

A person is standing on the edge of a high, reddish-brown cliff, looking out over a vast, layered canyon landscape. The sky is bright blue with scattered white clouds. The overall scene is dramatic and expansive.

**Lawful and unlawful measures
of
monitoring at the workplace, or:
from inspection to invasion**

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ROADMAP

- I. PAW - Why is it so special?
- II. The rules of the game (intenal & external sources)
 1. The New Labour Code
 - the essence of employment relationship
 - specific rules on privacy
 2. The ILO Code
- III. The most problematic fields

I. PAW - WHY IS IT SO SPECIAL?

1. Privacy

- Content
- Various sources



2. Workplace

- Clashing rights and interests
- Power imbalance, dependent position of worker
- 'the enemy attacking from within' (Majtényi)
- More complex than you would think!



II. THE RULES OF THE GAME

⦿ Internal

- New Constitution
- New DPA CXII/2011
- New Labour Code
- Commissioner's cases recommendations
- Labour Courts' cases
- Self-regulation
- Employment contract
- ...

⦿ External

- EU Directives
- CoE
- ILO Code of Practice
- +/- practice of other MSs ('legal patchwork')
-

1. THE NEW LABOUR CODE (§ 6-11, 52, ETC.)

◎ WORK

- ◎ performed in the employer's interest
- ◎ specified: place & time, fit for work, perform work in person, with the level of professional expertise and workmanship, in a way that demonstrates the trust vested in him, be at the employer's disposal...

◎ SUBORDINATION

- ◎ RIGHTS: to command, instruct, to monitor...

DUTIES:

- ⦿ to pay wages, provide safe working environment, equal treatment
- ⦿ to act in good faith and fairness
- ⦿ to cooperate
- ⦿ not to engage in any conduct to breach the rights or legitimate interests of the other party
- ⦿ to inform each other
- ⦿ prohibition of wrongful exercise of rights
- ⦿ not to jeopardize the legitimate economic interests of the employer
- ⦿ all involve processing personal data!

SPECIFIC RULES

Section 8

- ⦿ not to engage in any conduct potentially damaging to the employer's reputation, legitimate economic interest or the intended purpose of the ER- may be controlled (information in writing in advance)
- ⦿ exercise the right to express their opinion only if it does not lead to causing serious harm or damage to the employer's reputation or legitimate economic and organizational interests
- ⦿ confidentiality (business secrets)

Section 9

- ⦿ the personal rights of parties shall be respected
- ⦿ restriction:
 - strictly necessary for reasons directly related to the intended purpose of the ER
 - proportionate
 - the means and conditions for any restriction of personal rights, the expected duration shall be communicated in advance
- ⦿ worker may not waive their personal rights in advance
- ⦿ legal statements in writing

Section 10

- ⦿ A worker may be requested to make a statement or to disclose certain information
 - if it does not violate his personal rights,
 - necessary for the conclusion, fulfillment or termination of the ER
- ⦿ Aptitude test
 - prescribed by employment regulations, or
 - necessary for rights and obligations
- ⦿ Information
- ⦿ Disclosure of facts, data and opinions concerning a worker to third persons -- specified by law or upon the worker's consent
- ⦿ Disclose the personal data of a worker to a data controller
- ⦿ Statistics

Section 11

- ⦿ Employers are allowed to monitor the behaviour of workers
 - to the extent pertaining to the employment relationship
 - the actions and the methods may not be at the expense of human dignity
 - the private life of workers is not be violated
 - information in advance concerning the technical means used for the surveillance

2. THE ILO CODE

- ◉ Flexible, basic principles, framework, possible solutions
- ◉ aim: unify regulation, promote self regulation
- ◉ practical + commentary
- ◉ personal scope: present/future/ex workers, employers, workers' representatives, employment agencies
- ◉ covers: processing (collection, storage, communication or any other use) of personal data

GENERAL PRINCIPLES:

- ◉ PD procession: lawful, fair, only for reasons directly relevant to the employment
- ◉ usage: only for the purposes for which they were originally collected (change of context - in a compatible manner- e.g.benefits)
- ◉ special rules on automated processed PD
- ◉ regular assessment
- ◉ information
- ◉ training
- ◉ non-discrimination
- ◉ cooperation
- ◉ confidentiality
- ◉ worker: main source of information (→ former employer: with explicit consent)
- ◉ consent: clear, who/why?/how/for how long?/consequences

THE MOST PROBLEMATIC FIELDS

- ◉ CCTV camera
- ◉ GPS
- ◉ Alcohol and drug tests
- ◉ Badges
- ◉ Internet usage, e-mails
- ◉ Telephone
- ◉ Social networks
- ◉ Others: electronic keys, biometric identifiers, internal informant (whistleblowing), strike, graphology test, astrology (!)...



CAMERA



- ⦿ May in general touch upon human dignity (36/2005. (X. 5.) CC)
- ⦿ reason: protection of property, work safety, e.g. assault amongst workers- otherwise not defeatable, monitoring of work, (ABI-97/2010/P)
- ⦿ ILO:
 - Secret monitoring should be permitted only: (a) if it is in conformity with national legislation; or (b) if there is suspicion on reasonable grounds of criminal activity or other serious wrongdoing
 - Continuous monitoring should be permitted only if required for health and safety or the protection of property

ECHR

- ⊙ **Halford v. UK (20605/92, 1997)**
 - interception of an employee's private telephone calls by her employer, GBP 10,000 -non-pecuniary damage
- ⊙ **Copland v. UK (62617/00, 2007)**
 - It might sometimes have been legitimate for an employer to monitor and control an employee's use of telephone and internet. Interference was not "necessary in a democratic society"
 - EUR 3,000 -non-pecuniary damage + EUR 6,000 - costs and expenses

- ◉ visible signal
- ◉ notification (who/how long/why...)
- ◉ openness
- ◉ hidden camera: NO
- ◉ camera free zones
- ◉ BAD examples:
 - fire service of Pápa (ABI 1805/A/2005-3.)
 - ex worker's surveillance with camera at the department store
 - flower shop (ABI 598/A/2007)
 - gluttonous cook (ABI-2323/2010/P)



GPS



- ⦿ Determining the geographical position of employees with the help of GPS 24/7, 180 days storage, weekends, holidays, personal use for a fee
- ⦿ only the location of those employees whose work makes location-tracking necessary (and where there are no other means available to monitor the proper performance of the employee) can be tracked
- ⦿ only during working hours
- ⦿ it should be possible to switch it off
(ABI 1664/A/2006-3)

ALCOHOL AND DRUG TESTS



- ⊙ - :
- Sensitive data
- Not 100%
- ⊙ Basis: explicit permit of the law NOT the arbitrary decision of the employer or forced consent of the employee
- ⊙ only medical professional NOT the security guard (ABI-687/2010/K)
- ⊙ just security reason, just those at special risk
- ⊙ non-discriminatory, clear, written, accessible alcohol and drug policy at WP
- ⊙ copy of the documents (remedy)
- ⊙ former information and education

BADGE



- ⦿ company's image ↔ personal data
- ⦿ ABI 1798/K/2008-3, Miskolc, city buses,
- ⦿ reason: public duty, safety of consumers, quality of service
- ⦿ department store: christian name/whole name?

LETTER



- ⦿ ABI 1561/A/2006 private letter addressed to the WP (opened, not delivered immediately)
- ⦿ Open in the presence of concerned
- ⦿ Re-seal, indicate

TELEPHONE



- ⦿ consent of the employee but not that of the third party
- ⦿ No bugging
- ⦿ Leaking out confidential information is not a justification (ABI 158/A/2000)
- ⦿ The employer has the right to monitor the telephone usage of employees, BUT NOT the call history (numbers)
- ⦿ Solution:
 - sharing the cost (pre-arranged rate)
 - defining the maximal cost
 - If an item-by-item cannot be avoided: the selection can only be done by the employee (list of calls in a sealed envelope and the employee should mark the official calls + making the numbers illegible)

INTERNET USAGE, E-MAIL



- ◉ ABI 866/A/2006-3 make the list public
- ◉ Complaining - reason for dismissal?
- ◉ Explicit prohibition
- ◉ No explicit prohibition
- ◉ Possible solutions

FACEBOOK, IWIW, TWITTER



- ◉ Good faith and honesty, cooperation, protection of the lawful economic interest of the employer
secrecy ↔ freedom of expression, data protection
- ◉ Duty to spend working time with work
- ◉ Presence as advertisement?
- ◉ Lunch break?
- ◉ Outside of business hours?
- ◉ Critical remarks- retorsion
- ◉ Can it be checked? (privacy settings)
- ◉ Internal regulation



MONITORING AT THE WORKPLACE



inspection NOT invasion

**THANK YOU
FOR YOUR ATTENTION**

