

Monitoring of Workers' Emails Judged to be Unlawful

The European Court of Human Rights (ECHR), sitting in Grand Chamber, has judged the monitoring of a workers' Yahoo Messenger Account by his employer as being unlawful. The worker had used his work computer to send messages, contrary to the company's disciplinary policy. The actual judgment is complicated. However, the main point is that workers have a right to respect for privacy, even in the workplace. If an employer is going to monitor workers emails and messages, then the employer should, except in exceptional circumstances, inform the worker that their communications might be monitored, and the reason for this intrusion. Employers also need to be aware of the ECHR's view on limiting what actual data is being viewed during the monitoring of personal communication. In this case, although the worker knew that it was forbidden to use work computers for personal purposes, he had not been informed that the employer was monitoring his communications. With this in mind, employers would be well advised to read paragraphs 121 and 122 of the judgment. The judgment can be viewed at: <http://www.laverdad.es/apoyos/documentos/sentencia-ingles.pdf>

Contrary to the Romanian Court's prior decision which found the monitoring of the employee's Yahoo Messenger Account to be lawful, the ECHR held that Romanian law failed to strike a fair balance between the employer's and the employee's interests, and that this was a breach of Article 8 of the European Convention on Human Rights. The judgment brings an entitlement to compensation for the employee.

POSTSCRIPT

As often happens, this judgment would seem to be at odds with EU legislation. Let me explain: When GDPR is applied in May 2018, organizations must not hold personal details without the consent of the person concerned, and there must be a valid reason for holding the information. Failure to comply could result in a hefty fine, and the onus is on the organization to put in place a system whereby personal information can be managed. Personal email addresses are considered to be personal information. Therefore, staff sending personal emails from their work computer will be putting the organization at risk of breaking the law. I would suggest that organizations would have a valid reason for monitoring their IT systems, and that the use of work computers for the sending of personal emails might attract instant dismissal, given the huge fines that the holding personal information, without consent, could attract. In

this way the Organization will be able to prove to the Information Commissioner that they have made every effort to control and manage the personal information held by them. However, this would need to be highlighted in the contract of employment, and in the Organizations' Disciplinary Procedure; as would the fact that their IT systems are being monitored for this purpose.