

**September 2021**  
**Labour Law Department**

**ON THE USE OF VIDEO SURVEILLANCE IMAGES AS EVIDENCE FOR  
PROVING THE APPROPRIATENESS OF DISCIPLINARY MEASURES**

The Supreme Court [delivered on 21 July 2021 a Judgment unifying doctrine](#), in which it ruled that a lack of information on the purpose of the installation of video surveillance cameras cannot lead to the inadmissibility of evidence justifying a dismissal. The images in question were provided by the company *Securitas*, in the context of proceedings for the dismissal of a watchman, the Supreme Court having admitted that evidence.

On the other hand, the Labour Court, and the Supreme Court of Justice of Madrid, applying the doctrine contained in the Judgment of the European Court of Human Rights ("**ECtHR**") López Ribalda I, of 9 January 2019, had held that such recordings were inadmissible as evidence. In the latter case, the ECtHR ruled that to admit this evidence two conditions had to be met. First, it was required that the employees had been made aware of the system's existence clearly and comprehensively, and, on the other hand, that the workers were expressly, precisely, and unequivocally aware of its purpose

However, as the Supreme Court points out in this Judgment, the doctrine contained in López Ribalda I can no longer be applied, since the Grand Chamber of the ECtHR rectified it, issuing on 17 October 2019 the López Ribalda II Judgment. At that point, the ECtHR stated that reasonable suspicion about the commission of serious unlawful acts could be considered justification, under certain circumstances, for failing to warn the worker about the existence or location of video surveillance cameras.

For all these reasons, the Supreme Court, relying on the amended doctrine in the López Ribalda case as well as on Supreme Court Judgement of 31 January 2017 and that of the Constitutional Court of 3 March 2016, **lowered the information requirements and upheld the validity of the evidence, on the grounds of the following two considerations:**

- (i) That the worker must be clearly and comprehensively aware of the existence of a recording system** (the implementation of a distinctive sign, in accordance with the Spanish Data Protection Agency, would suffice); but,
- (ii) that it is not mandatory to specify the exact purpose for which the monitoring system has been allocated.**

Finally, and as concluding points to ponder, we can assert that, although a trend towards a greater flexibility regarding the use of video surveillance cameras in the work environment is evident, and their use can be considered valid evidence in any proceedings, our recommendation, in every case, would be to exercise caution. Therefore, in addition to ensuring that the installation of video surveillance devices

complies with the data protection regulations for their use in court, **we would also advise that a prior exercise to assess whether they comply with the proportionality test** (that is, that the use of said cameras is an appropriate measure, in relation to their purpose, and one that is necessary, in other words, essential, proportionate or balanced - the so-called proportionality test, [ref. AJ April 2016-](#)), **be undertaken.**