

New Constitutional Court ruling on employers' inspection of employees' corporate emails

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Introduction

On 12 January 2021 the Constitutional Court once again considered the rights of personal data protection and the freedom of communication in an employment context following an employer's inspection of an employee's corporate email account and the termination of the employee based on the outcome of such inspection (for further details please see "[Constitutional Court rules on employers' review of employees' corporate emails](#)").⁽¹⁾

The Constitutional Court found that there had been no violation of the rights of personal data protection and the freedom of communication since the employment contract stated that:

- the employee could use the corporate email only for business purposes; and
- the employer could inspect the email account without notice.

The decision sheds light on the application of the principle of proportionality by stressing that the employer examined only the messages supporting its claims and used such correspondence during the trial process only to prove its arguments.

Facts

The applicant was a customer relations manager at a private bank. On receiving a complaint claiming that the applicant also worked at a business registered in the name of his spouse, the company initiated an investigation and requested the employee's defence.

The report issued by the bank inspector set out that the employee had:

- founded a company in the name of his spouse;
- sent various payment documents to the company's accountant through his corporate email;
- filed a loan application by conducting negotiations with other banks regarding the company via his corporate email;
- submitted certain documents regarding the products in the business stocks from his personal email account to his corporate email account; and
- reviewed his spouse's account on a frequent basis.

In his defence, the employee stated that:

- he had kept the business, which he incorporated with his spouse, under his own supervision to avoid any loss;
- he had assisted his spouse in several tasks, such as payment and stock tracking; and
- this situation had occasionally affected his work performance to a certain degree.

The employer terminated the employee by relying on a valid reason on the grounds that the employee had carried out commercial activities for his spouse's business during working hours, which breached the employer's workplace rules and meant that he was neglecting his principal duty, which was working for the employer.

The employee initiated a reinstatement case against the employer. The first-instance court rejected the case. In

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the appellate examination, the regional court of appeal upheld the first-instance court's decision by stating that the employer had been able to prove the valid reason and thereby finalised the decision.

Applicant's claims

In the application filed before the Constitutional Court, the applicant argued that:

- the employer had reviewed his correspondence in his corporate email account without prior notice or his consent;
- his employment had been terminated in an unlawful manner based on this correspondence;
- his work performance had always been very high;
- he had to give his written defence due to the bank inspector's pressure and mobbing for the purpose of termination; and
- his right to the protection of personal data and freedom of communication had been violated.

Constitutional Court's reasoning

The Constitutional Court stated that in such disputes, the courts should remember the following points:

- Employers must have legitimate reasons justifying their inspection of communication devices provided to employees and their content.
- Employers' inspection of communication and the processing of personal data must be transparent and employees must be informed prior to the inspection. Information to employees need not be made in a certain way, but it must include:
 - the legal grounds for and the purpose of the inspection of communication and the processing of personal data;
 - the scope of the inspection and the processing of data;
 - the data retention period;
 - data subjects' rights;
 - the consequences of the inspection and processing;
 - the possible beneficiaries of the data; and
 - any restrictions projected by the employer regarding the use of communication devices.
- Inspection must be related to the desired purpose and be convenient for generating such purpose. Employers must use the collected data for the desired purpose.
- Employers must have no other less intrusive methods to achieve the desired purpose and the court must examine whether the employer could have achieved such purpose without inspecting the employee's communication.
- In order to deem the interference proportional, the data processed by way of inspecting the communication or used by any means must be limited to the desired purpose and no restrictions or intervention exceeding this purpose must be allowed.
- It must be analysed whether the conflicting interests and rights of the parties are fairly balanced by considering the impact of the inspection of communication.

The Constitutional Court ruled that the employer's processing of personal data via inspection of corporate email accounts was to ensure that work was being conducted efficiently throughout the business. As the employer provides financial services and employs a large number of employees, the court held that its inspection of employees' communication in their corporate email accounts constituted a legitimate interest in terms of workplace management and was an eligible method to achieve the desired purpose.

The Constitutional Court further stated that the applicant's employment contract stipulated that:

- the employee corporate email was for only business use; and
- the bank management could carry out an inspection at any time without prior notification.

Therefore, the Constitutional Court ruled that the employer had fulfilled the explicit information requirement and the employee had consented to the inspection by signing the employment contract.

The decision suggests that:

- employers need not obtain employee consent before reviewing corporate email accounts if they have provided the explicit information requirement; and
- employee consent will be deemed present and valid, unless proven otherwise, if the employee has not raised an objection to the inspection after receiving such information.

Further, the decision stresses that the employer reviewed only the messages supporting the claims regarding

the employee working at another job and used such communication during the trial process to prove its arguments. In this regard, the Constitutional Court ruled that the employer had conducted an inspection limited to the purpose of processing and used the collected data in compliance with the purpose.

The Constitutional Court found no violation of the applicant's rights to personal data protection and the freedom of communication.

Comment

In a previous decision of 17 September 2020, the Constitutional Court ruled in a similar case (Application 2016/13010) concerning an employer's inspection of employees' corporate email accounts (for further details please see "[Constitutional Court rules on employers' review of employees' corporate emails](#)"). The new Constitutional Court decision once again draws attention to the importance of the explicit information requirement in inspections conducted by employers and sheds light on the application of the principle of proportionality in the scope of inspections.

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Endnotes

(1) Application 2018/31036, published in the *Official Gazette* (31386) on 5 February 2021.

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