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Applying of measures for video surveillance on enterprises.

Abstract

In given article the measures of video surveillance are considered which an employer has the right to apply for preservation of the property of both an enterprise's and the employees' property. Legal nature of application of the means of the video control in labor law was researched. Main principles of application of the video control in labor legal relations are determined.

Key words: “embezzlement of the employer's property”, “infringement of the mode of the enterprise protection”, “video surveillance”, “private life”, “infringement of inviolability of private life”.

Quite prolonged functioning of crisis-like social and economic together with political and legal phenomena in Ukraine requires applying a wide range of measures of coercive influence. These phenomena are also present in the field of labor legal relations, especially issues connected with applying measures of video surveillance on enterprises. Nowadays such an issue is pertinent for any enterprise, institution or organization regardless of their form of property and direction of their activities. That is why to preserve property of the enterprise and personal property of the employees the employer has to apply measures of preventive influence.

The current labor legislation foresees just applying measures of material responsibility already by the fact of incurring damages to an enterprise, institution, organization and a possibility of running measures which could have prevented its occurrence is not written at all. Thus, the latest revision of the Labor Code draft ¹ contains a regulation about applying video surveillance of the labor process of an employee by an employer, which brings a lot of discussions among the legal crowd. **The aim of this article** is research of legal nature of applying measures of video surveillance by an employer so as to provide safekeeping of the property of an enterprise and personal property of each employee without infringing their rights.

Safeguarding of enterprises functions as setting up corresponding modes: access and internal on the object modes. Access mode means establishing a procedure of access to an enterprise, institution, organization, that would exclude free entrance (exit) to their territory, to the facility and to the employees. In its turn, internal on the object mode means establishing a system of measures and regulations, directed to provide safekeeping of material values, information resources, personal safety of the employees, clients, alarm and fire safety. Internal on the object mode includes a range of measures connected with organization and access control to the facilities of enterprises, institutions, organizations². That is why providing the mode of safeguarding the property and employees is one of the most important prerequisites of their effective functioning which requires thorough execution of the established measures by all the employees.

The main goal of applying measures of video surveillance is to stop illegitimate behavior of an employee. Adhering to an access mode stipulates that an employee is obliged to enter the territory of an enterprise (leave it) through an entrance checkpoint showing a pass or another permit.

¹ Проект Трудового кодексу України [Електронний ресурс]. – Режим доступу: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53221

² Зубок М.І. Безпека банківської діяльності: навч.-метод. посіб. / М. І. Зубок. – К.: КНЕУ, 2002. – 156 с.

Entering an enterprise otherwise (through the fence, auxiliary facilities or other places not designated for this purpose) is a violation of an access mode. Detention of an employee who was trying to go through another checkpoint or go over the fence stops illegitimate actions of an employee, does not allow him to complete wrongful acts.

The draft of Labor Code of Ukraine³ contains in Article 30 the following regulations: an employer is entitled to control how the employees perform their labor duties, including with using of hardware if it is not specified by the peculiarities of production, with an obligatory warning of the employees about their application. During performing of such a control, any actions that humiliate honor and dignity or infringe the rights of employees are not allowed. At the same time, such a stand of the authors of the project appeared quite contradicting for some specialists in the field of labor relationships.

A problem of applying special means of control in the field of labor law is new and is quite a complicated legal category. It is explained of having such main factors as: infringement of the basic human rights and liberties, legal grounds to set up the means of surveillance at enterprises: subjects, goal and consequences of applying such a measure; justification of its application; separation from adjacent fields of application (criminalistics, criminal action).

Nowadays systems of video surveillance is an obligatory, and sometimes the main element of a modern system of safeguarding enterprises, institutions, organizations. You can encounter them everywhere: in educational establishments, shops, subway, entertainment facilities, museums, banks, etc.

Remote visual control of all the guarded object allows to create highly effective systems of safety – without considerable expenses for safeguarding. These systems are able not only to reflect the operating situation but also to keep and archive all the video information for further processing.

The grounds according to which the owner is entitled to install systems of video surveillance on an enterprise need to be clarified. As a rule, the aim of their installation is to prevent stealing of property and controlling the production process. However, in connection with this, the employer might get two legal problems. The first one is connected with encroachment on constitutional rights and liberties of a human and a citizen, and the second one – with deterioration of essential labor conditions. Let us consider each of them separately.

A human, their life, health, honor, dignity, inviolability, and safety are recognized as the highest social value in Ukraine. Rights and liberties of a human and their guarantees determine contents and direction of the state activity (Art.3 of the Constitution of Ukraine)[3]. This regulation needs to have a paramount significance at normative regulation of all the directions of state activity, including in the field of labor relations and relations connected with them.

When entering into labor relationships, every person retains their natural rights, determined by the Constitution of Ukraine. Human rights are inalienable. Articles 29, 31, and 32 of the Fundamental Law define the rights of a human and a citizen for inviolability of personal life, personal and family secret, secret of correspondence, telephone conversations, protection of honor and dignity. Collection, keeping, using, and spreading of confidential information about a person without their consent is not allowed, besides cases defined by law. Article 13 of the Constitution says that property cannot be used to harm a human or society.

The stated rights of citizens are outlined in Article 302 (right for information) and 307 of the Civil Code of Ukraine (protection of interests of a physical person when performing photo-, cinema-, TV-, and video shooting)⁴ [4]. In particular, part 1 of Article 307 of the Civil Code of Ukraine states that a physical person can be shot for photo-, cinema-, TV-, and video film only following their consent. Consent of a person for shooting on photo-, cinema-, TV-, and video film is taken if such shooting is done openly outside, at a briefing, conference, meeting or other public gatherings. Part 4 of Article 23 of the Law of Ukraine “About Information” sets prohibition for collecting data about a person without their prior consent excluding cases foreseen by law⁵. At that,

³ Конституція України // Відом. Верховн. Ради України. - 1996. - №30. - Ст. 141

⁴ Цивільний кодекс України // Відом. Верховн. Ради України. – 2003. – №40-44. – Ст. 356.

⁵ Про інформацію: Закон України від 02.10.1992 р., №2657-XII // Відом. Верховн. Ради України. – 1992. – №48.

in accordance with the resolution of the Constitutional Court of Ukraine from October 30, 1997, No 5-зп, not only collection of information is prohibited, but also keeping, using and spreading of confidential information about a person without their prior consent⁶.

The stated norms testify that the human rights for inviolability of a personal life is strictly protected by the state.

When clarifying possibilities of legal regulation of using controlling systems, it is necessary to refer to social and psychological constituent of this problem. Particularly, open and closed type systems of video control are used in Ukraine. In the first case employees know that they get into the field of vision of the surveillance and that is why they try to perform their labor functions as diligently as possible. When using a closed system, the employees do not suspect about video surveillance and behave as usual. In both cases psychological aspect has a considerable impact. In the first case employees may feel discomfort, behave stiff, which may lead to a decrease of labor productivity both for an employee and the staff as a whole. That is why the employees need to be notified about availability and functioning of any type of video control. In the second case – the employees will feel free. However, the employer will have information not only about labor activity of an employee but also will have personal characteristics of a person, on the basis of which wrong conclusions may be formed and wrong managerial decisions will be made.

Let us emphasize that specifics of using technical means of control is based on psychological impact which is legitimate since it is based on voluntarily determined perception of surveillance by a worker. Compulsoriness of such measures is manifested in fact that with the aid of special systems of video surveillance a person has to voluntarily refuse to commit (prepare) illegitimate actions concerning property of the employer (for instance stealing material assets, using them for their personal benefit, etc.). It needs to be also acknowledged that using special systems of video surveillance mobilizes an employee to perform their labor duties, induces to better adhere to the corporate labor policy.

That is why a debatable point of view still has the right to exist, that installing systems of video surveillance under condition of the employees' consent, does not violate the main constitutional rights and liberties of a human and citizen in the field of labor relations. If the position as basis is taken that an agreement is the apex of legal regulation of labor in labor law, then the idea given above is true.

However, in reality everything is much more complicated. Despite receiving of a consent for using technical systems of video surveillance, in such acts of an employer a possibility of illegal interference into private life is observed. However, it is not possible to agree with this statement implicitly since activity of a person during their being on their working place does not refer to the category of a private life. This can be proved by the following. Now in our domestic literature there is no uniform approach to definition of a private life in an aspect of a right of a person for non-interference into private and family life, neither there are examples of critical comprehension of positive and negative aspects of already existing definitions of a private life⁷.

Category "private life" is widely used in juridical science. First of all, it is explained by its fixation in Article 32 of the Constitution of Ukraine, secondly – by the Soviet tradition of scientific analysis of a subjective human right. Stefanchuk R.O. determines notion "privacy" as a social value that covers all the private vital activity of a person that are organized and performed in the field of family, everyday life, personal, intimate, and other relations that are performed in the period of deliverance from public subordinate liabilities (labor, work, official, training and educational, social, etc). Category of "privacy" is comprehensive and such that is considerably wider than other

– Ст. 650.

⁶ Рішення Конституційного Суду України у справі щодо офіційного тлумачення статей 3, 23, 31, 47, 48 Закону України «Про інформацію» від 30.10.1997 р., №5-зп // [Електронний ресурс]. – Режим доступу: <http://zakon3.rada.gov.ua/laws/show/v005p710-97>.

⁷ Лановенко Г. Приватне життя людини як об'єкт правової охорони / Г. Лановенко // Право України. – 2005. – №12. – С. 112.

adjacent categories (for instance “personal life”), since it completely covers all the sphere of a private life of a physical person⁸.

According to Lanovenko H., private life structure comprises intimate, spatial (where choice of a working place belongs), family, religion, property, cultural, organizational, health-improving, licensing, and communication aspects⁹. The fact that private life is distinguished from the sphere of labor relations is also confirmed by the position of Petrukhin I.L., who gave two definitions to this notion. First – private life – is functioning of a person in a special sphere of family, everyday life, and intimate relations that are not liable to direct control from the state, community organizations, private persons. It is freedom of solitude, thoughts, correspondence, keeping diaries and other notes, contacting other people, freedom of speaking and deeds beyond the work relations. This is a condition of substantiated confidence that personal secrets of a person will not be revealed and disclosed. Second – it is a possibility of solitude, communication with the family members, self-expression beyond work relations¹⁰.

Thus, according to civil law specialists, “private life” is a category that cannot exist within the framework of work relationships. Article 182 of the Criminal Code of Ukraine [10] “infringement of inviolability of a private life” stipulates criminal responsibility for illegal collection, keeping, using or spreading of confidential information about a person without their consent or spreading this information in public speech, work of art that is demonstrated in public or in mass media. In such a situation we may say about cases of illegal usage of information beyond enterprises, institutions, and organizations.

When installing CCTV cameras in facilities of an enterprise, including working places of the employees, on objects of providing safekeeping property of an employer or controlling of production processes, at least there is no body of crime: there is no infringement of the right for inviolability of private and family life. According to Krylov D., it is connected with the fact that sphere of public actions, and that is the very case with the actions of clients or visitors, cannot be referred to private life of a person and even more cannot be their personal secret. Professional activity of the employees of an enterprise cannot be referred to as private life and personal secret¹¹.

Objective aspect of crime is also missing since Article 182 of the Criminal Code speaks only about illegal collection of confidential information about a person, illegal keeping, spreading it in public speech, illegal spreading, and illegal using [10]. Collecting of information concerning a person, both open and discreet is not illegal in case if such actions are done with the consent of a person themselves. Besides, it is worth stating that there is information which although belongs to a private life of a person, but due to its general prevalence is not their private or family secret. That is why it is necessary to note that to private or family life we can refer only the data, that according to the person are not subject to disclosure¹².

It is worth stating that it is not illegal to collect information about a private life of a person when such information is no longer a secret due to its disclosure by a person that this secret persists to. Thus, when a person, knowing about video controlling announced this information, there is no illegality of its receiving since the information was provided by the employee consciously and voluntarily.

Subjective aspect of crime is also missing since there is no intent and interest in receiving information about a person. The main goal of installing CCTV cameras is not receiving any information about the employee, but to prevent stealing of the employer’s property. The main goal

⁸ Стефанчук Р. О. До питання забезпечення цивільно-правової охорони приватного життя фізичної особи: досвід України та Німеччини / Р. О. Стефанчук // Університетські наукові записки. – 2005. – №4(16). – С. 69.

⁹ Лановенко Г. Приватне життя людини як об’єкт правової охорони / Г. Лановенко // Право України. – 2005. – №12. – С. 113-114.

¹⁰ Петрухин И. Л. Частная жизнь (правовые аспекты) / И. Л. Петрухин // Гос-во и право. – 1999. – №1. – С. 64.

¹¹ Крылов Д. О некоторых вопросах правомерности установки систем видеонаблюдения на предприятии / Д. Крылов // Бизнес и безопасность. – 2004. – №4. – С. 3.

¹² Крылов Д. О некоторых вопросах правомерности установки систем видеонаблюдения на предприятии / Д. Крылов // Бизнес и безопасность. – 2004. – №4. – С.

of installation of the system on sites where considerable material assets are concentrated (warehouses of the ready produce, metal, harnessing, etc) is fixation facts of stealing both at working and not working time. The goal of installing video surveillance at logistical sites (areas of loading and unloading, railway stations, etc) is recording actions that in the future may provide evidentiary foundation for the employer in case of arguments with contractors or persons that committed acquisitive crimes.

Installing video surveillance equipment in administrative facilities is done to provide safeguarding of the employer's property which is located on this object (computers, valuable equipment, money assets).

In most cases, the main goal of installing means of video control is not so much production process as safeguarding of property of the enterprise and the employees, uninterrupted work of equipment and machines. More than half facts of stealing registered in juridical persons, are done on enterprises of trade, food, processing industries. In the field of production, according to statistical data, it is done at least by 15% less. Meanwhile, according to science research, stealing at industrial enterprises are very common, a considerable part of them are left latent and that is why they are not reflected in statistical reporting. Thefts cause considerable material damage to industrial enterprises of all types of property as well as economy as a whole¹³.

Thus, installing CCTV cameras regardless of what specific goal has an employer: detection of offenders, ascertainment of facts of stealing the property, providing safety of especially important objects, are united by the main goal – to prevent committing of theft of the employer's property.

To conclude the said above, it needs to determine such main items: a) installing system of video control does not infringe human rights for personal life since sphere of private life of a person is beyond labor relationships; b) functioning of video control systems at an enterprise needs to be based on regulations of legal and local acts; c) systems of video control are installed in order to prevent stealing of the employer's property; d) using of video control systems is done based on principles of ethics, expediency, and validity; e) specifics of application is shown in indirect psychological impact, that is coerced persons will restrain from committing a wrongful act that will have negative consequences for property and law order at an enterprise.

¹³ Бобуа З.Б. Расследование и предупреждение краж, совершаемых в сфере промышленного производства: дис. ... канд. юрид. наук: 12.00.09 / З.Б. Бобуа. – Кемерово, 1999. – С.12.

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Ваганова І.М.

Застосування заходів відеоспостереження на підприємствах.

У даній статті розглянуті заходи відеоспостереження, що має право застосовувати роботодавець для збереження майна як підприємства, так і окремих працівників. Порушено питання правової природи застосування засобів відеоконтролю у трудовому праві. Визначено основні принципи застосування відеоконтролю в трудових правовідносинах.

Ключові слова: «розкрадання майна роботодавця», «порушення режиму охорони підприємства», «відеоспостереження», «особисте життя», «порушення недоторканності приватного життя».

Ваганова И. М.

Применение мер видеонаблюдения на предприятиях.

В данной статье рассмотрены меры видеонаблюдения, которые вправе применять работодатель для сохранения имущества как предприятия, так и отдельных работников. Исследовано правовую природу применения средств видеоконтроля в трудовом праве. Определены основные принципы применения видеоконтроля в трудовых правоотношениях.

Ключевые слова: «хищение имущества работодателя», «нарушение режима охраны предприятия», «видеонаблюдения», «личная жизнь», «нарушение неприкосновенности частной жизни».