

## OBSERVANCE OF PRIVACY RIGHT DURING VIDEO SURVEILLANCE

*The **purpose** of the paper is to research how privacy right is observed during video surveillance. The privacy right consists of the following elements: physical privacy, informational privacy, privacy of communication and privacy of the territory. Due to this right the person is protected from illegal searches, video surveillance, check-ups etc. In order to minimize such cases European Forum for Urban Security drafted Principles of Video Surveillance which were further included in Charter for a Democratic Use of Video-Surveillance.*

**Results.** *The main purpose of this document is to ensure privacy right during video surveillance. Those principles are the following:*

- *the principle of legality means that video surveillance in public places should comply with national and international legislation on data protection as well as protection of privacy and property rights;*
- *the principle of necessity says that video surveillance should be justified;*
- *the principle of proportionality means correspondence between goals which are intended to be achieved and means which are used;*
- *the principle of transparency means that activities on video surveillance taken by each subject in charge particularly governmental and local self-governmental bodies should be clear, convincing and known to public;*
- *the principle of accountability means that subjects in charge of video surveillance are fully responsible for the systems under their supervision;*
- *the principle of independent oversight says that constant independent oversight should be always carried out over the activities of subjects in charge;*
- *the principle of citizen participation means that the agency which made a decision on installment of video surveillance should involve public at each stage of the system's life.*

**Conclusions.** *It has been concluded that privacy right is one of the most important human rights which should be protected during video surveillance. To observe this right subjects in charge should observe the principles drafted by European Forum for Urban Security and included in the Charter for a Democratic Use of Video Surveillance.*

**Key words:** privacy right, video surveillance, principles of video surveillance, law enforcement agencies, data protection.



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## 1. Introduction

Each democratic, law based and social state aims at ensuring human rights. To some extent they are a tool which can be used by individuals to fight against humiliations and abuses of the state. Human rights restrict the state power in order to protect human dignity and motivate the government to respect it.

The main goal of human rights is that they respect and provide the person with an opportunity to develop and express herself. At the same time, scientific progress complicates sometimes the exercise of human rights by public. It is particularly relevant for observance of privacy right which can be violated by video surveillance.

*Analysis of recent research and publications.* Such scholars as V. Serohin, Z. Romovska, A. Oliinyk, E. Tsadykova, R. Stefanchuk, V. Tertyshnyk and others researched privacy right in their works. Nevertheless none of them focused on observance of privacy right during video surveillance which is the *purpose* of this paper.

## 2. The main body

Privacy right is some guarantee of private life which protects a person from interference “in her own world”. Due to this right the person has confidence that no one is entitled collect, store, use, and disseminate information on her private life without her consent.

Moreover, this right provides everyone with an opportunity to obtain more specific information about herself and require protection of her personal data. In this regards, it is possible to define the following elements in privacy right:

- a) physical privacy which protects the person from infringements upon her body like collection of DNA, blood samples etc.;
- b) informational privacy which includes rules regarding collection and handling with personal data;
- c) privacy of communication which stipulates security and inviolability of regular mails, emails and telephone conversations etc.;
- d) privacy of the territory which establishes limits for invasions in working place considered to be public etc. In such a way the person is protected from illegal searches, video surveillance, check-ups etc.

In our opinion, this definition includes all elements of this right and shows its essence. At the same time, video surveillance in public places has a threat to privacy right

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particularly its informational element as it leads to obtaining of the person's image which allows to identify the person in future. In order to minimize such cases European Forum for Urban Security drafted Principles of Video Surveillance which were further included in *Charter for a Democratic Use of Video-Surveillance*. The main purpose of this document is to ensure privacy right during video surveillance. In this regard, we propose to consider these principles more detailed.

### **3. The principle of legality**

It means that video surveillance in public places should comply with national and international legislation on data protection as well as protection of privacy and property rights. If national legislation does not stipulate a thorough procedure of using video surveillance its installation should comply with the principles (Charter for a democratic use of video-surveillance).

This principle obliges the subjects in charge of video surveillance (subjects in charge) to know and apply legal acts which regulate video cameras in public places.

### **4. The principle of necessity**

The principle of necessity says that video surveillance should be justified. Decision on installation of video cameras have to be made based on the fact that video surveillance is a necessary measure to overcome some problem. Necessity can be identified through balance between the ongoing situation and need on the one hand and their possible solution on the other hand (Charter for a democratic use of video-surveillance).

This principle obliges those ones who use video cameras to justify this measure for identification of possible effectiveness. To achieve this goal law enforcement officers have to refer to statistics of crimes kept by the Ministry of Internal Affairs. Nevertheless national criminologists mention that 80% of crimes are latent (Politova, 2013). Foreign surveys show the same tendency. It was established that in Britain more than half of committed crimes were not registered (Öffentliche Videoüberwachung in den USA, Großbritannien und Deutschland). Consequently, crime statistics is an important source of information but it should not be the only one influencing the process of decision making regarding installation of video cameras in public places. That is why the subject responsible for video surveillance should additionally refer to annual reports on law enforcement activities, researches and make public opinion surveys to find out public attitude to the work of law enforcement agencies and installed video cameras. While analyzing this information it is necessary to pay attention to preventive measures which are used by law enforcement agencies to see their effectiveness. Research of various information and its objective evaluation provide an opportunity to set the goal of video surveillance and prove it by identifying its advantages.

Compliance with this principle also requires that subjects responsible for video surveillance refuse from it when the goal was achieved. Some Western European countries used this approach. For example police deactivated some video cameras in the center of Mannheim in five years because the rate of criminality decreased at that place (Zoller, 2005).

### **5. The principle of proportionality**

Installation, operation and further dissemination of video surveillance should meet the existing needs. Video surveillance should be proportionate with the problem which the subject responsible for it tries to solve. First of all proportionality means correspon-

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dence between goals which are intended to be achieved and means which are used (Charter for a democratic use of video-surveillance). In other words, this principle means the balance between the invasion in personal rights and achieved goal. But this principle is not always observed by law enforcement agencies. It is also proved by the Verkhovna Rada Commissioner for Human Rights in her report *On the State of Observance and Protection of Human Rights in Ukraine*. The report says that in cells of certain detention facilities toilets can be seen from video cameras which does not ensure the exercise of detainees' privacy right because they are constantly monitored when they relieve themselves (Annual Report, 2015).

In order to achieve minimal invasion in private sphere of the person the subject in charge of video surveillance shall decide on the amount of cameras, the area of their coverage and their specifications. Only those technologies which will contribute to the achievement of the set goal are recommended to use. That is why video surveillance should be restricted by time and place (Major, 2002). It is essential to mention that video camera should be installed the way to exclude private property from surveillance because law enforcement officers should watch only public places. In this regard, it is necessary to decide the types of lens in use static or dynamic (Joiner, 2001).

The subject in charge should also think about location of video cameras and minimize surveillance over the territory which does not relate to achievement of the goal. It is also important to check whether installed video cameras will record only the problem taking place. For example, video cameras designated for recording overspeeding start filming when the driver violates traffic rules. Otherwise, it is impossible to use video surveillance in other cases. Such system allows also to save money invested in servers and ensure a privacy right (Surveillance Camera Code of Practice).

#### **6. The principle of transparency**

Activities on video surveillance taken by each subject in charge particularly governmental and local self-governmental bodies should be clear, convincing and known to public (Charter for a democratic use of video-surveillance). This principle obliges the subjects in charge to make the results of video surveillance accessible to individuals who were filmed. Notification of public on video surveillance in public places and publication of positive examples in mass media can make it possible.

Implementation of this principle requires that law enforcement agencies making decision on video surveillance provide individuals in the event of their requests with the following information:

- 1) decision on installation of video cameras and their location;
- 2) purpose of video surveillance;
- 3) areas which will be under surveillance. At the same time, special signs which notify public about it should be installed;
- 4) contact details of the unit which will provide more detailed information on this measure. Such information can be put on notification signs in public places. Such sign can say the following "the area is under video surveillance to prevent crimes and maintain public order. Kharkiv Patrol Police is in charge of this system. For further information please call <...>"
- 5) taking necessary measures to protect obtained images;

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6) ensuring a proper access to data received through video surveillance. Access to this information should be given only to the authorized persons and ensured only after entering a special password. Any use of images shall be fixed in special register which is kept by the subject in charge. If this subject is a law enforcement agency then this register should be registered, sewed and sealed by chancellery of the relevant unit. The register should include contact details of the person who requested data; the purpose of obtaining these data as well as other information which seems important to the person in charge. All requests should be treated with precautions because dissemination of materials can cause damage to those ones who were on video tape. To prevent those cases the subject in charge should make sure that the person has reasonable grounds to obtain these data (e. g. court decision on trial of some cases and necessity to provide video tapes to establish all the facts) and that provision of this information does not have any risks for the third parties;

7) subjects who can use images and tapes. These subjects can be law enforcement agencies, which investigate a certain case and will be able to establish facts due to obtained data; persons who were in the area of video surveillance; legal counsels or representatives who will use this information in the court for protection of their clients; third persons if their needs in these materials preempt the need to protect persons who are under video surveillance the same moment. For example, a person submits request to have access to data of video surveillance which were obtained the moment when his car was being injured. These materials are needed to be provided to the insurance company for reimbursement.

### **7. The principle of accountability**

This principle means that subjects in charge of video surveillance are fully responsible for the systems under their supervision (Charter for a democratic use of video-surveillance). They are accountable to persons who are under surveillance as well as they should fulfill properly their obligations which will improve video surveillance. As a result all subject in charge should ensure observance of privacy right during video surveillance, its principles and compliance with the purpose of this measure. In the event of failure to perform their duties they will bear liability. Art. 182 of the Criminal Code of Ukraine stipulates that illegal collection, storage, use or dissemination of confidential information about a person without his/her consent, or dissemination of such information in a public speech, publicly demonstrated work, or mass media shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labor for a term up to two years, or arrest for a term up to six months, or restraint of liberty for a term up to three years (Criminal Code of Ukraine, 2001).

This provision obliges also the subject in charge of video surveillance to take measures aimed at ensuring confidentiality of obtained information. Job description of the person can contain this duty. Moreover, additional security measures should be taken in the room where obtained information is stored.

### **8. The principle of independent oversight**

Constant independent oversight should be always carried out over the activities of subjects in charge (Charter for a democratic use of video-surveillance). Effective domestic legislation proves that the Verkhovna Rada Commissioner for Human Rights

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can exercise the mentioned control. According to Art. 23 of the Law of Ukraine “On Data Protection” he/she can conduct onsite and distance inspections of personal data controllers and/or processors with provision of access to the premises where processing of personal data is performed according to legislation (Law of Ukraine “On Personal Data Protection”). This task is fulfilled by Data Protection Department of the Verkhovna Rada Commissioner for Human Rights (Data Protection Department of the Verkhovna Rada Commissioner for Human Rights) which mainly generalizes information on data protection, drafts proposals and recommendations based on the analysis and cooperates with structural units or responsible persons who organize work related to data protection.

This Department does not have any territorial branches which makes it impossible to carry out overall control through inspections aimed among others at corresponding legislation on data protection during video surveillance. At the same time Ukrainian laws do not vest other bodies with the same powers. In this regard, Data Protection Department should be also represented at regional and local levels.

#### **9. The principle of citizen participation**

This principle means that the agency which made a decision on installment of video surveillance should involve public at each stage of the system’s life (Charter for a democratic use of video-surveillance). Moreover, public should take an active part in various consultations, negotiations, conferences and round tables. Decision on installment of video surveillance in new public places or its expansion should be made with an active public participation. In each possible case discussions and other forms of public interaction should be organized. Active public participation will contribute to positive attitude and increase public trust to law enforcement agencies.

#### **10. Conclusions**

Therefore, privacy right which is enshrined in international and domestic legislation is one of the most important human rights which should be protected during video surveillance. To observe this right subjects in charge of video surveillance should observe the principles drafted by European Forum for Urban Security and included in the Charter for a Democratic Use of Video Surveillance.

#### **Bibliography:**

1. Charter for a democratic use of video-surveillance. URL: [http://www.cctvcharter.eu/fileadmin/efus/CCTV\\_minisite\\_fichier/Charta/CCTV\\_Charter\\_EN.pdf](http://www.cctvcharter.eu/fileadmin/efus/CCTV_minisite_fichier/Charta/CCTV_Charter_EN.pdf).
2. Політова А.С. Кримінологічна ситуація в Україні: оцінка, тенденції, проблеми. Порівняльно-аналітичне право. 2013. № 2. С. 311–315. URL: [http://www.pap.in.ua/2\\_2013/Politova.pdf](http://www.pap.in.ua/2_2013/Politova.pdf).
3. Öffentliche Videoüberwachung in den USA, Großbritannien und Deutschland – Ein Drei-LänderVergleich. URL: <https://ediss.unigoettingen.de/bitstream/handle/11858/00-1735-0000-0006-B3C4-7/lin.pdf?sequence=1>.
4. Zoller M.A. Möglichkeiten und Grenzen polizeilicher Videouberwachung. Neue Zeitschrift für Verwaltungsrecht. 2005. Heft 11. S. 1235.
5. Щорічна доповідь Уповноваженого Верховної ради з прав людини «Про стан додержання та захисту прав і свобод людини і громадянина в Україні». К.: Секретаріат Уповноваженого Верховної Ради з прав людини, 2015. 552 с.

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6. Major R.D. Desmond Big Brother is Watching: Reasonable Expectations of Privacy in the Technological Age (Part II). *The Reporter*. 2002. № 3. P. 1–7.
  7. Scott D.J. Electronic Surveillance. *Georgetown Law Journal*. 2001. № 89. P. 1163–1185.
  8. Surveillance Camera Code of Practice. URL: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/204775/Surveillance\\_Camera\\_Code\\_of\\_Practice\\_WEB.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204775/Surveillance_Camera_Code_of_Practice_WEB.pdf).
  9. Кримінальний Кодекс України: Закон України від 5 квітня 2001 р. № 2341-III / Верховна Рада України. Відомості Верховної Ради України. 2001. № 25–26. Ст. 131.
  10. Про захист персональних даних: Закон України від 1 червня 2010 р. № 2297-VI / Верховна Рада України. Відомості Верховної Ради України. 2010. № 34. Ст. 481.
  11. Департамент з питань захисту персональних даних Секретаріату Уповноваженого Верховної Ради України з прав людини. URL: <http://www.ombudsman.gov.ua/ua/page/zpd/info/>.

### References:

1. Charter for a democratic use of video-surveillance. Retrieved from: [http://www.cctvcharter.eu/fileadmin/efus/CCTV\\_minisite\\_fichier/Charta/CCTV\\_Charter\\_EN.pdf](http://www.cctvcharter.eu/fileadmin/efus/CCTV_minisite_fichier/Charta/CCTV_Charter_EN.pdf).
2. Politova, A.S. (2013). Kryminolohichna sytuatsiia v Ukraini: otsinka, tendentsii, problem [Criminological Situation in Ukraine: Evaluation, Tendencies, Problems]. *Porivnialno-analitychne parvo*, no. 2, pp. 311–315. Retrieved from: [http://www.pap.in.ua/2\\_2013/Politova.pdf](http://www.pap.in.ua/2_2013/Politova.pdf).
3. Öffentliche Videoüberwachung in den USA, Großbritannien und Deutschland – Ein Drei-Länder-Vergleich. Retrieved from: <https://ediss.uni-goettingen.de/bitstream/handle/11858/001735-0000-0006-B3C4-7/lin.pdf?sequence=1>.
4. Zoller, M.A. (2005). Möglichkeiten und Grenzen polizeilicher Videüberwachung. *Neue Zeitschrift für Verwaltungsrecht*, Heft 11, S. 1235.
5. (2015). Shchorichna dopovid Upovnovazhenoho Verkhovnoi Rady z prav liudyny “Pro stan doderzhannia ta zakhystu prav i svobod liudyny i hromadianyna v Ukraini” [Annual Report of the Verkhovna Rada Commissioner for Human Rights “On the State of Observance and Protection of Human Rights and Freedoms in Ukraine”]. Kyiv: Sekretariat Upovnovazhenoho Verkhovnoi Rady z prav liudyny. [in Ukrainian].
6. Major, R.D. (2002). Desmond Big Brother is Watching: Reasonable Expectations of Privacy in the Technological Age (Part II). *The Reporter*, no. 3, pp. 1–7.
7. Scott, D.J. (2001). Electronic Surveillance. *Georgetown Law Journal*, no. 89, pp. 1163–1185.
8. Surveillance Camera Code of Practice. Retrieved from: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/204775/Surveillance\\_Camera\\_Code\\_of\\_Practice\\_WEB.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204775/Surveillance_Camera_Code_of_Practice_WEB.pdf).
9. Verkhovna Rada of Ukraine (2001). Kryminalnyi Kodeks Ukrainy: Zakon Ukrainy vid 5 kvitnia 2001 r. № 2341-III [The Criminal Code of Ukraine: Law of Ukraine of April 5, 2001. No. 2341-III]. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 25–26, art. 131.
10. Verkhovna Rada of Ukraine (2010). Pro zakhyst personalnykh danykh: Zakon Ukrainy vid 1 chervnia 2010 r. № 2297-VI [On Protection of Personal Data: Law of Ukraine dated June 1, 2010 No. 2297-VI]. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 34, art. 481.
11. Departament z pytan zakhystu personalnykh danykh Sekretariatu Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny [Data Protection Department of the Verkhovna Rada Commissioner for Human Rights]. Retrieved from: <http://www.ombudsman.gov.ua/ua/page/zpd/info/>.

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## ДОТРИМАННЯ ПРАВА НА НЕДОТОРКАННІСТЬ ПРИВАТНОГО ЖИТТЯ ПІД ЧАС ЗДІЙСНЕННЯ ВІДЕОСПОСТЕРЕЖЕННЯ

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***Мета** статті полягає в з'ясуванні питання щодо дотримання права на недоторканність приватного життя під час здійснення відеоспостереження. Право на недоторканність приватного життя складається з таких елементів, як фізична недоторканність, інформаційна недоторканність, недоторканність кореспонденції та недоторканність території. Завдяки наявності цього права особі забезпечується захист від проведення щодо неї незаконних оглядів, обшуків, відеоспостереження тощо. Для мінімізації таких випадків громадською організацією «Європейський форум із забезпечення безпеки міст» були розроблені принципи здійснення відеозйомки, які в подальшому були включені до Хартії демократичного застосування відеоспостереження. **Основна мета** цього документа полягає в забезпеченні права на недоторканність приватного життя під час здійснення відеоспостереження. До цих принципів належать такі:*

- принцип законності, який означає, що застосування відеоспостереження в громадських місцях має відповідати національному та міжнародному законодавству, яке спрямоване на захист персональних даних, права на недоторканність приватного життя та приватної власності;
- принцип необхідності, який означає, що застосування відеоспостереження має бути виправданим;
- принцип пропорційності, який вказує на те, що варто встановити баланс між метою, якої намагаються досягти, та засобами, які застосовуються;
- принцип прозорості, який встановлює, що дії будь-якого суб'єкта застосування відеоспостереження, зокрема й органів державної влади та органів місцевого самоврядування, з приводу його використання повинні бути зрозумілими, переконливими та відомими громадськості;
- принцип відповідальності, який означає, що суб'єкти застосування відеоспостереження несуть повну відповідальність за системи, які перебувають у їх віданні;
- принцип здійснення незалежного контролю, який вказує на те, що за діяльністю суб'єктів застосування відеоспостереження постійно має здійснюватися незалежний контроль;
- принцип залучення громадськості до застосування відеоспостереження, який означає, що орган, який вирішив застосовувати відеоспостереження, повинен вжити заходів для залучення громадськості на кожному етапі, який супроводжує встановлення відеокамер.

*Зроблено **висновок** про те, що досліджуване право є одним із найважливіших прав особи, що підлягає захисту під час здійснення відеоспостереження. Для цього суб'єктам застосування відеоспостереження необхідно дотримуватися принципів, які спеціально були розроблені представниками громадської організації «Європейський форум із забезпечення безпеки міст» та включені до Хартії демократичного застосування відеоспостереження.*

**Ключові слова:** право на недоторканність приватного життя, відеоспостереження, принципи відеоспостереження, правоохоронні органи, захист персональних даних.