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The Internet: To be or Not to be (Connected): The Right to be Disconnected

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From the proclaimed right to be connected to the evolving right to be disconnected, only few years have passed. However in internet sphere, prompted by the fast developing world of technologies, law has to catch up as well.

As from 1 January 2017, France has made effective the law which provides that companies with more then 50 employees should establish hours when staff should not send or answer emails. The law comes as a response to increasingly present praxis that workers, after leaving their place of work, actually stay at work, but this time, through their various electronic devices, being obliged to check on their mail, respond and eventually work from home, during the time that should be their private time dedicated to their private life and family. Health and psychology experts were very much concerned about the consequences such connectivity may have on health and personality of workers, who were thus not able to close the door of their office completely at the end of their working day.

So what happened between the right to be connected and the right to be disconnected?

Back in 2010, it was a great breakthrough into the freedom of expression in 'online' context when Finland, being a pioneer, provided its citizens with the legal right to access a 1 Mbps (megabit per second) broadband connection. It led to broadband access being included in basic communications servers, like telephone and postal services, and making Finland first country to provide for such a right.

Soon thereafter, in May 2011, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in his Report, made a step further towards the protection of right to expression online, acknowledging that 'the Internet has become a key means by which individuals can exercise their right to freedom of opinion and expression, as guaranteed under Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights'. A huge step was made in the new digital era when the classic human rights instruments have spread their effects to 'online' sphere as well.

The above Report pointed out two segments of the right to internet which would enable individuals to exercise their right to internet:

- Access to online content, and
- Availability of the necessary infrastructure and information communication technologies

The problem of access to internet would include arbitrary blocking or filtering of content, with the exception of legitimate grounds of state interference, criminalization of legitimate

expression, imposition of intermediary liability, disconnecting users from internet access, cyber attacks and inadequate protection of the right to privacy and data protection.

Countries worldwide have provided for the access to fast internet, and the technology has adequately responded with the storming of devices that provide such access.

Internet may be one of the most important instruments of the 21st century. It appears that in 2016, there were 46.1% of internet users globally. The United Nations Human Rights Council has in 2016 passed a resolution for the promotion, protection, and enjoyment of human rights on the internet, as a logical sequence to its resolution on internet access in 2012 and 2014. It provided that the same rights that people have offline must also be protected online, which in particular concerned the freedom of expression, that is applicable regardless of frontiers and through any media of one's choice. It has recognized the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms.

However, the globally prevailing access to internet raised some legal concerns of being constantly online. They concern, in particular, the work-home balance, and relying back to some long ago established principles such as work hours, absence, annual leave etc.

A year ago, the European Court of Human Rights ('the ECtHR'), in the case of Barbulescu v. Romania, has dealt with the question of whether an employer is entitled to look into his employee's private messages at Yahoo Messenger, written during the working time. The employer monitored and made transcript of messages made at the Yahoo Messenger account that was created at the employer's request for the purposes of contacts with clients, but the transcript also contained five short messages that Mr. Barbulescu, the employee, exchanged with his fiancée using a personal Yahoo Messenger account. The ECtHR found no violation of the right to respect the private life by such actions of the employer, having in mind, inter alia, that the company did adopt internal rules according to which it was strictly forbidden to use computers, photocopiers, telephones, telex and fax machines for personal purposes.

This case alerted employees and employers worldwide, as to the right of the employers to monitor private messages made using the internet during work hours in certain circumstances, and employees at the same time, to abstain from it.

However the issue which exists vice-versa, and which was not addressed at that time, is the question of whether an employer has the right to request his employee to be connected, and to stay online, outside of working hours. If so, does that time count as overtime? Is it to be considered as 'work from home'? Does that interfere with the right to leave / rest between two working days. What may be the psychological effects of being constantly 'on call'? How that affects the health?

The first act on labour standards that International Labour Organization adopted was the Convention Limiting the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-eight in the Week (Entry into force: 13 Jun 1921). The international labour standards, such as the need to protect workers' health and safety by providing adequate periods of rest and recuperation, including weekly rest and paid annual leave, may appear affected by the overuse of internet technologies. Some companies adopted flexible working hours and flexible place of work. But one should be concerned that these temporal flexibility and

spatial flexibility, does not diminish workers' rights that took so long to be established.

So first came the right to internet, or the right to be connected. Later, followed by the development of technologies, social online interactions, came the right of employers to review employees private messages and correspondence during work hours. Then, starting in France, came finally the right not to be connected. If a person cannot communicate privately during work hours, then he should not communicate for work, during private hours.

The ratio work/private life, has its long history and was cause of many social revolutions which have resulted in decrease of working hours, right to free time between two working days, right to annual leave, and the scope of overtime. France is the best example of when we should say stop to technologies, for the preservation of basic human rights.

The new French law means a small but important victory of human rights over IT, and a victory of workers' rights and rights to privacy over IT technologies and smart communications. How that victory will influence further developments in labour law when speaking of its online element, remains to be seen.

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