

# Employer's monitoring of messaging account did not breach right to privacy

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An employer's decision to monitor an employee's private messages on a work-related messaging account did not breach

that employee's rights to privacy.

Mr Barbulescu was employed as an engineer in charge of sales. He was asked by his employer to set up a Yahoo messenger account in order to respond to customer queries. Mr Barbulescu did so; however, he also used the account to talk to his brother and fiancée about sensitive personal matters from his work computer. The employer's handbook prohibited personal use of company resources, including computers, during working hours and gave the employer the authority to monitor employees' communications. The employer discovered Mr Barbulescu's personal communications and dismissed him on that basis. He subsequently claimed that his employer had breached his rights to privacy in monitoring his communications.

The European Court of Human Rights held that the employer's actions did not breach Mr Barbulescu's rights to privacy. The court found that it was reasonable for an employer to want to verify that staff were actually working during working hours. It was also relevant to note that the employer had accessed the account expecting it to contain communications with clients, given that it was an account set up for work reasons.

Although the decision was widely reported in the media as giving employers the right to 'spy' on their employees, the impact of this decision in the UK will be limited considering the number of other provisions protecting employees from invasions of their privacy. This decision by no means gives employers free rein to monitor all of their staff's communications in all circumstances.

It does, however, demonstrate the value in having a clear and unequivocal policy in the handbook to make employees aware that their personal communications may be monitored.

*Barbulescu v Romania – 61496/08 [2016] ECHR 61*

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