Fourth Study Commission
Public and Social Law - UIM IAJ

QUESTIONNAIRE 2010

Aspects of data protection in employment relationships

Report

BRASIL, Judge Rafael de Menezes, August 2010.

Introductory remarks: The protection of personal data has become increasingly important in pace with the development of information technology. Several international documents have been adopted to regulate this area. The use of cameras at working places is often associated with the idea of big brother. Cameras allow to record and provide information, which may be very accurate. The purpose of this Questionnaire is to provide an overview on how camera surveillance (video recording) is treated in the legal systems of the participant countries.

1 - Are there explicit legal provisions concerning camera surveillance especially at working places?

No, not yet, but because of theft and violence, brazilian society demands for video cameras everywhere, and it will be necessary for the Parliament to pass legislation on it. There are some legal projects running at the Parliament, making it an obligation for the police to use cameras in each vehicle, for the Football League to have cameras in the stadiums, and also banks to have cameras inside and around their buildings. We think that camera surveillance makes public and private spaces safer, without directly violating individual privacy.

Actually the brazilian legal system does not forbid video recording, so anyone can do it. However, the Brazilian Constitution protects the image, the intimacy and the private lives of its citizens (art 5o, X, CF). So the best way to reconcile freedom of video recording and the privacy of the citizens, is to announce clearly with signs that the area is under camera surveillance. Nevertheless, bathrooms and dressing rooms should be ruled out of camera surveillance.

Are there collective agreements defining the circumstances and conditions for the introduction and use of camera surveillance?

Collective agreements are allowed between Unions of Workers and Employers (art 7o, XXVI, CF), and, as there is no specific law regulating this matter, we think that the collective agreements should do it. As we said, it all began with security purposes, but nowadays, many enterprises discovered that camera surveillance helps also the boss to be closer to the employee, controlling his work.

2 - Is it obligatory for the employer to define the purpose of the use of camera surveillance?

No, as there is no law regulating it.

Is this bound to certain purposes (for instance security and safety, the protection of the property of the enterprise, the control of production process, the control of the performance of the worker...)?

Usually the purposes given are security and safety against violence, and also to protect the property of the enterprise. The employer never admits that the camera is for controlling the working process.
Is it allowed to use camera for the surveillance of a certain employee or certain employees at the workplace?

There is no law about it and the jurisprudence is not uniform. But as we said, the enterprise would never admit it.

Is camera surveillance allowed in toilets, dressing rooms or staff rooms?

No. Not at all. The judges do not allow it, even if the camera is turned off, because it really intimidates the citizen and violates the art 50, X, da CF (Federal Constitution).

3. **To whom are the sequences available?**

Usually the enterprises have security workers in a surveillance room watching the videos, and checking if anything wrong is happening. In many enterprises it is usual to see TV monitors everywhere showing what is going on in the next corridor. You also can see many signs written “smile, you are being filmed”, with the purpose to announce the video surveillance.

4. **How long are they stored.**

Usually the equipments store for two or three months, but the enterprise can make copies and store forever.

5. **Is there an obligation to inform employees if camera surveillance is installed?**

Not really an obligation, but this is common sense solution to reconcile security reasons to the legal protection of the image of citizens. Also, video recorded by hidden cameras may not be used as an evidence of crime, because of the art. 50, LVI, CF.

**Do the use of camera surveillance require the consent of the employees?**

No because the employer is the owner of the building and can rule it.

6. **Is there an obligation to inform the works council or trade unions about the introduction and the use of camera surveillance?**

No. But as there is no law regulating this matter, we think that collective agreements shall rule it.

**Is there an obligation to have an agreement with the works council or trade unions defining the circumstances and conditions for the introduction and use of camera surveillance?**

No. But there should have.

7. **Has the employer (controller, who uses electronic technology to process personal data) the duty to notify the processing to the Data Protection Authority or another authority?**

No. Anybody can buy a camera and begin filming his home or his office.

**Do employers need a permit from the Authority before he can set up the camera?**

No.

**What are the conditions for the Permission for camera surveillance?**
There are no conditions.

*Has the Data Protection Authority the authority to impose changes in order to make the processing or the surveillance satisfy the requirements of the law?*

No.

8. *What are the consequences of a failure to comply with the rules on camera surveillance (for instance punishment; liability to pay damages; works council or trade unions or worker can demand the control measures to be stopped and the prior situation to be restored...)?*

Brazil is working hard to protect the dignity of its workers. The Government has delegates to defend the worker. Also the Unions can do it. Brazil also has a very efficient Labor District Attorney, independent of Government, to protect the workers in collective problems. Any of them can claim in Court against video surveillance in bathrooms, for an example, demanding money for the worker, as moral damage.

Judge Rafael de Menezes, Brazil, August 2010