

The Constitutional Court ruled that an employer's inspection of its employee's correspondence made by using work phone and relying on these as a just cause for dismissal are violation of employee's right to privacy and freedom of communication

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The applicant, who works for a private company, alleged that the employer's inspection of his correspondence made by using his work phone and relying on this as a just cause for dismissal constitutes a violation of his right to privacy and freedom of communication.

In the re-employment claim before the first-instance court, the applicant alleged that the correspondence should be considered as personal data since he uses the work phone given by the employer also for personal use. In its defence the employer stated that the former employee's work phone was examined in order to access the customers' contact information and the contents of the encountered messages contained insulting statements about other employees. Upon dismissal of the case by the first-instance court, the applicant appealed to the Regional Court of Justice, which referring to the "Communication Tools Policy" issued by the employer, stated that the inspection of the employer's work phone by the employer would not result in a violation of the right to privacy and there was no injustice in the dismissal of the lawsuit; however, it was unlawful to accept the dismissal with just cause when it should be accepted as a valid reason. Thus, it decided to overturn the decision of the first instance court and dismiss the lawsuit as a final judgment.

Based on this outcome, the applicant applied to the Constitutional Court claiming that his right to privacy was violated. In addition to the defences raised at the court of first instance and at the Regional Court of Justice, the employer asserted that there was no violation of the right of privacy and freedom of communication stating as the work phone should have been used for business purposes and not for private communication.

Upon examination on the merits, the Constitutional Court set out the principles to be taken into account during the inspection of employees' communication tools as follows:

- It should be assessed whether the employer has legitimate grounds for the inspection,
- Inspection and personal data processing must be transparent,
- Employees should be informed in advance about the inspection, including its legal basis and purpose, its scope and data processing, the storage period of data, the rights of the data subject, the consequences of the inspection and processing, and the possible beneficiaries of the data,
- The intervention by the employer must be relevant and conducive to the purpose sought to be achieved,
- It should not be possible to achieve the same objective with milder interventions, and the intervention should be mandatory in terms of the objective to be achieved,
- The intervention must be proportionate, and the data obtained through the inspection must be limited to the purpose to be achieved,
- It should be considered whether the interests of the parties are balanced and an undue burden is not imposed on either party.

As a result of the assessment made by the Constitutional Court based on the above-mentioned principles, the Constitutional Court decided that there was a violation of rights and ruled on a retrial, on the grounds that first instance court and the Regional Court of Justice did not consider these principles. Referring to its previous decisions on the inspection of correspondence, the Constitutional Court concluded of a violation of personal rights through inspection of business communication tools.

In conclusion, the Constitutional Court considered that using of the findings obtained from the employee's work phone during the inspection as a just cause for dismissal by the employer constitutes a violation of the employee's right to privacy and freedom of communication.



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