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ECHR case law: Conditions for monitoring employees' communications

On the 5th of September the European Court of Human Rights (the "ECHR") issued a landmark decision in the field of monitoring employees' workplace communication in the case of *Bărbulescu v. Romania*, which concerned the dismissal of an employee by a private company, following the monitoring of his electronic communications and accessing their content. The ECHR concluded in its judgement that the Romanian authorities failed to protect Mr. Bărbulescu's right to respect for his private life and to properly balance the interests of both the employer and employee.

The ECHR refers to the following assessments, which are mandatory under Article 8 of the European Convention on Human Rights and which the Romanian courts of law failed to perform:

- (1) whether the employee received a prior notice to be informed that his communications might be monitored and the nature and extent of the monitoring, or the degree of intrusion into his private life and correspondence;
- (2) whether the reasons of the company were sufficient to justify the monitoring measures;
- (3) whether there were alternative less intrusive measures the employer could have used;
- (4) whether the communications might have been accessed without his knowledge.

The national authorities are required to carry out a balancing test between the competing interests of the employees' right to respect for private life, on the one hand, and the employer's right to take measures to improve the performance of his company or other such declared purposes, on the other.

In conclusion, before beginning any monitoring process, employers must be sure that they have taken all necessary measures to protect the employee's privacy and have taken into account the conditions mentioned in the ECHR decision.

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