

[ES] Constitutional Court of Spain rules out the use of hidden cameras for journalistic purposes

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On 25 February 2019, the Constitutional Court of Spain ruled out, in a judgement, the use of hidden cameras for journalistic purposes. The Constitutional Court ruled 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”.

The judgement of the First Chamber partially upheld the appeal for constitutional protection brought by an individual who considered that journalists of a television channel had violated his rights to privacy, own image and honour by broadcasting a report recorded with a hidden camera. The images captured by the hidden camera were used by various programmes broadcast by a television channel to denounce suspicious illegal activities undertaken by the plaintiff that could have serious risks for public health.

In its judgement the Constitutional Court addressed the conflict between media organisation’s freedom to communicate truthful information and the fundamental right to honour, privacy and one’s own image. This raised the correct balance of such rights, given that none of the rights recognised in Article 18.1 of the Spanish Constitution (honour, personal privacy and own image) is absolute.

The Constitutional Court, on the basis of the jurisprudence of the European Court of Human Rights (ECtHR), ruled that the hidden-camera reporting technique, as a general rule, must “be limited in its use, [and] only as a last resort, in accordance with ethical rules”. However, it “may exceptionally be considered legitimate when there are no less intrusive means of obtaining information”.

With regard to conflict between the freedom to communicate truthful information and the fundamental rights to honour, privacy and one’s own image, in this case the Constitutional Court considered that “the method used to obtain the intrusive content (by means of hidden cameras) had not been necessary and proportionate for the purpose of ascertaining the activity carried out by the plaintiff during his professional consultation and for the constitutional exercise of the freedom of information”. The Constitutional Court added that in order to achieve their goal, the journalists could have conducted interviews with plaintiff’s clients.

Furthermore, the Constitutional Court considered that “the broadcasting - on several television programmes and on the channel’s website - of the appellant’s image and voice without applying any distortion method constituted an unnecessarily invasive activity with regard to privacy and the right to one’s own image”.

Therefore, the Constitutional Court ruled that the fundamental rights to honour, privacy and one’s own image had to prevail in this case over the use of the hidden-camera reporting technique, given that there had been less intrusive possible means of obtaining the information in question, such as conducting interviews with the plaintiff’s clients, and given the fact that the broadcast programmes had included content that had not been essential for information purposes.

Press release No. 24/2019, “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.”

https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2019_024/Press%20Release%20No.%2024.2019.pdf

Sentencia del Tribunal Constitucional, de 25 de Febrero de 2019, de la Sala Primera

https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2019_024/2018-169STC.pdf

Judgement of the Constitutional Court, of 25 February 2019, of the First Chamber)

