



Monitoring of an employee's use of the Internet and his resulting dismissal was justified

In today's **Chamber** judgment¹ in the case of **Bărbulescu v. Romania** (application no. 61496/08) the European Court of Human Rights held, by six votes to one, that there had been:

no violation of Article 8 (right to respect for private and family life, the home and correspondence) of the European Convention on Human Rights.

The case concerned Mr Bărbulescu's dismissal by his employer, a private company, for having used the company's Internet for personal purposes during working hours in breach of internal regulations.

The Court found, in particular, that Mr Bărbulescu's private life and correspondence had been engaged. However his employer's monitoring of his communications had been reasonable in the context of disciplinary proceedings.

Principal facts

The applicant, Bogdan Mihai Bărbulescu, is a Romanian national who was born in 1979 and lives in Bucharest.

From 1 August 2004 until 6 August 2007 Mr Bărbulescu was employed by a private company as an engineer in charge of sales. At his employers' request, he created a Yahoo Messenger account for the purpose of responding to clients' enquiries. On 13 July 2007 Mr Bărbulescu was informed by his employer that his Yahoo Messenger communications had been monitored from 5 to 13 July 2007 and that the records showed he had used the internet for personal purposes. Mr Bărbulescu replied in writing that he had only used the service for professional purposes. He was presented with a transcript of his communication including transcripts of messages he had exchanged with his brother and his fiancée relating to personal matters such as his health and sex life. On 1 August 2007 the employer terminated Mr Bărbulescu's employment contract for breach of the company's internal regulations that prohibited the use of company resources for personal purposes.

Mr Bărbulescu challenged his employer's decision before the courts complaining that the decision to terminate his contract was null and void as his employer had violated his right to correspondence in accessing his communications in breach of the Constitution and Criminal Code. His complaint was dismissed on the grounds that the employer had complied with the dismissal proceedings provided for by the Labour Code and that Mr Bărbulescu had been duly informed of the company's regulations. Mr Bărbulescu appealed claiming that e-mails were protected by Article 8 (right to respect for private and family life, the home and correspondence) of the European Convention and that the first-instance court had not allowed him to call witnesses to prove that his employer had not suffered as a result of his actions. In a final decision on 17 June 2008 the Court of Appeal dismissed his appeal and, relying on EU law, held that the employer's conduct had been reasonable and that the monitoring of Mr Bărbulescu's communications had been the only method of

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

establishing whether there had been a disciplinary breach. Furthermore, the Court of Appeal held that the evidence before the first-instance court had been sufficient.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life, the home and correspondence) Mr Bărbulescu complained that his employer's decision to terminate his contract had been based on a breach of his privacy. Furthermore, relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), he complained that the proceedings before the domestic courts had been unfair.

The application was lodged with the European Court of Human Rights on 15 December 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

András Sajó (Hungary), *President*,
Vincent A. de Gaetano (Malta),
Boštjan M. Zupančič (Slovenia),
Nona Tsotsoria (Georgia),
Paulo Pinto de Albuquerque (Portugal),
Egidijus Kūris (Lithuania),
Iulia Antoanella Motoc (Romania),

and also Fatoş Aracı, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court considered that the fact that the employer had accessed Mr Bărbulescu's professional Internet account and that the record of his communications had been used in the domestic litigation to prove the employer's case was sufficient to engage the applicant's "private life" and "correspondence". It therefore found that Article 8 was applicable.

Firstly, however, it did not find it unreasonable that an employer would want to verify that employees were completing their professional tasks during working hours and noted that the employer had accessed Mr Bărbulescu's account in the belief that it contained client-related communications.

Secondly, Mr Bărbulescu had been able to raise his arguments related to the alleged breach of his private life and correspondence before the domestic courts and there was no mention in the ensuing decisions of the actual content of the communications. Notably, the domestic courts had used the transcript of his communications only to the extent that it proved that he had used the company's computer for his own private purposes during working hours and the identity of the people with whom he had communicated was not revealed.

The Court therefore concluded that the domestic courts had struck a fair balance between Mr Bărbulescu's right to respect for his private life and correspondence under Article 8 and the interests of his employer. There had therefore been no violation of Article 8 of the European Convention.

Article 6

The Court declared this complaint manifestly ill-founded as Mr Bărbulescu's concerns had been considered by the Court of Appeal which found them, in a sufficiently reasoned decision, to be irrelevant.

Separate Opinion

Judge Pinto de Albuquerque expressed a dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.