection of labour rights has been substantially renewed. The article analyses the constitutional and legislative foundations of state supervision, the powers of the State Labour Inspectorate and the prosecutor's office, the procedural aspects of inspections, and the interaction between state bodies and social partners. Particular attention is paid to the shortcomings of the existing mechanism, including the limited coverage of the informal sector, and to directions for its improvement in line with the international labour standards of the International Labour Organization. The author concludes that further digitalisation and the transition to a preventive, risk-based model of supervision are essential to guaranteeing the effective realisation of employees' labour rights.

Keywords: Labour rights, state supervision, control, State Labour Inspectorate, Labour Code, prosecutor's supervision, Republic of Uzbekistan, employees, labour legislation, ILO standards.

Introduction

The right to work, to fair and safe working conditions and to protection against unemployment belongs to the fundamental social and economic rights of the individual. The proclamation of these rights at the constitutional and legislative levels does not in itself guarantee their observance in practice. For labour rights

to be genuinely realised, the state must establish an effective mechanism of supervision and control capable of preventing violations, detecting them promptly and restoring the rights of employees. In the Republic of Uzbekistan, the reform of labour legislation carried out in recent years has placed the question of the effectiveness of such a mechanism at the centre of legal and political attention.

The relevance of the present research is determined by several factors. First, on 30 April 2023 the new Labour Code of the Republic of Uzbekistan, approved by the Law No. ZRU-798 of 28 October 2022, entered into force, replacing the Code of 1995. The new Code introduced a modernised system of guarantees for labour rights and reformulated the provisions on supervision and control. Second, the ongoing socio-economic reforms aimed at reducing poverty and increasing employment require a reliable protection of the rights of those who are already employed. Third, Uzbekistan's growing integration into the international labour law system, including the ratification of a number of conventions of the International Labour Organization (hereinafter — the ILO), demands the harmonisation of national supervisory institutions with international standards.

The purpose of this article is to analyse the legal nature, structure and content of state supervision and control over compliance with the labour rights of employees in Uzbekistan, to identify the problems of law enforcement and to formulate proposals for the improvement of the relevant legislation and practice. To achieve this purpose the following tasks are set: to reveal the concept and the legal nature of supervision and control in the labour sphere; to characterise the constitutional and legislative foundations of the supervisory activity; to describe the system of the bodies that carry out supervision and control and to delimit their competence; to examine the forms and the procedure of supervision; to determine the place of supervision within the general system of the protection of labour rights; and, on this basis, to formulate the directions of the improvement of the mechanism of protection.

The methodological basis of the research is constituted by the general scientific and the special legal methods of cognition. The formal-legal method is used for the analysis of the norms of labour legislation; the systemic-structural method permits the presentation of supervision and control as an integral mechanism composed of interconnected elements; and the comparative-legal approach makes it possible to correlate the national institutions with the international labour

standards. The normative basis of the research is formed by the Constitution of the Republic of Uzbekistan, the Labour Code, the Law 'On Employment of the Population' and the ratified conventions of the International Labour Organization. In the theory of labour law, supervision and control over compliance with labour legislation are treated as a special form of the protective function of the state. Although the terms 'supervision' and 'control' are often used together, they are not identical. Supervision is understood as the activity of specially authorised state bodies aimed at monitoring the exact and uniform execution of legislation, without interference in the operational and economic activity of the entity being checked. Control, by contrast, presupposes a broader authority, including the possibility of assessing the expediency of the decisions taken and of applying measures of influence in order to eliminate the detected violations.

The object of supervision and control in the labour sphere is the observance by employers of the requirements of labour legislation — the norms on the conclusion, amendment and termination of employment contracts, on working time and rest time, on remuneration of labour, on labour protection and occupational safety, on the labour of women, minors and other categories of workers in need of enhanced protection. The subjects that carry out supervision and control are the state bodies specially authorised for this purpose, as well as the prosecutor's office, which exercises the supreme supervision over the exact and uniform execution of laws.

The legal nature of state supervision is public-law in character. Unlike the protection of labour rights by the employee himself or through the bodies for the consideration of individual labour disputes, state supervision does not depend on the will of the parties to the employment relationship and is carried out in the public interest. This distinguishes it as an independent, imperative mechanism of protection that supplements the jurisdictional forms of the defence of rights.

It is necessary to emphasise the dual purpose of state supervision and control in the labour sphere. On the one hand, it is directed at the protection of the rights and legitimate interests of the concrete employee whose rights have been or may be violated by the employer. On the other hand, it serves the protection of the public interest, since the observance of labour legislation is a condition of the social stability, of the preservation of the labour potential of the society and of the maintenance of the balance of the interests of the workers, of the employers and of the state. This dual purpose determines the special significance of the

supervisory activity within the general system of the state administration in the social sphere and explains the attention that the state pays to its organisation and improvement.

The functions of state supervision and control may be classified into several groups. The protective function is aimed at the direct defence of the violated rights of the employees and at their restoration. The preventive function consists in the prevention of the violations of labour legislation through the systematic monitoring and through the explanatory work. The signalling function is manifested in the accumulation and the analysis of the information about the state of the observance of labour legislation, which permits the identification of the most problematic spheres and the elaboration of the measures of the state policy. Finally, the coercive function ensures the application of the measures of responsibility to the offenders. In their totality these functions characterise supervision and control as a complex and multifaceted mechanism of the protection of labour rights.

The foundation of the entire system of protection of labour rights is laid down in the Constitution of the Republic of Uzbekistan, which enshrines the right of everyone to work, to free choice of work, to fair working conditions and to protection against unemployment. The constitutional guarantee of these rights entails the obligation of the state to create the institutional and procedural conditions for their protection, including a system of supervisory bodies.

At the level of ordinary legislation, the central place is occupied by the Labour Code of the Republic of Uzbekistan in the edition that entered into force on 30 April 2023. The Code contains a special section devoted to supervision and control over compliance with labour legislation and to responsibility for its violation. It establishes that the protection of labour rights, carried out by supervisory bodies and by the control over compliance with the legislation on labour, as well as by the bodies for the consideration of labour disputes, is guaranteed to everyone. The Code also determines the circle of bodies that carry out control and supervision and delimits their competence.

The provisions of the Labour Code are supplemented by a number of other legislative and by-law acts. Among them the Law 'On Employment of the Population' of 20 October 2020 occupies an important place, since it regulates the activity of the labour authorities and defines the institutional structure within which supervision is exercised. The regulatory acts of the Cabinet of Ministers

and of the authorised ministry govern the procedure for conducting inspections and the powers of labour inspectors. Finally, the ratified conventions of the ILO, in accordance with the constitutional principle of the priority of the generally recognised norms of international law, form part of the national legal system and serve as a benchmark for the interpretation and application of the domestic rules. The modern system of state supervision and control over the observance of labour rights in Uzbekistan has taken shape as a result of the large-scale reform of labour legislation carried out in the framework of the general course of the renewal of the country. The Labour Code of 1995, adopted in Uzbekistan first among the post-Soviet states, served the country for more than a quarter of a century; however, over this period the social and economic relations underwent profound changes that required the fundamental renewal of the legal regulation of labour. In response to these changes, on 28 October 2022 the Law No. ZRU-798 'On the Approval of the Labour Code of the Republic of Uzbekistan' was signed, and the new Code entered into force on 30 April 2023.

The new edition of the Labour Code reflected the modern approaches to the regulation of labour relations, strengthened the guarantees of the labour rights of the employees and clarified the provisions on supervision and control. Along with the renewal of the Code, a number of other measures were undertaken aimed at the strengthening of the protection of labour rights, including the re-establishment of the State Labour Inspectorate with the expanded powers, the development of the electronic channels of the appeal of the citizens and the intensification of the cooperation with the international organisations. All these measures form a single line of the state policy directed at the transformation of the declared labour rights into the really guaranteed ones.

The reform of labour legislation is inseparably connected with the broader socio-economic reforms carried out in Uzbekistan, in particular with the policy of the reduction of poverty and of the increase of employment. The protection of the rights of those who are already employed is regarded as an integral part of this policy, since the observance of labour legislation and the provision of the fair and safe working conditions constitute a condition of the decent labour and of the social well-being of the population. In this context the strengthening of the mechanism of state supervision and control acquires not only a legal but also a socio-political significance.

The system of state supervision and control in the labour sphere of Uzbekistan is built on the combination of specialised administrative supervision and general prosecutor's supervision. The central role in the specialised supervision belongs to the State Labour Inspectorate, which functions within the structure of the Ministry of Employment and Poverty Reduction of the Republic of Uzbekistan. The State Labour Inspectorate was re-established at the end of 2018 with broadened responsibilities and authority to oversee and promote the realisation of the rights of workers, and its staffing was subsequently strengthened.

The State Labour Inspectorate carries out inspections of employers, examines the appeals and complaints of citizens concerning violations of their labour rights, issues binding instructions on the elimination of the detected violations, draws up materials on administrative offences and, where necessary, forwards materials to the law enforcement bodies. According to the data of the labour authority, the volume of appeals handled by the Inspectorate is significant: in 2020 the Inspectorate examined tens of thousands of complaints and assisted in the restoration of the rights of workers in thousands of cases, which testifies both to the demand for its activity and to the scale of violations in the labour sphere.

The organisational structure of the State Labour Inspectorate is built on the territorial principle, which permits the coverage of the whole territory of the country and the bringing of the supervisory activity closer to the place of the actual labour relations. The central apparatus of the Inspectorate carries out the general management, the methodological guidance and the coordination of the activity, while the territorial subdivisions conduct the direct inspections of the employers and examine the appeals of the citizens on the ground. Such a construction ensures both the unity of the supervisory policy and the possibility of taking into account the local specificity of the labour relations in the different regions of the republic.

Alongside the specialised inspection, the supreme supervision over the exact and uniform execution of the laws on labour is exercised by the Prosecutor General of the Republic of Uzbekistan and the prosecutors subordinate to him. Prosecutor's supervision is universal in nature: it extends to all employers regardless of the form of ownership and organisational-legal form and covers all aspects of the application of labour legislation. In addition, certain supervisory functions in the sphere of sanitary and hygienic conditions of labour and of occupational safety are performed by the specialised state supervisory bodies

within their competence. The trade unions, in turn, exercise public control over the observance of labour legislation, which, although not being state supervision in the proper sense, complements the state mechanism and reinforces the protection of the interests of employees.

The supervisory activity of the state is realised in several forms. The most common form is the conduct of inspections of the compliance of the employer's activity with the requirements of labour legislation. Inspections may be scheduled or unscheduled; the latter are usually initiated on the basis of the appeals and complaints of citizens or of information about violations received from other sources. In accordance with the general policy of the state on reducing the pressure on business entities, the emphasis is increasingly shifted from repressive to preventive forms of supervision, based on the assessment of risks and on the prevention of violations.

A distinctive feature of the modern procedure of supervision in Uzbekistan is its digitalisation. Employees may report violations of their rights through the electronic resources of the State Labour Inspectorate, including a specialised online portal, a messenger bot and a telephone hotline. The digital channels of appeal lower the barrier for citizens seeking the protection of their rights, ensure the recording of complaints and permit the monitoring of the dynamics of violations. This corresponds to the general course of the country towards the digital transformation of the labour inspection system, which is being carried out, among other things, with the support of the ILO and on the basis of the study of foreign experience.

Besides the inspections and the examination of the appeals, the supervisory activity includes such forms as the monitoring and the analysis of the state of the observance of labour legislation, the conduct of the explanatory and the preventive work among the employers and the employees, and the rendering of the methodological assistance on the questions of the application of labour legislation. The preventive forms of work acquire an ever greater significance in connection with the general reorientation of the state supervision from the punishment of the already committed violations towards their prevention. The explanatory work, the informing of the employees about their rights and of the employers about their duties, and the popularisation of the electronic channels of appeal contribute to the reduction of the number of violations and to the raising of the legal culture in the labour sphere.

Upon the detection of violations, the supervisory body is empowered to issue a binding instruction on their elimination within a fixed period, to raise the question of bringing the guilty persons to administrative or other responsibility, and to take measures for the restoration of the violated rights of the employees. The responsibility for the violation of labour legislation may be disciplinary, material, administrative or criminal, depending on the character and gravity of the offence. Thus, the procedure of supervision is closely connected with the mechanism of legal responsibility, which ensures the real, and not merely declarative, character of the protection of labour rights.

Notwithstanding the substantial progress achieved, the mechanism of state supervision and control over the observance of labour rights in Uzbekistan faces a number of problems. The first and most significant of them is the limited coverage of the informal sector of the economy. A considerable part of labour relations remains unregistered, and employees engaged in the informal sector often fall outside the field of vision of the supervisory bodies and are reluctant to report violations of their rights for fear of losing their earnings. As a result, precisely the most vulnerable categories of workers remain the least protected.

The second problem is connected with the sufficiency of the resource and personnel provision of the supervisory bodies. The international benchmarks of the ILO on the ratio of the number of labour inspectors to the size of the labour force point to the need for an adequate staffing of the inspection so that it may effectively fulfil its tasks. The strengthening of the professional capacity of inspectors, their regular training and the mastering of a modern, preventive and risk-oriented methodology of inspections constitute an important condition for raising the effectiveness of supervision.

A further problem is connected with the level of the legal awareness of the employees themselves. Many workers, especially in the small business and in the regions, are insufficiently informed about their labour rights and about the mechanisms of their protection, and therefore do not turn to the supervisory bodies even when their rights are violated. The low legal culture of a part of the employers, who regard the requirements of labour legislation as an excessive burden, aggravates the situation. The raising of the legal awareness of both the employees and the employers, the conduct of the explanatory and educational work and the popularisation of the electronic channels of appeal to the

Inspectorate constitute an important reserve for the enhancement of the effectiveness of the protection of labour rights.

The third problem lies in the plane of the coordination of the numerous bodies that participate in the protection of labour rights — the labour inspectorate, the prosecutor's office, the specialised supervisory bodies and the trade unions. The absence of clear coordination may lead to a duplication of functions or, on the contrary, to gaps in supervision. In this connection, the directions for the improvement of the mechanism should include the further digitalisation of the inspection, the transition to a preventive and risk-based model of supervision, the expansion of the reach of the informal sector, the strengthening of the personnel potential and the deepening of the interaction between the state bodies and the social partners on the basis of tripartite dialogue, which is actively developing in Uzbekistan with the assistance of the ILO.

The construction of an effective mechanism of state supervision over the observance of labour rights is impossible without regard for the international labour standards and for the experience of the foreign states. The fundamental international act in this sphere is the Labour Inspection Convention, 1947 (No. 81) of the International Labour Organization, which establishes the requirements for the organisation and functioning of the system of labour inspection, including the requirement of a sufficient number of qualified inspectors, of their independence and of the endowment of the inspection with the powers necessary for the effective exercise of supervision. Uzbekistan, as a member of the ILO, is orientated towards these standards in the reform of its own system of supervision. The ILO benchmarks concerning the ratio of the number of inspectors to the size of the labour force serve as one of the guides for the assessment of the adequacy of the supervisory system, although the modern guidance of the organisation emphasises the need for a holistic evaluation of the national context rather than the reliance on a single quantitative indicator. Alongside the Convention No. 81, an important role is played by the conventions in the sphere of occupational safety and health, in particular the conventions on the fundamental principles of occupational safety, which Uzbekistan has ratified and the requirements of which it implements in its national practice.

The study of the foreign experience of the organisation of labour inspection permits Uzbekistan to select and to adapt the most effective models. Of particular interest is the experience of the states that have realised the preventive, risk-based

approach to supervision, supported by the strong systems of social insurance and by the advanced digital instruments. Thus, in recent years the delegations of the labour authority of Uzbekistan have studied the experience of the functioning of the inspection systems and of the organisation of preventive work in a number of foreign countries with the support of the ILO, which permits the transfer of the corresponding practices to the national soil taking into account the specificity of the country. The tripartite dialogue with the participation of the state, of the employers and of the workers, which is actively developing in Uzbekistan, is regarded as an indispensable condition of the effective functioning of the system of supervision and corresponds to the fundamental principles of the ILO.

The conducted analysis permits the drawing of a number of conclusions. State supervision and control over compliance with the labour rights of employees represent a special public-law mechanism of the protection of rights that operates in the public interest independently of the will of the parties to the employment relationship. In the Republic of Uzbekistan this mechanism has received a renewed legal foundation in connection with the entry into force of the new Labour Code on 30 April 2023 and with the broader reform of labour legislation. The institutional core of the system is formed by the State Labour Inspectorate within the Ministry of Employment and Poverty Reduction, acting in combination with the supreme supervision of the prosecutor's office, the specialised supervisory bodies and the public control of the trade unions. At the same time the effectiveness of the mechanism is restrained by the limited coverage of the informal sector, by questions of resource provision and by the need for a closer coordination of the participating bodies. The prospects for the development of state supervision are connected with its digital transformation, with the transition to a preventive and risk-based model and with the further harmonisation of national practice with the international labour standards, which together are called upon to ensure the genuine, and not merely formal, guarantee of the labour rights of employees.

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