

A question of privacy? Recording without the knowledge of the recorded side in labor relations

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An obiter dictum given by the Supreme Court stating that the recording of a person without his knowledge is tainted by a moral flaw was adopted in the rulings of the Regional Labor Courts. The Courts relied on this obiter as a justification for a negative attitude towards the practice of recording in labor relations, and for ruling that the evidence of recorded conversations will be weighed accordingly in a legal proceeding.

The article seeks to replace this intuitive-value-based discussion with a legal discussion on privacy. I will examine whether said recording, which is a private case of monitoring and gathering information in the workplace, and serves mainly as a “counter-surveillance” force of workers vis-à-vis their employers, actually impair the right to privacy.

The discussion adopts the ‘privacy as control’ approach, and understanding of justifications for the right to privacy, against a background of existing social norms and technological developments, as well as the special characteristics and power gaps inherent to labor relations.

I conclude that, as a rule, recordings can be made in the workplace and submitted as evidence in the legal process. This is subject to maintaining the increased good faith that applies to the parties in labor relations, which I suggest examining based on the principle of proportionality, as a satisfactory solution to protect the relevant interests in this context.