



CONSTITUTIONAL COURT OF SPAIN
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THE CONSTITUTIONAL COURT DECLARES THAT USING FULL NAMES AS A SEARCH AND LOCATION PARAMETERS IN DIGITAL NEWSPAPERS ARCHIVES MAY VIOLATE THE “RIGHT TO BE FORGOTTEN”.

The First Chamber of the Constitutional Court has upheld an appeal for constitutional protection (*"recurso de amparo"*) brought by two individuals who considered their rights to honour, to intimacy and to the protection of their personal data to have been infringed by the use of Internet technologies. In this particular case, the alleged violation occurred when the appellants' names and surnames were made available and appeared in the search engines of digital newspaper archives. They considered that their right to be forgotten, as enshrined in Article 17 of the European Union's Data Protection Regulation ("GDPR"), had been infringed as a right to obtain the deletion of personal data.

The judgment rendered by the First Chamber of the Court, to which Magistrate María Luisa Balaguer was the rapporteur, argues that *"the prohibition on indexing personal data, and in particular the names and surnames of the appellants, for the purpose of being used by the internal search engine of El País (a Spanish national newspaper) must be limited, appropriate, necessary and proportionate. This seeks to prevent the dissemination of the specific news breaching the rights invoked"* by the plaintiffs.

The Court upheld the application for *amparo* against the Supreme Court's decision dated October 15^h 2015, which recognised the right to be forgotten in digital environments of individuals prosecuted for involvement in a drug trafficking and consumption case in the 1980s. The Civil Chamber of the Supreme Court rejected the necessity to eliminate the names and surnames of the information contained in the newspapers archives as well as to prevent that the personal data contained in the information may be indexed by the internal search engine of the newspaper library, since it considered that these measures constituted an excessive restriction against the freedom of information in relation to the existence of digital newspapers archives.

According to the judgment of *amparo*, the purpose of this appeal is to examine the conflict that may exist between the constitutional precepts regulated in Article 18.4 of the Spanish Constitution [CE] and the protection of the right to honour and privacy of individuals (Article 18.1 CE).

In this sense, it is generally recognised that *"freedom of information is not only a fundamental right of every individual but also a guarantee of the formation and existence of a free and plural public opinion capable of expressing political views through the exercise of participatory rights"*. However, this right is not absolute. Indeed, it must be modulated by two factors: firstly, the significance of time in assessing the impact of the dissemination of a piece of news when it comes to the right to privacy of the individual concerned. Secondly, the significance of the digitization of materials in facilitating Internet users' access to information.

The ruling further explains that, in such cases, it is legitimate to raise the issue regarding *«the precedence of the right to information over the right to privacy of an individual who, after a period of time, has opted to request that such data and information, which may have been of public relevance at a certain period of time, might be erased and forgotten»*.

In the Court's view, *"the universalization of access to newspaper archives, as well as the globalization of access to information through search engines, increases and amplifies the interference over the right to informational self-determination (art. 18.4 EC) and the ones related to the privacy (art. 18.1 EC) of citizens"*.

When resolving this dispute, it is essential to take into account the balance between freedom of information and the right to informational self-determination, given the important role played by the passing of time in determining the function carried out by the media and the dual approach (investigation and public information purposes) inherent to it.

The judgment rendered by the Court concludes that it should be borne in mind as a relevant fact that the internal search engines of websites fulfil the task of enabling the news to be easily found and disseminated. This task can be ensured even if the possibility of carrying out a search using the names and surnames of the persons concerned, who have no public relevance, is removed. Therefore, *"it will always be possible if there is an investigative purpose in the quest for information that is not merely based on a journalistic interest for the person under investigation, to locate the news article by means of a thematic, temporary, geographical or any other type of search"*. For this reason, the personal data of the applicants for protection are not necessary, and they do not add anything to the interest of the news. The initials of their names and surnames are deemed sufficient to fulfil the aforementioned purpose.

Madrid, 26 June 2018