

Collection and Monitoring of Employees' Communications may Violate Right to Privacy

Copland v United Kingdom, European Court of Human Rights, Application No 62617/00 (3 April 2007)

The European Court of Human Rights has held that a public college which monitored an employee's telephone, email and internet usage without her knowledge engaged in conduct amounting to an interference with her right to respect for private life and correspondence within the meaning of art 8 of the European Convention.

The Court considered that telephone calls, emails and internet usage at business premises are prima facie covered by the terms 'private life' and 'correspondence' for the purposes of art 8. In the present case, the college did not give the employee any warning that her calls, emails or internet usage would be liable to monitoring. Nor did the college have a policy on such monitoring. The Court therefore held that she had a reasonable expectation as to the privacy of communications. This right to privacy was further considered to extend not only to prima facie prohibit actual monitoring, but to also prohibit 'the use of information relating to the date and length of telephone conversations and in particular the numbers dialled...as such information constitutes an "integral element of the communications made by telephone"'. The Court held that:

The mere fact that these data may have been legitimately obtained by the College, in the form of telephone bills, is no bar to finding an interference with rights guaranteed under art 8. Moreover, storing of personal data relating to the private life of an individual also falls within the application of art 8. Thus, it is irrelevant that the data held by the college were not disclosed or used against the applicant in disciplinary or other proceedings.

Article 8 of the European Convention requires that any interference with the right to privacy must be 'in accordance with the law' *and* 'necessary in a democratic society' having regard to a number of factors. In the present case, the monitoring of correspondence was not 'authorised by law' (which requires not only a consideration of whether a law permits the interference but also the 'quality' and clarity of that law) so it was therefore unnecessary for the Court to consider whether the interference was 'necessary in a democratic society'.

The right to privacy is enshrined in the Victorian Charter of Human Rights at s 12 which provides that 'a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with'. An analogous case in Victoria would therefore presumably similarly involve a consideration not only of whether the monitoring of communications was 'lawful' (or 'in accordance with law') but also whether it was reasonable, necessary and proportionate (and therefore not 'arbitrary').

The full-text decision is available from 'HUDOC', a database of the case-law of the European Convention on Human Rights, at <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>.