

Excessive Control of Teleworkers' Activity as a Factor of Labor Relations Pollution

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ABSTRACT

With the spread of COVID-19, many organizations are forced to switch employees to telework. One of the most important issues in the organization of telework is the control over the activities, results and outputs. This study evaluates the methods of monitoring teleworker activities, including electronic monitoring and surveillance (EMS). Control methods are divided into «hard» and «soft» groups. Based on the analysis of the practice of the European court of human rights, it is concluded that secret surveillance, control of correspondence refers to excessive control and is a factor of social pollution of labor relations. The paper gives recommendations for the organization of telework control based on a balance of private and public interests. The degree of control must correspond to the protection of the legal rights and interests of the employer. The author suggests that methods of «hard control» with the development of organizational culture should be gradually replaced with «soft» ones, focusing on the KPI, peer and self-control system.

Keywords: Control, Telework, Electronic Monitoring, Surveillance, ECHR.

1. INTRODUCTION

In the digital economy remote work is becoming increasingly popular. The COVID – 19 epidemic was an additional driver to increase remote jobs. Most organizations are faced with the need for an emergency transition to telework. The US and the EU have accumulated quite a lot of experience in organizing telework, while many Russian companies have practically never encountered such a format. Switching to remote operation requires the organization of an effective system for setting tasks and monitoring their implementation. The integration of digital technologies into human resources policies and practices should benefit the overall well-being of employees and be evaluated not only in terms of their effectiveness and efficiency, but also in terms of equity and justice for all employees. The lack of sufficient experience in organizing remote work places has led to a growing interest in monitoring telework using special software.

The issue of organizing control in the field of telework has been considered by foreign researchers for more than 20 years [1,2,3,4]. As pointed out by Van Ommeren, in a telework relationship, it is difficult to observe workers' attendance, attitudes, and specific hours of work [5]. The choice of the control method is determined by the specifics and industry affiliation of the company, as well as the existing experience in organizing interaction with teleworkers. The simplest control options are control of the volume, quality, and timing of work. This control is called "hard control" [6] (table 1).

For example, a designer's work can be evaluated by the number of completed tasks, their quality, and compliance with deadlines. In the context of the development of Internet platforms, work can be evaluated based on external reviews. For example, taxi ordering services allow the client to set a rating for each driver. Further, this rating may affect the number of orders and payment. In case of serious violations, such employee may be disabled from using the platform.

Table 1. Methods for monitoring the activities of teleworkers

Methods for monitoring the activities of remote employees	Description
Hard control	Control of the volume, quality of work performed and terms of their execution
	Time spent monitoring
	Monitoring customer/ service user reviews
Soft control	KPI Control
	Peer control
	Selfcontrol

A more progressive control system with the use of KPIs, when the performance of telework is evaluated by indicators that are of fundamental importance to the company, seems to be more progressive. Nilles suggested shifting the emphasis away from controlling teleworkers' labor input to controlling their output [7]. If the teleworkers are united in a team, it is possible to use «peer» control. In this case, team members control the timing and quality of work, since the success of the entire project depends on it. This form of control is common in the field of IT technologies [8].

Developing and configuring a soft control system takes time and can change the organizational culture. In the conditions of rapid transition to the remote format, many Russian companies simply did not have the opportunity to establish assessment and control by KPI or peer control quickly. The lack of experience in organizing telework has led to the fact that many Russian companies have begun to implement hard-control methods, including using special software. Since the issue of control organization is new to Russian management practice, it is relevant to investigate the opportunities provided by special software and determine whether their use can lead to "social pollution".

The first scientist to identify the phenomenon of social pollution was the American researcher J. Pfeffer, who pointed out the ambivalence of behavioral models of many companies and their managers, focused on compliance with the principles of sustainable development, based, as a rule, on the environmental and economic component, but ignoring social aspects [9]. Within the framework of the research, social pollution is considered as "a process of reducing the quality of life, involving damage to the welfare and physical and psychological well-being of workers as a result of internal and external economic activities of organizations [10]. K. Maklem points to one of the reasons for the deterioration of the health of employees, emphasizing that toxic workplaces are characterized by

"unquestionable requirements, excessive pressure and cruelty" [11].

The factors of social pollution include:

- violation of labor legislation;
- development of precarization of employment;
- the use of the toxic practices of human resource management, including toxic leadership and toxic work places [12,13,14].

The results of research conducted earlier show that only 11.8% of respondents do not encounter organizational toxins in the workplace. 73.5% of respondents faced dishonesty and injustice at work. 31.8% of respondents experienced an invasion of personal space at work. In fact, all of them noted the presence of tension due to constant calls and messages from the manager during non-working hours and weekends. Respondents also pointed to cases of encountering rumors discrediting their reputation (10.6%), as well as illegal surveillance at work and in social networks (7.1%) [15]. Thus, excessive control, illegal surveillance, violation of the secrecy of private correspondence can be attributed to factors of social pollution of labor relations.

2. RESEARCH METHODS

As part of the study of factors of social pollution of labor relations the research program consisted of the following stages:

- evaluation of the functionality of software systems that allow monitoring the workplace of teleworkers (hereinafter referred to as «tracking programs»);
- legal examination of potential conflicts in the use of tracking programs.

The following hypothesis is put forward for the possibility of classifying excessive control as "toxic" factor. A factor can be considered toxic if there are cases of proven harm and damage caused to an employee by the employer due to excessive control and

monitoring of activities in law enforcement practice. To confirm or refute the hypothesis, the practice of the European court of human rights (ECHR) and the decisions of Russian courts were studied.

3. RESEARCH RESULTS

In accordance with the developed research program, at the first stage, an analysis of the functionality of the software that allows to organize control over the teleworkers activities was carried out. The results of the analysis are shown in the table 2.

The presented review of several software solutions shows that modern software has powerful functionality for organizing both open and secret control.

Secret control is a form of control when teleworker doesn't know of its existence. Indicative are the names of some programs that offer not just to control the teleworker, but also to "kill" him for laziness. The low price of software contributes to the realization of the employer's desire to control their employees secretly. In some scientific publications, we can find a positive assessment of such software and recommendations for widespread implementation [16]. The problem of excessive control is particularly acute for the least qualified remote workers [17].

Further, the question of whether the use of such controls is appropriate was considered. In accordance with article 15 of the Labor code of the Russian Federation, an employee must perform their labor function personally under the management and control of the employer. Article 22 of the Labor code of the Russian Federation grants the employer the right to demand compliance with internal labor regulations, to

adopt local regulations (including in terms of regulating procedures for monitoring employees' activities), and to bring employees to disciplinary and material liability.

Russian law enforcement practice has already accumulated experience in resolving disputes on the organization of control using computer technology. For example, the employee was dismissed for using the computer for personal purposes, games and entertainment, as well as illegal copying of official information on flash media (Appeal ruling of the Tula regional court of 26.05.2016 in the case N 33-1715/2016). With the help of special software, desktop images were taken, proving that the computer game was running during working hours. The defendant referred to the fact that a snapshot of the desktop cannot be proof that it was she who started the game. However, the court found convincing the employer's argument that the organization's local regulations established the procedure for using computer equipment, according to which an individual username and password assigned to the employee is used for access. The court sided with the employer in the case under consideration.

The presented example shows that monitoring and surveillance of employees can have a significant impact on their career, business reputation, and health status. In world practice, the question of the legality of control using computer programs, the limits of interference in private life has repeatedly become the subject of legal proceedings, and later scientific discussion [18,19].

And decisions are increasingly made in favor of employees. The case of *Barbulescu V. Romania* is illustrative. Romanian engineer in 2007 was dismissed for using a messenger for personal correspondence during working hours. As an employee of the company,

Table 2. Functionality of tracking programs

Main functionality	SecureTower	Staffcop	Kickidler
Preventing data leaks	+	+	+
Analysis of correspondence and communications	+	+	+
Monitoring messages in social networks	+	-	-
Message control		+	+
Secret video surveillance	+	+	+
Secret audio surveillance	+	+	+
Analysis of data in cloud storage	+	-	-
Monitoring of used programs and applications	+	+	+
Monitoring the use of working time	+	+	+
Automatic reporting	+	+	-
Printer control	+	-	-
Control of flash media	+	+	-
Self-control	-	-	+
Cost of an annual license for 1 workplace, USD	On request	45	15

he was notified of the prohibition of using working equipment for personal purposes. The applicant complained that the termination of his contract was caused by a violation of his right to respect for privacy and correspondence and that the country's courts had not protected this right. Initially, the ECHR decided not in favor of the employee. However, in 2017 the case was re-examined by the Grand Chamber of the ECHR. The case took into account not only the arguments of the Romanian side, but also comments from the French authorities and the European Trade Union Confederation, who participated in the case as third parties. In the 2017 decision in the *Barbulescu* case, the ECHR found a violation of article 8 of the Convention for the protection of human rights, as the Romanian courts failed to establish the relevant facts and failed to properly balance the applicant's right to respect for his personal life and correspondence with the interests of the employer. In the case, a significant compensation for moral injury was established-in the amount of 200 000 euros.

The question of the legality of organizing video surveillance is even more dramatic. In 2017 The ECHR adopted a landmark decision on the complaint of *Antovich and Mirkovic V. Montenegro* (complaint N 70838/13). The applicants challenged the legality of installing video surveillance in the University's classrooms. They initially filed a complaint with the Personal Data Protection Agency of Montenegro. The Agency decided to remove the cameras. However, the courts of Montenegro later sided with the University. The ECHR in its decision stated that "hidden video surveillance of employees at their workplace can be considered as a significant invasion of their personal life, entailing fixed and reproducible documentation of behavior in the workplace, which could not be avoided by employees bound by a contractual obligation to work in this place." Continuing this logic, we can conclude that the establishment of video surveillance for a

teleworkers also represents a significant invasion of privacy, not only of the employee himself, but also of their family members. Taking into account this practice, we can conclude that the stated functionality about the possibility of generating screenshots from remote webcams is illegal.

Thus, the organization of control over the actions of employees in Russian practice requires compliance with a number of conditions. The employer has the right to control the activities of employees, including teleworkers. The use of special software is not prohibited by itself. However, the secret use of such software is illegal. The employee has the right to receive complete and accurate information about control procedures. The need for an employer to adopt a local regulatory act is indicated by the Constitutional Court of the Russian Federation (Resolution No. 25-P of October 26, 2017). In the event of a labor dispute, the employer will have to prove that it has taken all measures to protect its rights and interests and the rights of the employee, including the development and approval of an internal document. The employee must be familiar with such an act under the signature, which follows from the requirements of article 68 and article 86 of the Labor Code of the Russian Federation.

The degree of control must correspond to the protection of the legal rights and interests of the employer. In this case, the employer must ensure the inviolability of the employee's personal life. The complexity of monitoring teleworkers is due to the fact that their activities are often carried out from home. Conducting hidden audio and video recordings leads to violation of the rights not only of the employee, but also of family members.

The following actions can be attributed to excessive control:

- use of hidden video surveillance and audio

Table 3. Compensation for non-pecuniary damage in cases of excessive control over employees in the practice of the ECHR

Case	Fabula	Compensation for moral injury
Lopez Ribalda and others against Spain	Cashiers disputed the legality of hidden video surveillance	4000 euros
Antovic and Mirkovic V. Montenegro	Teachers challenged the legality of video surveillance at the University 1 thousand euros	1000 euros
Barbulescu V. Romania the Applicant appealed against dismissal for using e-mail and messengers during working hours for personal purposes	Barbulescu V. Romania the Applicant appealed against dismissal for using e-mail and messengers during working hours for personal purposes	200 000 euros

recordings;

- installation of special software, without notice to the employee;

- control of personal correspondence and telephone conversations.

Analysis of judicial practice shows that excessive control negatively affects the well-being of employees. In the event of a trial, the ECHR awards fairly high compensation for moral injury.

Excessive control as a factor of social pollution can be attributed to destructive methods of personnel management. As a result of such control, trust and motivation are lost, and the risk of conflicts increases [20]. Excessive control reduces the positive effect of such basic advantages of remote work as autonomy and flexibility [21]. Moreover, too much control has a negative impact on the self-control process that is typical for the most effective teleworkers. Excessive control can cause emotional exhaustion. Evaluating the functionality of Russian software, we can conclude that it can become a potential source of labor disputes.

4. CONCLUSIONS

Based on the results of the study, the following conclusions were obtained.

1. In the context of the spread of coronavirus infection, a significant number of employees were transferred to a telework format, which increased the relevance of the organization of control over their activities.

2. Software products allow to plan the activities of teleworkers and control the work using open and secret methods.

3. Employees and employers take almost the opposite position on the issue of organizing secret surveillance. If employers mostly approve of secret monitoring, plan or already use software, employees experience psychological discomfort and doubt the legality of using such control methods. The identified conflict of interest is attributed to the factors of social pollution of labor relations, which has a negative impact on the well-being of employees in the digital economy.

4. The analysis of the regulatory framework and law enforcement practice has shown that the issue of monitoring employees' activities on the Internet has undergone a significant evolution. An illustrative case is *Barbulescu V. Romania*, in which the ECHR pointed out the inadmissibility of monitoring personal correspondence of employees, even if it was conducted during working hours. Russian legislation is still poorly adapted to the digital economy and does not contain a clear framework defining the limits of employer control over employees.

5. The organization of control over the teleworkers' activities requires regulation at the level of each organization using a system of local regulations.

6. Attention is drawn to the extremely lengthy dispute resolution procedure. Thus, in the high-profile case "*Barbulescu V. Romania*", the decision to protect the rights of the employee was made 10 years later. Russian practice is mainly formed against the employee. All this increases the risk of social pollution of labor relations and negatively affects the well-being of employees.

7. Recognizing the need for telework monitoring, it is necessary to determine its reasonable limits and prevent violations of the right to privacy. The best option is to exercise control not by tracking, but by planning the tasks that the employee must complete over a certain period of time. Methods of «hard control» with the development of organizational culture should be gradually replaced with «soft» ones, focusing on the KPI, peer and self-control system.

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