

European Court of Human Rights Issues Decision on Monitoring of Employee's Internet Use

Insights

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In *Barbulescu v. Romania*, a decision issued on January 12, 2016, the European Court of Human Rights issued a ruling interpreting the right to privacy under Article 8 of the European Convention on Human Rights in the context of an employee's argument that his privacy rights had been violated by his employer's monitoring of his internet use. Specifically, Barbulescu was asked by his Romanian employer to set up a Yahoo Messenger account for the purpose of responding to client inquiries. The employer maintained a policy strictly forbidding its employees from using the employer's computers for personal purposes. The employer, believing that Barbulescu had violated company policy by using the Yahoo Messenger account for personal communications, confronted him with its suspicions. When Barbulescu denied the allegations, the employer presented him with a transcript of his personal Yahoo Messenger communications, which included messages with his fiancée and his brother. The employer subsequently terminated Barbulescu for his violation of company policies.

After losing a lawsuit he brought against his employer in the Romanian courts, Barbulescu brought his claims to the European Court of Human Rights. The Court ruled in the employer's favor, finding that the employer had not violated Barbulescu's right to privacy in its monitoring of the Yahoo Messenger account.

Employers should note that the decision was heavily fact-specific, citing not only the employer's policies prohibiting personal use of company computers, but also the limited scope and nature of the employer's investigation, and the fact that the investigation was done in response to the employee's denial that he had used the account for personal purposes, among other things. Accordingly, while the Court's decision certainly supports employer monitoring of electronic communications under appropriate circumstances, it does not give employers carte blanche to monitor employee communications. Before monitoring employees' communications, employers should consult with their employment counsel to ensure the implementation of appropriate monitoring policies and to determine the appropriate scope of any monitoring activities.

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