

XVIII meeting of European Labour Court Judges

Privacy at the Workplace

General Reporter: Professor Alan C. Neal (United Kingdom)

Privacy at the Workplace



Professor Alan C. Neal

- Choice of subject-matter
- Design of Questionnaire
- National Responses received
- Focus for presentation
- Issues for discussion

Privacy at the Workplace: The Regulatory Context

Privacy at the Workplace

The Regulatory Context

In search of a definitional framework

The need for a general conceptual framework when considering “privacy” at the workplace

The need for basic definitions:
“privacy”, “confidentiality”, “secrecy”,
“freedom of information”, “private life”,
“personal data”, *etc.*

The significance of international “human rights” instruments and their frames of reference

Privacy at the Workplace

The Regulatory Context

UN International Covenant on Civil & Political Rights Article 17



- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.**
- 2. Everyone has the right to the protection of the law against such interference or attacks.**

Privacy at the Workplace

The Regulatory Context

Council of Europe
ECHR 1950
Article 8



RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is 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.

Privacy at the Workplace

The Regulatory Context

**EU Instruments:
The 2007 Charter
of Fundamental
Rights, Article 7**



RESPECT FOR PRIVATE AND FAMILY LIFE

**Everyone has the right to respect for his
or her private and family life, home and
communications.**

Privacy at the Workplace

The Regulatory Context

**EU Instruments:
The 2007 Charter
of Fundamental
Rights, Article 8**



PROTECTION OF PERSONAL DATA

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Privacy at the Workplace

The Regulatory Context

EU Instruments



- Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector
- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector

The Regulatory Context

The 1981 Council of Europe Convention



COUNCIL OF EUROPE

Convention for the Protection of
Individuals with regard to Automatic
Processing of Personal Data

Privacy at the Workplace

The Regulatory Context

Case-Law of the ECHR on Article 8 of the 1950 Convention



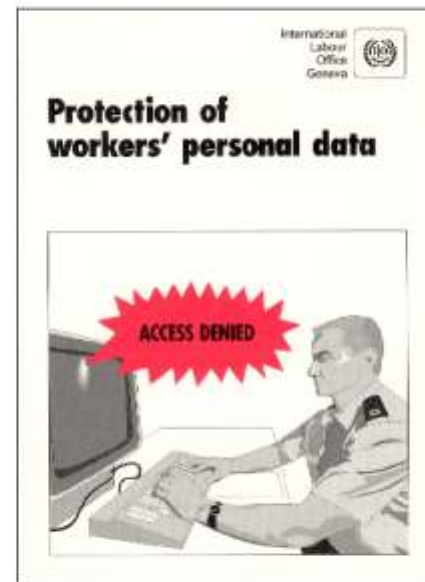
The guiding role of “key” Strasbourg Court cases such as:

- Halford v. The United Kingdom (1997)
- Amann v. Switzerland (2000)
- P.G. & J.H. v. The United Kingdom (2001)
- Copland v. The United Kingdom (2007)

Privacy at the Workplace

The Regulatory Context

“Soft Law” Guidance: The 1997 ILO Code of Practice



Privacy at the Workplace: The State and the Employer

Privacy at the Workplace

The State and the Employer

- The State as employer: The “Public Sector” / “Private Sector” divide
- Groups of persons in the world of work who are dealt with outside the “normal” arrangements
- To what extent do issues in this field truly belong to the sphere of “Labour Law”?

Privacy at the Workplace

The State and the Employer

- Powers for the State to obtain information through the medium of the employer
- Regulatory techniques to ensure compliance with (in particular) the ECHR requirements where the State seeks to derogate from Convention provisions

Privacy at the Workplace

The State and the Employer

- State powers to undertake surveillance activity (in various guises)
- Application of such powers in relation to persons at work
- Approaches to a “right to privacy” for persons at work

Privacy at the Workplace: The Employer and the Worker

Privacy at the Workplace

The Employer and the Worker

- Restricting the freedom of the employer in relation to matters affecting the privacy of the worker through mandatory State-imposed regulation
- Permitting the employer and the worker to regulate the scope of privacy through contractual arrangements
- Providing for intrusion into the privacy of workers by way of collective bargaining and collective agreements, or through other collective mechanisms

Privacy at the Workplace

The Employer and the Worker

- Limits to the scope of personal data which may be collected by the employer
- Regulation of personal data use and processing while in the possession of the employer
- Restricting the extent to which personal data may be passed by the employer to third-parties
- Safeguards to enable workers to evaluate and ensure the accuracy of data

Privacy at the Workplace

The Employer and the Worker

- Regulating the scope of employer powers to undertake surveillance activity (in various guises)
- Approaches to a “right to privacy” for persons at work
- Techniques for penalising employers who contravene provisions designed to safeguard the privacy of workers

Privacy at the Workplace

The Employer and the Worker

- Privacy issues in the context of workplace discipline and “employer prerogatives”
- A “right to privacy” in relation to duties of “confidentiality” or duties of “mutual trust and confidence” existing between employers and their workers
- To what extent is it open to the employer to justify an intrusion into the privacy of a worker?

Privacy at the Workplace

The Employer and the Worker

- Property rights issues in relation to data obtained in the context of the employment relationship
- Liability issues in relation to data obtained in the context of the employment relationship
- Developing trends towards specific regulation of privacy issues at work

The Employer and the Worker

SOME PROBLEMATIC INTERFACES

- **Information about Trade Union membership**
- **Information about pregnancy**
- **Information about disability**

Privacy at the Workplace: Miscellaneous Procedural and Other Matters

Privacy at the Workplace

Miscellaneous Procedural and Other Matters

PRIVACY ISSUES BEFORE THE LABOUR COURTS

- Is there any evidence of an emerging (or increasing) concern with privacy issues in litigation before Labour Courts or Tribunals?
- In what ways do such cases arise and come before Labour Courts or Tribunals for consideration?

Privacy at the Workplace

Miscellaneous Procedural and Other Matters

- Safeguarding the privacy of workers in the course of judicial proceedings
- Particular problem areas:
 - ❖ Hearings involving allegations of criminal activity
 - ❖ Hearings involving allegations of sexual activity
 - ❖ Hearings involving evidence which would be likely to prove distressing or embarrassing for a party or for a witness

Privacy at the Workplace

Miscellaneous
Procedural and
Other Matters

AND.....



But, of course, that's a secret...!

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