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This Factsheet does not bind the Court and is not exhaustive

Surveillance at workplace

Article 8 (right to respect for private and family life, home and correspondence) of the European Convention on Human Rights provides that:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

In order to determine whether the interference by the authorities with the applicants' private life or correspondence was necessary in a democratic society and a fair balance was struck between the different interests involved, the European Court of Human Rights examines whether the interference was in accordance with the law, pursued a legitimate aim or aims and was proportionate to the aim(s) pursued.

Monitoring of telephone and internet use

Halford v. the United Kingdom

25 June 1997 (judgment)

The applicant, who was the highest-ranking female police officer in the United Kingdom, brought discrimination proceedings after being denied promotion to the rank of Deputy Chief Constable over a period of seven years. Before the European Court of Human Rights she alleged in particular that her office and home telephone calls had been intercepted with a view to obtaining information to use against her in the course of the proceedings.

The European Court of Human Rights held that there had been a **violation of Article 8** of the European Convention on Human Rights as regards the interception of calls made on the applicant's office telephones. It first found that the conversations held by the applicant on her office telephones fell within the scope of the notions of "private life" and "correspondence" and that Article 8 of the Convention was therefore applicable to this part of the complaint. The Court further noted that there was a reasonable likelihood that calls made by the applicant from her office were intercepted by the police with the primary aim of gathering material to assist in the defence of the sex-discrimination proceedings brought against them. This interception constituted an interference by a public authority with the exercise of the applicant's right to respect for her private life and correspondence. Lastly, the Court observed that the Interception of Communications Act 1985 did not apply to internal communications systems operated by public authorities and that there was no other provision in domestic law to regulate interceptions of telephone calls made on such systems. It could not, therefore, be said that the interference was "in accordance with the law", since the domestic law had not provided adequate protection to the applicant against interferences by the police with her right to respect for her private life and correspondence. In this case the Court also

held that there been a **violation of Article 13** (right to an effective remedy) of the Convention, finding that the applicant had bee unable to seek relief at national level in relation to her complaint concerning her office telephones On the other hand, the Court held that there had been **no violation of Article 8** and **no violation of Article 13** of the Convention as regards the calls made from the applicant's home, since it did in particular not find it established that there had been interference regarding those communications.

Copland v. the United Kingdom

3 April 2007 (judgment)

The applicant was employed by Carmarthenshire College, a statutory body administered by the State. In 1995 she became the personal assistant to the College Principal and was required to work closely with the newly-appointed Deputy Principal. Before the Court, she complained that, during her employment at the College, her telephone, e-mail and internet usage had been monitored at the Deputy Principal's instigation.

The Court held that there had been a **violation of Article 8** of the Convention. It recalled in particular that, according to its case-law, telephone calls from business premises are *prima facie* covered by the notions of "private life" and "correspondence". It followed logically that e-mails sent from work should be similarly protected, as should information derived from the monitoring of personal internet usage. Concerning the applicant, she had however been given no warning that her calls would be liable to monitoring and therefore had a reasonable expectation as to the privacy of calls made from her work telephone. The same expectation ought to apply to her e-mail and internet usage. The Court also noted that the mere fact that the data may have been legitimately obtained by the college, in the form of telephone bills, was no bar to finding an interference. Nor was it relevant that it had not been disclosed to third parties or used against the applicant in disciplinary or other proceedings. The Court therefore found that the collection and storage of personal information relating to the applicant's use of the telephone, e-mail and internet, without her knowledge, had amounted to an interference with her right to respect for her private life and correspondence. In the present case, while leaving open the question whether the monitoring of an employee's use of a telephone, e-mail or internet at the place of work might be considered "necessary in a democratic society" in certain situations in pursuit of a legitimate aim, the Court concluded that, in the absence of any domestic law regulating monitoring at the material time, the interference was not "in accordance with the law". Lastly, having regard to its decision on Article 8 of the Convention, the Court did **not** consider it **necessary** in this case **to examine** the applicant's complaint also **under Article 13** (right to an effective remedy) of the Convention.

Bărbulescu v. Romania

5 September 2017 (Grand Chamber – judgment)

This case concerned the decision of a private company to dismiss an employee – the applicant – after monitoring his electronic communications and accessing their contents. The applicant complained that his employer's decision was based on a breach of his privacy and that the domestic courts had failed to protect his right to respect for his private life and correspondence.

The Grand Chamber held, by eleven votes to six, that there had been a **violation of Article 8** of the Convention, finding that the Romanian authorities had not adequately protected the applicant's right to respect for his private life and correspondence. They had consequently failed to strike a fair balance between the interests at stake. In particular, the national courts had failed to determine whether the applicant had received prior notice from his employer of the possibility that his communications might be monitored; nor had they had regard either to the fact that he had not been informed of the nature or the extent of the monitoring, or the degree of intrusion into his private life and correspondence. In addition, the national courts had failed to determine, firstly, the specific reasons justifying the introduction of the monitoring measures; secondly,

whether the employer could have used measures entailing less intrusion into the applicant's private life and correspondence; and thirdly, whether the communications might have been accessed without his knowledge.

Opening of personal files stored on a professional computer

Libert v. France

22 February 2018 (judgment[1])

This case concerned the dismissal of an SNCF (French national railway company) employee after the seizure of his work computer had revealed the storage of pornographic files and forged certificates drawn up for third persons. The applicant complained in particular that his employer had opened, in his absence, personal files stored on the hard drive of his work computer.

The Court held that there had been **no violation of Article 8** of the Convention, finding that in the present case the French authorities had not overstepped the margin of appreciation available to them. The Court noted in particular that the consultation of the files by the applicant's employer had pursed a legitimate aim of protecting the rights of employers, who might legitimately wish to ensure that their employees were using the computer facilities which they had placed at their disposal in line with their contractual obligations and the applicable regulations. The Court also observed that French law comprised a privacy protection mechanism allowing employers to open professional files, although they could not surreptitiously open files identified as being personal. They could only open the latter type of files in the employee's presence. The domestic courts had ruled that the said mechanism would not have prevented the employer from opening the files at issue since they had not been duly identified as being private. Lastly, the Court considered that the domestic courts had properly assessed the applicant's allegation of a violation of his right to respect for his private life, and that those courts' decisions had been based on relevant and sufficient grounds.

Video surveillance

Köpke v. Germany

5 October 2010 (decision on the admissibility)

The applicant, a supermarket cashier, was dismissed without notice for theft, following a covert video surveillance operation carried out by her employer with the help of a private detective agency. She unsuccessfully challenged her dismissal before the labour courts. Her constitutional complaint was likewise dismissed.

The Court declared **inadmissible**, as being manifestly ill-founded, the applicant's complaint under Article 8 of the Convention, finding that the domestic authorities had struck a fair balance between the employee's right to respect for her private life, her employer's interest in the protection of its property rights and the public interest in the proper administration of justice. The Court noted in particular that the measure complained of had been limited in time (two weeks) and had only covered the area surrounding the cash desk and accessible to the public. The visual data obtained had been processed by a limited number of persons working for the detective agency and by staff members of the employer. They had been used only in connection with the termination of her employment and the proceedings before the labour courts. It therefore concluded that the interference with the applicant's private life had been restricted to what had been necessary to achieve the aims pursued by the video surveillance. The Court observed, however, in this case that the competing interests concerned might well be given a different weight in the future, having regard to the

[1]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

extent to which intrusions into private life were made possible by new, more and more sophisticated technologies.

Antović and Mirković v. Montenegro

28 November 2017

This case concerned an invasion of privacy complaint by two professors at the University of Montenegro's School of Mathematics after video surveillance had been installed in areas where they taught. They stated that they had had no effective control over the information collected and that the surveillance had been unlawful. The domestic courts rejected a compensation claim however, finding that the question of private life had not been at issue as the auditoriums where the applicants taught were public areas.

The Court held that there had been a **violation of Article 8** of the Convention, finding that the camera surveillance had not been in accordance with the law. It first rejected the Government's argument that the case was inadmissible because no privacy issue had been at stake as the area under surveillance had been a public, working area. In this regard the Court noted in particular that it had previously found that private life might include professional activities and considered that was also the case with the applicants. Article 8 was therefore applicable. On the merits of the case, the Court then found that the camera surveillance had amounted to an interference with the applicants' right to privacy and that the evidence showed that that surveillance had violated the provisions of domestic law. Indeed, the domestic courts had never even considered any legal justification for the surveillance because they had decided from the outset that there had been no invasion of privacy.

Applications pending before the Grand Chamber

López Ribalda and Others v. Spain

9 January 2018 – Case referred to the Grand Chamber in May 2018

This case concerns the covert video surveillance of a Spanish supermarket chain's employees after suspicions of theft had arisen. The applicants were dismissed mainly on the basis of the video material, which they alleged had been obtained by breaching their right to privacy. The Spanish courts accepted the recordings in evidence and upheld the dismissal decisions.

In its Chamber judgment, the Court held that there had been a **violation of Article 8** of the Convention, finding that the Spanish courts had failed to strike a fair balance between the rights involved, namey the applicants' right to privacy and the employer's property rights. The Chamber noted in particular that under Spanish data protection legislation the applicants should have been informed that they were under surveillance, but they had not been. The employer's rights could have been safeguarded by other means and it could have provided the applicants at the least with general information about the surveillance. The Chamber held, however, that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention. It found that the proceedings as whole had been fair because the video material was not the only evidence the domestic courts had relied on when upholding the dismissal decisions and the applicants had been able to challenge the recordings in court.

On 28 May 2018 the Grand Chamber Panel accepted the Government's request that the case be referred to the Grand Chamber.

Further reading

See in particular:

- **"Personal data protection"**, factsheet prepared by the Court's Press Unit
- **Handbook on European Data Protection Law**, European Union Agency for Fundamental Rights / Council of Europe, 2014
- Council of Europe **web page** on data protection

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