



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 17 February 2015

THIRD SECTION

Applications nos. 1874/13 and 8567/13  
Isabel LÓPEZ RIBALDA against Spain  
and María Ángeles GANCEDO GIMÉNEZ and Others against Spain  
lodged on 28 December 2012 and 23 January 2013 respectively

STATEMENT OF FACTS

The applicants are Spanish nationals. They are represented before the Court by Mr J.A. Gonzalez Espada, a lawyer practising in Barcelona. A list of the applicants is set out in the appendix.

**A. The circumstances of the case**

The facts of the cases, as submitted by the applicants, may be summarised as follows.

All applicants worked as supermarket cashiers for M.S.A., a Spanish family owned supermarket chain. The applicants' employer had noticed that there were some irregularities concerning the supermarket stocks and what was actually sold on a daily basis. Consequently, the employer decided to install surveillance cameras consisting of visible cameras and hidden ones. The aim of the visible cameras was to record possible thefts committed by clients and thus they were directed into the entries and exits of the supermarket. The aim of the hidden cameras was to record and control possible thefts committed by the employees and thus they were zoomed into the checkout counters, which covered the area behind the cash desk, including the till and the cashier. Neither the employees nor the Staff Committee were informed about the existence of these hidden cameras.

For the sake of clarity, applicants will be referred as 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants in conformity with the appendix.

*1. Group A (1<sup>st</sup> and 2<sup>nd</sup> applicants)*

On 25 and 29 June 2006, the applicants' employer dismissed them on disciplinary grounds: both were caught on video stealing or helping others to steal items. According to the employer, the security cameras caught them scanning some items of clients or co-workers' grocery basket and afterwards cancelling the tickets. Security cameras also caught them

allowing clients or co-workers to leave the store with merchandise that had not been paid for.

In response, the applicants introduced labour proceedings before the Granollers Labour Court no. 1 on 22 July 2009, requesting the court to find their dismissal unlawful. During the trials, the videos of the applicants committing theft were submitted in order to justify the lawfulness of the dismissals. The applicants' lawyer asked for these evidences to be declared void, since these videos were recorded in breach of the applicants' right to private life.

On 20 January 2010 the Granollers Labour Court no. 1 issued two judgments ruling against both applicants, stating that both dismissals were lawful. In both judgments the main reason to support the fairness of the dismissals was the existence of videos recording the commission of these crimes. The Court found that the use of video surveillance in the workplace was lawful, as had been confirmed by the Constitutional Court (see, among others, STC No. 186/2000). According to the jurisprudence of the Constitutional Court, in case of the covert video surveillance of an employee on suspicion of theft, the employer's fundamental right to respect for his property rights had to be weighed against the employee's fundamental right to privacy. Special circumstances justified the interference with the employee's right to privacy, which was considered to be proportionate. Following this jurisprudence, the Labour Court, having regard to the evidences before it including the information obtained by examining the videos in question, found that the employer had had sufficient grounds to conclude that the applicants had repeatedly committed offences against its property during the relevant period and thus declared both dismissals to be lawful.

The applicants appealed before the High Court of Justice of Catalonia on 16 and 22 March 2010, respectively. On 28 January and 24 February 2011 the High Court of Justice of Catalonia upheld both first-instance judgments. The High Court of Justice of Catalonia, referring to the Constitutional Court's case-law, endorsed the Labour Court's finding that the defendant party had been authorised to carry out the covert video surveillance of the cash desk. Their dismissal had been justified as, following the examination of the videos in the proceedings, it was clear that the applicants had committed the alleged offences against the employer's property. The applicants introduced cassation appeals that were declared inadmissible on 5 October 2011 and 7 February 2012, respectively. Ultimately each applicant lodged an amparo appeal with the Constitutional Court which was declared inadmissible on 27 June and 18 July 2012, respectively, due to lack of a violation of a fundamental right.

## *2 Group B (3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants)*

On 25 and 29 June 2006 the applicants' employer dismissed them on disciplinary grounds: they were caught on video stealing some goods. According to the employer, the security cameras caught the 3<sup>rd</sup> applicant scanning some items of clients or co-workers' grocery basket and afterwards cancelling the tickets. Security cameras also caught her allowing clients or co-workers to leave the store with merchandise that had not been paid for. As regards the 4<sup>th</sup> and 5<sup>th</sup> applicants, security cameras had caught

them stealing some goods with the help of other co-workers (such as the 2<sup>nd</sup> and 3<sup>rd</sup> applicants).

The day they were dismissed, all these applicants –3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants– signed a document called “settlement agreement” (*acuerdo transaccional*), by which the applicants committed themselves not to bring any labour actions against the employer for the dismissals, while the employer committed himself not to bring charges against them for theft.

Despite of these settlement agreements, on 22 July 2009 the applicants introduced labour proceedings before the Granollers Labour Court no. 1 requesting the court to find their dismissal unlawful. According to the applicants, the settlement agreements had to be declared void. They claim that their consent was not valid, since they had been under duress at the time they signed the settlement agreements (some company representatives had allegedly threaten the applicants to initiate criminal proceedings against them if they did not sign this agreement).

On 20 January 2010 the Granollers Labour Court no. 1 ruled against the applicants and considered the dismissals to be lawful. The Court argued that the consent given was valid. As this fact alone justified the applicants’ dismissal, the use and analysis of the impugned videos as evidence in the proceedings had not been necessary.

The applicants appealed before the High Court of Justice of Catalonia on 16 March 2010. On 24 February 2011 the High Court of Justice of Catalonia upheld both first-instance judgments. The applicants introduced a cassation appeal which was declared inadmissible on 7 February 2012. Ultimately, the applicants lodged an *amparo* appeal with the Constitutional Court which was declared inadmissible on 18 July 2012 due to lack of a violation of a fundamental right.

## **B. Relevant domestic law**

### *1. Spanish Constitution*

#### **Article 10 § 2**

“The provisions relating to the fundamental rights and freedoms recognised under the Constitution shall be construed in accordance with the Universal Declaration of Human Rights and the international treaties and agreements which Spain has ratified in that sphere.”

#### **Article 15**

“Everyone shall have the right to life and to physical and mental integrity. ...”

#### **Article 18 § 1**

“The right to honour, to personal and family privacy and to the own image is guaranteed”.

#### **Article 18 § 4**

“The law shall restrict the use of data processing in order to guarantee the honour and personal and family privacy of citizens and the full exercise of their rights.”

**Article 24**

“1. Everyone has the right to effective protection by the judges and courts in the exercise of his legitimate rights and interests, and in no case may the right to a defence be curtailed.

2. Everyone, further, has the right to ... a public trial without undue delay and attended by all safeguards, ...”

**Article 53 § 2**

“Every citizen shall be entitled to seek protection of the freedoms and rights recognised in Article 14 and in the first section of Chapter II by bringing an action in the ordinary courts under a procedure designed to ensure priority and expedition and, in appropriate cases, by an appeal (*recurso de amparo*) to the Constitutional Court ...”

**2. Civil Code****Article 1261**

“There is no contract unless the following requirements are present:

1. Consent of the contracting parties.
2. A certain object which is the subject matter of the agreement.
3. Cause of the obligation established.

**Article 1265**

“Consent given pursuant to error, duress, intimidation or fraudulent misrepresentation shall be null and void.”

**Article 1266**

“For error to invalidate consent, it must be about the substance of the thing which constituted the subject matter of the contract, or about the conditions thereof which should have been the main reason to enter into it...”

**Article 1809**

“Settlement is a contract whereby the parties, by each giving, receiving or retaining something, prevent a lawsuit or end one which has already begun.”

**3. Labour Regulations (approved by Royal Legislative Decree no. 1/1995 of 24 March 1995)****Article 20 § 1**

“1. The employer may use monitoring measures to verify that the employer fulfils his/her responsibilities, in so far the employer respects human dignity ...”

**4. The Judicature Act (Law no. 6/1985 of 1 July 1985)****Article 11 § 1**

“1. The rules of good faith must be complied with in all proceedings. Evidences obtained, directly or indirectly in violation of fundamental rights or freedoms will be excluded”

**5. Constitutional Act 15/1999 on Personal Data Protection****Article 5 § 1**

“1. Data subjects whose personal data are requested must be previously and explicitly, precisely and unambiguously informed of the following:

- a) the existence of a personal data file or that the data will be processed, the purpose thereof and the recipients of the information;
- b) the obligatory or optional nature of their response to the questions asked;
- c) the consequences of providing or refusing to provide the data;
- d) the existence of rights of access, rectification, erasure and objection;
- e) the identity and address of the controller or, as appropriate, his representative ...”

*6. Instruction 1/2006 of 8 November, Spanish Data Protection Agency*

**Article 3**

“Everyone who uses video surveillance system must fulfil all the obligations prescribed in Article 5 of the Constitutional Act 15/1999 on Personal Data Protection. For that purpose:

- a. He or she must place a distinctive sign informing about the zones that are being under surveillance ...
- b. He or she must make available a document informing about the content of Art Article 5 of the Constitutional Act 15/1999 on Personal Data Protection.”

## COMPLAINTS

The applicants complain under Article 6 § 1 and 8 of the Convention that the employer had the obligation to previously inform them about the installment of hidden surveillance cameras that were zoomed into their workplace. According to the applicants, the covert video surveillance of their place of work; the recording of personal data; the use of the videos as evidence in the proceedings before the national courts (as regards 1<sup>st</sup> and 2<sup>nd</sup> applicants) or with the purpose of making them sign a settlement agreement (as regards 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> applicants); and the courts’ refusal to declare these evidences void had seriously interfered with their right to privacy. The applicants allege that there was not adequate State protection of their private life in connection with the video surveillance at their workplace.

## COMMON QUESTION

Was the use of video surveillance at workplace without previously informing the employees in accordance with Article 8 of the Convention?

## CASE SPECIFIC QUESTIONS

### **Group A:**

Assuming that the videos submitted to the Granollers Labour Court no. 1 were in breach of Article 8 of the Convention, was there also a breach of Article 6 of the Convention in declaring the applicants’ dismissals lawful?

**Group B:**

Assuming that video surveillance at workplace without previously informing the employees was not in accordance with Article 8 of the Convention, was there also a breach of Article 6 of the Convention in declaring the settlement agreements valid?

**ANNEX**

<b>No.</b>	<b>Applicant name date of birth place of residence</b>	<b>Application no.</b>
<b>1.</b>	<b>Isabel LOPEZ RIBALDA</b> 03/08/1963 Sant Celoni	1874/13
<b>2.</b>	<b>Maria Angeles GANCEDO GIMENEZ</b> 14/03/1967 Sant Celoni	8567/13
<b>3.</b>	<b>Maria Del Carmen RAMOS BUSQUETS</b> 11/11/1969 Sant Celoni	8567/13
<b>4.</b>	<b>Pilar SABORIDO APRESA</b> 15/09/1974 Sant Celoni	8567/13
<b>5.</b>	<b>Carmen Isabel POZO BARROSO</b> 20/05/1974 Sant Pere de Vilamajor	8567/13