

XVIIth Meeting of European Labour Court Judges

12 June 2009

**Grand Hotel Union
Miklošičeva ulica, 3
Ljubljana, Slovenia**

***Questionnaire on
Privacy in the workplace***

**General Reporter:
Professor Alan C. Neal,
University of Warwick
Judge,
Employment Tribunal, UK**

Part 1. The regulatory context

1. Does your legal system possess any general definition of “privacy”?
 - If so, please indicate the content and source of that definition. If not, how have notions of “privacy” been approached in your country conceptually, in academic writings, or as matters of socio-legal policy?
2. Does your country have a Constitution, and does this make any provision in relation to “privacy” for citizens (whether at work or otherwise)?
3. Does your country adhere to International Instruments which contain provisions relating to “privacy” (eg. at the level of the Council of Europe, etc.)?
 - If so, please indicate which instruments and when your country signed up to, or ratified, each of those instruments.
4. As a general matter, how are norms established at the international level transposed into protections or rights at the domestic level for citizens in your country?
 - Please illustrate this by reference to any International Instruments mentioned in relation to Q.3.
5. Are public sector workers/officials in your country subject to a different regime from private sector staff in relation to rules on “privacy”?
 - If so, please indicate what the differences are, and whether there can be said to be broad equivalence between the different regimes.
6. Are any groups of workers (other than public sector workers/officials) treated differently from the “normal model” in relation to rules on “privacy”?

7. Please describe briefly your national framework of rules dealing with issues of “privacy”. Where these are contained in legislation or administrative regulations, please indicate the sources *[and, if possible, please attach a copy/version of the relevant provisions]*.

Part 2: The State and the employer

8. Please outline the areas in which the State authorities in your country are entitled to obtain personal information from an employer about a member of its workforce.
- In particular, please indicate whether the State authorities possess such powers in relation to nationality or national origins; residence status; work permit status; previous employment records; criminal records; tax status; family/marital status; medical records, health and/or disability-related material; bank account information (eg. for payment of wages); trade union membership.
9. Please indicate whether the State authorities in your country are entitled, under any circumstances, to implement surveillance of a workplace (electronic, video, visual observation, etc.) for the purpose of obtaining personal information about any member of the workforce?
- In particular, please indicate whether the State authorities possess any special powers of this kind in the context of measures intended for “combating terrorism” or in relation to investigation of serious criminal activities (eg. drug dealing, “money laundering”, etc.).

Part 3. The employer and the worker

10. Does a worker in your country enjoy any form of “right to privacy”?
- If so, what form or forms does this right take? How is that right reflected in the legal system of your country?
11. To what extent (if at all) is any “right to privacy” for a worker more limited **when that person is at work** than any “general right to privacy” enjoyed by citizens in general?
12. Under what conditions (if at all) is an employer in your country entitled **to obtain** (eg. by way of questions contained in job application forms) personal information about a member of its workforce?
- In particular, please indicate the position in relation to the following specific areas (and please add information about any other matters which are of particular significance in your country):
 - information about the address, telephone contact numbers, etc. of the worker
 - information about the marital status of the worker
 - information about the health and medical condition of the worker (including, for example, details of the worker’s personal doctor)
 - information about the sexual orientation of the worker
 - information about the religion of the worker
 - information about the political affiliation or activities of the worker

- information about the tax (fiscal) affairs of the worker
 - credit information about the worker
 - court information (eg. for enforcement of court orders by way of deductions from salary – “attachment of earnings”)
 - information about any criminal convictions which the worker may have
13. Under what conditions (if at all) is an employer in your country entitled **to retain** (whether in the form of personal files, or electronically) personal information about a member of its workforce?
- In particular, please indicate the position in relation to the specific areas mentioned in Q.12 (and please add information about any other matters which are of particular significance in your country).
 - Is an employer in your country obliged to tell the worker that it is holding personal information about that worker and/or to make any such information available to the worker for inspection (eg. to ensure the accuracy of the information)?
 - Are there any provisions in your country which require the employer to handle such information in a particular way?
 - For example, is the employer required to register the fact that it holds such information with a public official (a “data protection commissioner” or the like)?
 - Does the employer personally/physically have to retain such information under its control at the workplace, or can it employ specialist companies to hold and manage any such data?
 - Is the employer required to destroy such information after a certain period of time?
 - Are there provisions in your country which regulate the freedom of the employer to disclose or pass such information to third parties (including to the public authorities)?
14. In addition to the situations mentioned in Q.12 and Q.13, are there any circumstances under which an employer in your country is entitled to obtain (or to demand) medical details about a member of its workforce?
- In particular, please indicate whether there are any situations in which an employer is obliged to obtain information about the health of the worker (eg. before permitting that worker to perform tasks at heights, or where there may be exposure to dangerous substances or radiation during the course of performing the job).
 - Is there any procedure laid down for an employer in your country to obtain the formal consent of a worker to accessing such personal medical information?
 - Is an employer in your country entitled to ask specific questions about whether a member of its workforce is “disabled”? – If so, what are the consequences if the worker refuses/fails/chooses not to disclose such information?
 - Can an employer in your country require a worker to submit to a medical examination, and subsequently have access to the results of that medical examination (eg. where the employer is considering dismissing the worker on grounds such as

“capacity”, or “fitness to do the job”, or because of a high level of absences from work for medical reasons)?

- Is an employer in your country entitled to make use of (and act on the basis of information obtained as a result of) techniques such as “psychological testing” or “genetic testing”?
15. Is an employer in your country entitled to implement any forms of surveillance of workers at the workplace?
- In particular, please indicate whether there are any situations in which an employer is entitled to make use of the following:
 - CCTV (video surveillance)
 - Monitoring and inspection of web-browsing by the worker
 - “Keystroke monitoring” of workers performing computerised tasks
 - Monitoring and inspection of a worker’s electronic communications (eMail, social networking websites, etc.)
 - Monitoring and inspection of a worker’s traditional communications (post, telephone calls, etc.)
16. Are there any circumstances where an employer in your country may be entitled to conduct (eg. by security staff belonging to the enterprise) a physical (possibly including intimate) body search of a member of its workforce?
- What would be the consequences if the worker refused to submit to such a search?
 - What would be the consequences if an employer carried out such a search without the consent of the worker?
17. Is an employer in your country subject to any recognised “duty of confidentiality” in relation to members of its workforce and/or others?
- If so, what is the extent of any such duty, what form or forms does this duty take, and how is that duty reflected in the legal system of your country?
18. Under what circumstances can an employer in your country justify breaching the “privacy” of a member of its workforce or any “duty of confidentiality” owed to a worker in its employment?
- In particular, please indicate how this might be the case in relation to:
 - the employer’s business interests (eg. protection of trade secrets)
 - supervision of security at the workplace
 - prevention of criminal activity (drugs abuse, etc.)
 - when required to act under instructions from the public authorities (eg. as part of a police investigation)
19. Is it possible for an employer in your country to justify intrusions into the privacy of members of its workforce by giving clear notice that particular measures are in use (eg. signs stating that the workplace is subject to CCTV surveillance)?

20. Is it possible for an employer in your country to include contractual provisions in the terms of the employment relationship which effectively permit the employer to breach the privacy of a member of its workforce?
21. Are there any special rules in your country concerning “personal” files created by a worker on a computer belonging to the employer at the workplace?
 - Is there any guidance in relation to who “owns” any rights in relation to such “personal” files?

Part 4. Miscellaneous procedural and other matters

22. Please provide a brief overview of the mechanisms in place in your country to deal with the regulation of “privacy” as between employers and workers.
23. Do issues of “privacy” arise before the Labour Courts/Tribunals in your country, and, if so, what form do these tend to take?
24. Do the procedures of the Labour Courts/Tribunals in your country make provision for private/secret hearings in particular circumstances:
 - In particular, please indicate whether this might be the case in relation to:
 - national security
 - cases involving disability or medical evidence of an intimate or embarrassing nature
 - cases where allegations are made that criminal acts been committed by a party or witness
 - cases where allegations are made of sexual or other abuse, and/or where the evidence may involve disclosure of intimate sexual or other acts by a party or witness
25. Are there any provisions in your country which enable particular proceedings in the Labour Courts/Tribunals not to be disclosed in the press and/or not to be available to the general public as part of official records of judicial proceedings?
 - If so, please indicate under what circumstances this might arise, and whether there is any special form of appellate or supervisory jurisdiction in relation to exercise of any such powers.