



SPANISH CONSTITUTIONAL COURT

Cabinet of the President
Press Office

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THE TC DECIDES THAT THE OPINIONS EXPRESSED BY JOURNALIST JIMÉNEZ LOSANTOS IN 2005 DO NOT BREACH THE RIGHT OF HONOUR OF PUIGCERCÓS AND CAROD ROVIRA

Chamber Two of the Spanish Constitutional Court has rejected the appeal for constitutional protection lodged by Joan Puigcercós, Josep Lluís Carod Rovira, and the political party Esquerra Republicana de Catalunya (ERC), upholding the judgment issued by the Spanish Supreme Court whereby the opinions expressed by journalist Federico Jiménez Losantos in June 2005 in his radio programme did not breach the appellants' right of honour. The judgment, where Judge Juan José González Rivas acted as Reporting Judge, includes the particular dissenting vote of Judge Fernando Valdés Dal-Ré, supported by Vice President Adela Asua.

The facts took place successively over June 2005, when Jiménez Losantos expressed, among others, the following opinions: “(...) ERC is always a violent political, aimed at overturning (...)”, “if you dare, Roviretxe, take me to Court and we will see how many terrorists you have in your political party, with its background and activities. Starting with Puigcercós (...)or “those ETA partners at Perpignan”. A few months earlier, another media agent had reported about a meeting which Carod Rovira supposedly held in Perpignan with members of the terrorist organisation ETA, and in which supposedly he had reached an agreement to avoid terrorist attacks in Catalonia.

The Chamber considers that, although the journalist's expressions “are close to being inadmissible due to their wounding and disproportionate nature”, they are “protected by the freedom of expression, insofar as part of a clearly public debate of great public interest; they were pronounced by a journalist in relation to the activity of political leaders as such, therefore extending the limits of admissible criticism”.

According to the Chamber, the facts should be analysed under the auspices of freedom of expression (which does not require that a journalist check the veracity of the facts), not of freedom of information (which does require verification of accurate information).

In this case, the judgment states, the aspect of freedom of expression which could be affected is “aimed at guaranteeing ‘the development of a free and public communication, enabling the free circulation of ideas and value judgments inherent to the principle of democratic legitimacy’”. This is because “expressions and considerations that are considered detrimental to the appellants' honour are publicly broadcast on the radio, with a view to generate a public debate”. “We, therefore face a situation where the fundamental right [to freedom of expression] reaches its maximum constitutional protection”.

Secondly, the Chamber considers that “the facts criticized refer to acts of political party leaders in the exercise of their political activity”. According to doctrine laid down by the Constitutional Court and European Court of Human Rights (ECHR), this means that “permissible levels of criticism are higher if related to individuals involved in

public activities who, therefore, are subject to stricter control of their activities and declarations as opposed to mere individuals with no public exposure whatsoever, given that, in a system based on democratic values, exposure to criticism is inseparable from any relevant public position. “*When the affected parties hold public office, they must endure criticism or any revelation no matter how much ‘it hurts, shocks or causes concern’ or are ‘especially disturbing and hurtful’*”, the judgment adds.

Finally, the Court explains that, in order to determine the “*offensive nature*” of an expression, it is necessary to determine “*whether or not it is connected to the value judgment issued or information reported*”. In this case, “*a journalist’s value judgments are constructed on a sufficient factual base, since the agreement he declares took place was a fact reported to the public opinion through another media agent, and the expressions given are connected to the value judgment issued by the journalist*”.

PARTICULAR VOTE

In their particular vote, the dissenting Judges are in favour of granting the appellants’ request for constitutional protection. In their opinion, the journalist’s statements should have been examined not only from the point of view of freedom of expression but also in terms of the freedom of information and, consequently, are subject to a veracity requirement, since they “*attribute facts (...) that are undoubtedly serious*”. In this regard, they recall that the ECHR considers that “*there are limits to the freedom of expression when value judgments entail factual accusations*” and that, in such case, the journalist’s judgments lacked any factual basis or minimum verification or contrast, let alone a proven reality.

In turn, they consider that the constitutional recognition of political parties should entail special protection against gratuitous defamation (Art 6 in relation to Art. 18 of the Spanish Constitution), not just higher legitimate criticism. Institutions need to be protected, not just duly and intensely criticized. Finally, they consider that some of the “*expressions*” issued by Jiménez Losantos “*greatly exceed the stricter scope of legality of the freedom of expression, fully and without prejudice involving insults and slander, which are not at all protected by such freedom*”.

Madrid, 11 June 2014.