

## Employment Update

### Video recordings by hidden and non-permanent cameras

25th October 2019

#### On the Judgment of the European Court of Human Rights

The Grand Chamber of the European Court of Human Rights (ECtHR) in a judgement handed down on 17 October 2019 has upheld the appeal filed by the Spanish Bar against the judgement known as "López Ribalda", handed down on 9 January 2018 by the ECtHR itself, radically modifying its criteria with regard to the use by companies of hidden video surveillance temporary cameras designed to control the behaviour of their employees without first informing them of their installation.

The Grand Chamber considers, in opposition to the judgment of a Section of the Court, that the installation of such devices without prior notice to employees under video surveillance does not infringe the right to privacy and privacy enshrined in the European Convention on Human Rights (ECHR), provided that the use of the cameras is based on "reasonable suspicion" of the commission of unlawful acts and the measure is applied in a proportionate manner.

The file brought its cause from the now distant the ruling of the Catalanian Supreme Court, 24 February 2011 (Mercadona; RS 4294/2010) confirming the previous SJS No. 1 of Granollers of 20 January 2010. The High Court gave full validity and effectiveness to the video surveillance test without affecting the fundamental right to privacy of the workers, expressly relying on the Social Chamber in the well-known STC No. 186/2000 of July 10 (recording video cameras of the Ensidesa staff shop till).

The dismissed workers served as cashiers in a supermarket chain and upon detecting irregularities between supermarket stock levels and sales figures by the director of the centre, video surveillance cameras were installed, some visible (focusing on the doors), to record possible customer robberies, and others hidden, located at the cash registers. The employer informed the workers of the installation of the visible cameras, but not of the hidden cameras.

These cameras captured six workers by appropriating products without paying for them, and by helping other colleagues and customers obtain the products without paying for them, all worth more than 80,000 euros. The company met with the women affected and offered them an agreement whereby, in exchange for their waiver of criminal proceedings against them, the workers undertook not to challenge the disciplinary dismissal. Although all but one signed the agreement, also signed by the Union Delegate, they claimed judicially against the dismissals, being in all cases judicially declared their origin, both in the first instance and before the High Court of Justice of Catalonia.

After all the national cases had been exhausted (order TS inadmissible RCUD 7-2-2012), they appealed to the ECtHR whose Third Chamber considered that their right to privacy had been violated (art. 8 ECtHR), since the proportionality test had not been passed because the suspicion of theft was general in scope, not a group of suspected workers was monitored, but all the workers, and the monitoring lasted for several weeks covering all working hours.

However, the Grand Chamber of the ECtHR now rectifies and considers that there was no violation of the right to privacy and that the Spanish courts made an appropriate balance between the right of the complainants to their private life and the employer's interest in protecting their assets. **In order to**



**arrive at this conclusion, it analyses whether the measure was proportionate for the purposes pursued by transferring to the prosecuted procedure the criteria used in the Barbulescu case (relating to the control of computer use) to analyse the validity of the control of it resources:**

1. **Degree of interference by the employer.** The ECtHR considers that the invasion of the private life of the workers was not of high gravity, since the installation of hidden cameras was limited to the area of the tills, where the degree of intimacy that the employee can reach is reduced. In addition, the surveillance lasted only **ten (10) days** and the recordings were seen by a small number of people.
2. Allegation of a **legitimate argument** on the part of the employer justifying the measure. In this case, the measure was justified by legitimate aims as there were reasonable suspicions that robberies were being committed.
3. Existence of **less intrusive means** to achieve the same objective. The ECtHR understands that no other measure would have made it possible to achieve the objective pursued, which was none other than to find those responsible for product losses.
4. **Use** by the company of the result of the surveillance measure. The employer did not use the recordings for purposes other than the intended purpose.

Regarding the **workers' argument** that there was no prior information on the existence of hidden cameras, the ECtHR considers that this absence is justified by reasonable suspicions that serious irregularities were being committed and by the extent of the misconduct observed by several employees. It therefore concludes that the Spanish labour courts did not exceed their margin of discretion and that there was no violation of the right to respect for private and family life (art. 8 ECHR) by declaring appropriate the dismissal of the only worker who did not sign the settlement document after having been recorded with hidden cameras.

As for the violation of the right to a **fair trial** (art. 6 ECHR), the ECtHR rejects its existence, stressing that the recordings were not the only means of evidence that the Spanish courts took into account to reach their conclusion, since witness evidence was also practiced and even the plaintiffs had acknowledged the facts.

**As a recap.** The The European Court of Human Rights judgment of 17 October 2019 is a very relevant resolution in a matter of frequent litigation in the Spanish social jurisdiction, video surveillance at work. It concludes, in short, on the validity of temporary controls hidden from workers by video surveillance, but never before the slightest suspicion of misappropriation or any other crime by employees could justify the installation of hidden video surveillance by the employer, but only in cases such as the analysed, in which there are reasonable suspicions that a serious violation has been committed, with significant harm to the company.

You can read the sentences in the following links: [ECHR](#) and [TSJC](#) statements.

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