

New Technical Means of Surveillance and the Protection of Fundamental Rights

Workshop 2

Online and Other Forms of Surveillance – the Erosion of Privacy

1. Recent important developments in jurisprudence re. the protection of privacy
 - of the European Court on Human Rights and under domestic jurisdictions (ex. German Constitutional Court on the guarantee of confidentiality and integrity re. systems of information technology)
 - New Technical Means of Surveillance, as the 'old' means considered: to touch on the personal domain and to fall under private life protection ('virtual domicile')
2. Need of clearly establishing roles in crime investigation, and the value of evidence:
 - procedural aspects need to be and remain under judicial control
3. Importance of the application of the principle of Proportionality:
 - to differentiate between searches required for the investigation of a concrete case vs. searches of a 'preventive character'
4. Difficulties for the Judiciary to take an informed decision on access by police to data
 - leading to access to data being granted in most cases
5. Harmonisation of legislation at EU level would:
 - do away with diverging national approaches and conceptualisations
 - facilitate confidence re. legal assistance concerning criminal cases
 - discourage forum-shopping given the character of the technology