



XIX Case Handling Workshop in Prague


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Plenary session 2: Video surveillance –
need of special regulation
in the light of cases from daily life

Video surveillance in general

Video surveillance of employees
in particular



EU Directive 95/46/EC

recital 16:

“Whereas the processing of sound and image data, such as in cases of video surveillance, does not come within the scope of this Directive if it is carried out for the purposes of public security, defence, national security or in the course of State activities relating to the area of criminal law or of other activities which do not come within the scope of Community law”;

German FDPA:

Sec. 6b: Monitoring of publicly accessible areas with optic-electronic devices

- (1) Monitoring publicly accessible areas with optic-electronic devices (video surveillance) is allowable only in so far as it is necessary
 1. to fulfil public tasks,
 2. to exercise the right to determine who shall be allowed or denied access or
 3. to pursue rightful interests for precisely defined purposesand if there are no indications that the data subjects' legitimate interests prevail.
- (2) The fact that the area is being monitored and the controller's identity shall be made discernible by appropriate means.
- (3) Data that have been collected under sub-section 1 above may be processed or used if this is necessary for the pursued purpose and if there are no indications that the data subjects' legitimate interests prevail. They may only be processed or used for another purpose if this is necessary to avert dangers to state security or public safety or to prosecute crimes
- (4) Where data collected through video-surveillance are attributed to an identified person, this person shall be informed about such processing or use in conformity with Sections 19a and 33.
- (5) The data shall be deleted without delay, if they are no longer needed for the pursued purpose or if the data subject's legitimate interests stand in the way of any further storage.

Legal framework:



issues to be raised:

identification of persons- registration – use

onward transfers?

non-registration (monitoring)

Sec. 6b BDSG:



- legal requirements:

- fulfilment of tasks
- exercise right to determine who shall be allowed
- precisely defined purposes

interests of persons concerned (guests, customers, clients, workers etc.)

prior control by DPA

deletion once registration no longer needed

Sec. 201a Penal Code:

registration and transferring of pictures is punishable up to one year of prison sentence in private homes or in areas that are specially protected:

toilet, dressing room, shower cabins, medical cabinets

not punishable: office rooms, shops

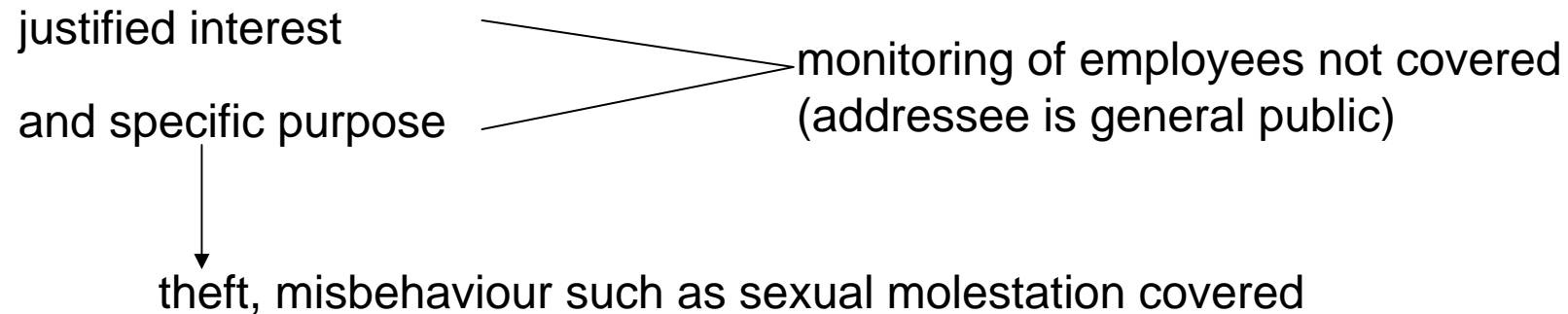
installation of cameras needs consent of workers council (sect. 87 I 6 Act on Labour-Management Relations [etc. VG])

if no consent, evidence cannot be used in courts

no consent needed in case of private detectives for monitoring of workers

Sec. 6b BDSG:

applicable to public rooms (borders, museums, railway station)



reasons for monitoring have to be communicated by employers in writing
consent of works council and DPA necessary

in non-public rooms sec. 6b BDSG not applicable

no other legal regulation in place (legal lacuna but case law)

case law: even if there was no prior participation by works council, dismissal legal if works council agrees to dismissal
registration has to be deleted after 7 days if no longer required for investigation

purpose: protection of property not monitoring of efficiency

regulation still missing – on EU level?



log files on access

information of persons concerned in case data are used

technical and organisational measures for video cassettes

onward transfer only for legitimate persons (law enforcement)

deletion of files to be documented

In hotels:

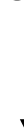
public rooms are covered by BDSG (lobby, garage, swimming pool)

however, restaurants – no, interest of guests in non-monitored conversation prevails

information notices: where, when, who responsible

storage of guest photos in hotel data base for marketing purposes?

no legal basis



prior consent

coy cameras: although BDSG not applicable → information notices

■ BDSG not applicable: private house not a public space

installation of camera in front of his apartment by a proprietor
needs consent of all other proprietors

installation of camera in entrance hall also needs consent

- permanent monitoring of people coming and leaving not compatible with human dignity
- information notice to people entering the premise

Usefulness of video surveillance

Questions as to usefulness remain:

- problematic areas constantly monitored do not become more secure
- prevention?
- tool in investigating crime: bank counter deterrent- intimidation
- rights of persons concerned

evidence in private circumstances:

tenant can refuse
evidence of landlord in
case of secret monitoring

court did not accept such
evidence



Many thanks for your attention!

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