

SUMMARY

ECtHR 9 January 2018, application nos. 1874/13 and 8567/13, Fundamental rights, Privacy

<p>The Spanish courts breached Article 8 of the Convention on Human Rights by accepting covert footage as valid evidence in court.</p>

<p>Lopez Ribalda – v – Spain, Spanish case</p>

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Introduction

The ECtHR recently reviewed in its judgment of 9 January 2018 of a case concerning the validity of covert video surveillance carried out by supermarket chain M.S.A. (a family owned business) on its employees in Spain (after suspicions of theft had been noticed by the employer).

Facts

The supermarket installed two types of cameras, some visible (in respect of which the employees were informed) and some not (which were covert cameras and were not disclosed to the employees).

The claimants had been dismissed by their employer based on the evidence collected mainly using footage obtained by the covert video camera – which had zoomed in on the checkout counters, without the employees' knowledge. The footage showed these employees stealing

(and also allowing co-workers to steal).

The employees challenged their dismissals and held that this evidence had been obtained in breach of their fundamental right to privacy because they had not been given prior notice of the installation of the covert video cameras, nor about the possible disciplinary use of the footage by the company.

The company had presented the covert footage as the main evidence, and also called co-workers as witnesses. Ultimately, the dismissals of the employees were held to have been fair by the employment tribunals in Spain (both at first instance and on appeal) and the courts accepted the covert footage as valid evidence on the basis that there were reasonable suspicions of theft and there was no other option that would sufficiently protect the employer's rights whilst being less intrusive from the point of view of the employees.

The claimants argued that the tribunals' acceptance of the covert footage as valid evidence was in breach of Articles 6(1) (right to a fair trial) and 8 (right to respect for private life) of the European Convention on Human Rights and that the Kingdom of Spain should be held accountable for failing to uphold their rights.

Summary of the judgment

The ECtHR held that:

Under Spanish data protection law, the company should have given clear prior notice to the employees that they were under surveillance.

The covert surveillance was not a proportionate measure and did not comply with Spanish law. Consequently, there was a breach of Article 8 of the Convention.

The employees were allowed by the courts to challenge the authenticity of the footage in adversarial proceedings. The footage was not the only evidence used by the court in order to hold the dismissals as fair (as there were also witness statements) and therefore, there was no breach of Article 6(1).

The ECtHR awarded the employees damages, to be paid by the Kingdom of Spain.

Commentary

*Luis Aguilar and Jacobo Martinez **

The case reminds us of the importance of carrying out a detailed legal analysis before installing video cameras surveillance in the workplace in Spain. As the footage collected will be considered as personal data relating to the employees, it is vitally importance to give employees prior notice of the installation of cameras and the possible disciplinary use of any evidence obtained using them. Failure to do so will be a breach of the employees' fundamental right to privacy.

**Jacobo Martínez Pérez-Espinosa is partner and Luis Aguilar is a legal director with Eversheds Sutherland Nicea, Madrid.*

Creator: European Court of Human Rights (ECtHR)

Verdict at: 2018-01-09

Case number: 1874/13