[ES] Constitutional Court Uphold Rights to Personal Image and Honour of a Disabled Person

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The Spanish Constitutional Court (TC) has ruled on 16 December 2013, that the rights to personal image and honour of a disabled person should prevail over the right to information claimed by a television broadcaster in relation to a programme in which a disabled person was ridiculed. The programme, which was broadcast on Tele5 (Mediaset's Spanish chain), invited a person with mental and physical disabilities, i.e. the plaintiff, to be interviewed. During the course of the interview, the plaintiff was asked personal questions of a sexual nature and was generally made fun of by the interviewer. Afterwards, the interview was made available on the programme's website.

The initial proceedings in the first instance, which were upheld by the Court of Appeal, declared that the plaintiff's right to image and honour had been infringed. The Supreme Court, however, held that the public's right to information was prevalent over the plaintiff's right to personal image and honour due to the fact that the plaintiff had agreed to the interview. The State Attorney, on the basis of article 49 of the Spanish Constitution, which contains a mandate to protect persons with disabilities, filed an appeal before the Constitutional Court (the Court in Spain responsible for making the final decision in cases regarding human rights controversies).

The TC held that the image rights of a person can only be used by a third party where the person concerned has given his or her express consent, i.e. in this instance to the broadcasting of the interview, and to the interview being made available on the internet. The Court argued that in this case, due to the disability of the plaintiff, the requirement for such consent should have been more strictly applied. Furthermore, the right to information could not prevail in this case due to the fact that the programme and the interview lacked the necessary public interest and public importance element. Not only did the interview lack newsworthy value, it was also performed exclusively with the purpose of ridiculing the individual by highlighting his obvious signs of physical and mental disability. The Court concluded that Tele5 abused the vulnerability of the interviewee with a clear and reprehensible intention to mock his physical and mental conditions; thus violating not only his right to honour and reputation, but also his right to dignity. Tele5 were ordered to compensate the plaintiff by paying him EUR 15,000, a significantly lower amount than the EUR 300,000 initially claimed by the plaintiff.

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This decision has been commended by the *Comité Español de Representantes de Personas con Discapacidad* (Spanish Committee of Representatives of Disabled Persons- CERMI) which is a platform for representation, defense and action of disabled people, who value the decision as an added legal protection to the personal and social image of people with disabilities.

Tribunal Constitucional, Sentencia 208/2013 de 16 de diciembre de 2013

http://hj.tribunalconstitucional.es/en/Resolucion/Show/23724ES

Constitutional Court, judgment 208/2013 of 16 December 2013

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