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THE CONSTITUTIONAL COURT RULES OUT, IN GENERAL TERMS, THE USE OF HIDDEN CAMERAS FOR JOURNALISTIC PURPOSES, CONSIDERING THAT IT CONSTITUTES AN ILLEGITIMATE INTERFERENCE WITH THE RIGHTS TO PRIVACY AND TO ONE'S OWN IMAGE

The Constitutional Court has ruled, in a judgement drafted by Magistrate Cándido Conde-Pumpido, that *"the Constitution does not permit the use of hidden cameras for journalistic purposes as it constitutes a serious illegitimate interference with the fundamental rights to privacy and to one's own image"*. However, *"its use may exceptionally be considered legitimate when there are no less intrusive means of obtaining the information"*.

With this reasoning, the First Chamber has partially upheld the appeal for constitutional protection (*"recurso de amparo"*) brought by an individual, considering that a television channel had violated his rights to privacy, to his own image and to honour for broadcasting a report recorded with a hidden camera. Thus, the Court partially annuls judgement nº634/2017 rendered by the Civil Chamber of the Supreme Court on 23 December 2017. This judgement had attributed greater importance to the freedom of information than to the aforementioned rights because the essential purpose of the report broadcast was to denounce suspicious illegal activities by the *amparo* plaintiff and his company that could have serious risks for public health.

The case reviewed by the Court concerns the following facts: the journalists went to the appellant's office where he was employed as coach, mentor, personal consultant and executive director of his own company. They pretended to be clients and one of them faked to be diagnosed with cancer. They recorded the visit with a hidden camera. A few days later, on a television program, they broadcast the footage of what the plaintiff had done and how he had proceeded. The television debate focused on showing him as a *"healer"* who, without holding any qualification related to health, claimed an aptitude to cure all kinds of illnesses. Likewise, he was described as a *"womanizer"* and was accused of including *"something more than caresses"* in the therapies. Another television programme also released a report entitled *A False Guru of Happiness?*

The main dispute raised in the present *amparo* appeal deals with the conflict between the freedom to communicate truthful information by a media organization and the fundamental rights to honour, privacy and one's own image of the applicant. Indeed, as stated above, the plaintiff was the object of various programmes broadcast by a TV channel combining reportage, debate and voice-over, which used images captured by hidden camera during their professional practice by journalists who were pretending to be clients interested in his services.

The Court, recalling its case law on the use of the hidden camera synthesized in Judgment nº12/2012, stresses the need to *"strengthen vigilance in the protection of privacy in order to combat the dangers arising from an invasive use of new communication technologies"*

which, among other things, facilitate the collection of images on a systematic basis without the affected person being aware of it as well as their dissemination to a wide public audience".

However, as with other conflicts involving fundamental freedoms, the balance of rights is the solution to the problem raised by the hidden camera reporting technique, because none of the rights recognised in Article 18.1 of the Spanish Constitution is absolute nor unconditional. Therefore, freedom of information can be considered to prevail over the rights of privacy analysed on a case-by-case basis, as long as the information is considered truthful and relevant to informing public opinion and dealing with matters of general interest.

The ruling of the Court – which incorporates the abundant jurisprudence of the European Court of Human Rights (ECHR) – emphasizes that *"the legitimacy of the use of hidden cameras as a journalistic method for gathering information is subject to a strict assessment criteria aimed at preventing disproportionate intrusion and unnecessary interference in people's private lives"*. For this reason, the ECHR concludes that the use of the hidden camera, considered as an intrusive technique damaging private life, must as a general rule *"be limited in its use, only as a last recourse and in accordance with ethical rules"*.

The Constitutional Court does not share the decision adopted by the Civil Chamber of the Supreme Court which found that, in the aforementioned case, freedom of information prevailed over the rights of privacy. Indeed, it considered that *"the method used to obtain the intrusive content (by means of hidden cameras) was not necessary and proportionate for the purpose of ascertaining the activity carried out by the amparo plaintiff during his professional consultation and for the constitutional exercise of the freedom of information"*. On this point, the Court further stated that *"It would have been sufficient to conduct interviews with his clients"*.

On the other hand, the Court concludes that *"the broadcasting – through several television programmes and on the channel's website – of the appellant's images and voice without applying any distortion method constituted an unnecessarily invasive activity with regard to privacy and the right to one's own image. The content of the programmes broadcast included manipulated aspects and degrading statements that were not essential for information purposes"*.

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