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USE OF VIDEO SURVEILLANCE IMAGES IN DISCIPLINARY PROCEEDINGS

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On 26 September 2024, the Évora Court of Appeal handed down a ruling in a case challenging the regularity and lawfulness of a dismissal, in which it found that the employer had acted lawfully in using video surveillance footage to prove just cause for an employee's dismissal.

In the case under review, the Court begins by pointing out that, since the entry into force of the General Data Protection Regulation (“GDPR”), employers no longer need authorisation from the National Data Protection Commission to install video surveillance equipment in their employees' workplace. However, the judgement recalls that it is the sole responsibility of employers to ensure that such equipment is installed and used in accordance with the applicable legal rules.

In this respect, it should be remembered that Article 20(2) of the Labour Code allows the use of remote surveillance at the workplace whenever the purpose is the protection and safety of people and property. Based on this rule, the Évora Court of Appeal ruled that the use of remote surveillance at the workplace can be used to protect the employer's property against acts by third parties or the employees themselves.

Thus, the case law decision considered it lawful to use video surveillance images to prove disciplinary offences against an employee in the context of disciplinary proceedings, as long as they can be used in criminal proceedings. In these terms, the use of video surveillance images is now excluded in situations where the facts imputed to an employee do not constitute the commission of a crime, even though they may correspond to the commission of a disciplinary offence.

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In addition, it is important to emphasise that video surveillance images can only be used in disciplinary proceedings if their use would be permitted in the context of a criminal case involving the same facts as the disciplinary proceedings.

Therefore, and although the Évora Court of Appeal's ruling seems to broaden the scope of the probative means allowed to be used by the employer in a disciplinary procedure, it is important to bear in mind that the use of video surveillance images to prove just cause for an employee's dismissal must be preceded by a prognostic judgement that should focus on two questions: (i) whether the facts imputed to the employee could constitute the commission of a crime and (ii) whether the use of the images would be permitted in the context of a disciplinary procedure.

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