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VARIETES

TECHNOLOGY, THE RIGHT TO PRIVACY AND THE WORK OF INTERNATIONAL ORGANISATIONS

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I. INTRODUCTION

Protection of the right to privacy of the individual vis-à-vis modern scientific and technological developments has been a subject most «en vogue» during the last two years. The development and expansion of new scientific and technical inventions and their influence on the rights of individuals needs little explanation, since there has been an increasing awareness of the dangers which might be posed by them.

One can particularly refer to the dangers for human rights which might arise from developments in science and technology from the following standpoints: (1) the invasions of a person's privacy by the monitoring of telephone conversations in private places and offices, by «bugging» devices, by keeping track of a person with the aid of electronic spies and by subliminal «sub-conscious» advertising; (2) the effect of automation in industrialisation on the labour market - this danger particularly affects the less developed countries; and (3) by a minority group who have control over these devices, e.g. data banks, computers, etc.

It has been emphatically referred by well known authors, specialists, technicians and jurists to a lack of balance between the powers of public authorities, a few private persons and the rights of the rest of the population. It was largely recommended that the international organisations should undertake certain

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projects to provide a guideline for national legislation in order to avoid this danger.

This article has been devoted, therefore, to the work of the Council of Europe, other international organisations and some private initiatives relating to the protection of the right to privacy. A selective bibliography concerning this subject is attached to this article in order to facilitate research.

II. THE WORK OF THE COUNCIL OF EUROPE RELATING TO THE RIGHT TO PRIVACY

1. As a result of two motions tabled in the Consultative Assembly in April 1967 on new technical devices for eavesdropping (doc. 2226), and on Human Rights and modern scientific and technical developments (doc. 2206), the Legal Affairs Committee presented a report on 31 January 1968, (doc. 2326, Rapporteur : Mr. Czernetz), and the Assembly adopted its *Recommendation 509 (1968) concerning human rights and modern scientific and technical developments*.

In this Recommendation, the Assembly called for a study of the question whether, having regard to Article 8 of the Convention on Human Rights, the national legislation in the Member States adequately protects the right to privacy against violations which may be committed by the use of modern scientific and technical methods; and if the answer to this question is in the negative, for recommendations as to the better protection of the right to privacy.

2. At the same time, the Committee of Experts on Human Rights made a similar proposal.

3. In April 1968, the Committee of Ministers decided to include in the *intergovernmental Programme of Work* of the Council of Europe :

«The right to privacy as affected by :

- (a) the press and other mass media; and
- (b) modern scientific and technical devices.

Study of the advisability of preparing a Recommendation to Governments.»

4. In view of the complex technical aspects of this subject and of the problems of civil and criminal law which might arise, the Committee of Ministers decided to instruct the Secretariat to place this item on the Agenda of the Committee of Experts on Human Rights, the European Committee on Crime Problems and the European Committee on Legal Co-operation, with a request that each should consider the implication of the problem in their respective fields.

5. In September 1968, the Consultative Assembly organised in Salzburg, a *Symposium on Human Rights and Mass Communication Media*, with the assistance of the Austrian Government. One of the subjects discussed was «the relation between mass communication media, on the one hand, and the individual and his rights, on the other.»

6. After the Legal Affairs Committee had studied the results of this Symposium, the Consultative Assembly in January 1970, adopted *Resolution 428* and *Recommendation 582* based on the Report presented to it by the Legal Affairs Committee (doc 2687, Rapporteurs : Mr. St John Stevas and Mr. Silkin). Resolution 428 contains a «*Declaration on Mass Communication Media and Human Rights*» setting out various principles which should be observed by the Mass Media, including measures to protect the individual against interference with his right to privacy.

Recommendation 582 contains various proposals of the Assembly for action by the Committee of Ministers and Member Governments relating to mass communication media and human rights. The Committee of Ministers has already taken various decisions to give effect to the Assembly's proposals.

7. In May 1969, the Consultative Assembly adopted a *Recommendation 557* (1969) on the *Use of Computers in Local Government*, which was based on the Report of the Committee on Regional Planning and Local Authorities (doc 2562). At its 181st Meeting the Deputies examined this Recommendation and they decided to transmit it to Governments for information and opinion, and to

send it for information, together with the report contained in document 2562, to the Committees set up to study the right to privacy as affected by the press and mass communications media and by modern scientific and technical developments.

8. As referred to above, on 23 January 1970, the Consultative Assembly of the Council of Europe has adopted its *Resolution 428 (1970) containing a declaration on mass communication media and human rights*, which declared as followed :

i. There is an area in which the exercise of the right of freedom of information and freedom of expression may conflict with the right to privacy protected by Article 8 of the Convention on Human Rights¹. The exercise of the former right must not be allowed to destroy the existence of the latter.

ii. The right to privacy consists essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection against misuse of private communications, protection from disclosure of information given or received by the individual confidentially. Those who, by their own actions, have encouraged indiscreet revelations about which they complain later on, cannot avail themselves of the right to privacy.

iii. A particular problem arises as regards the privacy of persons in public life. The phrase «where public life begins, private life ends» is inadequate to cover this situation. The private lives

(1) Article 8 of the European Convention on Human Rights :

«1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.»

of public figures are entitled to protection, save where they may have an impact upon public events. The fact that an individual figures in the news does not deprive him of a right to a private life.

iv. Another particular problem arises from attempts to obtain information by modern technical devices (wire-tapping, hidden microphones, the use of computers, etc.), which infringe the right to privacy. Further consideration of this problem is required.

v. Where regional, national or international computer-data banks are instituted the individual must not become completely exposed and transparent by the accumulation of information referring even to his private life. Data banks should be restricted to the necessary minimum of information required for the purposes of taxation, pension schemes, social security schemes and similar matters.

vi. In order to counter these dangers, national law should provide a right of action enforceable at law against persons responsible for such infringements of the right to privacy.

vii. The right to privacy afforded by Article 8 of the Convention on Human Rights should not only protect an individual against interference by public authorities, but also against interference by private persons or institutions, including the mass media. National legislations should comprise provisions guaranteeing this protection.

9. During the year 1970, the Committee of Experts on Human Rights has been studying the question whether the provisions of *Article 8 of the European Convention on Human Rights* constitute an adequate form of protection against interferences committed by modern technical methods.

In studying the problem, the Committee of Experts attempted to define what constitutes interference with privacy. On this point the Committee concluded that there is no generally accepted definition of private life in either international or national legislation, jurisprudence or practice, or in legal writings. Nevertheless, there exists a certain consensus of opinion on certain of the elements which are, or should be, part of private life. There-

fore, without devoting further consideration to this question of definitions, the Committee decided to formulate its views on the essential practical problems arising in this matter, and to propose measures which should be taken.

Furthermore, the Committee considered that it was not its task to proceed to a critical study of the national legislation relating to the right to privacy. In the Committee's opinion it was sufficient at present to take note of the efforts, already completed with success, or in progress, in all Member States, towards solving this problem.

Moreover, the Committee was unanimous in considering that it would be appropriate to recommend to the Governments of Member States that they should pursue their efforts towards the protection of privacy. It considered, however, that it could not yet usefully formulate such a recommendation until after the European Committee on Legal Co-operation and the European Committee on Crime Problems have expressed their opinion on certain questions raised by their study on this subject.

The Committee of Experts on Human Rights completed this part of its work at its meeting which took place from 5 to 9 October 1970 and it communicated its conclusions to the European Committee on Crime Problems and the Committee on Legal Co-operation.

9. *The Sixth Conference of European Ministers of Justice*, organised by the Netherlands Government under the auspices of the Council of Europe, met at the Hague from 26-28 May, 1970. One of the subjects discussed by the Ministers was the protection of privacy.

By Resolution No. 3, the Ministers emphasised the importance of international action for this purpose and recommended that the Council of Europe should treat this matter as one of priority; they proposed that a symposium should be held of technicians and jurists to define the problems which arise in the field of telecommunications and other technical fields in relation to the protection of privacy, with a view to outlining possible solutions. The Committee of Ministers will be examining this proposal in the near future.

10. *The Third International Colloquy about the European Convention on Human Rights*, organised by the Law Faculties of the Belgian Universities in co-operation with the Council of Europe and with the support of the Belgian Government, took place in Brussels from 30 September to 3 October 1970. Four sessions of the Colloquy were devoted to discussing various aspects of the right to respect for a person's private and family life, his home and communications.

The Colloquy is the third of a series of conferences organised about the European Convention on Human Rights which are held every five years. The first took place in Strasbourg in 1960, the second in Vienna in 1965.

About 350 persons participated at this Colloquy, including specialists on human rights questions coming from 20 European countries; some American, Asian and European lawyers and representatives of some of the international press organisations were also present.

The themes of the reports dealing with the specific aspects of the rights of the individual were as follows :

The European Convention on Human Rights and the right to respect for private life, home and communications. Rapporteur : Mr. J. Velu, Professor at the Law Faculty of the University of Brussels (ULB), Procureur du Roi, Brussels.

Modern scientific and technical developments and their consequences on the protection of the right to respect for a person's private and family life, his home and communications.

Rapporteurs : Mr. P. Juvigny, of the French Council of State. Mr. R.V. Jones, Professor of Natural Philosophy, University of Aberdeen.

The Convention and the right to respect for family life, particularly as regards the unity of the family and the protection of the rights of parents and guardians in the education of children.

Rapporteur : Mr. T. Opsahl, Professor of Constitutional Law, University of Oslo.

The right to respect for private and family life, home and communications in relations between individuals and the resulting obligations for States Parties to the Convention.

Rapporteur : Mr. J. De Meyer, Professor at the Law Faculty of Louvain (K.U.L.), Assessor to the Conseil d'Etat of Belgium.

In addition to the reports, written communications were submitted by a number of distinguished lawyers from Austria, England, France, the Federal Republic of Germany, Ireland, Italy, the Netherlands, Rumania, Turkey and the United States; also by the Faculties of Law of the Universities of Ghent, Liège, Louvain and Brussels.

It is hoped that the proceedings of the Colloquy will be published within the next year in French, English and Dutch.

III. THE WORK CARRIED OUT BY OTHER INTERNATIONAL ORGANISATIONS AND PRIVATE INSTITUTIONS ON THE RIGHT TO PRIVACY AS AFFECTED BY MODERN SCIENTIFIC AND TECHNICAL DEVICES

1. *The United Nations*

On 12 May 1968, the International Conference on Human Rights held in Teheran in April/May 1968, adopted Resolution XI on «Human Rights and Scientific and Technical Developments» by which it recommended that the «organisations of the United Nations family should undertake a study of the problems with respect to human rights arising from developments in science and technology».

The General Assembly, in 1968, acting upon this recommendation, invited the Secretary General to undertake a study of the problems in connection with human rights arising from developments in science and technology. This study should cover the following aspects: (1) Respect for the privacy of individuals and the integrity and sovereignty of nations in the light of advances in recording and other techniques; (2) Uses of electronics which may affect the rights of the person and the limits which should be placed on such uses in a democratic society; (3) The balance which should be established between scientific and techno-

logical progress and the intellectual, spiritual, cultural and moral advancement of humanity.

In spring 1970, the Secretary General submitted this preliminary report to the Commission on Human Rights (Doc. E/CN.4/1028 and Addenda 1 - 4, and Addendum 3/Corr. 1 in English only). The Commission have not yet examined this report which was, however, transmitted to the General Assembly, deciding to examine it at a later session in the light of the decisions of the General Assembly.

The Assembly has so far not taken any action on this preliminary report.

2. UNESCO

At its October/November session 1968, the General Conference of UNESCO, in adopting the programme and budget, noted that «recent developments in science and technology such as computers, the miniaturisation of recording devices, wire-tapping and eavesdropping mechanism television screens, one-way observation «walls», and screens and similar devices, as well as experimentation on human beings, have created a threat to human rights in general and to the individual's right to privacy in particular» (UNESCO Approved Programme and Budget for 1969-70 paragraph 1065). Subsequently a meeting of experts was held in Paris from 19-23 January 1970 and it led, in particular, to the following recommendations which should be carried out by UNESCO :

1. The possibility of encouraging codes of conduct for the press and an ethical code for social science research;
2. To convene a meeting with the participation of the United Nations and its Specialised Agencies on the problem of the Right to Privacy, for co-ordinating their programmes in this field and organising other meetings on specific aspects of the right to privacy, e.g. biochemical research; and
3. To make a critical assessment of legislation which affects the Right to Privacy.

On the basis of these recommendations, studies will be undertaken by UNESCO in 1970/71 which are scheduled to be published in 1971-72. This project is to be co-ordinated with the studies envisaged on the theme «Man and his environment».

3. *O.E.C.D.*

The problem of privacy has been dealt with by this Organisation in connection with the utilisation of computers.

The third Ministerial Meeting on Science and, later, the Science Policy Committee in 1969 emphasised the role of computer utilisation in the development of Member Countries and asked the O.E.C.D. to give priority to action in this field. Consequently, several groups within the O.E.C.D. were established to consider the impact of computer use on their specific subjects. Subsequently, a group of Experts on Computer Utilisation has been set up, which met for the first time in January 1969.

The work of the Experts developed mainly along the following lines :

I. COMPUTER UTILISATION SURVEYS

1. Standardisation of data collection;
2. Economic Aspects of Tele-processing Developments;
3. Computer Manpower;
4. Reference Services on Computer Utilisation;
5. Case Studies in Computer Usage - in order to contribute to making advance computer applications in member countries rapidly known to a larger audience.

In February 1970, two documents, submitted by a group of Experts on computer utilisation, were published. These documents give an inventory of existing national surveys on computer systems and manpower in the O.E.C.D. member countries (DAS/SPR/69.11/2 rev; DAS/SPR/70.2).

II. DATA BANKS IN THE PUBLIC SECTOR

It was agreed to prepare a report on the concepts of computerised data banks in public administration.

Since the *Council of Europe* and also the *United Nations* and *UNESCO* are dealing with the protection of privacy in general, it was agreed that the discussion of privacy problems in the framework of Computer Utilisation studies should be restricted to the narrow context of data banks.

In accordance with the programme of work for 1970, approved by the Committee for Science Policy [Cf. SP (69) 9 para. 45], the Secretariat put before the last meeting of the group of Experts a proposal for a conference on the impact of *Computers on modern society*.

4. *Justice, British Section of the International Commission of Jurists.*

A report by Justice, British Section of the International Commission of Jurist was published on 15 January 1970. It contains a draft Bill which is substantially the same as several other proposals made to the Parliament.

The committee reached three main conclusions stated below:

— That the right of privacy reflects a fundamental human need which must be respected in any civilised society, and requires the protection of the law;

— The tendency in a sophisticated and technological society as for infringements of the right of privacy increases, and accordingly the need for legal protection also increases;

— In modern conditions, English law as it stands today falls well short of an adequate degree of protection.

It recommended that legislation should be passed in England to :

— provide a civil remedy for any substantial and unreasonable infringement of any person's privacy, while fully safeguarding

the interests of the community, and especially the needs of the press as a guardian of the public interest;

— make the use of electronic, optical or other technical devices as a means of surreptitious surveillance a criminal offence except in certain clearly defined circumstances;

— extend the present licensing provisions covering the use of wireless transmitters, and apply to their sale and possession;

— make evidence obtained through certain actionable infringements of privacy inadmissible in civil proceedings.

5. *Other Institutions*

In the United Kingdom, two other institutions, the *Society of Conservative Lawyers* and the *National Council for Civil Liberties* have prepared reports and drafted bills on data banks and their relation to personal liberty. The latter has organised a Conference in November 1970 and published the proceedings of this Conference as a book entitled «The data bank society.»

Both these Bills favour broadly speaking, giving a remedy in case of damages to an individual by giving false information about him whether this is done in a private sector or in a public sector. The NCCL's Bill requires licences for the operation of data banks and that this should also apply to their operators as well as to the Crown.
