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LEGISLATION ON EMPLOYER MONITORING OF EMPLOYEES AT THE WORKPLACE IN THE CZECH REPUBLIC

(Summary)

The monitoring of employee by employers is most often motivated by the employer's interest in protecting his/her property, controlling technological or other work procedures, or even monitoring the productivity of his/her subordinates. At present, electronic means of communication are increasingly used, which increases the risk of the misuse of personal data. The employer's right to monitor employees is regulated by the Labour Code, but also in labour-law relationships, the employee must be provided with an adequate level of privacy.

Keywords: the monitoring of employees; the protection of the privacy of employees; the Labour Code; Personal Data Protection Act

1. Introduction

The monitoring of employees by employers is most often motivated by the employer's interest in protecting his/her property, controlling technological or other work procedures, or even monitoring the productivity of his/her subordinates. At present, electronic means of communication are increasingly used and their control becomes more and more difficult, which increases the risk of the misuse of personal data. The monitoring of employees in the workplace is regulated both by Act No. 262/2006 Coll., and the Labour Code, but the recording of employees' activity is also covered by Act No. 101/2000 Coll., providing for the protection

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of personal data. The Office for Personal Data Protection considers the operation of the CCTV system to be personal data processing if “recordings are taken in addition to CCTV, or information is stored in the recording equipment and the purpose of the recorded records or selected information is used to identify individuals in connection with a particular action”¹. Labour law issues are confronted with the issue of personal data protection.

2. Protection of Privacy of Employees

The protection of the privacy of employees and the prohibition of the wilful interference with private life is based on international documents. The first is the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights². Other important international sources include the conventions, recommendations and resolutions of the International Labour Organization. Another important document dealing with the protection of privacy, property and personal data is the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950 in Rome³. Also, the European Union, in order to ensure the functioning of the common market, has dealt with the development of security systems for using personal data. The regulation of the European Parliament and the Council (EU) 2016/679 providing for the protection of individuals, the processing of personal data and the free movement of such data, entered into force last year⁴. This regulation was particularly adopted due to rapid technological development and globalization. It also applies to directive 2002/58/EC of the European Parliament and of the Council concerning the processing

¹ Office for Personal Data Protection: Operation of the CCTV system in terms of the Personal Data Protection Act [online]. The Office for the Protection of Personal Data: 2006, No. 1 [cit. 4 June 2016] https://www.uoou.cz/files/opinion_2006_1.pdf

Úřad pro ochranu osobních údajů: Provozování kamerového systému z hlediska zákona o ochraně osobních údajů [online]. Úřad pro ochranu osobních údajů: 2006, č. 1 [cit. 4. června 2016], https://www.uoou.cz/files/stanovisko_2006_1.pdf

² The International Covenant on Civil and Political Rights was signed by the Czechoslovak Socialist Republic in 1968 and entered into force on 23 March 1976. The International Covenant on Economic, Social and Cultural Rights entered into force for the Czechoslovak Socialist Republic on 23 March 1976.

³ The Czech and Slovak Federal Republic ratified the Convention on 18 March 1992.

⁴ The regulation came into force on 24 May 2016, and will then become effective on 25 May 2018.

of personal data and the protection of privacy in the electronic communications sector, as amended by directive 2009/136/EC⁵. The directive lays down rules for ensuring data security, reporting privacy breaches, and confidentiality of the communication⁶. The Charter of Fundamental Rights of the European Union has also a significant impact, namely Article 7, which states that “everyone has the right to respect for private and family life, dwelling and communication” and Article 8 “everyone has the right to protection of personal data concerning him/her”. This data must be processed fairly, for specific purposes and subject to the consent of the person concerned or for any other legitimate reason provided by law. Everyone has the right to access the data that has been collected about him/her and has the right to correct them. Compliance with these rules shall be supervised by an independent body. Although the Charter is not a contractual document, its meaning and commitment to other EU documents are implicit⁷.

In the Czech legal environment, the inviolability of a person and his/her privacy is guaranteed by Article 7 (1) of the Charter of Fundamental Rights and Freedoms⁸. Article 10 of the Charter further states that everyone has the right to preserve his human dignity, personal honour, good reputation and his/her name (Article 10 (1)) and has the right to protection from unauthorized interference with private and family life (Article 10 (2)). The Charter protects against unauthorized collecting, disclosure or other misuse of data about the person (Article 10 (3)). Regarding the reasons for employer monitoring of employees, it is necessary to mention Article 11 of the Charter because it guarantees the employer the right to own property. The fundamental labour law regulation, which regulates the possibilities of the monitoring of employees is Act No. 262/2006 Coll., Labour Code. The protection of privacy is also governed by⁹ Act No. 89/2012 Coll., the Civil

⁵ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, as amended by Directive 2009/136 / EC of 19 December 2009. The Directive was transposed by Act No. 468/2011 Coll., which amended Act No. 127/2005 Coll., on electronic communications (effective from 1 January 2012).

⁶ EUR-Lex: Access to European Union law: Data protection in the electronic communications sector. [Online]. EUR-Lex: Access to European Union law: 2014 [cit. October 17, 2016], <http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=uriserv%3A124120>

⁷ <http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX%3A12012P%2FTXT>; [Online]. [cit. 4 June 2016].

⁸ Resolution of the Bureau of the Czech National Council of 16 December 1992 No. 2/1993 Coll., On the proclamation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic, valid and effective as of December 28, 1992.

⁹ This is a provision of Section 84 – § 90.

Code, according to which the provisions of section 4 of the Civil Code, applies to employment relationships in a subsidiary way. The Criminal Code (Act No. 40/2009 Coll.) regulates the facts of the case of an unauthorized use of personal data in the provision of section 180, paragraph 2. The offense could be committed by an employer who intentionally or negligently violates the duty of confidentiality by unauthorized disclosure, communication or declassification of personal data obtained in connection with employment to a third party, thereby causing serious harm to the employee's rights or legitimate interests. In addition, under Act No. 251/2005 S, providing for labour Inspection, the bodies of inspection inspect the employers' compliance with the statutory obligations¹⁰.

3. Concept of Privacy in the Workplace

Privacy is considered to be a place where we feel safe, in which we decide ourselves on who can enter it and the extent to which it can influence us. Does privacy also have a place in labour law? Although it seems at first sight that there is no privacy in labour-law relationships, it is not so. It is obvious that in an employment relationship, the employee cannot have the same degree of privacy as in the home environment, but an adequate degree of privacy must also be ensured in the workplace. However, due to diversity of employers' activities, the degree of privacy depends on the objective and subjective circumstances that need to be assessed in each particular case¹¹. Privacy includes personal privacy and the right to create relationships with other people.

¹⁰ § 11a (delicts of natural persons) and 24a (delicts of legal or business individuals) of Act No. 251/2005 Coll., providing for labour inspection (the wording of both provisions are identical) § 11a – Delicts in the privacy and personal rights of employees

(1) A natural person commits a delict as an employer by:

- a) the violation of privacy of the employee at the workplaces and in the employer's common premises in some of the ways mentioned in section 316, paragraph 2 of the Labour Code,
- b) failure to inform the employees about the extent of the control and the ways of its implementation pursuant to section 316(3) of the Labour Code, or
- c) contrary to section 316 (4) of the Labour Code, requiring information from the employee which is not directly related to the performance of the work and basic labour relationship.

(2) A fine may be imposed for a delict under paragraph 1:

- a) CZK 1,000,000 in the case of a delict under (a) or (c),
- b) CZK 100000 in the case of a delict under (b).

¹¹ **F. Nonnemann**, *Soukromí na pracovišti. (Privacy at the Workplace)*, Právní rozhledy 2015/7, p. 229.

The Labour Code, section 316 (2), states *that an employer must not, without serious reason based on the special nature of the employer's activity, interfere with the privacy of employees at workplaces and in the employer's common premises by subjecting employees to open or hidden surveillance, interception and recording of his/her telephone calls, checking emails or letter mail addressed to employees*. It results from the wording of the law that the Labour Code provides an employee the right to an appropriate (reasonable) degree of privacy in the workplace, and that privacy must not be disturbed without a serious reason which consists in the particular nature of this activity. However, the wording of the law cannot be interpreted that only employers who carry out, e.g. particularly dangerous activities, can set up monitoring facilities. The legitimate reasons for their implementation are protection of the life and health of employees, compliance with OSH, protection of the employer's and employees' property or productivity check. The listed reasons for employer monitoring of employees can be virtually applied by every employer. The Labour Code then lists the examples of violations of employee privacy in the workplace.

Neither the Labour Code nor any other legal regulation defines the concept of privacy, and the judgements given by the Czech courts or the European Court of Human Rights, deal rather with the question of what is covered by the concept of privacy, and whether a particular act has already been an interference with the right to privacy, or not.

It was the Constitutional Court and the ECHR that expressed the concept of privacy and the right to privacy. One of the first cases which dealt with the interpretation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, guaranteeing the right to respect for private life, dwelling and correspondence, was the case of *Niemietz v. Germany*¹².

In the above-mentioned case, the law firm was searched and the attorney Niemietz objected that his right to privacy and dwelling had been interfered with. The ECHR stated that "... respect for private life must to a certain extent include the right to create and develop relationships with other human beings. Furthermore, there seems to be no reason to exclude this way of understanding the concept of "private life" from activity of a professional or commercial nature, since most people, during their working lives, have a considerable, if not the greatest, opportunity to develop relations with the outside world". The ECHR held that the search of the office was an interference with the right of privacy because it is not possible to separate private and professional life. Interference

¹² ECJ judgment of 16 December 1992, *Niemietz versus Germany*, No 13710/88.

with private life may also occur under the ECHR where telephone tapping involves both business and private calls¹³. The ECHR ruled similarly in *Von Handel v. The Netherlands*¹⁴. It ruled in favour of the employee who assumed he was talking to a private person, not to his employer. In a similar case, the ECHR in *Copland v. United Kingdom* stated that: “the concepts “private life” and “correspondence” apply to telephone calls from business premises, as it is clearly stated in Article 8 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. It logically follows, that emails sent from work should fall under Article 8, as well as information from the monitoring the personal use of the internet. The court considers that the collection and personal information retention without the complainant’s knowledge meant under Article 8 violation of the right to respect for private life and correspondence¹⁵. In *Halford vs. United Kingdom* the ECHR speaks about a legitimate or reasonable expectation of the right to privacy. Interference with private and family life and correspondence violates Article 8 of the Convention, unless it is in accordance with the law and follows legitimate aims which are necessary to achieve¹⁶. According to the conclusions of the ECHR, privacy includes the right to self-identity, personal development and the right to enter into relationships with other people. The right to privacy cannot be confined to a specific area, so the employee has a legitimate expectation that his right to privacy will be respected also outside the home¹⁷. The ECHR has repeatedly ruled on the violation of Article 8 of the Convention in many other decisions¹⁸.

The Constitutional Court of the Czech Republic repeatedly interpreted the concept of privacy. The Constitutional Court has stated that “especially nowadays autonomous fulfilment of private life and work or leisure activities are closely related and it is not possible to make a sharp spatial separation of privacy in places used for housing from privacy created in places and environments serving for

¹³ ECHR judgment of 24 April 1990, *Huvig versus France*, No. 11105/84.

¹⁴ ECHR judgment of 25 October 2007, *Von Handel v. The Netherlands*, No 38258/03.

¹⁵ ECLP *Copland v. The United Kingdom* judgment of 3 April 2007, Complaint No. 62617/00, §§ 41 and 44.

¹⁶ Judgment of the European Court of Human Rights of 24 April 1990, *Kruslin v. France*, No 11801/85.

¹⁷ ECHR judgment of 2 September 2010, *Uzun verus Germany*, Complaint No 35623/05.

¹⁸ E.g. ECHR judgment of 6 June 9, 1978, *Klass and Others versus Germany*, No. 5029/71. Judgment of the European Court of Human Rights of 30 March 1989, *Chappell v. The United Kingdom*, No. 10461/83. ECHR judgment of 25 March 1992, *Campbell and Cosans v. The United Kingdom*, No. 7743/76, ECHR *Malone v. The United Kingdom* Judgment of 2 August 1984, No. 8691/79, ECJ *Copland vs. United Kingdom* of the 3rd of April 2007.

work or business activities or to satisfy own needs or activities in public areas, such as business activities. They will be subject to certain restrictions which may constitute a particular interference with the right to privacy”¹⁹. The Constitutional Court further stated that “the requirements of respect for privacy and its protection are closely linked to the development of technical and technological possibilities. The right to privacy also guarantees the right of an individual to decide, at his own discretion, whether, to what extent, in what manner and under what circumstances, facts and information from its privacy should be available to other entities”²⁰. It follows that a defined right to privacy can not constitute an exhaustive list of its individual aspects because the company is constantly evolving and the concept of the right to privacy may change. The 2011²¹ finding states that “the primary function of the right to respect for private life is to provide space for the development and self-realization of an individual person. In addition to the traditional definition of privacy in its spatial dimension (protection of dwellings in a broad sense) and in the context of autonomous existence and public power undisturbed by the creation of social relationships (marriage, family, society), the right to respect for private life also includes the guarantee of self-determination In the sense of the fundamental decision of the individual about himself. In other words, the right to privacy also guarantees the right of the individual to decide, at his own discretion, to what extent, in what manner and under what circumstances facts and information from his privacy should be available to other entities. In relation to the close linkage between privacy requirements and their protection, together with the development of technical and technological possibilities that increase freedom, it is necessary to respect the purpose of a generally understood and dynamically developing right to privacy as such, and to consider it in its period integrity”. It results from these views that the right to privacy is difficult to define because of changing circumstances. Based on the judgements, the concept of privacy is subordinated by the right to self-identity, self-determination, the right to create one’s own family and social environment, it is connected with the external environment through personal, written or electronic communication. The privacy of a person cannot be determined by a certain place and time, and therefore the protection cannot be bound by specific place or time. Everyone has the right to the protection of their private sphere and it may be intruded on only in

¹⁹ Finding of the Constitutional Court of the Czech Republic sp. Pl. ÚS 3/09 of 8 June 2010.

²⁰ Finding of the Constitutional Court of the Czech Republic sp. Pl. ÚS 24/10 of 22 March 2011.

²¹ Finding of the Constitutional Court of the Czech Republic sp. Pl. ÚS 42/11 of 20 December 2011.

cases foreseen by law. The Office for Personal Data Protection has attempted to define the concept of privacy in its opinion No 6/2009 which states that “privacy can be briefly described as the personal, intimate sphere of a man in his integrity, which encompasses all manifestations of the personality of a particular and unique human being. The concept of privacy also includes the material and intellectual space of an individual, and the right to create and develop relationships with other human beings”. It is obvious that if the right to privacy is interfered with, it is necessary to assess the specific circumstances of interference with the Charter of Fundamental Rights and Freedoms or other legislation.

How do these conclusions reflect the right to privacy of the employee? The employee is obliged to work properly according to his/her strength, knowledge and skills, to comply with the instructions issued by superiors in accordance with legal regulations and to cooperate with other employees. If the employee does not work or spends his/her work in private activities, he/she violates his/her duties set out in section 301 of the Labour Code. The basic duty of an employee is to use working time and means of production to perform the tasks entrusted to him/her, to perform the work tasks in a good manner and on time, to observe the legal regulations relating to the work performed by him/her, to observe the other regulations relating to the work done, provided he/she has been duly informed. An equally important duty is to manage the resources entrusted to him by the employer properly, to protect the employer’s property against damage, loss, destruction and abuse and not to act contrary to the legitimate interests of the employer. The law does not regulate the possibility of performing any activity in the private interest of the employee. As the employee remains in the workplace for the most part of the day, his/her right to privacy in the workplace must also be respected. As Morávek writes, the employer is thus obliged to respect the right to privacy of the employee in the workplace, but to the extent strictly necessary and only in situations where he/she does not perform the assigned task²². The employee has the right to a certain degree of privacy, for example in the dressing room, on the toilet and also at the time of breaks for food and relaxation, at the time of the safety break when he/she is not obliged to work. According to the provisions of section 316 (1) of the Labour Code, employees may not use the production and working means of the employer, including computer equipment or its telecommunication equipment, without the employer’s consent. The employer is authorized to inspect compliance with this prohibition reasonably.

²² **J. Morávek**, *Ochrana osobních údajů v pracovněprávních vztazích* (Protection of personal data in labour relations), Wolters Kluwer CR, Prague 2013, p. 67.

The control can be carried out, for example, by using a camera system, an e-mail correspondence system, or a telephone call monitoring system. Camera systems are currently one of the main elements of public space control, but they are also used by private entities to protect their property, safety and health of persons. For the same reason, employers also control their premises. The Office for Personal Data Protection defined the CCTV system as a “automatically-operated, permanent technical system for capturing and storing audio, video, or other records from tracked places, which can take the form of passive space monitoring or target shots (capture motion) or reporting method”²³. The camera systems allow a variety of record keeping methods. In accordance with the provisions of section 4 (E) of the Personal Data Protection Act²⁴, the storage of such data after the recording is considered as the processing of personal data. If there is no record, it is not recognized as personal data processing. Any information relating to a designated or identifiable data identified, either directly or indirectly, based on a number, a code or one or more elements specific to its physical, physiological, psychological, economic, cultural or social identity, is considered to be personal data, according to law. In labour law relations, an employee can be uniquely identified on the basis of a video record. In practice, abuse of employer’s facilities for personal use is often found. The most common is the use of an employer’s computer to view websites and to write emails to handle private affairs. The employees do so through the employer’s ban, because the device cannot be used without his consent, even after working hours or during breaks for food and relaxation. The Supreme Court of the Czech Republic²⁵ heard the case of an employee who spent almost one hundred and three inefficient working hours on a computer, he worked for the employer for only 8 working days out of a total of 21 working days and thus spent almost 13 days on non-business activities. This violated the obligation laid down in the Employer’s Rules of Procedure “not to use websites with dubious or sensitive content, on-line news sites, watching TV over the internet or listening

²³ Personal Data Protection Authority: Comment on the camera operating rules from the point of view of the Personal Data Protection Act [online]. Data Protection Authority, January 2006 [cit. 12 June 2017], https://www.uouu.com/vismo/zobraz_dok.asp?id_ktg=1103&p1=1103#kamery

²⁴ Provision of § 4 let. E) of Act No. 101/2000 Coll., providing for the Protection of Personal Data and on amendments to certain acts, processing of personal data, any operation or system of operations that the controller or processor systematically performs with personal data by automated or other means. The processing of personal data means, in particular, the collection, storage on information media, making available, modifying or altering, searching, using, transmitting, disseminating, publishing, storing, exchanging, sorting or combining.

²⁵ Judgment of the Supreme Court of the Czech Republic, sp. 21 Cdo 1771/2011 of 16 August 2012, <http://www.nsoud.cz>

to radio over the internet that may overburden the computer network and are not related to the performance of the negotiated work". The employer immediately terminated his employment. As stated by the Supreme Court, "the provision of section 316 (1), second sentence empowers employers to adequately control compliance with the prohibition to use the employer's manufacturing and work means, including computer technology and telecommunication equipment for personal needs. It belongs to the legal rule of a relatively indefinite hypothesis, which gives the court the discretion to decide in each individual case based on a broad, unlimited range of circumstances". It follows from the legal regulation that the employee uses the employer's production and working means including computer equipment or his telecommunication equipment for his own personal use but only with the consent of the employer. Because the statutory prohibition to use the employer's manufacturing and labour resources for his personal use is absolute, the employer may consent to use them to some extent. He can consent without any limitation, or consent only to a certain extent or in time, or even to a one-time use only. The way and the extent to which the employer consents to use the employer's production and labour means for their personal needs depends entirely on his own will. On the other hand, compliance with that prohibition cannot be exercised by the employer in any arbitrary manner, in terms of scope, length, thoroughness, *etc.*, since the employer is entitled to carry out the inspection only in an "appropriate manner", because the law does not specify what the "reasonable" way of control means, it leaves the court to consider the hypothesis of the legal rule and gives discretion in each individual case, from a broad, unlimited range of circumstances'. In each individual case, the court will take into account whether it was an ongoing or subsequent control, its duration, scope, whether and to what extent it restricted the employees in their activities, whether and to what extent it also interfered with the right to employee privacy, *etc.* Of course, the subject matter of a check may be only to find out if the employee has violated the statutory absolute prohibition but taking into account whether the employer has not agreed to use the employer's manufacturing and work equipment, including computer equipment and its telecommunication equipment, and to what extent for his personal use. At the same time, it is important to note that if an employee is forbidden to use the employer's property for his personal use and the employer has the right to control compliance with the prohibition, the employer must have the opportunity to carry out that control in some way and, if necessary, to obtain proof of non-compliance with that prohibition. In such a case, the Supreme Court heard the case of an employee with whom the employment relationship was terminated by a notice pursuant to section 52 (F) and (g) of the Labour Code,

for repeated infringements of the statutory obligations, which included, among other things, “during working hours an employee searched information for private purposes on the internet using a company computer and during working hours he used the company telephone for private purposes”²⁶. The Supreme Court ruled that the purpose (s) of control by the employer was not to determine the content of the employee’s telephone calls, but merely to determine whether the employee respects the prohibition to use the computer allocated and the employer’s assigned telephone service for his personal use. When monitoring an employee’s e-mail communication, it must be taken into account that an employee is not entitled to use a working e-mail for private correspondence. E-mails delivered to the company mailbox are also considered to be working e-mails. The literature has addressed the question of whether or not the employer can open the emails delivered to the company mailbox²⁷.

This issue has recently been raised by the ECHR in the case of *Barbulescu vs. Romania*²⁸. In January 2016, the judges of the Fourth Chamber of the European Court of Human Rights reached a decision that, under certain circumstances, the employer may monitor the content of his/her employee’s private communication and by doing so the employer did not interfere with the right of the employee to private life and private correspondence. This has created a great deal of interest and uncertainty as to whether this also means a change in the interpretation of employer’s right to control e-mail communications of his/her employees. The Grand Chamber, however, concluded in September 2017 that there had been a violation of private rights of a Romanian employee dismissed by the employer for the use of electronic mail for private purposes. The Grand Chamber of the European Court of Human Rights found that the Romanian courts had not ascertained whether the employee was informed by the employer that the mails were monitored and to what extent. The Romanian courts did not specify the reasons for justification of the monitoring and whether the employer could use a more moderate means of monitoring and whether an employee had been informed.

The ECHR has ruled on an infringement of Article 8, since privacy and correspondence have not been adequately protected by national courts because a fair balance between the various interests has not been ensured. The employer must

²⁶ Judgment of the Supreme Court of the Czech Republic, sp. 21 Cdo 747/2013 of 8 July 2012, <http://www.nsoud.cz>

²⁷ V. Křížan, *Ochrana súkromia zamestnanca v ére internetu (Protection of privacy of an employee in the Internet era)*, in: H. Barancová, A. Olšovská, *Súčasný stav a nové úlohy pracovného práva. (Current situation and new roles of labour law)*, Leges, Prague 2016, p. 267.

²⁸ Complaint No 61496/08, rozsudek Velkého senátu ze dne 5. 9. 2017.

inform employees that electronic communication is monitored and to what extent. For the monitoring to be carried out in accordance with Article 8, employees must know a clear nature of the monitoring and the employee must be notified in advance. In the view of the ECHR, employees are allowed to be monitored to prevent abuse of the system, but the court has specified the criteria that must be applied by national courts in deciding whether the monitoring rate is proportional and whether the employee is adequately protected (Article 121 of the judgment).

The ECHR considers that it has to be taken into account whether the employer has legitimate reasons for monitoring electronic communication, how many employees are monitoring and how many employees have access to monitoring results. It is also necessary to distinguish between monitoring the course of communication and its content. Employers should consider whether it is necessary to monitor the communication and, if necessary, draw milder consequences for the breach than the termination of employment. Employers should always consider whether the monitoring has been used for the intended purpose and whether personal data of the employee have been misused.

The ECHR in the *Barbulescu* case regarded monitoring as an interference with the rights of the employee to private life and correspondence and stated that this was a violation of Article 8 of the Convention. Even though the employer checked whether the employee was performing his/her duties and believed that the e-mail delivered was working. The control was ruled to be disproportionate by the court, since monitoring was not sufficiently notified to the employee and monitoring was carried out in a short period of time. This decision relates to its previous judgments, but it can still be seen as a breakthrough and points to a very thin line between acceptable and unacceptable monitoring.

If the employer has a reason to introduce control mechanisms, the employee must directly be informed about the extent of the check and the way it will be conducted²⁹. The law does not regulate how the employee will be informed about the control. The employer must inform the employees about the way of the control, and may also inform the employee when it takes place. However, I do not find it purposeful, because this would probably have no effect. The employer also has the ability, in order to protect property, to carry out, to some necessary extent, the control of the things that the employees bring or take away, including the search of the employees. The personal protection must be observed during the control and the search. Only a natural person of the same sex may conduct

²⁹ Provison of Section 316 (3) of Act No. 262/2006 Coll., the Labour Code.

a personal search³⁰. The control can be carried out by the employer himself or herself, through his employees or through a security agency. When carrying out the control, the employee's right to protection of personality must be observed according to the provisions of section 81 et seq., of the Civil Code.

4. Conclusion

The employer's right to monitor employees is governed by the Labour Code primarily as a law ensuring the protection of the employer's property, as well as ensuring the safety and the protection of health of employees. It is clear that even in labour relations, the employee must be provided with a reasonable degree of privacy, which is also determined by the diversity of employers' activities. The degree of protection of the employee is determined by the fact that he carries out dependent work, which is carried out in relation to the employer's superiority and subordination of the employee, on behalf of the employer, according to the instructions of the employer and the employee performs it for the employer personally. The employees also have the duty to use the means of production only to perform the entrusted work, to properly manage, guard and protect them from damage, loss, destruction or misuse and not to act contrary to the legitimate interests of the employer. It is not possible to tolerate employees using the property of an employer for private purposes without the employer's consent. It is up to the employer to control the employee's performance, working hours, the use of telecommunication equipment by employees, *etc.* The employers' excessive monitoring of employees may result in the deterioration of work conditions in the workplace and a decrease of employee performance. The employer should seek to ensure favourable working conditions and take into account the right of the employee to privacy to a reasonable degree. As Barancova says, the expanding monitoring of employees may cause work-related stress and can negatively affect their psyche³¹.

By adopting Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR), there is a tightening of the regulation on the processing of personal data. The GDPR contains "more sophisticated and more demanding

³⁰ Provision of Section 248 (2) of Act No. 262/2006 Coll., the Labour Code.

³¹ **H. Barancová**, *Monitorovanie zamestnancov a ochrana súkromného života v judikatúre európskych súdov*. (Monitoring of employees and protection of private life in the judgements of European courts), in: **H. Barancová**, *Monitorovanie zamestnancov a právo na súkromný život*. (Monitoring of Employees and Right to Private Life), Sprint dva, Bratislava 2010, p. 36.

rules for specific data and processing categories, while at the same time enforcing a much more proactive approach by administrators and processors, namely, the influence of processing of data on the protection of personal data and choosing the appropriate protection tools data³². In labour relations, application of legal regulations on the protection of personal data should also be applied in the application of the provisions of Section 316 of the Labour Code, insofar as IT staff monitoring is concerned. This, in my view, will increase the pressure on employers when monitoring employees to comply with all the GDPR obligations, such as minimizing interference with protected values and preservation of employees' rights.

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REGULACJA PRAWNA MONITORINGU PRACOWNIKÓW W MIEJSCU ZATRUDNIENIA W REPUBLICIE CZESKIEJ

(Streszczenie)

Monitorowanie pracowników przez pracodawców jest najczęściej motywowane interesem pracodawcy w zakresie ochrony jego własności, kontrolowania procedur technologicznych lub innych procedur pracy, a nawet monitorowania produktywności jego podwładnych. Obecnie coraz częściej wykorzystywane są elektroniczne środki komunikacji, co zwiększa ryzyko niewłaściwego wykorzystania danych osobowych. Prawo pracodawcy do monitorowania pracowników jest regulowane przez Kodeks pracy, ale także w relacjach z zakresu prawa pracy, pracownikowi należy zapewnić odpowiedni poziom prywatności.

Słowa kluczowe: monitorowanie pracowników; ochrona prywatności pracowników; kodeks pracy; ustawa o ochronie danych osobowych