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Investigaciones Internas

Summary of relevant case law on internal investigations

2025

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Spanish Data Protection Agency (AEPD)

Internal complaints: protection of the whistleblower or the right of defence of the person under investigation?

Summary: in internal investigations, the confidentiality of the whistleblower is a core legal obligation and not optional, even where anonymity has not been expressly requested.

Following a €120,000 fine imposed by the AEPD on a company for disclosing the details of whistleblowers in a harassment case, the text emphasises that revealing identities (even in an internal context) can cause serious personal harm and breaches the GDPR's principle of confidentiality (Art. 5.1.f). Furthermore, Law 2/2023 reinforces this protection and introduces a second layer of sanctions through the Independent Whistleblower Protection Authority.

The underlying idea is clear: organisations must implement robust protocols, train their teams and actively protect whistleblowers, because without confidentiality, the number of reports declines and, with it, the ethical culture is weakened.

Commentary by Rania Zitouni Chahdi

Catalan Data Protection Authority (APDCat)

Disciplinary Proceedings No. 51/2025 of the Catalan Data Protection Authority

Summary: According to the decision concluding Disciplinary Proceedings No. 51/2025 of the Catalan Data Protection Authority (APDCat), the retention of a former employee's corporate email account, more than six (6) years after their departure, constitutes a very serious infringement of Organic Law No. 3/2018 of 5 December on the Protection of Personal Data and the Guarantee of Digital Rights, as provided for in Article 72.1.a).

Anti-Fraud Office of Catalonia (OAC)

Fine for retaliatory action imposed by the Anti-Fraud Office of Catalonia (OAC)

Summary: In 2025, the Anti-Fraud Office of Catalonia imposed the first fine on a Catalan company under the penalty regime provided for in Law 2/2023. The fine, amounting to €600,000.00, was imposed for the alleged commission of a very serious offence, namely: the taking of retaliatory action against an employee (suspension from work and pay for six days) for having reported internally possible irregularities in the recruitment of staff, the payment of salary supplements and the monitoring of working hours. The sanction against the employee had previously been overturned by the labour court, which ordered the company to pay the employee compensation of €7,500.00. Following the ruling by the labour court, the OAC imposed its sanction. The company has stated to the media its intention to appeal the sanction before the ordinary courts.

Provincial Courts (APs)

SAP Burgos (Criminal Division 2) No. 70/2025, of 13 March

Summary: The case concerns the communication of a letter of dismissal to the Works Council and its potential conflict with the right to the protection of personal data.

The claimant, a dismissed employee, alleged that the company had infringed her right to reputation by sharing personal information without her consent, information which, in her view, led to her dismissal. Specifically, this concerned a medical report which noted the employee's physical and mental limitations, her marital status and her membership of the UGT trade union.

However, the Provincial Court of Burgos concluded that the forwarding of the documentation to the Works Council was duly justified by compliance with a legal obligation and, in turn, protected by the right to information of all members of the Works Council.

Commentary by Clara Tomàs Vaqués

High Courts of Justice (TSJs)

STSJ Navarre (Labour Chamber) No. 302/2025, of 4 September:

Summary: The Labour Chamber of the High Court of Justice of Navarre upholds a lower court judgment declaring null and void the disciplinary sanction imposed by a company in the iron and steel sector on an employee who was a member of the Works Council. The ruling also confirms the order for the company to pay the employee compensation of €7,500.00.

The temporal link between a safety incident which the sanctioned worker reported on the very day of the incident, the filing of a complaint with the INSS two days later, and the initiation of disciplinary proceedings eleven days after that (7.2), together with the subsequent imposition of a sanction (23.2), is considered sufficient evidence that, in this specific case, the guarantee of immunity has been breached.

The Court adds that, in this specific case, there is a further strong indication: the offer made by the Managing Director to the members of the Works Council a few days after the worker in question was penalised, namely to withdraw the sanction if the Works Council withdrew its complaint to the INSS.

Commentary by Albert Estrada Cuadras

STSJ La Rioja (Labour Chamber) No. 106/2025, of 28 July

Summary: In this ruling, the High Court of Justice of La Rioja upheld the dismissal of an employee for having made an internal complaint against a colleague, regarding whom there is an audio recording in which he clearly utters insults and threats of physical violence against the complainant. Both the trial judge and the High Court of Justice conclude that the dismissed employee had provoked his colleague, with the sole aim of eliciting the insults and threats, recording them and thereby securing a long-desired change of shift.

Commentary by Albert Estrada Cuadras

Supreme Court of Justice of the Balearic Islands (Labour Chamber) No. 103/2025, of 21 February, by Agustí Maragall

Summary: an example of the non-retroactive application of the recent doctrine of the Plenary Session of the Social Chamber of the Supreme Court requiring a prior hearing as a necessary condition for disciplinary dismissal to be valid. Given that the dismissal took place prior to the judgment of the Plenary Session of the Supreme Court of 18 November 2024, it is considered reasonable that the small employer was unaware of the new doctrine. This is despite the fact that the new doctrine of the Supreme Court came

brought, in fact, by the High Court of Justice of the Balearic Islands, whose case law in favour of the

preliminary hearing was widely known, and despite the fact that, weeks earlier, this same TSJ of the Balearic Islands had not applied the exception of non-retroactivity to a dismissal prior to 18 November 2024, as it involved a large employer with ample resources (El Corte Inglés).

Commentary by Laura de Dalmases Herrero

Supreme Court (SC)

Supreme Court (Plenary Session – Criminal Chamber) Judgment No. 849/2025, of 16 October

Summary: The unauthorised acquisition of an employee’s password for a company computer constitutes criminal access to confidential personal data, falling within the scope of Article 197(2) of the Criminal Code. This was established by the Plenary Session of the Second Chamber in its judgment of 16 October 2025, in which, in addition to the fraudulent obtaining of the ‘password’, access was gained to the folders and files stored on the user’s desktop. However, the Court makes it clear that the mere fraudulent obtaining of a personal access code may be considered a criminal offence under Article 197(2) of the Criminal Code.

Supreme Court (Administrative Chamber) Judgment No. 704/2025 of 4 June, p. Requero Ibáñez

Summary: the fundamental right of a public official not to incriminate oneself (Art. 24.2 of the Spanish Constitution) extends to the pre-trial phase of preliminary investigations or preliminary inquiries (Art. 28 of Royal Decree No. 33/1986), provided that the facts and the alleged perpetrators are sufficiently specific and identified to render the preliminary confidential inquiry procedure unnecessary.

Commentary by Albert Estrada Cuadras

Supreme Court Judgment (Criminal Chamber) No. 457/2025, of 21 May, p. Hernández García

Summary: The defence challenges the admissibility of incriminating footage obtained via a video surveillance system which, it appears, did not comply with data protection regulations. The Court dismisses the ground of appeal on the basis that the (private) owners of the cameras did not obtain the recordings with the aim of gaining a procedural advantage, but for security reasons.

Commentary by Clara Tomàs Vaqués

Supreme Court Judgment (Criminal Chamber) No. 1189/2024, of 20 January 2025, p. del Moral García

Summary: A woman came into possession of a USB stick used exclusively by her partner, which contained thousands of sexual images of minors. The device formed the basis of the evidence that led to the police investigation and subsequent criminal proceedings. The Court dismisses the defence's appeal on the grounds of a violation of the fundamental right to privacy (Art. 18 of the Spanish Constitution). In accordance with the doctrine established in Constitutional Court Ruling No. 97/2019 (the Falciani case), it is concluded that the source of evidence is valid because the woman did not act with the intention of gaining procedural advantages.

Commentary by Rania Zitouni Chahdi

Supreme Court (Social Chamber) No. 23/2025, 14 January, p. Ureste García

Summary: Disciplinary dismissal based on footage captured by a visible video surveillance system, of which the workers were aware and about which their representatives had been expressly informed. However, the specific employee who was dismissed had not been individually informed of the existence of the cameras or their potential use for disciplinary purposes. The Labour Chamber of the Supreme Court ruled, contrary to the High Court of Justice of the Basque Country, that there was no violation of the employee's fundamental right to privacy (Article 18.1 of the Spanish Constitution) because, when the cameras capture the flagrant commission of an unlawful act, the duty to inform is deemed to have been fulfilled by the placement of a sufficiently visible information sign (Articles 89 and 22.4 of the Data Protection Act).

Commentary by Paula Torres Ruiz

Constitutional Court (TC)

Constitutional Court (First Chamber) Judgment No. 107/2025, of 12 May, p. Espejel Jorquera

Summary: Inquiry Committee of the Congress of Deputies into the accident involving Spanair flight JK5022 on 20 August 2008. One of the persons under investigation lodged an application for constitutional protection on the grounds of a violation of their right to effective judicial protection in relation to the rights to a fair trial and the presumption of innocence (Article 24 of the Spanish Constitution), on the basis that the guarantees inherent in a legal disciplinary procedure had not been observed. The Court dismissed the application: the guarantees provided for in Article 24 of the Spanish Constitution

are enforceable only in judicial proceedings and in administrative . Provided that the Chamber does not exceed its strictly political powers, there is no basis for finding a violation of such fundamental rights.

Commentary by Cristina Molins Joly

European Court of Human Rights (ECHR)

ECHR judgment of 6 November 2025, Guyvan v. Ukraine

Summary: Mr Guyvan, an employee, was the subject of an internal investigation conducted by his employer. The purpose of the internal investigation was to determine whether the employee had fulfilled his duty to attend his workplace in person.

The company obtained from the telecoms provider the call details (date, time and location; duration; number dialled; calling number; type of communication: voice, text message, etc.) for international calls made by the employee over a period of twelve (12) months using a company-owned telephone line, the personal use of which was openly permitted.

Whilst acknowledging that the aim of the investigation was legitimate, the Court considers that the Ukrainian judicial authorities did not apply with due rigour the proportionality test set out in the Grand Chamber judgment of 5 September 2017 in the case of *Bărbulescu v. Romania*. It adds that some of the communications data obtained were unnecessary for the purpose pursued.

Commentary by Albert Estrada Cuadras

ECHR judgment of 18 February 2025 (Romanchenko and Kharazishvili v. Georgia)

Summary: In this case, the European Court of Human Rights (ECHR) ruled against the Georgian State for violating the right to respect for private life through the indiscriminate interception of communications belonging to eight individuals under investigation for alleged tax fraud. The Court emphasised the enhanced protection afforded by legal professional privilege, which is intended to safeguard practising lawyers, but refrained from expressly ruling on its scope in relation to in-house lawyers. This omission leaves a situation of legal uncertainty, pending the judgment to be delivered by the CJEU in Case C-796/2024, in which the Court is expected to review or confirm the AKZO doctrine following the reference for a preliminary ruling raised by the Belgian Constitutional Court on this matter. For the time being, the European Commission has already

has ruled against extending the scope of the duty of confidentiality to in-house lawyers (Competition Policy Brief 1/2025).

Commentary by Clara Tomàs Vaqués

ECHR judgment of 15 February 2025, Macharik v. the Czech Republic

Summary: In this judgment, the European Court of Human Rights rules on a case in which the obtaining of emails served as the basis for a conviction against a third party to whom those messages were forwarded. The judgment sets out the minimum requirements under which correspondence may be considered lawful evidence in proceedings without infringing the right to respect for private correspondence enshrined in Article 8 of the European Convention on Human Rights.

The ECHR sends a clear message by demanding a particularly high standard of foreseeability, proportionality and judicial review, on the grounds that access to emails is one of the most intrusive forms of interference in a person's private life.

Commentary by Paula Torres Ruiz

ECHR judgment of 14 January 2025, case N.Ö. v. Turkey

Summary: In this judgment, the European Court of Human Rights concludes that the State failed in its duty of diligence in investigating a sexual assault. It criticises the national authorities for basing the acquittal on gender stereotypes and the victim's delay in reporting the offence, rather than carrying out essential investigations to establish the facts. This failure to conduct an effective investigation constituted a violation of the victim's rights as recognised in the European Convention on Human Rights. The judgment thus emphasises the obligation of States to act with particular diligence in investigating crimes of sexual violence, providing criteria for distinguishing between cases that merit the authorities' attention and those that do not.

Commentary by Cristina Molins Joly

ECHR judgment of 19 December 2024, Grande Oriente d'Italia v. Italy

Summary: this commentary analyses the ECtHR judgment finding a violation of Article 8 of the ECHR (right to private life) due to a search and seizure ordered without

by a judge, but by a parliamentary committee tasked with investigating relations between the Mafia and Freemasonry. The study examines how these commissions fit into the Italian legal system and how, despite their autonomy and political nature, they cannot be exempt from the safeguards inherent to the rule of law. The work highlights the excessive scope of the measure in several respects, the lack of effective independent oversight, and the prolonged retention of particularly sensitive data. From this, lessons are drawn regarding the use of intrusive powers in investigations of any kind, emphasising the need to precisely define the scope of the interference and to ensure the necessary control mechanisms are in place so as not to exceed the limits imposed by the regulations.

Commentary by Rania Zitouni Chahdi

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