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“Private life, working life ”

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XXIII^e International Convention of Data Protection Commissioners

“Private life, working life”

“ Life a work and privacy : for decent work in an information society”

It is a great pleasure for me to be invited to take part in this 23rd International Convention of Data Protection Commissioners here in Paris, as a representative of the International Labour Organisation. I am also glad to have an opportunity to express my views on a topic that is one major challenge of interest to all of us : workers’ privacy protection, in an information society. This is a key element of “decent work for all”, in line with the strategic objectives defined by the ILO.

This morning, I would like to take a look at three aspects that are particularly important to the line drawn between employee life and privacy life :

- 1 First, worker surveillance measures ;
- 2 Secondly, tests applied to workers ;
- 3 Last, personal data collection.

These various aspects are obviously closely linked. Information generated by surveillance and detection systems always refers to personal data collection methods. All lead to sensitive privacy protection issues, confidentiality issues and to the appropriate use of personal data. All these areas have been dramatically changed by technological progress, not only in industrialised countries. The rapidly decreasing costs of these information technologies make them accessible to the biggest number of people.

It should be reminded here that the sensitive issue of separating the private life sphere from the work place requires respect of workers’ basic rights, and of employees’ legitimate interests.

Employers want to collect data in order to hire the most suitable applicant for the job, and to ensure that the hire person will not be a danger to their colleague sand partners within the company in general. They also need information in order to manage and control work and performance, guarantee health and safety, protect the company’s property, generate profits and comply with the law and regulations. Workers are concerned that personal information may be disclosed, as some of the tests and surveillance habits can be likely to be harmful to their privacy and have a discriminatory effect.

These long-lasting concerns now have a new meaning. Modern technologies are frequently seen as a source of potential profits but also of uncertainty. ILO’s recent report on employment in the world, called *Life at work in an information economy*, showed that the communication system revolution helps create interesting jobs and find a balance between employee life and other aspects of privacy, and to free the work of constraints associated with his/her physical presence at work at fixed hours. Teleworking helps conciliate professional requirements and family responsibilities. Conference call techniques, the internet and electronic mail are means we have to access immediate communication beyond distances.

However, despite these unquestionable advantages, there are some real concerns. The recent report by the French Privacy Protection Commission (*Commission Nationale de l’Informatique et des*

Libertés), the title of which is *Cybersurveillance of employees at work*, showed that the increasingly systematic use of new technologies has tremendous implications on employment relationships and generates new risks for employees. Modern technologies offer new data processing and surveillance capabilities, which are likely to put employee privacy at risk. Clearly, electronics has helped intensify form of controls such as video surveillance, telephone bugging, the use of listening and research devices, and the development of computerised surveillance software programmes.

In response to these bigger risks of privacy breaches, a number of solutions have been put forward at company level. Their goal is :

- 1 To ensure the compliance of surveillance techniques with applicable legal and regulatory provisions ;
- 2 To further the full involvement of all players concerned, as from the first surveillance device planning phase ;
- 3 To promote the signing of agreements on the nature of the information that can be collected ;
- 4 To think about measures to implement a policy relating to privacy protection at work;
- 5 To make sure that the surveillance measures are not likely to result in physical and psychological disorders and to violate the worker's dignity.
- 6 To review surveillance options by taking into account the organisation and content of the work, as well as, to the extent possible, helping the worker's autonomy.

These solutions adopted at company level should be completed by others aiming at employee privacy protection at work, such as :

- 1 Identifying gaps in the legal and regulatory areas ;
- 2 Looking for laws specific to surveillance methods ;
- 3 Determining surveillance techniques likely to offer advantages both to the employee and to the employer ;
- 4 In-depth studies covering the nature, scope and consequences of national practices in the area.

Developing detection techniques also generates risks to employee privacy breaches. Tests carried out include alcohol detection, drug detection or HIV/AIDS detection and other health problems, as well as a broad array of psychological and personality tests, and sometimes genetic tests.

Such tests may be justified for a number of reasons. For instance :

- 1 Alcohol and drug detection can be part of a work safety promotion and accident prevention programme and offer help in identifying, guiding and readapting people facing these problems ;
- 2 Likewise, genetic detection and surveillance can play a significant role in preventing risks resulting from the workers' genetic heritage and detecting potentially dangerous exposures.
- 3 HIV/AIDS tests can be used in order to provide contaminated workers with adequate assistance.
- 4 Lastly, all personality tests used in the framework of hiring are justified by the need to find the most skilled and most suitable applicants for the job.

However, there are risks. Using such tests can constitute an unjustified intrusion in someone's

private life, bearing no relationship to the job at issue : they can have serious and long lasting effects on the applicants, if they are not reliable or lead to assessment errors, and in addition may have a discriminatory effect on various groups.

Detection policies should take into account an umber of basic principles. To that end, we need to :

- 1 protect the confidentiality sphere ;
- 2 determine whether detection is appropriate. The HIV test should not be required from job seekers or employees ;
- 3 recognise that the detection methods have moral, ethical and legal implications ;
- 4 in addition, HIV/AIDS, alcoholism and drug addition issues should be discussed like any other disease and in no way constitute motives of discrimination.
- 5 In all cases, these principles should be completed by measures for both the worker's and his/her family readjustment.

Some of these principles were emphasised ion the book of practical guidelines relating to alcoholism and drug addition issues developed at an ILO expert meeting in 1995, and also in the practical guideline on HIV/AID and the world of teleworking adopted in June 2001.

As we said, the issues of detection and surveillance merge into the more general framework of personal employee data protection.

Information technologies lead to a new deal in the area of personal employee information collection and processing. The progresses of data processing have significantly increased the means available to employers for collecting, storing and processing employee-related information, and for including them in data files generated by other sources. But the free collection of personal information may also lead to misleading information being gathered, unknown to employees. There is also a possibility that looking for information may be diverted from its original goal and that the disclosure of such information may be beyond control. New technologies have changed the nature of surveillance, by making the secret and permanent control of employees' action possible.

Therefore, we need to be extra careful in order to ensure :

- 1 that personal information is processed in a lawful and fair manner, and only for reasons directly linked to the worker's employment ;
- 2 that personal information is used only for the purpose it was initially gathered for ;
- 3 that personal information processing does not lead to unlawful employment discrimination based on gender, marital status, origin, age, etc.

Some of these principles were laid down in the ILO's practical guideline book on personal employee data protection, adopted by a meeting of experts in 1996.

Collecting personal health information is also a sensitive area where special care should be applied, including in the area of medical information confidentiality. The responsibility of health professionals at work was discussed in the ILO's report adopted in 1998, relating to technical and ethical principles of surveillance, and in the above-mentioned practical guideline book on HIV/AIDS and the world of teleworking.

Elaborating workplace policies in the three areas discussed in this paper –surveillance, detection and personal information collection - cannot elude taking into account risks of employee

privacy breaches. This concern should be fully part of the definition and implementation of workplace safety and health management systems, as attested by the guidelines recently elaborated by the ILO in this matter.

These principles, common to the areas discussed, include :

The acknowledgement of employers' and employees' responsibilities and duties in the area of personal employee data protection ;

- 1 The need for openness, meaning the duty to inform people ;
- 2 Compliance with the principle of non-discrimination.
- 3 The lawful, fair and confidential processing of any collected information.

It is also highly important to ensure that employees and their representatives are consulted when implementing a protection system. To that end, employer and employee organisations should be encouraged and assisted with a view to entering into agreements relating to the definition and implementation of surveillance, detection and personal data collection systems.

It is our duty to ensure that modern technologies increase the quality of our professional environment while protecting employees' privacy and basic rights. It is necessary to ensure that they do not generate a general environment of distrust, tension and uncertainty at work. On the contrary, they should be used so as to ensure employee dignity and respect.