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Estudios

TECHNOLOGY IN LABOUR RELATIONS AND THE EMPLOYER'S POWER

LA TECNOLOGÍA EN LAS RELACIONES LABORALES Y EL PODER DEL EMPLEADOR

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Abstract

The use of technology is widespread in labour relations due to the undoubted advantages offered, but, correlatively this implies an increase in the possibilities of business access to facets of the personal life of employees, which must be limited in order to avoid incurring a «virtual over-control». This article raises the assumptions, alternatives and jurisprudential solutions to this phenomenon.
Keywords: Technology; Labour relations; Private life; Labour Law.

Resumen

: El uso de la tecnología está muy extendido en las relaciones laborales debido a las indudables ventajas que ofrece, pero, correlativamente, ello implica un aumento de las posibilidades de acceso empresarial a facetas de la vida personal de los empleados, que deben ser limitadas para evitar incurrir en un «sobre-control virtual». En este artículo se plantean los supuestos, alternativas y soluciones jurisprudenciales a este fenómeno.
Palabras clave: Tecnología; relaciones laborales; vida privada; Derecho del Trabajo.

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SUMMARY

1. INTRODUCTION
2. APPROACH OF THE SUBJECT
    2.1. Monitoring of electronic communications
    2.2. Video surveillance
    2.3. Publications on social networks
    2.4. Geolocators
    2.5. Subcutaneous implantation of microchips
3. CONCLUSIONS
4. BIBLIOGRAPHY

1. INTRODUCTION

The company, understood like an integrated entity and an organized group of personal and material means, is an employer creator, which has put its effort and expectations at stake for the obtaining of some wished economic results. It's, therefore, the company´s owner responsibility to determine the personnel skills included in these organised means, that will result in the exercise of his direction and organisation's power, the orders and instructions of the employer concerning his employees don't require, in principle, any type of motivation, explanation or justification, because the employer adopts them in the exercise of his freedom of business organisation (Article 38 of Spanish Constitution). This is referred repeatedly in Spanish constitutional jurisprudence that mentions the high margin of discretionality usually accepted in the labour contract among the employer's organisational faculties[1]. Additionally, the employee should observe and fulfil all the employer's orders and instructions, attending to his authority[2], due to he has to obey the employer (Article 5 of Spanish Workers' Statute). However, neither this duty nor that power are absolute, since «the generic legal regulation and the wide faculties attributed to the company, as direct and immediate manifestation of management and control power of the labour activity that also corresponds him, is not, nevertheless, free of limits, that are mainly concentrated in the respect to the employee´s professional and economic rights»[3], apart from the fundamental rights and public freedoms that, as citizens, they hold.

And, as and evidence of this idea, the Article 20.3 stablishes that: «the employer *will be able to adopt the measures that estimate more timely of surveillance and control to verify the fulfilment by the worker of his obligations and labour duties, saving in his adoption and application the consideration been due to his human dignity and taking into account the real capacity of the workers diminished, in his case*», from which it could be inferred that the employer can use all the means at its disposal to control the work of its employees, but this statement is not true in general and, in addition, requires clarifications in the event of

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[1] See the Sentence of the Spanish Constitutional Court no. 170/2013, October the 7th; and the Sentence of the Spanish Supreme Court October 6, 2016 (Cassation no. 4053/2010).

[2] For more information, De Castro Mejuto, L. F. (2015). La prestación del trabajo (III): poder disciplinario. *Práctica de Derecho del Trabajo*. Mella Méndez [Dir.]. Delta Publicaciones. Madrid, p. 309 *et seq*.

[3] See the Sentence of the High Court of Justice of Galicia June 25, 2010 (Appeal no. 1178/2010).

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confrontation with fundamental rights. Because -what doubt fits- the use of technology implies a greater degree of penetration in the life of the employee, in the affectation of rights such as privacy, secrecy of communications, own image…[4], and constitute a practically boundless cast[5].

2. APPROACH OF THE SUBJECT

«In a labour contract, the employee puts at the disposal of the employer his work's strength, but no his person»[6]; famous appointment, remembered by someone[7], that comports a factor of reflection to evaluate the change more transcendental that has supposed the introduction of the new technologies in the employment's relation: growth about diverse and sophisticated modalities in the exercise of the business control's power; modalities that stress so much his capacity and possibilities; especially, with the massive incorporation of the electronics to the processes of good and services production[8]. This implies to consider which are the limitations and the rights related to technology that the workers have like employees of a company; because it could remember the words of the European Court of Human Rights in his known *Rotaru Case*, May 4, 2000, «any reason of principle allows to exclude the professional activities of the notion of private life»[9]; what supposes, then, as our Constitutional Court recognized, that there would also be necessary spaces of privacy in the labour[10]. From which follows the urgent need to reconcile these business powers, in particular, the surveillance, with the dignity and privacy of the worker, submitting, and this was important, the possible business controls that affect fundamental rights of the employee to greater formal and causal requirements[11], which allowed to harmonize both interests and rights[12].

The control's question by employer with regarding to his workers has to see, substantially, with corroborating that they fulfil his labour obligations. This situation has had to be taken care of by the Courts on multiple occasions, restricting the controlling capacities of the employer, protecting the rights of the employees and describing the various obstacles that power –derived from the Constitution and the statutory text- corresponds to the employer. A detailed study of the distinct situations would be infinite, but it could be described in the next five areas.

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[4] About this risk, see brilliant Munín Sánchez, L. (2015). Los poderes del empresario ante el teletrabajo, el control y sus límites]. *Trabajo a distancia y teletrabajo: estudios sobre su régimen jurídico en el derecho español y comparado*. Villalba Sánchez, A. and Mella Méndez, L., [Dir.]. Thomson – Reuters – Aranzadi. Cizur Menor, p. 107 et seq.

[5] See Tascón López, R. (2007). El lento (pero firme) proceso de decantación de los límites del poder de control empresarial en la era tecnológica. *Aranzadi Social*, 17.

[6] See Rivero, J. (1982). Les libertés publiques dans l'entreprise. *Droit Social*, 5, p. 424.

[7] Cf. Desdentado Bonete, A. y Muñoz Ruiz, A. B. (2014). Trabajo, videovigilancia y controles informáticos. Un recorrido por la jurisprudencia. *Revista General de Derecho del Trabajo y de la Seguridad Social*, 39, p. 4.

[8] See Rodríguez Escanciano, S., *Poder de Control Empresarial, Sistemas Tecnológicos y Derechos Fundamentales de los Trabajadores (2015)*. Tirant Lo Blanch. Valencia, p. 29.

[9] This same idea already was present in the *Niemietz against Germany Case*, December 16, 1992.

[10] See the Sentences of the Spanish Constitutional Court no. 170/2013, October the 7th; and no. 241/2012, December the 17th.

[11] See Sentence of High Court of Justice of Castile and Leon/Valladolid November 8, 2004 (Appeal no. 2006/2004).

[12] See Sentence of High Court of Justice of Cantabria August 26, 2004 (Appeal no. 840/2004).

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2.1. Monitoring of electronic communications

The employer's directional control that can obtain through the technology that provides to his employees, and carried to limits in at all absurd, can cause interference in the privacy of that personal life[13]. First of all, it must keep the rule that if it installs a mean of control has to be governed by the principle of the proportionality what pursues and compliant with the Directive 90/270, about visualisation screens[14]. This phenomenon at labour relation involves an exponential increase of employer's control power, what has been designated as «industrial feudalism», «visibly old-fashioned and in scarce relation with the democratic surroundings, and however reconverted and renovated [...] thanks to the ICT»[15]; virtual feudalism «in front of employee heaves, claiming the respect of his personal freedoms through the strongest guarantee; which loans the principle of supremacy of the Constitution»[16]. The Spanish Constitutional Court's posture, in its Sentences no. 170/2013, October the 7th; no. 241/2012, December the 17th; no. 96/2012, May the 7th; and no. 173/2011, November the 7th, is the next: e-mail is within the scope of the right to secrecy of communications (Article 18.3 of the Spanish Constitution) and, therefore, excluded from both the surveillance (observation) and control (verification) of the employer, with notable exceptions. And, precisely, in the cases analyzed, these concur, by stating –in the first of the aforementioned- that «there could not be a reasonable and reasonable expectation of confidentiality», because the collective agreement defined infringing the use of computer equipment of the company for purposes other than those related to the provision of work, which is recognized -implicitly- a faculty of the company to control the use of electronic mail, through an eventual monitoring, in order to verify compliance by the worker of your duties. Or, in the second, Sentence 241/2012, it was the case of an instant messaging program on the employer's computer, installed by the workers against the express prohibition of that; Once this circumstance was discovered, the workers were sanctioned; and, as it was a computer of common use and without access code, the control of its content is legitimate, because those conditions reveal an «incompatibility with personal uses [and imply] that, in this case, the pretension of secrecy it lacks constitutional coverage, due to the lack of the necessary conditions for its preservation».

There are several reviews that have elevated to this configuration, especially, under the light of the community jurisprudence expressed, firstly, in the Sentences of the European Court of Human Rights April 3, 2007, *Copland against United Kingdom case*; and July 1, 2008, *Liberty and others against United Kingdom* case, and, afterwards, remarked with one September 5, 2017, as known like *Bãrbulescu II case*, that have determined that the emails sent from the workplace and the derivative information of the personal use of Internet can be included in the concepts of «private life» and of «correspondence» used in article 8 of the European Convention on Human Rights. So, «subordinate in an unconditional way the field of the right to the secret of the communications and about privacy´s right in the context of the telematics communication context to what have the laws, the collective agreements or the instructions of the employer. With this, in practice, they carry out a deco positioning of such rights in this context, since the characteristic of fundamental rights is to serve as a limit for

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[13] Regarding this matter, you can consult *in extenso*Munín Sánchez, L. (2015). Los poderes del empresario ante el teletrabajo, el control y sus límites], cit., p. 107 *et seq*.

[14] See Izquierdo Carbonero, F. J. (2006). *El teletrabajo*. Difusión Jurídica. Madrid, p. 38.

[15] See Ojeda Avilés, A. (2010). *La deconstrucción del Derecho del Trabajo*. La Ley. Madrid, p. 429.

[16] See Valdés Dal-Ré, F. (2003). Los derechos fundamentales de la persona del trabajador entre la resistencia a su reconocimiento y la reivindicación de su ejercicio. *Relaciones Laborales*, 2, p. 76.

actions that come from both public authorities and, even with certain conditions, private persons, as in the field of labour relations»[17].

Briefly, monitoring the content and activity from the computer delivered by the company to the worker to provide their services (or the corresponding Smartphone), when there is an express prohibition, is lawful and does not violate the right to privacy, hence it is so important to specify what is the use that will be allowed and the consequences of its non-compliance, because, otherwise, the conflict will arise at the moment when it can be understood that there was a «reasonable expectation of confidentiality», derived from personal use moderate of such computing means (limit to the control that can be exercised by the employer), although it can be ruled out if the applicable agreement restricts the use -general- of computer equipment for other purposes than labour (when configured as a slight fault) , so that the employer can freely access the content of the computer and its programs. This is the traditional Spanish jurisprudential line, which has been ratified by the Sentence of the Supreme Court of February 8, 2018 (Cassation no. 1121/2015), in the so-called *Inditex case*, on the control of computer resources by the company, insisting on the need for proportionality of the control measures towards the worker , and alienating its decision with the aforementioned Sentence of the European Court of Human Rights September 5, 2017, *Bãrbulescu II case*, which revokes the initially issued by the fourth section, January 12, 2016¸ in which the possibility of greater control had been estimated. This doctrine of the Spanish Supreme Court is perfectly extrapolated to the rest of the measures that will be mentioned below and, therefore, I will focus on its different features, since the judgments of «suitability», «necessity» and «proportionality» can be resolved based on the factual framework of any business interference in privacy.

2.2. Video surveillance

Another employer's power is the use of cameras of surveillance or, also, drone; nevertheless, it is considered that this forecast does not legitimize its installation and use by itself, that is, that it performs a treatment of the images in the work center, without informing the workers; because the essential thing is that said measure has been expressly communicated to the worker, in such a way that it becomes part of the employment relationship and the treatment of the data obtained is necessary for its proper development[18]. In particular, the doctrine[19] understands that its use is valid, when the worker knows the existence of these video cameras in the workplace, despite the fact that he has not been expressly informed about its use, destination or location, because it integrates a measure reasonable and proportionate to the object sought by the employer, which is to find out the commission of a reported work fault, because «to check whether a restrictive measure of a fundamental right overcomes the proportionality trial, it is necessary to verify whether it meets the following three requirements or conditions: if such measure is capable of achieving the proposed objective (suitability judgment); if, in addition, it is necessary, in the sense that

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[17] Cf. Carrasco Durán, M. (2014). El Tribunal Constitucional y el uso del correo electrónico y los programas de mensajería en la empresa. *Aranzadi Social*, 9.

[18] See Álvarez Hernando, J. (2015). Relaciones laborales y protección de datos. *Practicum Protección de Datos 2015*. VV. AA. *Aranzadi Social*.

[19] See the Sentences of Spanish Supreme Court July 7, 2016 (Cassation no. 3233/2014); January 31, 2017 (Cassation no. 331/2015), February 1, 2017 (Cassation no. 3262/15) and February 2, 2017 (Cassation no. 554/2016).

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there is no other more moderate measure for the achievement of such a purpose with equal efficacy (necessity judgment); and, finally, if it is weighted or balanced, as it derives from it more benefits or advantages for the general interest than damages on other assets or values in conflict (proportionality trial in the strict sense)». In this same sense, the Sentence of the Spanish Constitutional Court no. 39/2016, April the 8th, explains that «the employer does not need the express consent of the worker for the treatment of the images that have been obtained through the cameras installed in the company for the purpose of safety or labour control. Consent is understood implicit in the acceptance of the contract itself, which implies recognition of the employer's management power [...] it demands the consequent weighting in each case of the constitutional rights and property in conflict; namely, on the one hand, the right to protection of worker data and, on the other, the power of business management essential for the smooth running of the productive organization». By virtue of this constitutional doctrine, it has been considered valid to install a camera in a restricted room[20], to find out who leaked sensitive information about the company to the press, since it contained the file where they were stored; camcorder that remained hidden and unpublished for all workers, as it was a justified, appropriate, necessary and balanced measure.

In the same line, the Sentence of the European Court of Human Rights October 17, 2019, *López Ribalda II case*, justifies the recording with hidden cameras in the workplace by the duly accredited existence of reasonable suspicions of serious irregularities. This means the European Court has rectified its previous criteria regarding the use of temporary hidden video surveillance cameras by companies[21]. This new criterion has been accepted immediately by Spanish jurisprudence, in multiple pronouncements[22], in which the video surveillance provided by the employer to justify the dismissal has been considered valid, despite being hidden cameras.

2.3. Publications on social networks

The freedom of expression of workers in social networks is recognized, but is subject to the same limits as any other manifestation of ideas, which, moreover, is public knowledge, because, although that freedom allows the externalization of experiences, ideas, thoughts, reflections, etc., does not enable you to belittle, insult, humiliate or vex any other, among which is -naturally- your employer and your co-workers. In addition to this variety of labour violations, serious and culpable, are two other problems that occur more frequently in practice: on the one hand, the information reflected in a social network can serve as a way to control false situations of disability temporary; and, on the other hand, the social transcendence that can be attributed to certain opinions or reflections of a personal nature, included by the worker in his own personal profile of a social network, where it will be discussed whether or not they have been carried out with offensive or contemptuous spirit. And that, even, they could end up in the image that the company could have achieved in its market between consumers and users[23].

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[20] See the Sentence of High Court of Justice of Galicia January 30, 2017 (Appeal no. 4025/2016).

[21] On its impact, see Valdés Dal-Ré, F. (2020). La sentencia de López Ribalda II: más sombras que luces. *Derecho de las relaciones laborales*, 5, pp. 655-656; and Goñi Sein, J. L. (2019). Vigilancia empresarial y protección de datos: doctrina jurisprudencial. *Revista del Ministerio de Empleo y Seguridad Social*, 143, pp. 191-216.

[22] Among the latest see the Sentences of Spanish Supreme Court March 30, 2022 (Cassation no. 1288/2020); July 22, 2022 (Cassation no. 701/2021); and July 26, 2022 (Cassation no. 1675/2021).

Be that as it may, all the cases analyzed have a common element: the supervision of the information reflected in the social network is used by the company as a way of proving that the worker has transgressed his work obligations, undermining contractual good faith and causing the company to lose the trust that until then had deposited in the worker. What varies is the type of non-compliance imputed to the operator, which, to justify a dismissal, must be serious and culpable; which is what imposes the gradualist theory of sanctions (principles of individualization and proportionality)[24]. And this, without forgetting how through social networks you can get to know personal data of employees[25], Because -we must not forget- the information coming from the so-called social networks is usually constituted by the sum of the action of the users and, also, the extremes revealed by different agents and in different acts. On the one hand, it is undoubtedly the result of the user's own action, who voluntarily, at the time of registration in the forum in question, will provide, both for its initial configuration and for changes in its profile, identifying data, personal characteristics, social circumstances, details of their daily life, academic data, professionals, preferences, hobbies, etc. On the other hand, all this initial information is completed -and expanded exponentially- as a result of the interaction with other subjects, either accepting the participation in groups, markings of follow-ups or expressions of taste on certain publications; or, even, something simpler: the number and class of friends, who integrate their contacts; because this will make it possible to draw conclusions about the personality of the individual, their social success, their relational or motivational skills, their leadership skills, their character, healthy habits or not, etc.[26]

2.4. Geolocators

The use of technology can also refer to the global positioning system (GPS), a technological mechanism that allows the employer to track and locate continuously, in addition to the automated processing of data obtained from the devices placed; has already been done through a physical device installed in some element that carries the worker (uniform, vehicle, and so it is through an application installed on the Smartphone or Tablet. This location capability allows to organize with greater efficiency the routes, deliveries, and, in general, the control of the work and the use that has been made of the vehicle outside the work center (starting hours, stops, kilometers traveled, amount of fuel consumed, etc.)[27]. In any case, these advantages do not alter the controlling and restrictive nature of the worker's freedom, given that the data obtained are personal and, together with other work-related ones, others are provided; and, in spite of the fact that in a theoretical level and avoiding extreme assumptions, which lead to the violation of the right to privacy[28], it is lawful for the

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[23] See Selma Penalva, A. (2014). La información reflejada en las redes sociales y su valor como prueba en el proceso laboral. Análisis de los últimos criterios jurisprudenciales. *Revista General de Derecho del Trabajo y de la Seguridad Social*, 39, p. 359.

[24] This doctrine derives of the Sentences of the Spanish Supreme Court July 1, 1977 and July 26, 1977; and it could see reflected in the Sentences of High Court of Justice of Galicia May 12, 2016 (Appeal no. 690/2016) and October 21, 2015 (Appeal no. 2674/2015).

[25] See Llorens Espada, J. (2014). El uso de Facebook en los procesos de selección de personal y la protección de los derechos de los candidatos. *Revista de Derecho Social*, 68, p. 3.

[26] Cf. Cardona Rubert, M. B. y Cordeiro Gordillo, V. (2015). Redes sociales y derechos colectivos. *Revista Direito e Desenvolvimento*, 11, pp. 136-140.

[27] See Fernández García, A. (2010). Sistemas de geolocalización como medio de control del trabajador: un análisis jurisprudencial. *Aranzadi Social*, 17.

[28] This was analysed in the Sentence of Spanish Supreme Court June 21, 2012 (Cassation no. 2194/2011).

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employer to use this system to verify compliance with labour obligations., but circumscribing strictly to that end, then, if the situation were different, there would be an interference in the private sphere of the worker's person due to the improper use of the data obtained. Hence, the court rulings handed down in this area indicate that, if the vehicle can be used freely after the end of the working day, it must have a system that allows it to be switched off by the user[29], in order to prevent it from being collected. Personal data that affects the privacy of the driving employee; others emphasize the necessary knowledge of the employee of said facility[30], although this has not always been required[31] and in any case; and, finally, there are those who carry their hands in the communication to the Data Protection Agency[32] or in the use of proportionality[33]. As a curiosity, the use of geolocators has been considered a trait of work, among many others, by the Spanish Work and Social Security Inspection to attribute the status of employees to the riders of the Spanish subsidiary of *Deliveroo*, in a decision that comes to contradict the award issued by the Central Committee of Arbitration of the United Kingdom November 14, 2017, on the same question, for which it was estimated in that country that they are autonomous[34].

2.5. Subcutaneous implantation of microchips

Another step in business control would be the installation of subcutaneous microchips - similar to those used with our pets - and, although it is true that this practice must have the consent of the worker and I believe that there are great doubts about its legality, it could be asked what It would happen to implement this method, which comes to replace the use of cards, the aforementioned bracelet or other means of anthropometric recognition (facial, fingerprints, iris, ...) not only to cross access to certain rooms, but also to access the computer equipment or to pay the amount of the company's cafeteria. What seems to be science fiction has been implanted -as it was beforehand- since 2017 in a Belgian company and in another American one, with signs of its exponential expansion[35]. It is evident that this measure is absolutely impossible - in my opinion - to apply without the consent - not only the knowledge - of the affected worker, since it affects the right to privacy, which will be affected. as well as physical integrity (Article 15 of the Spanish Constitution), apart from the problems arising from the installation in the body of a foreign element or those derived from its possible hacking or, to be more exact, biohacking. It is affirmed by the implementing companies that the privacy of the carriers will not be compromised, since the data stored in the device will be encrypted and it will be impossible to track them, that is, to be tracked by GPS, in such a way that its functionality would be similar to a simple corporate access card.

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[29] For all, Sentence of High Court of Justice of Asturias December 27, 2017 (Appeal no. 2241/2017).

[30] See Sentence of High Court of Justice of Madrid May 10, 2011 (Appeal no. 644/2011)

[31] See the Sentence of High Court of Justice of Catalonia of 5 March 2012 (Appeal no. 5194/2011).

[32] See the Sentence of High Court of Justice of the Valencian Community May 2, 2017 (Appeal no. 3689/2016).

[33] See the Sentence of High Court of Justice of Andalusia/Seville July 17, 2017 (Appeal no. 2776/2016).

[34] Cf. De La Cera Guerrero, M. E. (2018). Análisis de las primeras resoluciones dictadas en Reino Unido y España en el «caso Deliveroo». *Actualidad Jurídica Aranzadi*, 937.

[35] A Belgian company of software, *NewFusion*, has implanted a chip to varied of his employees [http://www.elmundo.es/tecnologia/2017/02/18/58a7f828e5fdea8f078b4577.html –consulted on 3 March 2021-]; and another American, the *Three Square Market*, has decided to implant in fifty voluntary employees a microchip that will substitute the cards of identification [http://www.elnuevoherald.com/noticias/tecnologia/article163505873.html –consulted on same data-].

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3. CONCLUSIONS

One of the first conclusions that can be drawn from the incidence of technology in labour relations is that Spanish labour legislation has proved incapable of adapting to industry 4.0 and the Courts have to face the digital revolution and its influence on labour relations. Anchored in its classic *Fordist* vision, the Workers' Statute continues to refer to the lockers' control (Article 18), and the bulletin board (Article 81; while the rules on business control remain focused on health, an important issue, but certainly far from the increasingly frequent problems in the Spanish social reality[36].

From the business perspective, I see three underlying questions: the *first one*, to determine if ICT (Information and Communication Technologies)[37] have been made available to the employee by the employer, in which case and after a first stage in which it was required that the employer warned of the internal rules and of the restriction of the use that supposed, given the property of the employer on the Tablet, PC or Smartphone or electronic mail account; after this first stage –it is repeated-, the Spanish Constitutional Court has established certain qualifications regarding the scope of the protection of the right to privacy recognized in Article 18.1 of the Spanish Constitution (*a reasonable expectation of privacy*). The *second one* that was alluded to is harder, because it has to do with the employee's use of the internet or social networks through their own device at times and at work. And, in this regard, a basic idea should be proclaimed: the right to the innocuous use of ICT. Because its employment for personal ends, even playful, does not have to suppose a decrease not only in the performance of the worker, but even of the same diligence with which he must satisfy his labour duties[38]; there is no impediment to maintain that the computer devices, activity in the networks or chat in the rest times or in the micropauses physiologically necessary in the work activity[39]. Our Constitutional Court has admitted the existence of these periods of pause, disconnection or interruption, pointing out the need to submit to the proportional test those means of permanent control that could also include these minimum personal lapses or communications between workers or clients[40]. And, the *last question* to which I referred, has to do about the constant overcoming of the means of control of the employer, restricting freedoms and rights of workers, which has passed from the already successful signing to the implantation of a subcutaneous chip, passing by a system of cameras and devices that receive signals and data, which are reminiscent of the *Panopticon's* organizational system, understood as the ideal and perfect view, because everything is seen, unseen and whose origin lies in the penitentiary field[41]; dystopian ideal to which some work centers are going to approach, to implement the measures they have been proclaiming, because the control over the movements, activities,

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[36] See Calvo Gallego, F. J. (2012). TIC y poder de control empresarial: reglas internas de utilización y otras cuestiones relativas al uso de Facebook y redes sociales. *Aranzadi Social*, 71.

[37] Cf. Belloch Ortí, C. (2006). Las Tecnologías de la información y la comunicación (TIC). *Universidad de Valencia*. He defines them like «the group of technologies that allow the access, production, treatment and communication of information presented in different codes (text, image, sound...)» [recovered at https://www.uv.es/bellochc/pdf/pwtic1.Pdf [consulted on 17th March 2018].

[38] On this appearance, it keeps on being classical the work of Barreiro González, G. (1981). *Diligencia y negligencia en el cumplimiento. Estudio sobre la prestación debida por el trabajador*. Centro de Estudios Constitucionales. Madrid.

[39] Cf. Goñi Sein, J. L. (1988). *El respeto a la esfera privada del trabajador. Un estudio sobre los límites del poder de control empresarial*. Civitas. Madrid, p. 144, said that it is necessary to admit «the moment of distraction and, even, inactivity that are present in any work [...] because the same production must adapt to these limits, which are the application's limits of the human work».

[40] See Sentence of the Spanish Constitutional Court no. 98/2000, April the 10th.

[41] See Bentham, J (1979). *El Panóptico*. La Piqueta. Madrid.

conversations, etc., of each employee, in every place, at all times, goes to be reflected and recorded by the system implemented by your employer. What is translated in a degradation of the worker's person, reification and the return to feudalism, now virtual.

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