



# The right to the protection of personal data between law and constitution\*.

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## 1. Right to the protection of data in article 18.4 EC

The use of information and communication technologies in all spheres of life is an unquestionable reality because it is difficult to imagine a situation without incidence of technologies. The company as a social and economic reality is not an exception, and neither the benefits that the use of technology is able to secure.

The denial of potentials of technologies, on the one hand, and our increasing dependence, on the other hand, can lead to ignore the adverse consequences of the massive use of digital technologies in workers' life.

The integration of technology in the labour organization, in consideration of the employees' dependency to the powers of organization, management and control of the employer directly affects job performance.

Commenting the decision of the Spanish Constitutional Court of 3 March 2016 n. 39, we won't analyze the problem of correct use, in accordance with Article 23, Workers' Statute (TRET), of video cameras as a means of supervision and control, but we will try to verify the compatibility between technological development of business processes and the legislative framework.

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The decision concerns the protection of personal data enshrined in Article 18.4 of the Spanish Constitution (EC), which can only be guaranteed and made effective if it is regarded as a fundamental right.

The different terms with which the Courts and especially the Constitutional Court mention the right under Article 18.4 EC can not affect the content. It is a «right that, in regulating the processing of personal data, relates to the guarantee and protection of civil liberties and fundamental human rights, especially honor and personal and family dignity».

This right has a positive and a negative dimension. From the negative point of view, is a limit in order to protect honor and privacy of individuals, from the positive point of view, is reflected in the right to control the proper use and treatment of data, including the processing of data carried out by a computer system (habeas data). This dual dimension makes it a fundamental and autonomous right as it is not a mere specification of the right to privacy and / or image rights, but it is a «right of control over the data on your person».

Another defining characteristic is the reservation to the law provided by the Constitution: «The law will limit the treatment and use of personal data to ensure the honor and personal and family privacy of citizens and the full exercise of their fundamental rights». The Data Protection Law (LOPD) implemented this statutory reserve transposing Dir. 95/46/ EC of 24 October 1995 and setting the exercise of this right.

The legal establishment of the right and its limits, provided in the LOPD, were not set out with the necessary clarity and generated many case decisions on application and interpretation