[ES] Constitutional Court on Use of Hidden Cameras in the Journalistic Field

IRIS 2012-4:1/21

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On 30 January 2012, the Spanish Constitutional Court declared the use of hidden cameras in a journalistic field to be unconstitutional, regardless of the public relevance of the investigation's purpose.

This statement arises from a lawsuit filed against a Spanish TV production company for the infringement of the rights to honour and to personal portrayal, when a journalist went to an appointment with an estheticienne (beautician) posing as a patient. The appointment was at the beautician's home, which was partly used as her office, where the journalist recorded the voice and image of the beautician by means of a hidden camera. The material recorded was then transmitted to a Valencian TV, which broadcasted a program on fake health professionals.

Both the Spanish Courts of first instance and of Appeals considered that the use of the hidden camera in this specific case was valid, as it could be classified as "investigation journalism". Because the report met the veracity, objectivity, public interest and informative purposes requirements, no rights were infringed.

Notwithstanding this, the Supreme Court considered that the report had clearly infringed the right to privacy of the beautician, but not her right to honour.

Finally, on 30 January 2012, the Spanish Constitutional Court, analysed which right, between the fundamental rights to freedom of communicating truthful information (freedom of speech and information) and the personal rights to privacy and to personal portrayal, had to prevail.

One of the most important arguments of the Constitutional Court in order to consider there had been a clear infringement of the rights to privacy and to personal portrayal of the beautician is the lack of knowledge and consent of the affected person to disclose her image through the media. Similarly, the fact that using a hidden camera is considered to be an excessive method in order to provide journalistic information when it is possible to use other means much less invasive of a person's rights to privacy and to personal portrayal, such as simply interviewing other clients of the beautician's "clinic". The Constitutional Court decision considers it is not justified posing as a patient "simulating an identity that fits the situation in order to access the private area of the affected person

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with the purpose of recording its uninhibited behaviour or to provoke certain comments or reactions as well as to register in a surreptitious way her statements over certain facts or persons, which certainly would not have obtained if the journalist had previously informed of her real identity, profession and her real purposes".

In summary, the Spanish Constitutional Court has considered the use of hidden cameras or similar devices unlawful as it is an excessive means, which infringes the fundamental rights to privacy and to personal portrayal.

The decision does not state anything about other fields or backgrounds in which the use of hidden cameras or similar devices may be justified, such as investigations on drug cartels or women trafficking. The union of investigation journalists considers that the use of hidden cameras should not be prohibited in certain investigations (such as drug cartels or women trafficking).

Notwithstanding, the first consequences of this decision have already happened. The "book of style" of the Spanish Public Television (TVE) currently contains a provision allowing the use of hidden cameras "in very special cases", such as to demonstrate illegal or criminal practices affecting public interest, always with the prior consent of the Management of the broadcaster. However, after the decision of the Constitutional Court, it has been decided that the "book of style" will be amended to contain a provision prohibiting this method.

Tribunal Constitucional, Sala Primera. Sentencia 12/2012, de 30 de enero de 2012. BOE núm. 47, de 24 de febrero de 2012

http://www.tribunalconstitucional.es/es/jurisprudencia/Paginas/Sentencia.aspx?cod=10299

Spanish Constitutional Court Decision 12/2012 of 30 January 2012, Official Journal no. 47, 24 February 2012

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