



TRIBUNAL CONSTITUCIONAL

Gabinete del Presidente

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THE CONSTITUTIONAL COURT DOES NOT FIND ANY VIOLATION OF THE RIGHT TO PRIVACY AND THE SECRECY OF COMMUNICATIONS IN CORPORATE E-MAIL MONITORING BY A COMPANY. IT SUPPORTS THE DISMISSAL OF AN EMPLOYEE WHO SENT SENSITIVE INFORMATION TO COMPETITORS

The Constitutional Court has rejected the appeal for constitutional protection filed by a worker, dismissed by his employer company for having sent sensitive information to competitors using corporate e-mail. In a unanimous decision by its magistrates, the First Chamber of the Constitutional Court denied that the company's intervention of the messages violated the worker's right to secrecy of communications (Art. 18.3 CE) and privacy (Art. 18.1 CE). The opinion of the ruling was written by Magistrate Andrés Ollero.

In ruling upon the appeal, the Constitutional Court bears in the mind the Collective Bargaining Agreement for the chemicals sector, to which the company belongs, which defines as a minor infraction *"the use of computerised means belonging to the company (e-mail, Intranet, Internet, etc.) for purposes other than those related to the content of a job post (...)."* Because this is a regulation of a *"binding nature,"* the Court has determined that, as established by the Workers' Statute, the company was entitled to supervise *"computerised tools in the company's name made available to the employees (...) for the purposes of both monitoring the employment tasks performed through the professional use of these tools and to ensure that they were not used for personal purposes or objectives outside the content inherent to each job position."*

Ultimately, it states that *"no reasoned and reasonable expectation of confidentiality could exist with regard to knowledge about the communications carried out by the worker using the e-mail account provided by the company."* As the Constitutional Court affirms, there is no violation of the secrecy of communications, because the limitation on use of e-mail to professional purposes *"implicitly bore with it the company's power to monitor its use in order to verify the workers' fulfilment of their obligations and job duties."*

The Court does not find that there was any violation of the right to privacy either. Regarding this subject, importance is taken on once again by the *"predictable"* nature of the company's oversight, because this is an element that marks and difference between this case and others in which the European Court of Human Rights has detected a violation of the right to privacy.

Last of all, the Constitutional Court denies that the company's access to the content of the e-mail messages was a disproportionate measure, based on several grounds: the decision was *"justified,"* because it was based on *"the existence of suspicions of a worker's behaviour";* it was *"suitable"* for the intended purpose, *"consisting of verifying whether the worker was effectively committing the suspected*

irregularity: the revelation of company information of required confidentiality to third parties”; this was a “necessary” measure to be able to justify the disciplinary dismissal in the event of a potential challenge in court; and, in the end, it was a “properly weighed and balanced” measure, because none of the messages which led to the controversy discusses “specific aspects of the worker’s personal or family life, but rather only information regarding the business activity whose remittance to third parties (...) implied a breach of contractual good faith.”

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