

## DIGITALIZATION AND THE NEW LEGAL AND ECONOMIC CHALLENGES TO EMPLOYERS IN IMPLEMENTING INTERNAL CONTROL

*The study examines the main aspects and issues related to personnel management in the context of digitalization of the work process. The economic analysis is based on a study of the obligations of employers arising from the current regulations in the country. People are the main economic resource through which all basic management goals and objectives of any company are achieved. The internal control processes in the enterprises are regulated by sources of the state legislation, as well as by various internal normative acts specific for the respective enterprise or branch. HRM (Human Resource Management) systems are considered as part of this management process. The legal part of the study focuses on the characteristics of control according to the current labour legislation, focusing on the problems arising from the processes of digitalization, respectively the risks of affecting the subjective labour rights of employees. Based on the performed complex economic and legal analysis, conclusions with theoretical and practical orientation are formed, leading tendencies in the area of control are identified and recommendations for legislative adjustments are made.*

*JEL: K29; K31; M41; M42*

### Introduction

The modern digital age is associated with positive effects in all spheres of society, including labour relations. There are indisputable benefits expressed in quality and productivity increase, facilitation of risk-involving labour, etc. At the same time, digitalization has an impact on processes directly and indirectly related to the performance of the workforce. The focus of this study's authors is the internal control exercised by the employer for employees' compliance with labour legislation. The issues of control have been the subject of scientific interest and have been studied in their various aspects in the economic (Donev, 1990; Nedyalkova, 2020; Blagoycheva, 2019), as well we in the legal

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theory (Andreeva, Yolova, 2011; Andreeva 2009; Andreeva, Yolova, 2018; Andreeva, Dimitrova, 2019). At the same time, digitalization in the labour process requires a new managerial and legal perspective to cover, assess and regulate current aspects of control, taking into account the risks and trends in this area caused by the involvement of technology and on this basis to give a new economic model of the internal control and to propose an update of the legal framework regulating control. The analysis of these issues, as well as the proposal of managerial and legal solutions to the issues of internal control is not only of theoretical, but also of great practical importance, which is conditioned by an objective social need. Currently, our country and the world are going through a situation of crisis, caused by the global pandemic, which, combined with the dynamics of digitalization processes requires employers to impose both an increased level of internal control and take greater care of their workers and employees. The employer, as the organizer of the work process, is committed to comply with all provisions of labour law, inseparably integrated with the special provisions concerning the type of the specific labour process and to create working conditions, aimed at protecting the health of the worker or employee (Blagoycheva, et al., 2019). New technologies often disrupt, supplanting older ways of doing things and rendering old skills and organizational approaches irrelevant (Manyika, et al., 2013).

The legal protection of labour relations is carried out by the legislator through the use of a complex approach, combining measures of different legal nature, among which control occupies a key place. An analysis of the various aspects of this protection system, as well as a good knowledge of the processes taking place in the system of internal control, will significantly contribute to the protection of the subjective labour rights of workers and employees, and the quality of the performed work.

Control has an important role also in terms of compliance with labour law, and despite the disparity of the parties in the legal relationship, it is a natural function of employers' legal capacity. Different types of control for compliance with the labour legislation exist in law. They determine the efficiency of combining different forms, directed to the two parties of the legal labour relationship: on the one hand, control over employers is carried out by the competent state authorities, while control over workers and employees represents internal control exercised by the employer in their capacity as leader of the work process. The effectiveness of control is embedded in the complex exercise of its various types, thus monitoring the strict implementation of the obligations of the parties, ensuring the prevention of offences, respectively bringing offenders to justice.

**The subject of this study** is the internal control for compliance with the obligations of workers and employees, analyzed both through the prism of management processes and through legislative mechanisms for impact and prevention, regulated in labour law. At the heart of the study are issues related to the economic and legal aspects of control; the authors have conducted the study around two interrelated axes, giving a perspective at topical issues related to control, concerning problems, trends and challenges in the context of digitalization.

**The aim of the study** is to consider the main aspects of the problems related to personnel management in the context of digitalization of the management process. The economic and legal analysis is based on a study of the obligations of employers arising from the current

regulations in the country. Emphasis is placed on the problems arising from the processes of digitalization, respectively the risks for infringing the subjective labour rights of employees. On the basis of the performed complex economic and legal analysis, conclusions are formed with theoretical and practical value, leading tendencies in the area of control are identified and recommendations for legislative amendments are made.

The above aim is achieved through the fulfilment of the *following tasks*:

- to study and formulate the main problems in personnel management with the help of HRM systems, part of the ERP systems upon exercising internal control;
- to formulate typical traits characterizing internal control in view of compliance with labour law;
- to study the main risks and issues upon exercising internal control in the conditions of labour digitalization;
- on the basis of the comprehensive economic and legal analysis, to make conclusions intended to help employers exercise efficient internal control;
- to make recommendations *de lege ferenda* aimed at the improvement and updating of labour law as a whole and of its principles in particular, accounting for the methods and forms of control impact in order to make labour law adequate to the current technological processes.

In terms of subject matter, the authors have set some limitations that would contribute to the better interaction of the economic and legal analyses. The economic part of the study presents the technology of the control process through the application of the HRM (Human Resource Management) system, which is part of the generally established ERP system. Internal control is presented as the main management tool, through which the main management goals and objectives are achieved.

In the legal part, the authors have addressed only the basic problems and risks arising from the digitalization processes, leaving out of scope the detailed analysis of the current labour law framework. In order to achieve the set goal and the related tasks in the study, traditional scientific methods applicable in economic and legal research have been used, namely: induction and deduction, current normative analysis, etc.

The study takes into account the legislation, practice and relevant economic and legal literature up to 30.08.2020.

### **1. Problems in Personnel Management with the Help of the HRM Systems, Part of the ERP Systems when Exercising Internal Control**

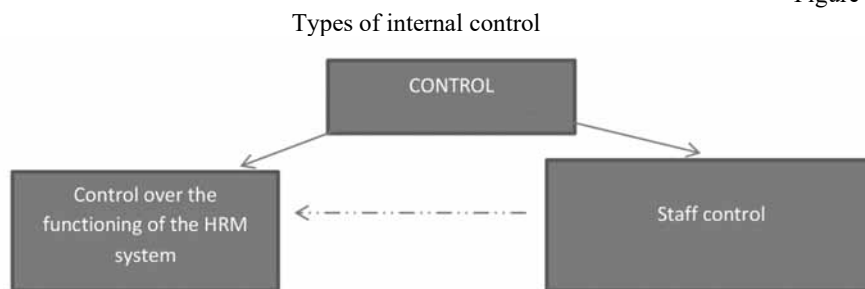
Personnel control should be seen as a complex process, which should start indirectly during the recruitment of staff for a given position and should continue throughout the period during which staff carry out their activities in the company. Therefore, internal control over staff is a multi-layered and multi-directional process that is aimed at:

- Improving the overall activity of the enterprise in order to optimize and minimize production costs.
- Establishment of violations and deviations from compliance with labour legislation.
- Assisting the employer in the implementation of digital personnel management processes, also targeted at the accurate work measurement and reporting.
- Supporting the processes of documenting the processes, that affect the change of staff structure and qualification.

According to various scientific studies, the quality of internal control improves significantly (i.e. by about 80%) through the established and implemented HRM (Human Resource Management) systems (Snell, Youndt, 1995), as the respective system has advanced functional modules; in addition to staff reporting and salary calculation, the respective HRM has a number of other options, namely: executing the relevant staffing table; maintaining an online digital document flow related to staff (orders, employment contracts, staff requests, memos, payslips, etc.); calculation of salaries; calculation and determination of allowances, deductions and compensations; processing of quantitative data and derivation of quantitative indicators. The HRM system outputs mainly quantitative data, with a functional limitation for displaying non-quantitative data. With a good organizational structure and providing access to the system to relevant stakeholders, including access to internal controllers, the system can properly achieve its functional purpose, which is aimed at supporting the company by making the right management and control decisions.

In relation to the purpose, tasks and functions of internal control, its scope can cover two main directions (Figure 1).

Figure 1



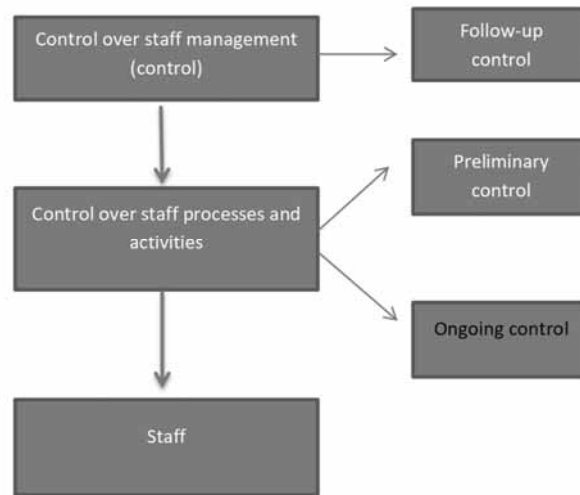
The two types of internal control are different in terms of procedures, applied methodology (which includes means and methods of control), persons involved in the control process, etc. The control that is exercised over the functioning of the HRM system should be considered as part of the system control that is carried out in the enterprise itself. The control over the HRM system very much depends on the circumstance, whether the respective system for the enterprise functions separately or it is part of the general ERP

(Enterprise Resource Planning) system. When the HRM system is part of the ERP system, the control takes place together with the general control over the whole ERP system.

The overall control of the systems includes constant monitoring and surveillance of the processes. Such control is performed by both data controllers and data users (directors, managers, external individuals, etc.) (Mahdi Salehi & Marziyeh Farzaneh, 2018). Control by the data controllers is aimed at optimal use of the system, increasing staff productivity and significantly reducing the possibility of making mistakes. Data controllers can perform ongoing, follow-up and preliminary controls, while data users, depending on their powers, carry out follow-up control, with the exception of the company's managers, whose powers allow them to carry out not only follow-up control, but also preliminary and ongoing controls.

The second type of control is very specific for each company, namely the control over the personnel and the subsequent control over the management of the personnel. Both controls provide information in the established HRM system, which automatically summarizes and displays quantitative indicators of the effectiveness of control, and indicators that analyze the overall condition of staff, such as: obligations to staff; staff turnover analysis; analysis of staff satisfaction and problems in the work environment; analysis of risk factors regarding safety at work, analysis of staffing for each activity of the enterprise and analysis of the distribution of human resources. The two types of control are performed sequentially, (Tomov, 2007) (Figure 2).

Figure 2  
Control over staff management and control over staff processes and activities



Follow-up control over staff management is exercised by senior officials, usually persons who have not participated in and/or have not been involved in the direct control (management) of personnel. Follow-up control can also be carried out by external

controllers, such as inspectors at the General labour Inspectorate Executive Agency, the National Revenue Agency (NRA), experts at the court, etc.

Typically, the HMR system is built on a modular basis, with each module including separate functions and procedures for a given area of personnel management. Each module is fully integrated with the other modules and the input of certain information in the respective module is automatically related and presented in the other modules. Therefore, the HRM system is convenient from the point of view of controllers who exercise direct internal control over personnel management, as the information derived from direct monitoring of processes and procedures in the company is documented and presented online in the approved HMR system. In this way, the follow-up control over personnel management can be carried out very easily, as the information from the performed preliminary and current control is available in the respective HMP system.

With the introduction of HMP systems, the internal control in the enterprises significantly changed its scope, the control procedures changed, and changes also occurred in the control inspections documentation and in entering the results thereof. There is a significant difference in control activities before the introduction of HMP systems and after the introduction of HMP systems. Internal control has significantly shifted its focus from direct financial monitoring to checking the behaviour of staff and compliance with and implementation of specific standards and rules in the company. ***In addition to human resources (staff)***, internal control inspections ***also encompass***: remuneration; verification of the accrued social, health and tax liabilities related to salaries; verification of the accrued and paid compensations; check on the accrual and payment of paid annual leave; verification of the presentation and disclosure of the financial relations with the staff in the financial statements of the company, etc. ***New internal control areas are the audits of***: “the processes related to the movement and change of staff within the company; communications, connections and lines of interaction with staff; staff risk assessment” (Apostolov, 2019).

The technology of internal control changes significantly after the implementation, introduction and validation of the HRM system, as the application of analysis as a means of control is facilitated by the use of the functions of the HRM system. In addition to the legality checks aimed at checking compliance with regulatory requirements, policies and processes in personnel management, the control is also aimed at checking indicators such as: average number of staff; number of occupied or vacant jobs in the company; the number of complaints lodged by staff and the nature of such complaints; number of employees leaving and establishing the reasons for staff turnover, etc. The technology of the internal control over staff has also changed in the direction of providing a final assessment of the condition of the controlled object. Accordingly, this has given a new impetus to the development of internal control, as the top management of the company relies on internal control not only to identify violations and irregularities, but also to provide management with an overall assessment of the current state of the inspected object and opportunities for its development, assessing and taking into account future risk factors.

The process of internal control over staff goes through the following stages:

1. *Determining the goals, tasks, scope of internal control and the starting positions of the internal controllers*. In this first stage, the persons who are engaged in the control process are identified, it is determined whether during the control process the staff will make a self-assessment regarding the risk factors, the expectations for development in the company, evaluation of their work, etc. Accordingly, at this stage, it should be determined whether in the final stage of the control process, the controllers should derive their self-assessment of the past control process. In principle, this requirement is applicable to state enterprises, i.e. the internal auditors are obliged to perform their self-assessment for the audited entity in accordance with the requirements of **Standard 1311 Internal Assessments (International Standards for the Professional Practice of Internal Auditing)**. Private companies are not required to carry out internal self-assessments, which, on the other hand, would have improved their activities and, from the staff's point of view, the relevant self-assessments would have identified a number of problem areas that have not been established by the company's management.
2. *Determining the norm of control* – the norm of control “reflects certain relations related to the behaviour of objects and regulates rules of conduct corresponding to the objective needs and requirements of applicable public laws. As an analogue of reality, it is a specific means of detecting deviations in the behaviour of the individual, the enterprise, etc.” (Donev, 2010). “All written and unwritten rules, including internal regulations, orders, instructions, decrees, etc.” (Nedyalkova, 2019) are also included in the norm of control. It can be assumed that the norm of control, reflecting the legal aspect of the control process, determines the direction in which the whole control process will take place, as well as the possible results in relation to the respective regulatory scope.
3. *Determining and assessing the actual condition of the controlled object*: from a temporal point of view, this stage is the longest, and very often, it is at this stage that significant inaccuracies are incurred on the part of controllers, whole hasty actions usually lead to incorrect determination of the current state of the controlled object. Very often, during the control process, the inherent risks of the company, which affect staff development and impact the overall control environment in the company, are not properly identified. This stage is also essential since the results of the next control stages depend thereon and are determined thereby. Determining the actual condition of the site, in addition to using the HRM system, can be done using the methods of factual and documentary control. The HRM system can provide information about: the access system of the company (i.e. the time of starting and finishing work); display of information on the observance or non-observance of the work schedules; conducting internal trainings; information on the staff incentive systems, etc. The HRM system guides controllers in carrying out internal controls, but cannot replace the actual factual on-the-spot inspection. Very often, the internal controllers develop questionnaires, through which information on the staff's current condition is displayed. This information should be well analyzed and examined using different methods.
4. *Comparison and/or juxtaposition*: this is the fourth stage of the internal control process. The controllers should compare the current condition of the site with the approved regulatory requirements. In terms of staff control, this means that the internal control persons should compare the condition of the controlled object not only with the

established state normative requirements such as: labour Code (LC), Social Security Code (CSR), Income Tax Act of natural persons (PITA), the application of accounting standards (IAS/IFRS or NSS), etc., but also with the approved internal regulations, procedures and instructions of the company itself, such as: Rules of internal labour order, Internal remuneration rules, Rules for safe working conditions, etc.

Each company, according to the specifics and peculiarities of its activity, has a different work organization. The different organization of work also influences the ways of calculating remuneration. From the point of view of internal control, the most common are violations related to the calculation and payment of remuneration, as well as violations related to the determination of tax and social security liabilities. From the point of view of the HRM systems for determining and calculating remuneration, depending on whether the respective enterprise applies IAS/IFRS or NSS, respectively, they are adapted to the relevant accounting standards, ie. IAS 19 Employee Benefits or NSS 19 Employee Benefits. In addition to the above standards, a company's internally approved HRM system is adapted to the requirements of the labour Code and other regulations: Social Security Code, Personal Income Tax Act, etc.

The connection of the HRM systems with the legislative acts has had a positive effect on the development of the internal financial control; however, this has not resulted in exempting companies from this type of control. On the contrary, it is during this fourth stage of the control process that the controllers should very carefully determine, in relation to the type and form of work, what types of remuneration and tax liabilities should be charged to the staff. In principle, HRM systems allow for automatic accrual of wages, according to the requirements of regulations, but controllers should carefully monitor and determine whether for an individual the so-called "short-term benefits, retirement benefits, compensation or other long-term income" should be charged according to IAS 19 or "termination benefits, post-employment benefits, unconditionally acquired employee benefits, short-term employee benefits, employee benefits or respectively it is a question of current service cost" according to NSS 19. The specificity of HRM systems is that already during the administrative entry of the information on the employment record of the respective employee, the system automatically sets options for selection for calculation and determination of remuneration. It is very often here that technical errors are made by data operators and these errors are reflected in the payroll. The internal controllers should compare the situation with the regulatory requirements at this stage, but also make a de facto control of the relevant HRM system regarding the presentation of the information therein.

5. Establishing and deriving a result from the data obtained from the comparison and juxtaposition of the data performed during the fourth stage. When comparing the actual condition of the site with the specified regulatory requirements, respectively, the results can be: coincidence or deviation (positive or negative). When the internal controllers establish a match, it means that the control object meets all regulatory requirements and it respectively reflects the qualitative legal and economic aspects financially, in terms of accountancy and economically. In case the control persons establish during the control process that there is a deviation between the norm of the control and the established current state of the controlled object, i.e. a discrepancy exists, which can be both in



positive and in negative values and dimensions, then accordingly the controllers should identify and analyze the reasons for these deviations. Example of a positive deviation can be when the accrued remuneration exceeds the actually earned, illegal accrual of benefits in favor of staff, etc.; examples of negative deviations: less calculated working days for work done by workers/employees, less accrued remuneration, less accrued compensation, less accrued additional remuneration, etc. When such discrepancies are found, the control process should continue in the direction of searching for the reasons and the culprits who have allowed these discrepancies.

6. Implementation of a system of impacts: this is the final stage of the control process. It is characterized by the fact that the powers of the internal control persons for a given enterprise are limited in comparison with the persons who carry out external control. In case of deviations and irregularities internal controllers should provide guidelines and instructions to the management of the company regarding the elimination of violations, and the management of the company decides whether to hold the respective culprits responsible, imposing personal material and / or disciplinary liability. In external control, controllers have greater powers. Accordingly, they can directly seek liability in the form of administrative and criminal liability or material liability.

## **2. Legal Aspects of the Challenges Facing Employers in Carrying Out Internal Control in the Context of Digitalization**

Compliance with labour legislation and the subjective obligations of the parties in the employment relationship is carried out through control. Control is a basic, specific legal guarantee for compliance with labour law. The special control mechanism for the protection of labour relations is necessary and reflects the high social significance of the human benefits protected by labour law (Andreeva, Yolova, 2011).

In the current Bulgarian labour legislation, a complete and comprehensive legal framework of control was set with the adoption of the labour Inspection Act (LIA – SG № 102, 2008). In the years before the adoption of this regulation, the law, respectively, the legal doctrine, used different concepts and, accordingly, introduced a different set of measures for exercising the types of control (Labor Code, CMD No.15, 12.05.1973, Law on the Prosecutor's Office). The historical roots of control can be traced back to the 1990s and are associated with the nascent capitalist relations in the country, respectively, the industrial processes.<sup>4</sup> During the years of its centuries-old development, control has undergone an evolution in the legal system, following the dynamics of social processes and the spirit of the labour law framework, built in accordance with the leading social processes in the country. The term “control” has been established in the current labour legislation and doctrine, since it most accurately reflects the essence of this authoritarian activity. One of the approved classifications of control subdivides it in view of the position occupied by the

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<sup>4</sup> In the first decade of the 20<sup>th</sup> century the foundations of the labour legislation and the control activity related to its observance were laid, and a number of normative acts were adopted: the Law on Women's and Child labour in Industrial Establishments (SG, № 66, 1905); The labour Inspectors Act (SG, № 238, 1907); The Occupational Hygiene and Safety Act (SG, № 129, 1917), etc.

control bodies in relation to the controlled object. This criterion underlies the grouping of internal and external control (Dimitrova, Mateeva). The present study analyzes some of the main legal aspects of internal control, linking it to digitalization and the risks, respectively trends, that are evident as a result of the technological processes. Such control is carried out within the relevant organization or enterprise, i.e. it is employer control in its various aspects and specialized subtypes, through which the employer monitors compliance with labour laws within the employer's authority granted to them. Internal control is part of the general system of control, and in this unity it should correspond to the common state policy in this area. Precisely due to the need for coordination of the subjects performing functions of internal and external control, the legislator has granted a guiding and coordinating function to the Minister of Labour and Social Policy, which derives from the norm of Art. 6, item 1 of the Labour Inspection Act.<sup>5</sup>

The internal control carried out by the employer is a complex process covering a number of activities aimed at strict compliance with the overall organization in the respective company or organization, at the same time, it is timed so as to cover the various stages of the activity in order to prevent offences and rectify the damage caused.

In view of the criterion 'time of implementation', control is divided into preliminary, ongoing and follow-up. Ongoing control occupies the most important place in the system of internal control, i.e. it ensures that the labour process is carried out in accordance with the regulations of the labour legislation, in compliance with the labour rights of the parties in the employment relationship.

At the current stage of development of labour relations resulting from the dynamics of processes related to the introduction of artificial intelligence (AI) and new technologies, one of the important challenges for labour law doctrine, respectively for the legislator, is to adapt control mechanisms in a way that creates a real guarantee to protect the right to work. Socio-economic rights are subject to international law and, accordingly, the sources of control for compliance with labour law follow the international regulatory framework and the leading trends (Yanylov, 2000).

Drawing a clear line between the personal and professional lives of employees is not an easy task, given the transformation that the labour market is undergoing and, accordingly, the penetration of technology in all areas of labour performance. The employer expands the forms of internal control, supplementing the familiar ones with new ones, based on information technology. In this way, on the one hand, the employer protects its own interests and, on the other hand, seeks to ensure the normal functioning of the labour process. The nature of the employment relationship is such that it is synallagmatic in nature, which implies the interconnectedness of the rights and obligations of the parties, respectively, their interests. In the hypothesis of internal control, dependence is preserved because through technology, the employer protects its own interests and at the same time, the rights of workers. At the same time, the legislation lacks clear regulation of the level of

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<sup>5</sup> Art. 6. In order to achieve the objectives of this law: 1. the Minister of labour and Social Policy shall manage and coordinate the activities for implementation of: a) the overall control for observance of the labour legislation; b) integrated control for ensuring healthy and safe working conditions; c) specialized control under the Employment Promotion Act and the Disability Act.

admissible internal control, so that the employer does not trespass from the official to the personal sphere of the employee.

In this regard, we shall note some of the main problems with a practical focus, which are not yet subject to legislative regulation.

Communication in the modern digital society is carried out mainly by e-mail. Employers are increasingly introducing a new form of control, namely over their employees' correspondence through the office e-mail. On the one hand, this is reasonable in order to create a "safe" virtual environment, as well as to ensure prevention against infection with computer viruses, but seen from another angle, this internal control may be illegal and/or in violation of moral and ethical norms.

At the international level, Art. 8 of the Convention on the Rights of Man<sup>6</sup> proclaims the inviolability of private and family life, home and the secrecy of correspondence. Accordingly, in item 2 the hypotheses of admissibility of control by the state authorities in the exercise of this right are considered.

In order to introduce control that is effective, but does not violate the subjective rights of workers, in the first place, it is necessary for employers to provide the forms and limits of this control activity in their internal acts: for example, as part of the Internal labour Rules or in a specially issued act (instruction, order, etc.). In addition, the issue of the ethical side of online communication should not be overlooked. Many employers in areas where there are codes of ethics make additions to their rules, stipulating rules for communication and respectively ensuring the possibility of bringing the person to justice in case of non-compliance. At this stage, however, our national legislation lacks rules governing this type of relationship between the parties in the employment relationship. On the one hand, this is considered normal given the equality of the parties and the leading role of the employer in the labour process. At the same time, however, the modern digital environment presupposes communication that has long gone beyond the real dimensions of "physical" communication, and this presupposes legislative guarantees for regulating the employer-employee relationship in this regard. We consider it necessary for the legislator to introduce **a new labour law principle of "ethics" in electronic communication**. Based on it, an update can be made in the individual labour law institutes to ensure compliance with the said principle.

The second aspect of control is related to the technical capabilities which employers use to control the behaviour of their workers and employees, for example: filtering incoming and outgoing correspondence, tracking visited Internet sites, access to correspondence content, etc. Unfortunately, Bulgaria lacks a rich experience in this area, there is scarce court and administrative practice which can give an answer about the admissible level of by

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<sup>6</sup> Art. 8 of the Convention on the Rights of Man

1. Everybody has the right to privacy and family life, to housing and to the secrecy of communication.  
2. The interference of the state authorities in the exercise of this right is inadmissible, except in the cases envisaged in the law and necessary for a democratic society in the interest of its national and public security or of the country's economic welfare, for preventing unrest or offences, for protection of the health and morals or the rights and freedoms of others.

employers in the digital environment through modern technical means. This question has been raised in its different aspects in the legal doctrine (Andreeva, 2019; Yaroslava, 2010), however, no comprehensive study of control in the digital environment and the related risks, respectively propositions for legal safeguards of the parties' rights has been carried out so far. In the practice of the European Court of Justice, cases related to employers' internal control over their employees' correspondence are no exception<sup>7</sup>.

A **generalized conclusion** can be drawn that when it is a matter of official correspondence and the respective employer has stipulated in its internal rules clear instructions for the implementation of this type of control, the ECHR usually finds that there is no violation of Article 8 of the Convention, i.e. if we transfer this experience, it can be recommended for Bulgarian employers to exercise such control over the activities of their employees, because in this way with the care of a good manager they would seek to protect their business and professional secrets, to protect the personal data of contractors, to guarantee the rights of all parties involved. At the same time, this process should be regulated in the internal acts which employees should be made aware of, both at the time of establishing the employment relationship and on an ongoing basis, at the time of updating the respective regulation. Given the risk that such forms of control activity affect the personal subjective labour rights of employees, it is advisable to invite trade union representatives in the process of discussing the acts. This is not stipulated as an explicit requirement in the applicable labour law, however, we believe that it would only create an atmosphere of trust and effectiveness of control.

It is evident that the introduction of new technologies in the conditions of permanent digitalization of processes is a trend that needs a strict regulatory framework to regulate the processes of employer control within the limits of human rights. A brief look at EU legislation presupposes the establishment of forms of interdepartmental and, most often, ongoing control to follow established European Community values. In this regard, decisive guidance, outlining the framework of tolerable impact should be sought in the fundamental acts that cannot be overruled with the mechanisms of national legislation – in particular, the Charter of Fundamental Rights of the EU and the European Pillar of Social Rights. In the EU Charter of Fundamental Rights (2016/C 202/02)<sup>8</sup> the inviolability of human dignity, physical and, above all, mental integrity, working conditions, protecting the health, safety and respect for the dignity of the worker, definition of clear boundaries between personal and professional life, guaranteeing the level of the general right to protection of personal data, is stipulated as a basic framework for exercising the right to work and by analogy,

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<sup>7</sup> ECHR decision on the *Barbulescu v Romania* case (61496/08); the *Libert v. France* (588/13) case; *Copland v. UK* (62617/00) case

<sup>8</sup> As a reflection of the European Union's commitment to the protection of human rights and as a consequence of the Treaty of Lisbon (01.12.2009), the Charter of Fundamental Rights of the European Union (2010 / C 83/02) introduces into Union law a set of personal, civil, political, economic and social rights of citizens and permanent residents of the EU with a direct state commitment to implementation and advocacy.

when applying control mechanisms. At the level of personal data protection, a requirement is stipulated for the respective national legislator that these data (including for the needs of the control impact – authors' note) be processed in good faith, for specific purposes and on the basis of the consent of the person concerned or by virtue of another legitimate ground provided by law, whereby the person to whom the data relate has the right of access to them, as well as the right to request their correction.

The European Pillar of Social Rights<sup>9</sup> as a fundamental document for further development of a wide range of individual subjective rights, respectively their development in the direction from the first and second to the third generation also presupposes concrete initiatives at a Community level, and at the same time – their strict observance and further development in the acts of the national legal systems. Fundamentally focused on employment and social protection issues, as well as on adapting the European social model to the challenges of the digital society, the social pillar has also been established as a normative framework for evolution in the development and upholding of basic human rights by supporting fair and dignified forms of realization of the right to work. In the spirit of its tendency to serve as a benchmark for well-functioning labour markets and social systems, it reinforces the Community's understanding of the dignified exercise of the right to work with appropriate protection of personal data in the context of employment.

Along these lines, there are many acts of the community institutions aimed at protecting the identity of workers in the conditions of aggressive digitalization of work processes and the need to exercise control over the performance of labour functions. In this sense, a wide range of measures are deployed in the direction of guaranteeing and protecting the right to safety of workers in the digital revolution, giving rise to threats to personality and pathologies, which are qualitatively different in nature and are especially typical for remote work. In this regard, for example, it is assumed<sup>10</sup> that "social dialogue at European, national and sectoral level is a useful tool to examine in more detail whether and to what extent the health and privacy of workers need additional protection in times of ubiquitous digital mobile communication and what measures are appropriate in this regard." A means of preventing them is e.g. the so-called right to detach from the working atmosphere, recognized in France and applied in certain sectoral and company collective employment

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<sup>9</sup> Its development dates back to the speech of the President of the European Commission Jean-Claude Juncker in 2015 "On the state of the Union", further developed at the Social Summit on Equity for Employment and Growth in Gothenburg on November 17, 2017 when the Interinstitutional Proclamation between the EC, the Council and the EP was signed. The pillar is based on existing legislation at EU and international level. There are borrowings in particular from the Community Charter of the Fundamental Social Rights of Workers of 1989, the European Social Charter of 1961, the revised European Social Charter of 1996 and the European Social Security Code of the Council of Europe. The principles also take into account the relevant conventions, recommendations and related protocols of the International labour Organization (ILO) and the United Nations Convention on the Rights of Persons with Disabilities.

<sup>10</sup> Opinion of the European Economic and Social Committee on 'Skills building and development, including digital skills', in the context of new forms of employment - new policies and the development of roles and responsibilities (2017/C 434/06).

agreements in certain EU countries.<sup>11</sup> The forthcoming direction of the evolution of this right is its assessment and further development at the European level, taking into account the need to comply with the provisions concerning working hours, rest and leave of absence, on the one hand, and on the other – in view of applying the new approach and philosophy of balance between professional and personal life. In this sense, it is obvious and indisputable that whatever control measures are applied, they should be established within the limits between the need to exercise control impact for the performance of work functions and the limits of the individual's privacy. The latter is particularly typical of new types of employment contracts concerning remote work, privacy and professional engagement, which are still being established, both as a framework and as an adaptability to the legal model.

A steady trend at a Community level is the increased activity of institutions in developing **ethical frameworks in the use of artificial intelligence**, including such related to the application of control mechanisms.<sup>12</sup> Thus, in the European Parliament Resolution on a comprehensive European industrial policy in the field of artificial intelligence and robotics (2018/2088(INI)), 12 February 2019<sup>13</sup> explicit emphasis is placed on the need to create ethical rules ensuring the development of AI decision-making systems which are human-oriented and ensure accountability and transparency. In this sense, and not without reason, concern is expressed about the use of AI applications, including those related to face and voice recognition, in programs for the so-called “emotional observation”, i.e. monitoring the mental state of workers with the understanding that “these programs are inherently contrary to European values and norms protecting the rights and freedoms of individuals.”

The guidelines aimed at creating adequate ethical and legal frameworks are fully subordinated to the understanding that artificial intelligence actions and applications should be in accordance with ethical principles and the relevant national, Union and international law. If we look at them through the prism of labour **law and employer control**, we can **summarize them in the following aspects**:

1. *Integration of the principles of security and protection of privacy* already in the design of policies related to robotics and artificial intelligence, in strict compliance with the right to protection of privacy and the right to protection of personal data provided in Art. 7 and 8 of the Charter of Fundamental Rights and in Art. 16 of the Treaty on the Functioning of the European Union;
2. *Data processing procedures* should be in line with the applicable law, confidentiality, anonymity, fair treatment, privacy and data protection;

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<sup>11</sup> In France, a law has been passed on the right to detach from the work atmosphere, and in Italy there is a debate on this issue and it is recognized in some collective employment agreements.

<sup>12</sup> Motion for a European Parliament resolution containing recommendations to the Commission on civil law concerning robotics (2015/2103 (INL)), based on a report from 27.01.2017, Communication "Artificial Intelligence for Europe" to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, COM (2018) 237 final, White Paper on AI - Europe in search of excellence and an atmosphere of trust (Brussels, 19.2.2020 COM (2020) 65 final), etc.

<sup>13</sup> [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0081\\_BG.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0081_BG.html).

3. *Revision of the rules, principles and criteria* regarding the use of cameras and sensors in accordance with the Union legal framework for data protection;
4. *Any future EU regulatory framework on AI* should ensure privacy and the confidentiality of communications, the protection of personal data, including the principles of legality, fairness and transparency, personal security and other fundamental rights, such as the right to freedom of expression and of information;
5. It is especially important in the application of control measures to emphasize *the requirement for clear, unambiguous and informed consent by individuals*, while requiring confidentiality, anonymity, fair treatment and destruction of related personal data;
6. *Ensuring that the consent given by the data subject will generate data only for the intended purposes.*

At the same time, in the course of developing future principles and rules, compliance with Regulation (EU) 2018/1807 of the European Parliament and of the Council on a framework for the free movement of non-personal data in the European Union of 14 November, 2018, as well as with the General Regulation on Data Protection should always be sought in order to ensure a high standard of personal data protection with adequately applied default measures.

It is obvious that the creation of a comprehensive, permanently established and applied normative framework, guaranteeing a regulated control mechanism protecting the freedoms and dignity of the individual, is still a starting process both at the European and subsequently on a national level. It is an indisputable fact, however, that the introduction of digitalization in labour processes, on the one hand, dramatically increases the possibilities and methods for control measures and mechanisms applied by employers, but on the other, it is an extremely vulnerable area of adequate regulation and a fair legal framework from the point of view of individual freedoms.

***Our proposals*** in this direction at the level of introduction of labour law principles and, in particular, the introduction of practices and norms in the internal normative acts can be summarized in the following aspects:

1. *Introduction of a strict and mandatory legal framework for the level of admissible internal control* with the use of technological means in accordance with the common European documents and the General Regulation on data protection;
2. *Establishing in the rules of internal order* and their respective ethical charters procedures for the forms of control with the help of artificial intelligence within the optimal aspect, taking into account the needs of the control impact, with possible inclusion in the individual and collective employment contracts;
3. *Strictly observed adequate level of social dialogue* in establishing, applying and using data in the types of ongoing control applied by the employer;

4. *Level of informing employees about the exercised forms of control* in accordance with the control mechanism with guaranteed protection of personal data and non-admission of exercise of control in the absence of consent;
5. *Introduction of the principle of ethics in the electronic communication and the digital environment* in general, in the exercise of control of official correspondence with counter-commitments to prevent misuse of information, dissemination of information and data.
6. *Strict observance of the established principle of balance between professional and personal life* and non-admission of control impact, setting tasks and controlling their implementation within the established periods of rest. The latter should be guaranteed even in the case of remote work contracts and, in the general case, through interdepartmental rules and practices also safeguarded through sectoral agreements with the social partners.

## **Conclusion**

The joint study of economic and legal aspects of internal control exercised by the employer for compliance with labour legislation on the part of employees is aimed at emphasizing both the management side of the issue concerning the labour process and certain risks and challenges to the law, related to the digitalization processes, requiring adequate legal protection of the subjective labour rights of workers and employees.

The study places special emphasis on the topicality, necessity and legal changes in the field of internal control. The technical means not only contribute to the better organization of work and increase its quality, but they are also a powerful tool for exercising control by the employer over the activities of its workers and employees. Very often, this exceeds the permissible limits of employer powers and interferes with the privacy of individuals. This merging of professional and private life through controls carried out through modern technological possibilities is a particularly worrying trend and requires urgent legislative intervention in order to respect workers' rights, as well as to ensure the implementation of other related labour-law institutions: holiday, working hours, leave, etc.

Legislative changes are currently needed to clearly regulate the boundaries of internal employer control in order to protect the rights of employees and create guarantees for non-interference in their private lives. The tendencies of increased activity at a European level are a fact and are undoubtedly the next step and challenge before the Bulgarian legislator. In this line, an update of the labour law sources should be made, which should cover the acts of the different hierarchical levels, starting from the main general act in the labour law, the labour Code and reaching the employer's internal acts. At the legal level, we believe that new labour law principles governing relations in the digital environment should be added, as well as new subjective obligations should be introduced for both parties to the employment relationship, failure to comply with which should trigger the mechanisms of liability.



Along these lines are the proposals made de lege ferenda for the introduction of the principles of “ethics in the digital environment”, “optimality of internal control”, awareness and prior consent, use of data exclusively for the needs of control, etc.

Internal control is different for each company, as it reflects the internal rules and procedures adopted by each company. This diversity and non-uniformity of internal control activities are due to the lack of precise regulations by various legal institutions, which is a prerequisite for the lack of uniform and accurate standardization of internal control. HRM systems support the control process, but they cannot fully standardize this process for all enterprises. Their scope is again reduced to the respective enterprise. Accordingly, this again brings to the fore the question of the importance and significance of the overall management of the company i.e. the extent to which the employer has a clearly established concept of staff management and how, respectively, the management exercises direct and indirect control over personnel. Also, the implementation of proper and effective control over staff is a prerequisite for achieving good added value for the company, since human resources are the main factor in achieving the strategic goals of the company.

It is indisputable that the need to exercise employer control, on the one hand, and to respect and guarantee the limits of personal freedom and inviolability, on the other, are divided by an extremely fine line challenging the law in the new digital society. It presupposes the establishment of limits in the exercise of basic human rights: the right to work on the one hand and the right to personal freedom, freedom of opinion and dignity on the other.

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