

## Client Alert: European Court CCTV damages judgment

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The recent European Court of Human Rights judgment in the case of *Antovic and Mirkovic v Montenegro* has highlighted the issue of the unlawful use of CCTV (or surveillance cameras) in the workplace in the data protection context.

The very basic facts of the case were as follows:

- In 2011 the two claimants, professors at the University of Montenegro's School of Mathematics, along with other professors teaching there, were informed that video surveillance had been installed in the auditoriums where they were teaching;
- The aims of the surveillance were to ensure the safety of property (it was claimed that there was a history of university property destruction and other incidents) and people (including students – it was claimed that there was a history of people other than students being on the premises), and to monitor teaching;
- The surveillance data could only be accessed by the Dean of the School of Mathematics and was only kept for a year;
- The claimants brought a complaint about the surveillance to the Montenegrin data protection regulator on the basis that the installation and use of video surveillance equipment was unlawful and infringed their right to respect for private life – they argued that they knew of no reason to fear for anybody's safety and that there were in any event other ways to protect people and property and monitor classes, and they requested removal of the cameras and deletion of the data;
- An initial report by inspectors from the regulator concluded that the surveillance conformed to Montenegrin data protection law, but the complainants filed an objection to this and the regulator concluded that the surveillance measures did infringe data protection legislation and ordered the removal of the cameras – this action was consequently undertaken by the university, and the data collected was also later deleted;
- The claimants brought compensation claims in civil proceedings before the national courts (lower and higher) against the university, the data protection regulator and the government for infringement of the Article 8 right to respect for private and family life under the European Convention on Human Rights;
- The national courts rejected the claims on the basis that the question of private life was not in issue as the university auditoriums in question were public areas and so the data collected was consequently not personal data;
- The claimants then brought their compensations claim to the European Court of Human Rights.

The European Court of Human Rights ruled in the claimants' favour, awarding them damages of €1,000 each along with their costs. The court ruled that the scope of "private life" did cover professional activities or activities taking place in a public context – university amphitheatres were teachers' workplaces where they not only taught but also interacted with students, developing relationships etc.

The court had previously ruled that covert video surveillance at work was an intrusion in an employee's private life and in the current case this could also be extended to non-covert surveillance in the workplace – video surveillance was a *"considerable intrusion in [an] employee's private life"*. The court concluded that *"Given that the relevant [Montenegrin] legislation explicitly provides for certain conditions to be met before camera surveillance is resorted to, and that in the present case those conditions have not been met, and taking into consideration the decision of the [regulator] in this regard (and in the absence of any examination of the question by the domestic courts) the Court cannot but conclude that the interference in question was not in accordance with the law, a fact that suffices to constitute a violation of Article 8."*

As the ruling makes clear, the use of CCTV is not necessarily in itself unlawful in data protection terms – lawfulness is determined by particular legal conditions, and the facts of a given matter also have to be determined in the light of this. Organisations must therefore consider these issues carefully before installing CCTV in the workplace. In this regard it is also worth noting that the UK's Information Commissioner's Office has (previously) issued detailed guidance on this topic entitled *"In the picture: a data protection code of practice for surveillance cameras and personal information"*. We've written before on this topic

- <http://www.corderycompliance.com/the-law-on-using-cctv-on-your-premises/>.

Looking to the future, Article 82(1) of the EU General Data Protection Regulation (GDPR) states that individuals who have suffered “*material or non-material damage as a result of an infringement of [GDPR] shall have the right to receive compensation from the controller or processor for the damage suffered*” – we can expect that those who bring future compensation claims for unlawful CCTV surveillance in the workplace will do so on this basis.

For other articles that we have written about data protection and the European Convention on Human Rights, such as the Barbelescu case which was about monitoring employee communications please see here: <http://www.corderycompliance.com/barbelescu-judgment-monitoring-employee-communications-data-protection/>

For other articles that we have written about data protection compliance please see here: <http://www.corderycompliance.com/category/data-protection-privacy/> Our FAQs and video on the EU General Data Protection Regulation (GDPR) can be found here [www.bit.ly/gdprfaq](http://www.bit.ly/gdprfaq)

Cordery also has a GDPR Navigator subscription service which includes short films, straightforward guidance, checklists and regular conference calls to help you comply. More details about this can be found here: [www.bit.ly/gdprnav](http://www.bit.ly/gdprnav).

Judgment in the case is here <http://www.bailii.org/eu/cases/ECHR/2017/1068.html>)

For more information please contact Jonathan Armstrong or André Bywater who are lawyers with Cordery in London where their focus is on compliance issues.

[Jonathan Armstrong](#), Cordery, Lexis House, 30  
Farringdon Street, London, EC4A 4HH  
Office: +44 (0)207 075 1784  
[Jonathan.armstrong@corderycompliance.com](mailto:Jonathan.armstrong@corderycompliance.com)



[André Bywater](#), Cordery, Lexis House, 30  
Street, London, EC4A 4HH  
Office: +44 (0)207 075 1785  
[Andre.bywater@corderycompliance.com](mailto:Andre.bywater@corderycompliance.com)



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