



Covert video surveillance of Spanish supermarket cashiers led to privacy violation

In today's **Chamber** judgment¹ in the case of **López Ribalda v. Spain** (application no. 1874/13) the European Court of Human Rights held:

by six votes to one, that there had been a **violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights, and

unanimously, that there had been **no violation of Article 6 § 1 (right to a fair trial)**.

The case concerned the covert video surveillance of a Spanish supermarket chain's employees after suspicions of theft had arisen. The applicants were dismissed mainly on the basis of the video material, which they alleged had been obtained by breaching their right to privacy. The Spanish courts accepted the recordings in evidence and upheld the dismissal decisions.

The Court found in particular that under Spanish data protection legislation the applicants should have been informed that they were under surveillance, but they had not been. The employer's rights could have been safeguarded by other means and it could have provided the applicants at the least with general information about the surveillance. The domestic courts had failed to strike a fair balance between the applicants' right to privacy and the employer's property rights.

However, the Court found that the proceedings as whole had been fair because the video material was not the only evidence the domestic courts had relied on when upholding the dismissal decisions and the applicants had been able to challenge the recordings in court.

Principal facts

The applicants, Isabel López Ribalda, María Ángeles Gancedo Giménez, María Del Carmen Ramos Busquets, Pilar Saborido Apresa, and Carmen Isabel Pozo Barroso, are five Spanish nationals who were born in 1963, 1967, 1969 and 1974 respectively and live in Sant Celoni and Sant Pere de Vilamajor (Ms Pozo Barroso) (both in Spain).

(The case concerns the covert video surveillance of the applicants at their workplace.) In June 2009 they were all working as cashiers for M.S.A., a family-owned supermarket chain. The surveillance was carried out by their employer in order to investigate possible theft after the shop manager had noticed irregularities between stock levels and what was actually sold on a daily basis.

The employer installed both visible and hidden cameras. The company told its workers about the visible cameras but not about the hidden ones and they were thus never aware that they were being filmed. All the workers suspected of theft were called to individual meetings where the videos were shown to them. They had caught the applicants helping customers and other co-workers to steal items and stealing them themselves.

The applicants admitted involvement in the thefts and were dismissed on disciplinary grounds.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Three of the five applicants signed a settlement agreement acknowledging their involvement in the thefts and committing themselves not to challenge their dismissal before the labour courts, while the employer company committed itself not to initiate criminal proceedings against them. The other two applicants did not sign an agreement. All the applicants ultimately went to court, but the dismissals were upheld at first-instance by Employment Tribunals and on appeal by the High Court of Justice. The courts accepted the video evidence as having been obtained lawfully.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life) and Article 6 § 1 (right to a fair trial), the applicants complained about the covert video surveillance and the courts' use of the data obtained to find that their dismissals had been fair. Three of the applicants also complained that the settlement agreements had been made under duress owing to the video material and should not have been accepted as evidence that their dismissals had been fair. Lastly, the first applicant also complained that the judgments had lacked proper motivation as to her specific circumstances or any reasoning leading to the conclusion that her dismissal had been fair.

The application was lodged with the European Court of Human Rights on 28 December 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena Jäderblom (Sweden), *President*,
Luis López Guerra (Spain),
Dmitry Dedov (Russia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
Jolien Schukking (the Netherlands),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 8

The Court first observed that the Spanish Government had argued that the State was not responsible in this case as the disputed acts had been carried out by a private company.

However, the Court reiterated that countries had a positive obligation under the European Convention to take measures to ensure respect for private life and it therefore had to examine whether the State had struck a fair balance between the applicants' rights and the employer's.

Under Spanish law individuals were to be clearly told about the storage and processing of personal data, but the applicants had had no such warning. The domestic courts had found that justifiable given the reasonable suspicions of theft and because there had been no other way to provide sufficient protection for the employer's rights and interfere less with those of the applicants.

The Court observed that it had not found a violation in the case of *Köpke v. Germany*, which had also concerned covert video surveillance of an employee. However, in that case there had been no clear domestic law on the issue and the surveillance had been limited. The monitoring in this case had involved all employees over several weeks, during all working hours.

The Court disagreed with the domestic courts about the proportionality of the measure. The surveillance had not complied with Spanish law, in particular when it came to notification, and the employer's rights could have been given at least some protection by other means. For instance, the

company could have provided the applicants with general information about the surveillance and given the notification required under the Personal Data Protection Act.

The Court found that the domestic courts had failed to strike a fair balance between the rights involved and there had been a violation of Article 8 in respect of the applicants.

Article 6 § 1

The Court examined whether the use of the video material obtained in violation of the European Convention had made the domestic proceedings as a whole unfair.

It noted that the applicants had been able to challenge the authenticity of the recordings in adversarial proceedings and that the films had not been the sole evidence for the courts' decisions, which had also been based on witness statements.

The Court also saw no reason to challenge the domestic courts' findings that it had been possible to use the third, fourth and fifth applicants' settlement agreements as evidence, even if they had been obtained after the video recordings had been shown to them. The domestic courts had weighed up the validity of the documents and the applicants had had ample opportunity to object to them.

Overall, it found no breach of the fair trial provision. It also rejected as manifestly ill-founded the first applicant's complaint about a lack of reasoning or consideration of specific circumstances by the courts.

Just satisfaction (Article 41)

The Court decided by four votes to three that Spain was to pay the applicants 4,000 euros (EUR) each in respect of non-pecuniary damage. It held unanimously that Spain had to pay EUR 500 to the first applicant in respect of costs and expenses and EUR 568.86 euros to each of the others.

Separate opinion

Judge Poláčeková issued a partly dissenting opinion, which was joined by Judge Pastor Vilanova, while Judge Dedov expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.