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THE RIGHT TO PRIVACY AT THE WORKPLACE

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Abstract: Employees in any workplace, whether physical or virtual, have certain fundamental rights to privacy. These rights form the cornerstone of a healthy, respectful work environment and are often legally protected. In this article, we'll explore what these rights entail and what are the obligations of the parties in this context.
In order to achieve the proposed objective, we will analyze the international legal provisions as well as those of the Republic of Moldova regarding the protection of private life at the workplace, as well as some cases from international judicial practice.

Keywords: private life, working place, electronic monitoring, employees, data protection.

JEL Classification: K311, K 24, J81, J83.

Introduction

The concept of private life is a general notion recognized and enshrined for decades in the laws of modern states, which aims to protect individuals against the implications of third parties on their personal space. With the passage of time, the question regarding the value dimension of this concept arises more and more often, considering the evolution of legal relations, the processes of globalization and digitization of everyday life (Pislaruc, 2020).

The aspect of private life persists in most material and informational spaces, and the workplace is no exception in this respect. The exact definition of the concept of the private life of the employee at work with the stability of some fixed limit would be a too restrictivemeasure, from which consideration it is more appropriate to set some benchmarks, which would help the litigant to determine if certain actions on the part of the employer or third parties can be considered interference in the employee's own life or not. (Pislaruc, 2020)

The main international regulations of the right to private life can be found in: Universal Declaration of Human Rights of 1948 - Article 12; International Convention on Civil and Political Rights of 1966 - Article17; European Convention on Human Rights from 1950 - Article 8; and at the EU level we find certain regulations in the Charter of Fundamental Rights of the European Union - Article 7.

As the term "privacy" can be defined with varying degrees of strictness, it is preferable to use the term "violations of private or personal life" (European Comittee of Social Rights, Conclusions 2006).

The emergence of new technologies which have revolutionised communications have permitted employers to organise continuous supervision of employees and in practice enabled employees to

work for their employers at any time and in any place, with the result that the frontier between professional and private life has been weakened. The right to undertake work freely includes the right to be protected against interferences with the right to privacy. (European Comittee of Social Rights, Conclusions 2012)

Pursuant to Article 1 paragraph (2) of the European Social Charter (ESC), natural persons must be protected against interference with their private or personal life associated with or arising from the professional situation, in particular through modern electronic communication and data collection techniques. (European Comittee of Social Rights, Conclusions 2006)

Violations of the right to privacy and dignity can take very different forms. These can range from questions to employees or job seekers about their family situation or background, their associations, their opinions, their sexual orientation or behaviour, and about their ortheir family members health. and how they spend their time outside of work. They may also result from the temporary or permanent storage and processing of this data by the employer, from its exchange with third parties and from its use for the purpose of taking measures regarding employees. (European Comittee of Social Rights, Conclusions 2006)

Under Articles 1§2 and 26 of ESC, the principles protecting employees from unnecessary interference in their personal or private lives are worded in the most general terms. However, it should not be overlooked that under various specific circumstances, violations of these principles can also constitute violations of other articles of the Revised Social Chart. This applies in particular to Article 3 (one of whose aims is to counter threats to workers' health, including their mental health), Article 5 (in relation to the right to join organisations and not to disclose that one is a member), Article 6 (in relation to collective bargaining), Article 11 (in relation to mental health), Article 20 (in relation to discrimination on the ground of sex), Article 24 (in relation, in particular, to paragraph a., on reasons for dismissal) and Article 26 (in relation to protection against various forms of harassment). (Digest of the Case of Law of the European Committee of Social Rights)

The European Convention on Human Rights (1950), at Aricle 8 establishes: "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 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.."

The main collision between the right to a private life and the employee's labor obligations lies in the unprecedented development of IT and CT technologies (internet, e-mail, social networks). A series of normative acts regulate the protection of the individual against interference in everything related to privacy. (Donțu, 2022)

In the Republic of Moldova, the protection of the right to private life of employees is regulated by the following normative acts:

a. The Constitution of the Republic of Moldova (1994) partially guarantees the right to a private life and protects some aspects related to this right: Article 28,private and family life; Article 32, enshrines the right to free image; Article 30, privacy of of correspondence.

b. Law of the Republic of Moldova no.133/2012 on the protection of personal data, aims to ensure the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data, especially the right to the inviolability of intimate, family and private life.

c. Labor Code of the Republic of Moldova (2003), in Article 91 refers to the general requirements regarding the processing of the employee's personal data and the guarantees regarding their protection;
d. Article 177 of the Criminal Code of the Republic of Moldova (2002) regulates the crimes related to the the violation of privacy and the violation of the right to privacy of correspondence - Article 178.
The most controversial subject in the matter of employees' right to privacy is their monitoring at the workplace.
The monitoring of the use of the Internet and e-mail by employees has turned into a custom, with employers expressly indicating that the means of information technology made available to employees are intended exclusively for the purpose of carrying out professional activity.
The jurisprudence of the European Court of Human Rights (ECtHR) proposed a judicial solution in the field of monitoring employees at work.
Thus, in the case of *Copland v. UK, 2007*, the Court decided that the sphere of privacy protection includes telephone conversations and electronic correspondence at work. Although the employer defended himself, demonstrating that the content of the phone calls was not monitored, but only their duration and cost, as well as the numbers dialed, the ECtHR decided that he affected the private life of his employee, especially in the conditions that the latter did not was warned about the possibility of monitoring.
The petitioner wrote to the employer to ask if there was a general investigation or if only her e-mails were being investigated. The employer informed the petitioner that, under the conditions in which all e-mail traffic was recorded, the College's information department only investigated her e-mails, at the request of her superior. At that time the College had no availability policy in force regarding the monitoring of telephone, e-mail or Internet use by employees.
There must be a measure of legal protection in the internal law of the state against the arbitrary interference of public authorities in private life, because the lack of public control generates the risk of an abuse of power. The Court mentioned that, it does not exclude the fact that monitoring the use of the telephone, e-mail or the Internet by an employer at the workplace can be considered as "necessary in a democratic society" in certain situations, in order to fulfill a legitimate purpose. However, considering that in that period, in English national law there were no regulations regarding monitoring actions, the interference described above was not qualified "in accordance with the law", a fact which, taken together with other circumstances, determined the European Court to find the violation of art. 8 of the Convention by the UK.
The monitoring of employees has been a sensitive subject for a long time in the member states of the European Union. Thus, pursuant to Article 29 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, a working group was established for the protection of persons in regarding the processing of personal data, invested with the powers of an independent European advisory body for data protection and privacy issues. This advisory body developed a Working Document on the supervision of electronic communications at the workplace, through which the following principles were established, as recommendations: (Working Document (EU) 2002)

a) the principle of necessity, according to which the employer must verify whether the monitoring of employees is necessary for a defined purpose, the collected data not being kept longer than is necessary to fulfill the proposed purpose;
b) the principle of finality, according to which the data must be collected for a specified, explicit and legitimate purpose and not further processed in a way incompatible with those purposes. In this context the "compatibility" principle means, to use an example, that if the processing of data is justified on the basis of the security of the system, this data could not then be processed for another purpose such as for monitoring the behaviour of the worker.
c) the principle of transparency, according to which theemployer must be clear and open about his activities. It means that no covert e-mail monitoring is allowed by employers except in those cases where a law in the Member State under Article 13 of the Directive allows for that.
d) processing operations means that any data processing operation can only take place if it has a legitimate purpose as provided for in Article 7 of the Directive and the national legislation transposing it.
e) the principle of proportionality, according to which requires that personal data including those involved in monitoring must be adequate, relevant and not excessive with regard to achieving the purpose specified;
f) the principle of security, this principle obliges the employer to implement appropriate technical and organisational measures to ensure that any personal data held by him is secure and safe from outside intrusion. It also encompasses the right of the employer to protect his system against viruses and may involve the automated scanning of e-mails and network traffic data.
Another case from ECtHR jurisprudence is that of *Bărbulescu v. Romania (2017)*. Examining the application, the European Court found that, although the applicant had indeed been informed about the prohibition to use the Internet for personal purposes, imposed by the internal regulation, nevertheless, the instructions of an employer cannot reduce to zero the exercise of the right to private social life at the workplace. Respect for privacy and the confidentiality of communications is still required, even if they can be limited to the extent necessary. The monitoring of the applicant's communications by the employer and the latter's consultation of their content, with a view to justifying the dismissal of the person in question, is not considered "interference" on the part of a public authority, because the stated measure was taken by a legal entity of private law.
However, the Court observed that the measure adopted by the employer was confirmed by the national courts, from which they consider the request of the applicant Bărbulescu to have been examined from the perspective of the state's positive obligations. The Romanian state had the obligation to adopt a normative framework designed to protect the applicant's right to respect his private life and his correspondence in the context of his professional relations with a private employer. Thus, the Court referred to European Union law when it ruled on respect for private life and data protection:
• monitoring the use of the internet by an employee at work and using the collected data as a reason for dismissal (*Bărbulescu v. Romania (MC), 2017, points 44-51).*
• the dismissal of some employees who had been video-surveilled by their employer at the company's headquarters (*López Ribalda and others v. Spain (MC), 2019, paras. 63-66).*
The European Court of Human Rights established that, although the purpose of Article 8 of the Convention is essentially to protect the individual against arbitrary interference by public authorities, nevertheless, in addition to this negative obligation of the state, there is also the positive obligation,

which consists in adopting measures intended to ensure respect for private life even in the sphere of private relationships between individuals.

From the above, the employer's positive and negative obligations are deduced, in the context of ensuring the right to the protection of employees' private life.

The legislation of the Republic of Moldova contains modest regulations regarding the protection of the employee's right to private life. This right is reflected in article 91 of the Labor Code, which states that: the employer is not entitled to obtain and process data related to the employee's political and religious beliefs, as well as his private life. In the cases provided by law, the employer can request and process data about the employee's private life only with his written consent.

In most EU member states, the monitoring of telecommunications (e-mail, internet, telephone): listening and recording of telephones or private conversations, as well as violating private correspondence, are strictly prohibited and fall under the criminal provisions. Conversations or emails of a private nature (including those between employees) may not be listened to/recorded or read in any way, even when they have been expressly prohibited.

Communication technology is an indispensable tool for modern organisations – including emails, access to the internet, or mobile phones provided to staff. Limited private use of these tools is often permitted, generating a level of expectation by employees for privacy: employers should not routinely read employee' emails or check what they are looking at on the internet.

However, employers also have a legitimate interest to ensure that usage remains limited. In order to balance the monitoring of usage while respecting their employees' privacy, employers should adopt a gradual approach and avoid the collection of data when possible. (Data protection (EU))

Under these conditions, the employer is required to adopt an internal policy for the processing of employees' personal data, which contains both the rights and obligations of the parties to the legal employment relationship in order to ensure and respect the right to private life within the legal relationship work.

The justification of an interference in the private life of the employee will only take place when certain conditions are met, therefore, when examining cases that concern the private life of employees, the state and national courts must take into account the following aspects:

1) interference in private life must be provided by law;
2) the interference is necessary in a democratic society;
3) offering the employee guarantees and tools to defend against arbitrary actions;
4) the interference pursues a legitimate purpose;
5) informing the employee about the employer's possibility to adopt monitoring measures as well as about the implementation of such measures;
6) assessment of the extent of the monitoring carried out by the employer and the degree of intrusion into the private life of the employee;
7) the possibility of establishing a monitoring system based on less intrusive means and measures;
8) the consequences of monitoring for the employee. (Pislaruc, 2020)

Analyzing part of the European jurisprudence in the matter of the employee's right to private life, the statement is outlined that, when the plaintiff invokes that a legal person has committed an interference in his private life, thus violating the provisions of Article 8 of the Convention, the Court will analyze the case from the perspective of the state's positive obligations.

In conclusion, we mention that states are obliged to regulate the protection of the employee's right to private life.

Although the Republic of Moldova has ratified art. 1 of the European Social Charter and ensures this right of employees, the national labor legislation does not contain provisions regarding the monitoring of electronic communications of the employee, this fact being achieved more through the lens of the Law on the protection of personal data.

Given that technologies are part of the work process, and their use is a part of necessity, it is required to regulate the electronic monitoring procedure at the employee's workplace, so that this fact does not interfere with the private life of the employee, but also does not harm the employer. As a result, employers will develop clear internal regulations for electronic monitoring at the workplace.

From the perspective of integration into the European Union and the harmonization of national legislation with the Community AQuis, this aspect is only a matter of time for employers and employees in the Republic of Moldova.

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