[ES] Hidden Camera Case Decision by the Supreme Court

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The rights to honour, privacy and self-image are established in the Spanish Constitution (Arts. 18 para. 1, 20 para. 4). They are considered to be fundamental rights and a limit to freedom of speech or expression, which is also protected as a fundamental right according to the Spanish Constitution. Honour, privacy and image rights are regulated in detail by the Spanish Act on Civil Protection of Right to Honour, Privacy and Self-Image.

Notwithstanding the aforementioned, these rights cannot be considered to be absolutely unlimited, as was stated by the Supreme Court in a recent decision on this matter.

The facts underlying this decision were the following: in 2004, a lawsuit was filed by a Spanish football players' representative against three different Spanish Television Broadcasters, because they had broadcast a report filmed with a hidden camera and entitled "The Business of Football", in which the reporters made this person believe that they were interested in supposed negotiations for the signing of a player. These images and conversations were finally broadcast on different information media.

The lawsuit was based on the infringement of the rights to honour, privacy and image and the plaintiff claimed the amount of EUR 300,000 in damages. The Court of First Instance of Barcelona decided that there was an effective infringement of the three abovementioned rights, but it sentenced the defendants to pay jointly and severally the much lower amount of EUR 6,000 in damages.

The decision was appealed by both parties before the Provincial Court of Barcelona. The judge stated that there was an infringement of the rights to honour and self-image and sentenced the defendants to pay jointly and severally the amount of EUR 75,000 in damages.

Finally, the case arrived before to the Spanish Supreme Court, which analysed separately the two rights allegedly infringed (the right of honour and the right of image) in relation to the rights of freedom of speech and information, which were the rights that the defendants called upon in their defence, as they considered the programme to be a report of investigative journalism.

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Regarding the right to honour, the Supreme Court stated that there was no infringement, as the information published was true, it was not offensive and it was socially relevant. As a result, this plea was rejected.

And in relation to the image right, the Supreme Court stated that there was indeed an infringement of such a right, both at the time of the recording and at the time of the broadcasting of the programme, as the plaintiff was not allowed to decide, consent to or impede the reproduction of his physical image; the Supreme Court considered also that the reproduction of the physical image of the plaintiff could have been avoided, as the objective of the programme was the condemnation of abusive practices in contracting football players. Also relevant was the fact that nowadays it is very easy to use digital techniques in order to blur someone's face or voice.

In addition to the aforementioned, the Supreme Court referred to a previous decision it had issued on 6 July 2009, which stated that the self-image of the plaintiff was not an essential element for information purposes, as it did not contribute at all to the report, which could have been broadcast perfectly well without it. And it cannot be alleged that the image was information in itself, because its publication did not add any informative value.

Finally, the Supreme Court sentenced the defendants to pay jointly and severally the amount of EUR 3,000 to the plaintiff.

To conclude, it is worth highlighting that:

a) There is a really fine line between the two fundamental rights (right to honour, privacy and self-image and the right to freedom of speech and information) and problems start at the moment of determining which of these two fundamental rights must prevail over the other if there is a conflict between them, as there are no specific rules to use as a guide in solving the problem and judges are obliged to analyse on a case by case basis;

b) Even when an infringement is found by Spanish Courts, the penalties are far from significant in an economic sense, as normally penalties for damages are very poor. As a result it will usually be better to find an out-of-court solution, as court costs when not compensated for by damages can be very high.

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