

Chen MENGXUAN*

The Right to Privacy of Workers under Workplace Surveillance in China

ABSTRACT: Article 1032 of the Civil Code of the People's Republic of China, which came into force on 1 January 2021, establishes the right of personality as a separate chapter, and defines privacy for the first time: "Privacy is the undisturbed private life of a natural person and his private space, private activities, and private information that he/she does not want to be known to others."¹ The Personal Information Protection Law of the People's Republic of China (Hereinafter: PIPL), effective since 1 November 2021, requires personal information processors in China to take technical measures and necessary steps to secure personal information (Article 42), comply with laws/regulations and agreements (Article 43), and publish rules for personal information protection (Article 44). At present, China does not have any systematic law for the installation of regulatory surveillance systems. Article 26 of the PIPL only relates to the collection of personal information in public places, which mandates the installation of personal identification equipment in public places for public safety purposes, while requiring prominent logo reminders, and collected personal data may only be used for public security purposes, unless with individual consent.² The Chinese Labour Code and the Labour Contract Law only deal with the protection of the property of workers in China, and there are no clear provisions for the protection of workers' privacy. In labour law cases, the most common view of the courts is that the purpose of installing cameras in the workplace is to ensure the safety of a particular workplace, which is a normal exercise of the employer's right to supervise.

- 1 PRC Civil Code, Order of the President of the People's Republic of China No. 45, National People's Congress, 28 May 2020, p. 186; available at: https://english.www.gov.cn/archive/lawsregulations/202012/31/content_WS5fedad98c6d0f72576943005.html (Accessed: 25 October 2023).
- 2 The Personal Information Protection Law of the People's Republic of China, 20 August 2021, Standing Committee of the National People's Congress; available at: <http://www.npc.gov.cn/npc/c30834/202108/a8c4e3672c74491a80b53a172bb753fe.shtml> (Accessed: 25 October 2023).

* PhD student of Law and Political Science Faculty, University of Szeged. The research was supported by the Humanities and Social Sciences Cluster of the Centre of Excellence for Interdisciplinary Research, Development and Innovation of the University of Szeged, Hungary. The author is a member of the "The Impact of Artificial Intelligence on the Future of Work and the Labour Market" research group.

Recently there have been no legal provisions defining workers' right to privacy in the workplace. This article aims 1. to analyse the views on privacy in China from the historical perspective, and 2. to analyse workers' right to privacy under workplace surveillance in China through the legislation and a case study on Chinese jurisprudence.

KEYWORDS: *Right to Privacy, Privacy of Workers, PIPL, Workplace Surveillance, Civil Code of the People's Republic of China.*

1.

Introduction

Since the implementation of the Personal Information Protection Law in China on 1 November 2021, the protection of personal information and the right to privacy have attracted growing attention, especially as China is a country with a large number of surveillance cameras, the impact of workplace surveillance systems on the workers' right to privacy has become increasingly important, and the lack of legislation on the surveillance of workplaces has made it even more important to protect the workers' right to privacy under the Personal Information Protection Law.

The aim of this article is 1. to analyse the views of privacy in China from the historical perspective, and 2. to analyse workers' right to privacy under workplace surveillance in China through the legislation and a case study on Chinese jurisprudence. Following the introduction, the article will elaborate on three aspects: the history of privacy in China, the protection of workers' right to privacy under workplace surveillance in China and a case study.

2.

The History of the Right to Privacy in China

Chinese notions of privacy have undoubtedly existed long before the modern era. At the very latest, during the late imperial era, a profound understanding of privacy had already emerged, accompanied by a recognition of its numerous advantages.³ However, the concept of privacy at this time ('Yin Si') was very different from the

3 McDougall, Bonnie, Hansson, 2002.

modern concept of privacy. The interpretation of ‘Yin Si’⁴ in the 1983 edition of the Modern Chinese Dictionary was ‘a shameful secret’. This concept has been going on for over 2,000 years since ancient China.⁵ For an extended period, there was a fusion of the terms ‘Yin Si’ and privacy. Until the People’s Daily gradually stopped using the concept of ‘Yin Si’ from the late 1980s onwards.⁶

China’s legislation on the right to privacy is relatively late: in 1986, the General Principles of Civil Law did not provide for the right to privacy; in 1988, the Supreme People’s Court of the People’s Republic of China ruled ‘on the implementation of the application of the General Principles of Civil Law on a number of issues of the opinion’, clear infringement of privacy in accordance with the infringement of the right to reputation, but with the definition of the current point of view, privacy and reputation are two completely different rights, the right to reputation of the core of the fabrication of false facts, defamation and an insult to reputation, while the right to privacy is the other party’s breaking of true material and true information, which does not constitute defamation and is an infringement of privacy.⁷

Since 2013, the Chinese Government has focused on personal information protection. On 28 December 2012, the Standing Committee of the National People’s Congress passed the ‘Decision on Strengthening the Protection of Internet Information’.⁸ The ‘Decision’ consists of four parts and a total of twelve Articles. Article 1 emphasises the protection of electronic information, while Article 2 stipulates the principles of lawful, proper, and necessary collection and use of information. Article 3 specifies the principle that collected personal information must not be disclosed, tampered with, damaged, or sold, while Article 4 outlines the principle of security protection for personal information. Article 11 outlines the responsibilities for violations of the ‘Decision’. The revised ‘Consumer Rights Protection Law’ of 2014 and the

4 The term ‘privacy’ used here does not signify the modern understanding, but rather ‘Yin Si’ (阴私) [yīnsī], which shares a similar pronunciation in Chinese but is represented by different characters. For an extended period, there was a fusion of the terms Yin Si and privacy. However, it was not until 1999 that Chinese scholars discerned between the concepts of privacy and Yin Si. Privacy was defined as ‘matters that one does not wish to be known,’ while Yin Si was understood as ‘matters that should not be known,’ the former denoting the private aspects of individuals’ lives neutrally and the latter carrying certain pejorative connotations.

5 周汉华:个人信息保护观念演变的四个阶段_权利 (zhōuhàn huá: gèrén xìn xī bǎo hù guān niàn yǎn biàn de sì gè jiē duàn_ quán lì) [Zhou Hanhua: Four Stages of the Evolution of the Concept of Personal Information Protection Rights], no date; available at: https://www.sohu.com/a/281451267_455313 (Accessed: 25 October 2023).

6 Zhenhao, 2022.

7 Sourced from Sanlian Life Week’s interview with Prof. Shi Jiayou from Renmin University of China Law School.

8 全国人大常委会关于加强网络信息保护的決定 (quánguó réndàchángwěihuì guānyú jiāqiáng wǎngluò xìn xī bǎo hù de jué dìng) [Decision of the Standing Committee of the National People’s Congress on Strengthening the Protection of Network Information], no date; available at: https://www.gov.cn/jrzq/2012-12/28/content_2301231.htm (Accessed: 25 October 2023).

'Cybersecurity Law' of 2017 established comprehensive measures for safeguarding consumer information, stressing the principles of lawful collection and user consent. These were followed by amendments to the Criminal Code (from the seventh to the ninth amendments), which introduced penalties for crimes related to the illegal acquisition and provision of personal information. Additionally, the 'Information Security Technology-Personal Information Security Specification' of 2017 provided detailed guidelines for safeguarding personal data, while the 'E-Commerce Law' of 2019 reinforced users' rights to access, correct, and delete their information, positioning them as proactive participants in data protection.⁹

The Civil Code of the People's Republic of China defined the right to privacy for the first time on 1 January 2021, with Article 1032 stating "*Privacy is the undisturbed private life of a natural person and his private space, private activities, and private information that he/she does not want to be known to others.*"¹⁰ Meanwhile, the PIPL, effective from 1 November 2021, mandates personal information processors in China to secure data (Article 42) and follow laws and agreements (Article 43). They must also publish protection rules (Article 44). While there is no comprehensive surveillance law, Article 26 regulates data collection in public areas, requiring personal identification systems with clear notices. Collected data may only be used for public security unless consent is given.¹¹ China does not have a tradition of case law and therefore relies heavily on statutory law, and the meaning of the right to privacy will need to be continually researched and interpreted in the future.

3.

Workers' Right to Privacy under Workplace Surveillance

For employees, the protection of personal information is primarily enshrined in Article 8 of the Labour Contract Law (2007)¹² and in Articles 20 and 36 of the Law on

9 袁泉, 大数据背景下的个人信息分类保护制度研究[D], 北京: 对外经济贸易大学 (yuánquán, dàshùjù bèijīng xiàde gèrénxìnxī fēnlèi bǎohù zhìdù yánjiū [D], běijīng: duìwàijīngjìmàoyìdàxué) [Yuan Quan, Research on Personal Information Classification and Protection System under the Background of Big Data [D], Beijing, University of International Business and Economics], 2019.

10 PRC Civil Code, Order of the President of the People's Republic of China No. 45, National People's Congress, 2020; p. 186.

11 The Personal Information Protection Law of the People's Republic of China, Standing Committee of the National People's Congress, 2021.

12 中华人民共和国劳动合同法(主席令第六十五号) (zhōnghuárénmíngònghéguó láodòng hétongfǎ (zhǔxíling dì liùshí wǔhào)) [PRC Labour Contract Law (Presidential Decree No. 65)], no date; available at: https://www.gov.cn/flfg/2007-06/29/content_669394.htm (Accessed: 25 October 2023).

the Prevention and Control of Occupational Diseases (2001).¹³ Article 8 of the Labour Contract Law states that:

“When an employer recruits a worker, it shall truthfully inform the worker of the content of the work, the working conditions, the place of work, the occupational hazards, the safety conditions of production, the remuneration for labour, and any other information that the worker may request; the employer shall have the right to learn about the worker’s basic information that is directly related to the labour contract, and the worker shall truthfully explain it.”

This provision emphasises the power of employers to obtain work-related information about workers. In an ancillary manner, it prohibits employers from soliciting irrelevant personal information and lays down the foundation for protecting workers’ privacy.

Article 20 of the Law on the Prevention and Control of Occupational Diseases states that: *“Employers must use effective occupational disease protection facilities and provide workers with occupational disease protection equipment for personal use.”* and Article 36 states that:

“Workers have the following rights to occupational health protection:
a) *To have access to occupational health education and training; b) To obtain occupational health examinations, diagnosis and treatment of occupational diseases, rehabilitation and other services for the prevention and control of occupational diseases; c) To be informed of the hazards of occupational diseases arising or likely to arise in the workplace, the consequences of such hazards, and the measures that should be taken to protect against occupational diseases; d) To require employers to provide occupational disease protection facilities that meet the requirements for the prevention and treatment of occupational diseases and occupational disease protection articles for personal use, and to improve working conditions; e) To make criticisms, denunciations and complaints about violations of laws and regulations on the prevention and control of occupational diseases and acts that endanger life and health; f) To reject unauthorised direction and forcing to carry out operations without occupational disease protection measures; g) To participate in the democratic management of*

13 中华人民共和国职业病防治法 (zhōnghuárénmíngònghéguó zhíyèbìng fángzhìfǎ) [PRC Law on Prevention and Control of Occupational Diseases], no date; available at: https://www.gov.cn/banshi/2005-08/01/content_19003.htm (Accessed: 25 October 2023).

the occupational health work of the employer, and putting forward opinions and suggestions on the prevention and treatment of occupational diseases. The employer shall guarantee that workers exercise the rights listed in the preceding paragraph. Any act that reduces the wages, benefits or other entitlements of a worker, or terminates or suspends an employment contract with a worker, as a result of the worker exercising his or her legitimate rights in accordance with the law, shall be null and void.”

It is obvious that these two Articles concentrate on safeguarding the health data of employees, mandating employers to establish and maintain comprehensive occupational health records. Nonetheless, there is a legal vacuum specifically concerning the protection of sensitive personal information for skilled workers.

Regarding the issue of surveillance systems, at the legal level, there are currently no detailed regulations in China that specifically address the installation and use of surveillance facilities and equipment. In other words, the employer’s installation and use of surveillance cameras and microphones in office spaces does not violate any legal provisions, and thus the employer’s behaviour in itself is not illegal.¹⁴

When it comes to the protection of workers’ right to privacy under surveillance, the Labour Contract Law on privacy and personal information only deals with the workers’ right to know the content and intensity of their work, and the employers’ right to know specific information about workers. Although the workers’ privacy can be protected on the basis of ‘information not related to the work’, the Labour Contract Law has considerable limitations due to the complexity of the working environment and the collection of information, and therefore we mainly rely on the Civil Code and the PIPL for the protection of workers’ privacy under workplace surveillance.

3.1. Protection of Privacy in Civil Code

Article 1032 of the Civil Code states “*Privacy is the undisturbed private life of a natural person and his private space, private activities, and private information that he/she does not want to be known to others.*”¹⁵ Even though the Civil Code provided a definition for Privacy, it is not as clear that “*That he/she does not want to be known to others*” which shows that definitions are highly subjective.

Article 1034 of the Civil Code stipulates that “*The personal information of natural persons is protected by law.*” The subjects of this protection are natural persons, and

14 Wang, 2022.

15 PRC Civil Code, Order of the President of the People’s Republic of China No. 45, National People’s Congress, 2020.

the objects of protection are personal information. This provision applies to the definition and regulations concerning personal information as mentioned above in the PIPL. According to Article 1035 of the Civil Code:

“Those handling personal information shall follow the principles of legality, legitimacy, and necessity, avoid excessive processing, and meet the following conditions: (1) Obtain the consent of the natural person or their guardian, except as otherwise provided by laws and administrative regulations; (2) Abide by the rules for the public processing of information; (3) Clearly indicate the purpose, method, and scope of processing information; (4) Not violate the provisions of laws, administrative regulations, or the agreement of both parties.”¹⁶

The principle of legality serves as a prerequisite, the principle of legitimacy as the foundation, and the principle of necessity as the standard, with the fundamental objective being to avoid excessive use. The four conditions listed in the provision are the overarching prerequisites: it is only legal if the natural person or guardian agrees; it is legitimate to process information according to the rules; it is necessary to clearly indicate the purpose, method and scope of processing information; and it is only not excessive processing if it does not violate the provisions of laws, administrative regulations, or the agreement of both parties. The provision also explicitly outlines the methods of handling personal information, including collection, storage, use, processing, transmission, provision and public disclosure.¹⁷

3.2. The Concept of the ‘Personal Information’ in the PIPL

‘Personal information’ is defined by the PIPL in Article 4 as *“all kinds of information related to identified or identifiable natural persons that are electronically or otherwise recorded, excluding information that has been anonymised.”*¹⁸ There are two important parts of this definition that are key to identifying personal information: ‘related to’ and ‘identified or identifiable natural person’. Since this Article is focused on the right to privacy, employees are clearly identifiable by their employers in the workplace, the term ‘related to’ is very important in defining personal information. However, there is no further description of ‘related to’ in the PIPL.

16 PRC Civil Code, Order of the President of the People’s Republic of China No. 45, National People’s Congress, 2020; p.186.

17 Kai, 2022.

18 The Personal Information Protection Law of the People’s Republic of China, Standing Committee of the National People’s Congress, 2021.

The relationship between information and data is viewed as the interplay between content and form. Personal data is seen as a specialised manifestation of personal information, and once the informational essence is lost, the legal relevance and discourse surrounding data become unnecessary. Consequently, the legal discussion of personal data in the era of big data is considered tantamount to the discussion of personal information, emphasising their conceptual equivalence and treating them as different expressions of consent.^{19,20} Therefore, Chinese scholars accordingly compare and analyse China's personal information protection (mainly in PIPL) with the EU's personal data protection (mainly in the GDPR).²¹

The General Data Protection Regulation (GDPR) defines 'personal data' in Article 4 as:

"any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person".²²

In addition, Recital 26 specifies that the GDPR does not apply to anonymised information.²³ Like the definition of personal information in PIPL "excluding information that has been anonymised" This Article concurs with prior examinations concerning the legal convergence between personal information and personal data, and takes the GDPR's definition of personal data only in terms of defining personal information as a reference.

In the GDPR, the term 'related to' within the definition signifies the direct connection between information and individuals. This link may be clear in various scenarios, such as personnel files in a human resources office or medical records of a patient. However, establishing this connection is not always straightforward, particularly when data concerns objects or involves indirect relationships. To ascertain the relevance of specific data to an individual, the presence of a 'content', 'purpose', or 'result' element is crucial. The 'content' element refers to specific information about an individual, while the 'purpose' element involves using data to influence an individual. The

19 Xiao, 2018.

20 Xiaying, 2019.

21 Xiaoping, Junjie, 2022.

22 Personal Data - General Data Protection Regulation (GDPR), 2021; available at: <https://gdpr-info.eu/issues/personal-data/> (Accessed: 25 October 2023).

23 Recital 26 - Not applicable to anonymous data - General Data Protection Regulation (GDPR); available at: <https://gdpr-info.eu/recitals/no-26/> (Accessed: 25 October 2023).

'result' element comes into play when data usage affects an individual's rights, even if not explicitly related. This understanding is vital in applying provisions such as the right of access to data. For instance, data collected during workplace monitoring is generally considered personal information under the GDPR due to its direct impact on employees, encompassing both the 'purpose' and 'result' elements.²⁴

Article 28 of the PIPL specifies certain categories of personal information that require additional safeguards, classified as 'sensitive personal information'. According to the law, sensitive personal information refers to personal data that is likely to cause harm to an individual's personal dignity, physical well-being or property. This category encompasses various data types, including but not limited to biometric identification, religious beliefs, special identities, medical health information, financial accounts, tracking of physical locations, whereabouts, and personal details of individuals below the age of 14.²⁵ Therefore, the facial recognition or biometric information of the employees is considered sensitive information in personal information.

3.3. Protection of Personal Information in the PIPL

Article 2 of the PIPL states that "*The personal information of natural persons shall be protected by law. No organisation or individual may infringe upon natural person's rights and interests relating to personal information.*" Article 13 states that "*A personal information processor may not process personal information unless the individual's consent has been obtained*" but there are some situations involving the processing of personal information without an individual's consent:

1. the processing is necessary for the conclusion or performance of a contract to which the individual is a contracting party or for conducting human resources management under the labour rules and regulations developed in accordance with the law and a collective contract signed in accordance with the law;
2. the processing is necessary to fulfil statutory functions or statutory obligations;
3. the processing is necessary to respond to public health emergencies or to protect the life, health or property safety of natural persons under emergency circumstances;
4. personal information is processed within a reasonable scope to conduct news reporting, public opinion-based supervision, or other activities in the public interest;

24 Article 29 Working Party: Opinion 4/2007 on the concept of personal data, no date; available at: [https://uk.practicallaw.thomsonreuters.com/w-034-6988?transitionType=Default&context-Data=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-034-6988?transitionType=Default&context-Data=(sc.Default)&firstPage=true) (Accessed: 25 October 2023).

25 Crowell & Moring LLP, no date.

5. the personal information that has been disclosed by the individuals themselves or other personal information that has been legally disclosed is processed within a reasonable scope in accordance with this Law; or
6. under any other circumstance as provided by any law or administrative regulation.²⁶

For workers, the first of the situations listed above is particularly important. Necessary information processed for the purposes of human resources management is not subject to the consent of the individual. This can lead to employers relying too heavily on 'human resources management', but not all workplace surveillance is done for human resources management purposes, for example, if an employer installs surveillance cameras to ensure safety in the workplace, or monitors employees' use of the Internet and documents to maintain network security or protect trade secrets, these situations are hard to be recognised as a necessary measure for human resources management.²⁷

As regards the working environment, when it refers to the consent problem, according to Article 14, valid consent must incorporate the following essential components: employees must be comprehensively informed about the intricacies of data processing; consent must be given without any form of coercion or influence; and the consent granted must be clear and unmistakable.²⁸

Moreover, in specific scenarios, what is referred to as 'separate consent' must be obtained, including but not limited to the following cases:

1. Transferring Personal Information (PI) to a third party (Article 23 of the PIPL²⁹), for instance, providing an employee's ID number to an insurance company to facilitate the purchase of commercial insurance.
2. Public disclosure of PI (Article 25 of the PIPL³⁰), such as displaying an employee's PI on the company's website.

26 The Personal Information Protection Law of the People's Republic of China, Standing Committee of the National People's Congress, 2021.

27 Sun, 2022.

28 The Personal Information Protection Law of the People's Republic of China, Standing Committee of the National People's Congress, 2021.

29 A personal information processor that provides any other personal information processor with the personal information it or he processes shall notify individuals of the recipient's name, contact information, purposes and methods of processing, and categories of personal information, and obtain the individuals' separate consent. The recipient shall process personal information within the scope of the aforementioned purposes and methods of processing, and categories of personal information, among others. Where the recipient changes the original purposes or methods of processing, it or he shall obtain individuals' consent anew in accordance with this Law.

30 Personal information processors shall not disclose the personal information processed, except with the separate consent of the individuals.

3. Collection of images or personal identity through devices installed in public places for uses other than public security (Article 26 of the PIPL), for example, the employer using facial recognition for attendance management at the building's reception area.
4. Processing of Sensitive PI (Article 29 of the PIPL), including the collection of an employee's prescriptions, lab reports and other detailed medical information.
5. Transferring an individual's PI to a party located outside the territory of China (Article 39 of the PIPL), for instance, the employer sharing employees' contact information with other offices situated outside mainland China.

As the term 'separate consent' lacks a specific definition within the PIPL, the precise manner of its implementation by organisations remains to be determined. However, as a fundamental guideline, (I) 'separate consent' should correspond to the crucial elements of valid consent as outlined in Article 14, and (II) it is probable that the requirement for 'separate consent' cannot be fulfilled through a method of 'bundled consent' (wherein an employer acquires a single consent for the processing of personal information for multiple purposes).³¹

However, in real court practice, inherent modes of adjudication and lack of clarity in legal definitions also result in workers' right to privacy often being ignored.

3.4. Workers' Information Collected through Workplace Surveillance

Both the PIPL and the Civil Code are focused on personal information protection in order to determine if information collected during workplace surveillance qualifies as personal information, it is crucial to initially comprehend the types of data that employers usually collect and handle through workplace surveillance. In general, worker information captured through workplace surveillance includes the following.

1. Biometric Data: Initially, there is biological data, with workplace cameras and equipment directly accessing workers' facial information and movements. Additionally, certain companies have adopted fingerprint or facial recognition clock-in and clock-out systems, capturing both fingerprint data and specific facial details.³²
2. Communication Data: In the workplace, employer monitoring extends to email and internet usage, serving the purpose of ensuring legal compliance and reinforcing security measures. Company-owned emails and phone

31 Gong, 2021.

32 Sun, 2022.

numbers are subject to monitoring, with the aid of specialised software for content filtering and computer activity tracking.³³ The data collected through communication monitoring is typically categorised into two segments: ‘traffic information’, which includes specifics such as session duration, dial-in/out numbers, visited websites, IP addresses and data volume, and ‘content information’, encompassing the actual message or information conveyed during these communications.³⁴

3. Other Data: At certain workplaces, employee health information is collected to verify the physical and mental fitness of employees for job-related duties. Moreover, real-time location data may be collected to monitor regular attendance and ensure adherence to work schedules.

Based on the definition of ‘personal information’ explained above, according to the three elements of ‘related to’, it is clear that the information of workers collected through surveillance in the workplace belongs to personal information, and the PIPL and the Civil Code can serve as a legal framework for workers’ right to privacy under workplace surveillance.

4.

Introduction to Chinese Jurisprudence on Workers’ Right to Privacy under Workplace Surveillance

The author searched the ‘China Judgments Online’ website with the keywords ‘workers, surveillance, privacy, and the search result was 189 judgments; excluding the unrelated judgments on workplace video surveillance, and combining the judgments of the first trial, second trial and re-trial, obtained 28 valid judgments and 7 valid judgments after the enactment of the PIPL.

None of the workers’ claims that workplace video surveillance infringed on their right to privacy were upheld by the courts. Since in some of the judgements the right to privacy was not the plaintiff’s main claim, some courts did not mention this aspect in their decisions,³⁵ while others pointed out that workers, as employees of their organisations, need to be supervised and managed by their organisations. In one case, a worker made a recording of another worker in the workplace, but the court’s judgement still rejected the claim of invasion of privacy, the court held that carrying out the recording acts involved in the case belonged to the worker’s lawful

33 Abdurrahimli, 2020.

34 Sun, 2022

35 10 out of 28 judgements did not mention the right to privacy in their judgements.

safeguards and own rights and interests, and it was confirmed that no rules and regulations existed to prohibit the recording behaviour, therefore, the court firmly believed that the company claimed with the plaintiff secretly recorded private conversations with other people and serious violation of other people's privacy cannot be sustained.³⁶ In another case,³⁷ the company's shareholder sued the employee for violating his portrait rights was also not supported by the court which held that the case was a dispute over portrait rights. Portrait right refers to a natural person's enjoyment of his or her own portrait embodied in the interests of personality as the content of a personality right. Portrait right is a fundamental right of citizens, which means that without their consent, no one shall use or insult their portraits. In this case, the defendant acknowledges the authenticity of the evidence provided by the plaintiff but explains that the video was recorded solely for evidence collection and used for labour arbitration. During the hearing, the plaintiff did not provide proof that the defendant had unlawfully shared the video on public platforms to defame, damage, or use it for profit, resulting in a violation of the plaintiff's right to their likeness, the court determined the defendant's actions did not violate the plaintiff's right to likeness and dismissed all of the plaintiff's claims for lack of legal basis.

The prevailing stance of the courts favouring employer surveillance practices, primarily for safeguarding property and upholding management order, has created a disparity in the consideration of the competing interests of employers and employees. This imbalance stems from the courts' failure to adequately assess the extent of both the employer's surveillance needs and the workers' right to privacy. Notably, judicial practice often downplays the significance of protecting employees' privacy under surveillance, rendering it a minor or overlooked aspect in many litigation cases. Consequently, court judgments frequently fail to acknowledge this crucial aspect, indicating a systemic disregard for workers' privacy rights.

36 Case Number: Yue 0104 Min Chu No.7358. The plaintiff submitted a CD of recorded conversations with the defendant's personnel specialist and legal representative and transcription of some of the recordings, proving that on August 18, 2020, the plaintiff and these two people were negotiating and bargaining over the defendant's unilateral dismissal as proof that the defendant's dismissal was a violation of the law.

37 Case Number: Yue 2071 Min Chu No. 3029: The plaintiff (a shareholder of the company) claimed to have come to the office of the defendant (an employee) and quarrelled with the defendant over a labour dispute. During the altercation, the defendant recorded the plaintiff's portrait on his mobile phone without the plaintiff's consent. The plaintiff repeatedly asked the defendant to delete the video, but the defendant refused to do so. The plaintiff claimed that the defendant's behaviour had seriously violated the plaintiff's right to privacy. The defendant claimed that the dispute with the plaintiff's portrait right is based on the company and the defendant is still in the period of labour relations, the company does not provide the defendant with labour conditions of labour contract dispute, and the plaintiff is the company's shareholder, the defendant is the company's worker, the plaintiff is not in a disadvantageous position of the individual, the defendant's recording video is not a stealing secretly recorded.

Compounding this issue is the apparent indifference of workers themselves towards safeguarding their privacy in the context of workplace surveillance. Of the 28 judgments, only two addressed the right to privacy. This lack of concern further contributes to the marginalisation of privacy protection in legal deliberations.

Moreover, the absence of comprehensive laws and regulations concerning workplace surveillance in China exacerbates the problem, leaving ample room for ambiguity and inconsistent legal treatment in similar cases. Although China lacks specific case law on this matter, the recurrent pattern of judgments in workers' privacy cases suggests a significant reliance on past precedents, leading to uniform rulings that may not adequately address the nuanced privacy concerns in contemporary workplace surveillance.

5.

Conclusion

In conclusion, the evolution of privacy rights in China has been a gradual process, with the concept of privacy itself transforming over time. Despite the relatively recent formal recognition of the right to privacy in the country's legal framework, the comprehensive integration of privacy protection has lagged behind its international counterparts. The enactment of the Civil Code in 2021 and the subsequent implementation of the Personal Information Protection Law (PIPL) in 2021 marked significant steps towards the establishment of robust privacy regulations, particularly concerning the protection of workers' privacy in the context of workplace surveillance.

However, gaps and ambiguities in the current legal framework persist, particularly in instances where employers may exploit the ambiguity in defining 'human resource management' to circumvent the necessity of individual consent. Additionally, the issue of 'separate consent' in specific scenarios demands further clarification to ensure more stringent safeguarding of workers' privacy rights. It is imperative for future legal developments to address these loopholes comprehensively to establish a more equitable balance between the legitimate interests of employers and the fundamental right to privacy of workers.

The PIPL may not offer holistic safeguarding for employees' personal data due to its oversight of the unique requirements for preserving such information. This gap arises from the subordinate position of employees in relation to the authority of employers and the growing disparity in labour dynamics, rendering employees' personal information more susceptible to misuse by employers.³⁸ At the same time, Courts consistently prioritise employer surveillance needs over workers' privacy

38 Wang, 2022.

rights, neglecting the significance of safeguarding personal information. Workers' indifference and the absence of comprehensive legal frameworks exacerbate this issue, resulting in inconsistent and inadequate protection for employee privacy in the workplace.

Bibliography

- Abdurrahimli, F. (2020, May 21). Big boss is watching you! The right to privacy of employees in the context of workplace surveillance. SSRN. <https://ssrn.com/abstract=3740078> (Accessed on 2023.10.25)
- Article 29 Working Party. (no date). Opinion 4/2007 on the concept of personal data. Practical Law. <https://uk.practicallaw.thomsonreuters.com/w-034-6988>(Accessed on 2023.10.25)
- Bird & Bird. (no date). Employee data protection series (I): What do employers need to know about managing employee data in China? <https://www.twobirds.com/en/insights/2021/china/employee-data-protection-series-what-do-employers-need-to-know-about-managing-employee-data-in-china>(Accessed on 2023.10.25)
- Crowell & Moring LLP. (no date). Employee personal information protection in China – Are you up to speed? <https://www.crowell.com/en/insights/client-alerts/employee-personal-information-protection-in-china-are-you-up-to-speed>(Accessed on 2023.10.25)
- HANLING & PARTNERS. (2022, July 4). Legal compliance of workplace surveillance in China: From a personal information protection perspective. <https://www.lexology.com/library/detail.aspx?g=da176c92-59ed-4450-8c99-601be259a961>(Accessed on 2023.10.25)
- McDougall, B. S., & Hansson, A. (Eds.). (2002). *Chinese concepts of privacy*. Chinese concepts of privacy / edited by Bonnie S. McDougall and Anders Hansson. Brill.
- Personal Data – General Data Protection Regulation (GDPR). (2021, October 22). General Data Protection Regulation (GDPR). <https://gdpr-info.eu/issues/personal-data/>(Accessed on 2023.10.25)
- 《中华人民共和国民法典》(zhōnghuárénmíngònghéguó mínfǎdiǎn). (2020). 中华人民共和国主席令第45号 (zhōnghuárénmíngònghéguó zhǔxǐlìng dì 45 hào). 全国人民代表大会常务委员会 (quánguó rénmíndàibiǎodàihuì chángwùwěiyuánhùi). *PRC Civil Code, Presidential Decree No. 45*. https://english.www.gov.cn/archive/lawsregulations/202012/31/content_WS5fedad98c6d0f72576943005.html (Accessed on 2023.10.25)
- Recital 26 – Not applicable to anonymous data – General Data Protection Regulation (GDPR). (2019, September 2). General Data Protection Regulation <https://gdpr-info.eu/recitals/no-26/>(Accessed on 2023.10.25)
- 《个人信息保护法》(gèrénxìnxī bǎohùfǎ). (2021, 8月20日) (2021, 8 yuè 20 rì). 全国人民代表大会常务委员会 (quánguó rénmíndàibiǎodàihuì chángwùwěiyuánhùi). *The Personal Information Protection Law of the People's Republic of China*. <http://www.npc.gov.cn/npc/c30834/202108/a8c4e3672c74491a80b53a172bb753fe.shtml>(Accessed on 2023.10.25)

- Wang, Y. (2022). Protection of employees' personal information under workplace surveillance. *Beijing Law Review*, 13(2), 350–364. <https://doi.org/10.4236/blr.2022.132023>(Accessed on 2023.10.25)
- 程啸 (chéng xiào). (2018). 论大数据时代的个人数据权利 (lùn dàshùjù shídài de gèrén shùjù quánlì). *中国社会科学 (zhōngguó shèhuìkēxué)*, 2018(3). Cheng, X. (2018). On personal data rights in the era of big data. *Chinese Social Science*, 2018(3).
- 卢震豪 (lú zhèn háo). (2022). 从“阴私”到“隐私”：近现代中国的隐私观念流变. *法学家 (cóng “yīnsī” dào “yǐnsī”: jìn xiàndài zhōngguóde yīnsī guānniàn liúbiàn. fǎxuéjiā)*, 2022(6), 31–45. Lu, Z. (2022). From “Yīnsī” to “Yǐnsī”: The evolution of privacy in modern China. *The Jurist*, 2022(6), 31–45.
- 梅夏英 (Méi Xià Yīng). (2019). 在分享和控制之间数据保护的私法局限和公共秩序构建 (zài fēnxiǎng hé kòngzhì zhījiān shùjù bǎohù de sīfǎ júxiàn hé gōnggòng zhìxù gòujiàn). *中外法学 (zhōngwài fǎxué)*, 31(4), 845–870. Mei, X. (2019). Private law limitations and public order construction of data protection between sharing and control. *Chinese and Foreign Law*, 31(4), 845–870.
- 全国人大常委会 (quánguó réndàchángwěihuì). (2012). 关于加强网络信息保护的決定 (guānyú jiāqiáng wǎngluò xìnxī bǎohù dejuédìng). *中华人民共和国 (zhōnghuárénmíngònghéguó)*. *Decision of the Standing Committee of the National People's Congress on Strengthening the Protection of Network Information*. https://www.gov.cn/jrzq/2012-12/28/content_2301231.htm (Accessed on 2023.10.25)
- 盛小平 (shèng xiǎopíng), & 唐筠杰 (táng jūn jié). (2022). 我国个人信息权利与欧盟个人数据权利的比较分析: 基于《个人信息保护法》与GDPR. (wǒguó gèrénxìnxī quánlì yǔ ōuméng gèrén shùjù quánlì de bǐjiào fēnxī: jīyú 《gèrénxìnxī bǎohùfǎ》 yǔ GDPR). *图书情报工作 (túshū qǐngbào gōngzuò)*, 66(6), 26–33. Sheng, X., & Tang, J. (2022). A comparative analysis of personal information rights in China and the EU: Based on the Personal Information Protection Law and GDPR. *Library and Information Service*, 66(6), 26–33.
- 袁泉 (yuánquán). (2019). 大数据背景下的个人信息分类保护制度研究 [博士论文, 对外经济贸易大学] (dàshùjù bèijīng xiàde gèrénxìnxī fēnlèi bǎohù zhìdù yánjiū [bóshì lùnwén, duìwàijīngjìmàoyìdàxué]. Yuan, Q. (2019). Research on personal information classification and protection system under the background of big data [Doctoral dissertation, University of International Business and Economics].
- 张凯 (zhāngkǎi). (2022). 民法典为个人信息保护提供强有力的法治保障 (mínfǎdiǎn wéi gèrénxìnxī bǎohù tígòng qiángyǒulìde fǎzhì bǎozhàng). *思客 (sī kè)*. Zhang, K. (2022). Civil Code provides strong rule of law guarantees for personal information protection. *Think Tank*. <https://www.xinhuanet.com/sikepro/20221109/fa99997b51904063a27cea66ac87e9db/c.html> (Accessed on 2023.10.25)
- 《中华人民共和国劳动合同法》(zhōnghuárénmíngònghéguó láodòng hétongfǎ). (2007). 主席令第六十五号 (zhǔxǐlìng dì liùshí wǔhào). *PRC Labour Contract Law*,

Presidential Decree No. 65. https://www.gov.cn/flfg/2007-06/29/content_669394.htm (Accessed on 2023.10.25)

- 《中华人民共和国职业病防治法》(zhōnghuárénmíngònghéguó zhíyèbìng fángzhìfǎ). (2005). *PRC Law on Prevention and Control of Occupational Diseases*. https://www.gov.cn/banshi/2005-08/01/content_19003.htm (Accessed on 2023.10.25)
- 周汉华 (zhōuhàn huá). (no date). 个人信息保护观念演变的四个阶段 (gèrénxìnxì bǎohù guānniàn yǎnbiàn de sìgè jiēduàn). 搜狐 (sōuhú). Zhou, H. (no date). The four stages of the evolution of personal information protection concepts. *Sohu*. https://www.sohu.com/a/281451267_455313 (Accessed on 2023.10.25)

Jurisprudence

- 北京市朝阳区人民法院 (běijīngshìcháoyángqū rén mínfǎyuàn). (2021). 民事判决书 (mínshì pànjuéshū). 京0105民初48030号 (jīng 0105 mínchū 48030 hào). Beijing Chaoyang District People's Court. (2021) Civil judgment. Jing 0105 Min Chu No.48030.
- 北京市第二中级人民法院 (běijīngshì dièr zhōngjí rén mínfǎyuàn). (2022). 民事判决书 (mínshì pànjuéshū). 京02民终4119号 (jīng 02 mǐnzhōng 4119 hào). Beijing Second Intermediate People's Court. (2022). Civil judgment. Jing 02 Min Zhong No. 4119
- 北京市第二中级人民法院 (běijīngshì dièr zhōngjí rén mínfǎyuàn). (2022). 民事判决书 (mínshì pànjuéshū). 京02民终4152号 (jīng 02 mǐnzhōng 4152 hào). Beijing Second Intermediate People's Court. (2022). Civil judgment. Jing 02 Min Zhong No.4152.
- 北京市第一中级人民法院 (běijīngshì dìyī zhōngjí rén mínfǎyuàn). (2021). 民事判决书 (mínshì pànjuéshū). (2021) 京01民终10660号 (jīng 01 mǐnzhōng 10660 hào). Beijing First Intermediate People's Court. (2021). Civil judgment. Jing 01 Min Zhong No.10660.
- 北京市第一中级人民法院 (běijīngshì dìyī zhōngjí rén mínfǎyuàn). (2021). 民事判决书 (mínshì pànjuéshū). 京01民终2804号 (jīng 01 mǐnzhōng 2804 hào). Beijing First Intermediate People's Court. (2021). Civil judgment. Jing 01 Min Zhong No.2804.
- 福建省福州市中级人民法院 (fújiànshěng fúzhōushì zhōngjí rén mínfǎyuàn). (2021). 民事判决书 (mínshì pànjuéshū). 闽01民终5241号 (mǐn 01 mǐnzhōng 5241 hào). Fujian Fuzhou Intermediate People's Court. (2021). Civil judgment. Min 01 Min Zhong NO.5241.
- 广东省高级人民法院 (guǎngdōngshěng gāojí rén mínfǎyuàn). (2020). 民事裁定书 (mínshì pànjuéshū). 粤民申8843号 (yuè mǐn shēn 8843 hào). Guangdong Higher People's Court. (2020). Civil ruling. Yue Min Shen No. 8843.
- 广东省广州市番禺区人民法院 (guǎngdōngshěng guǎngzhōushì pānyúqū rén mínfǎyuàn). (2020). 民事判决书 (mínshì pànjuéshū). 粤0113民初7948号 (yuè 0113 mínchū 7948 hào). Guangdong Guangzhou Panyu District People's Court. (2020). Civil judgment. Yue 0113 Min Chu NO.7948.

- 广东省广州市越秀区人民法院 (guǎngdōngshěng guǎngzhōushì yuèxiùqū rén mínfǎyuàn). (2021). 民事判决书 (mínshì pànjuéshū). 粤0104民初7358号 (yuè 0104 míncū 7358 hào). Guangdong Guangzhou Yuexiu District People's Court. (2021). Civil judgment. Yue 0104 Min Chu No.7358.
- 广东省广州市中级人民法院 (guǎngdōngshěng guǎngzhōushì zhōngjí rén mínfǎyuàn). (2021). 民事判决书 (mínshì pànjuéshū). 粤01民终17024号 (yuè 01 mínzōng 17024 hào). Guangdong Guangzhou Intermediate People's Court. (2021). Civil judgment. Yue 01 Min Zhong No.17024.
- 广东省深圳市宝安区人民法院 (guǎngdōngshěng shēnzhènshì bǎo'ānqū rén mínfǎyuàn). (2013). 民事判决书 (mínshì pànjuéshū). 深宝法沙劳初字第523号 (shēn bǎo fǎ shā láo chū zìdì 523 hào). Guangdong Shenzhen Bao'an District People's Court. (2013). Civil judgment. Shen Bao Fa Sha Lao Chu Zi No. 523.
- 广东省深圳市中级人民法院 (guǎngdōngshěng shēnzhènshì zhōngjí rén mínfǎyuàn). (2014). 民事判决书 (mínshì pànjuéshū). 深中法劳终字第4397-4421号 (shēn zhōngfǎ láo zhōng zìdì 4397-4421 hào). Guangdong Shenzhen Intermediate People's Court. (2014). Civil judgment. Shen Zhong Fa Lao Zhong Zi No. 4397-4421.
- 广东省深圳市中级人民法院 (guǎngdōngshěng shēnzhènshì zhōngjí rén mínfǎyuàn). (2018). 民事判决书 (mínshì pànjuéshū). 粤03民终26105号 (yuè 03 mínzōng 26105 hào). Guangdong Shenzhen Intermediate People's Court. (2018). Civil judgment. Yue 03 Min Zhong No.26105.
- 广东省中山市第一人民法院 (guǎngdōngshěng zhōngshānshì dìyī rén mínfǎyuàn). (2023). 民事判决书 (mínshì pànjuéshū). 粤2071民初3029号 (yuè 2071 míncū 3029 hào). Guangdong Zhongshan First People's Court. (2023). Civil judgment. Yue 2071 Min Chu No.3029.
- 广东省珠海市中级人民法院 (guǎngdōngshěng zhūhǎishì zhōngjí rén mínfǎyuàn). (2020). 民事判决书 (mínshì pànjuéshū). 粤04民终850号 (yuè 04 mínzōng 850 hào). Guangdong Zhuhai Intermediate People's Court. Civil judgment. Yue 04 Min Zhong No.850.
- 湖北省武汉市中级人民法院 (húběishěng wūhànshì zhōngjí rén mínfǎyuàn). (2020). 民事判决书 (mínshì pànjuéshū). 鄂01民终3509号 (è 01 mínzōng 3509 hào). Hubei Wuhan Intermediate People's Court. (2020). Civil judgment. E 01 Min Zhong No.3509.
- 江苏省常州市中级人民法院 (jiāngsūshěng chángzhōushì zhōngjí rén mínfǎyuàn). (2015). 民事判决书 (mínshì pànjuéshū). 常民终字第1131号 (cháng mín zhōng zìdì 1131 hào). Jiangsu Changzhou Intermediate People's Court. (2015). Civil judgment. Chang Min Zhong Zi No.1131.
- 江苏省淮安市中级人民法院 (jiāngsūshěng huái'ānshì zhōngjí rén mínfǎyuàn). (2015). 民事判决书 (mínshì pànjuéshū). 淮中民终字第02139号 (huái zhōngmín zhōng zìdì 02139 hào). Jiangsu Huai'an Intermediate People's Court. (2015). Civil judgment. Huai Zhong Min Zhong Zi No. 02139.

- 江苏省苏州市中级人民法院 (jiāngsūshěng sūzhōushì zhōngjí rén mǐn fǎ yuàn). (2016). 民事判决书 (mínshì pànjuéshū). 苏05民终9029号 (sū 05 mínzhōng 9029 hào). Jiangsu Suzhou Intermediate People's Court. (2016). Civil judgment. Su 05 Min Zhong No.9029.
- 江苏省苏州市中级人民法院 (jiāngsūshěng sūzhōushì zhōngjí rén mǐn fǎ yuàn). (2021). 民事判决书 (mínshì pànjuéshū). 苏05民终4298号 (sū 05 mínzhōng 4298 hào). Jiangsu Suzhou Intermediate People's Court. (2021). Civil judgment. Su 05 Min Zhong No.4298.
- 江苏省无锡市中级人民法院 (jiāngsūshěng wúxīshì zhōngjí rén mǐn fǎ yuàn). (2019). 民事判决书 (mínshì pànjuéshū). 苏02民终3728号 (sū 02 mínzhōng 3728 hào). Jiangsu Wuxi Intermediate People's Court. (2019). Civil judgment. Su 02 Min Zhong No.3728.
- 江苏省无锡市中级人民法院 (jiāngsūshěng wúxīshì zhōngjí rén mǐn fǎ yuàn). (2023). 民事判决书 (mínshì pànjuéshū). (2023) 苏02民终834号 (sū 02 mínzhōng 834 hào). Jiangsu Wuxi Intermediate People's Court. (2023). Civil judgment. Su 02 Min Zhong No. 834.
- 山东省青岛市中级人民法院 (shāndōngshěng qīngdǎoshì zhōngjí rén mǐn fǎ yuàn). (2021). 民事判决书 (mínshì pànjuéshū). 鲁02民终6792号 (lǔ 02 mínzhōng 6792 hào). Shandong Qingdao Intermediate People's Court. (2021). Civil judgment. Lu 02 Min Zhong No.6792.
- 山东省烟台市中级人民法院 (shāndōngshěng yāntáishì zhōngjí rén mǐn fǎ yuàn). (2019). 民事判决书 (mínshì pànjuéshū). 鲁06民终7145号 (lǔ 06 mínzhōng 7145 hào). Shandong Yantai Intermediate People's Court. (2019). Civil judgment. Lu 06 Min Zhong No.7145.
- 上海市第二中级人民法院 (shànghǎishì dìèr zhōngjí rén mǐn fǎ yuàn). (2020). 民事判决书 (mínshì pànjuéshū). 沪02民终6335号 (hù 02 mínzhōng 6335 hào). Shanghai Second Intermediate People's Court. (2020). Civil judgment. Hu 02 Min Zhong NO.6335.
- 上海市第一中级人民法院 (shànghǎishì dìyī zhōngjí rén mǐn fǎ yuàn). (2022). 民事判决书 (mínshì pànjuéshū). (2022) 沪01民终5831号 (hù 01 mínzhōng 5831 hào). Shanghai First Intermediate People's Court. (2022). Civil judgment. Hu 01 Min Zhong NO.5831.
- 上海市闵行区人民法院 (shànghǎishì mǐnhángqū rén mǐn fǎ yuàn). (2015). 民事判决书 (mínshì pànjuéshū). (2015) 闵民一(民)初字第25960号 (mǐn mǐn yī (mín)chūzìdì 25960 hào). Shanghai Minhang District People's Court. (2015). Civil judgment. Min Min Yi (Min) Chu Zi No. 25960.