



ALCOHOL AND DRUG TESTS IN THE EMPLOYMENT CONTEXT

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XIX Case Handling Workshop

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APPROACH

- ◉ Legal framework
- ◉ Jurisprudence
- ◉ Some cases dealt by the DPA
- ◉ DPA guidelines
- ◉ Dispute in the court

LEGAL FRAMEWORK

Convention 108

- Explanatory report
 - Article 6- Special categories of data (health data)

“This category of data also covers those relating to abuse of alcohol or the taking of drugs”

National legislation

- General dispositions - nothing explicit on the data processing on drug or alcohol
 - Labour Code
 - Tests only admissible for the protection and security of the employee or thirds
 - DP Act

JURISPRUDENCE

- ◉ Justice Supreme Court (1998 June 24)
 - Legitimate for the employer to submit the employee to alcohol tests. This imposition is covered by the employer directive power and the employee refusal is fair cause for firing
- ◉ Constitutional Court (2002 - Decision 368/02)
 - The employee has to submit to such tests whenever his behaviour may represent a risk for third parties. This compulsory measure cannot, though, be taken in an abusive or discriminatory manner.

CASES DEALT BY THE DPA

○ Case 1 (2003)

Car accident at work:
one mortal victim

- The employer requests the hospital for alcohol test results to make internal inquiry and eventually sanction procedure

○ DPA decision

- The employer has disciplinary action;
- Law considers that being intoxicated at work is punishable with suspension;
- Authorised the access to the data

CASES DEALT BY THE DPA (2)

○ Case 2 (2002)

Medicine service at work

- Employer wished to process employees' alcohol consumer habits

○ DPA decision

- It should not be processed, in a general way, for all professional categories
- This could be an unjustified intromission in the employee's habits
- It is admissible for certain professions to prevent risks for the life or physical integrity of others.
- Information only processed by the work doctor

INCREASING TREND

- ◉ Many companies and public bodies want to submit all their employees to alcohol tests
- ◉ Internal regulations on the use of drugs and alcohol and imposition of tests
- ◉ Positive results: disciplinary action
- ◉ More coercive than preventive

DPA GUIDELINES

- ◉ Several notifications concerning data processing with the purpose of granting security, hygiene and medicine at work
- ◉ 2006: DPA issued guidelines on the principles applicable to this kind of data processing
- ◉ Analysis on alcohol and drug issue

MAIN PRINCIPLES

- ⊙ Alcohol and drug consumer habits
 - Consumer profiles may be excessive and potentially discriminatory
 - Not admissible for all professional categories
- ⊙ Other less intrusive measures
 - Preventive action
 - Close observation and surveillance of symptoms

MAIN PRINCIPLES (2)

- Alcohol and drug tests at work
 - Admissible for certain professional categories duly justified, for the prevention of danger to physical integrity of the employee and third parties;
 - Performed exclusively by the work doctor;
 - Results data processed only by the doctor;
 - Output for the employer: able to work or non-able

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RECENT CASE

- ◎ Municipality approved an internal regulation:
 - Any employee can be subjected to alcohol tests, for no reason at all;
 - The tests are performed by non-medical staff;
 - The results of the tests are communicated to the superiors (=>0,5g/l is considered positive)
 - Positive result causes immediate dismissal
- ◎ The DPA did not authorise the data processing as requested for disproportionate and illegitimate
- ◎ The data controller appealed to the court

THANK YOU FOR YOUR ATTENTION!

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