



## TRIBUNAL CONSTITUCIONAL

Gabinete del Presidente

Oficina de Prensa

### NOTA INFORMATIVA Nº 72/2013

#### THE CONSTITUTIONAL COURT GRANTS CONSTITUTIONAL PROTECTION TO ÁLVAREZ-CASCOS AND DECLARES THAT THE BROADCASTING OF A REPORT ON HIS PRIVATE LIFE VIOLATED HIS RIGHT TO PRIVACY AND HIS PERSONAL IMAGE RIGHTS

The Second Chamber of the Constitutional Court has ruled in favour of the appeal for constitutional protection filed by Francisco Álvarez Cascos and María Porto based on the violation of the right to privacy and personal image rights. The plaintiffs claim that these rights were violated by the broadcast, on the television programme “*Crónicas marcianas*” in January 2004, of a report about their private relationship and holidays which they spent in the Canary Islands along with some of the minor children of one of them. The ruling by the Constitutional Court, in a unanimous decision, voids the Supreme Court judgment which acquitted journalist Javier Sardá, Boris Izaguirre and the entities Gestevisión Telecinco and Gestmusic Endemol, which had been convicted by both the Court of First Instance and by the Provincial Appellate Court of Madrid.

The plaintiffs question the way in which the Supreme Court weighed up the right to freedom of information, which was considered to hold precedence, and the rights of privacy and personal image. According to the First Chamber of the Supreme Court, the divulgence of the images taken of Álvarez Cascos, his partner and their children during their holiday at a hotel in Lanzarote did not violate the plaintiffs’ rights to privacy and personal image, because the nature of the programme may not rule out “*in principle*” the “*transcendence*” of the information “*for the formation of a free public opinion*” and also because of the “*public and political projection*” of Álvarez Cascos at that time as a Minister of the Spanish Government.

The Constitutional Court reminds that, according to its consistent case-law, “*capturing images involving a public personage at times in their life of an eminently individual or private nature entails the violation of the aforementioned right [to personal image], unless the event is in the public interest or the image was divulged with the person’s consent.*” The application of this criterion to the divulgence of Álvarez-Cascos’ images, adds the judgment, “*leads to the conclusion that this conduct constitutes an illegitimate intrusion of the appellants’ right to personal image, which cannot be protected by the right to communication true information freely.*”

“*Not all information about a person with public notoriety enjoys that special protection, but rather, in order for this to be enforceable, along with that subjective element of the public character of the person in question, there is the objective element that the facts comprising the information, due to their public importance, do not affect privacy, no matter how restricted this may be.*” “*And it is regarding this point,*” affirms the Second Chamber, “*that the arguments used in the*

*appealed judgment fall apart. The public notoriety of the appellant within the realm of his political activity does not deprive him of maintaining, beyond this sphere open to the knowledge of others, a reserved portion of his life, such as that which involves his affective relations, with his conduct in political activities not eliminating the right to privacy in his personal life, if of his own volition he decides to keep it distant from the public's knowledge, because it is each person's decision how to delimit the personal and familial privacy which is reserved for him or her."*

The judgment, for which Magistrate Pedro González-Trevijano wrote the majority opinion, highlights the importance held by the fact that the images were *"obtained in a clandestine manner by a professional reporter who specialises in capturing this type of images (paparazzi), without the appellants having opened up their reserved domain to the public's knowledge."*

The Constitutional Court denies that the fact that some of the areas in the hotel where the plaintiffs and their families spent their holiday and where they were recorded were *"accessible to the public"* means that no invasion of their right to privacy occurred. In fact, it points out that *"given a strictly reserved facet of their private life, there being no express, valid, effective consent given by the holders of the rights affected, an illegitimate intrusion of their fundamental rights to privacy is produced."*

This Chamber also denies that the dissemination of the images was protected by a *"constitutionally relevant public interest."* There is public interest when the information *"is relevant to the community."* But in this case, *"revealing the affective relationships of the appellants fully lacks any transcendence for the community, because it does not affect the people as a whole or the country's political scene, other than mere curiosity generated by the television chain itself by attributing the value of a news item to the dissemination of the repeatedly mentioned image, which must not be confused with a public interest worthy of constitutional protection."*

Madrid, 29 October 2013