



Liability of the owner of a website for the comments published by users in its forums

Judgment of the Supreme Court, Civil Chamber, of 7 January 2014

Background and legal framework

The owner of a computer store called “Aiguamolls” brought a claim against Meristation Magazine, S.L. for the degrading expressions published in the forums of its website that were addressed to both Aiguamolls and its owner. The plaintiff considered to have suffered a violation to his right to honour and requested that the files called “criticism to the way Aiguamolls works” and “Aiguamolls also wants to defraud me” be removed from such website. The defendant refused to do so claiming that he was only the owner of the website and that the users were responsible for their opinions published in the forums.

According to Directive 2000/31/EC, incorporated to our legal system through Law 34/2002, service providers who store information provided by the user of such services will not be responsible for the data stored as long as they are not “effectively aware” of its illegal nature. The law establishes that there is effective awareness “when a competent body has declared the unlawfulness of the data, ordering its removal...”. It also establishes that once the service provider becomes aware of this situation, he shall have to act promptly and diligently to remove such data.

Position of the Court

The local court of Rubí (Barcelona) ruled in favor of Aiguamolls, ordering Meristation to pay 30.000 Euros and to publish the judgment on its website.

The Provincial Court of Barcelona shared these considerations but it reduced the compensation to 12.000 Euros. It considered that the exemption of liability for lack of “effective awareness” did not apply since: (i) the comments on the forums had serious importance and could even lead to criminal liability; and (ii) Meristation could have been aware of the conversations of the users due to the long period in which they took place and to the number of answers. The Provincial Court concluded that setting up forums requires to increase the duty of control over the website content, through “moderators”.

The Supreme Court, after reminding that the right to honour is limited by the freedom of expression and information, fully agreed with the Provincial Court. The owner of the website did not comply with his duty of diligence as he did not detect and prevent certain contents since, although the information could not have been previously filtered, he should have identified the situation and expelled the user.

Although the law understands that “effective awareness” exists when the authorities declare the unlawfulness of the comments, the Supreme Court considered that in today’s world, characterized by the facility and speed of data dissemination, preventing the affected party to initiate proceedings until the moment when such unlawfulness is formally declared would multiply the damages caused to the extent of becoming irreparable by the time the answer to the legal proceedings is obtained.