

Subjects: Surveillance (extensive)

Occupation: Citizen

Data type: Professionals

Can I record an interview with my counsellor from the unemployment insurance to use it as a proof ?

X recently lost his job and registered with the unemployment insurance in order to receive the compensation payments.

Bad luck seems to pursue him as the relationship with his counsellor is difficult as, according to him, he is aggressive and counterproductive. He asked in vain a change of counsellor.

Determined to prove his claims, which, according to him, the counsellor strives to distort, he records the last counselling interview with his phone, unknown to his counsellor.

The legal service of the employment insurance, which he contacted in order to contest the decision of suspension with the record in question as a proof, rules in his favour. However, it follows against him a criminal procedure for recording a non-public conversation without consent.

Therefore, he wins his case in the administrative procedure, but was legally given a suspended sentence.

Recommendations

The conditions under which a conversation can be recorded without prerequisite consent from the person concerned are strictly limited by the criminal law and concern phone conversations with assistance, help or safety services, or related to orders, authorizations, bookings or other similar commercial transactions. In any other cases, the consent of the person concerned is necessary for the recording to be lawful.

Basic principles

Basic principles: Art. 4, 12 LPD ; 28 CCS (Lawfulness, honesty and transparency of the collection; personality rights)

Resources

See newspaper article relating a court decision in Lausanne on October 21, 2014, sentencing someone for the violation of the Swiss penal code (unauthorized recording)

<http://www.24heures.ch/vaud-regions/Enregistrer-son-entretien-a-l-ORP-peut-couter-cher/story/20669096>

Note of the PFPDT (Federal Data Protection and Information Commissioner) on the recording of phone conversations:

<https://www.edoeb.admin.ch/datenschutz/00739/00871/index.html?lang=fr>