sons would have to be put forward before a difference in treatment based exclusively on nationality were found to be compatible with the Convention (*Gaygusuz v. Austria*, 16 September 1996).

The ECtHR held that Mr Ribać fulfilled all other statutory conditions entitling him to the pension but Slovenian citizenship. It refused the Slovenian argument that Mr Ribać had been entitled to pension rights in Serbia and under the YPA Fund, as he had only received two payments and Slovenia had not shown how Mr Ribać could have received such a pension between 1998 and 2003. Moreover, this argument had not been brought forward in domestic court proceedings, which had only focused on his citizenship.

As regards the justification, Slovenia had argued that the difference in treatment was justified (i) as nationals of other former SFRY republics were assumed to have participated in aggression against Slovenia, and (ii) their rights were the subject of succession negotiations, so there was no reason to assume responsibility during those negotiations. The ECtHR dismissed the first argument, as non-participation against Slovenia was already an explicit requirement in the 1998 Act, so there was no room for any other implicit assumption. Moreover, Mr Ribać's behaviour – which in no way suggests any violent activity – was never an issue during the proceedings: he had been granted an advance in 1993 and received his pension as soon as he had become a Slovenian citizen in 2003. The second argument was rejected as the Succession Agreement had not entered into force until 2004, at which point Mr Ribać was already receiving pension. In this context, the ECtHR stressed that it was fully aware that there was uncertainty about the obligations of the various successor States of SFRY, but Slovenia nevertheless was responsible for securing the rights and freedoms contained in the Convention.

Ruling

The ECtHR, unanimously:
- declared the application admissible;
- held that there had been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;
- awarded (part of the claimed) damages to the applicant, and dismissed the remainder of the applicant's claim for just satisfaction.

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

Lopez Ribalda – v – Spain, Spanish case

Summary

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

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

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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:

1. Under Spanish data protection law, the company should have given clear prior notice to the employees that they were under surveillance.
2. 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.
3. 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 *[2]

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.

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

ECtHR 23 January 2018, application no. 15374/11, Unfair dismissal, Other fundamental rights

Mr Güç – v – Turkey, Turkish case

Summary

Dismissal for harassment despite acquittal in criminal proceedings is not incompatible with Article 6(2) of the Convention (presumption of innocence).

Facts

Mr G was a caretaker employed at the Public Education Centre in Giresun, Turkey. On 8 February 2006, he was taken into police custody on suspicion of child molestation, after being caught in an allegedly indecent position with a 9-year-old girl at the primary school located in the same building as the Public Education Centre.

On 8 March 2006, the public prosecutor charged Mr G with the sexual abuse, sexual assault and unlawful detention of a minor. During the proceedings, various statements were taken from (former) colleagues and parents, most notably from an eyewitness who had caught Mr G. Most of the evidence was indirect. Ultimately, on 18 December 2008 the Espiye Criminal Court of First Instance ordered Mr G's acquittal, holding that it was not possible to establish beyond reasonable doubt that he had committed the sexual acts forming the basis of the charge.

(Partly) parallel to these criminal proceedings, the Public Education Centre had started a disciplinary investigation into allegations of harassment by two inspectors. They took various statements and took into account a report dated 2003 describing the physical and social developmental attributes of the girl as weak and very timid, diagnosing autism. The investigation report found the allegations to be well-founded and recommended the dismissal of Mr G for "*shameful and disgraceful conduct incompatible with the civil service*", as provided under Turkish law. The Public Education Centre therefore dismissed Mr G.

Mr G appealed all the way up to the Supreme Administrative Court, arguing that he had not been convicted (and indeed had been acquitted). In 2010, he appealed to the ECtHR, arguing that his dismissal had been incompatible with Article 6(2) on the presumption of innocence. During the ECtHR proceedings, he made

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