***Case Title:* Maureira Álvarez v. Google et al.**

***Meta-Data*:**

* **Case Number**:Rol N°140.332-2020
* **Date of decision**: June 25, 2021
* **Featured case**: N/A
* **Region**: Latin America and the Caribbean
* **Country**: Chile
* **Type of expression**: Electronic / Internet-based Communication
* **Judicial Body**: Supreme Court (court of final appeal)
* **Type of law**: Constitutional Law
* **Main Themes**: Defamation / Reputation, Press Freedom, Privacy, Data Protection
* **Outcome**: Overturned Court of Appeals Court's decision
* **Status**: Closed
* **Tags**: Right to be forgotten, Update of Information

***Analysis:***

**Summary and Outcome**:

On June 25, 2021, the Supreme Court of Chile partially revoked a ruling of the Court of Appeals of Concepción that rejected a writ of protection filed by a former public official against media outlets for maintaining internet-based publications connected to a criminal investigation against the plaintiff for embezzlement of public funds. The Supreme Court held that the media outlets had violated the plaintiff's right to honor since they had failed to include the definitive dismissal of the charges against the plaintiff.

* **Facts**:

In July 2012, the Chilean Defense Council of State presented a lawsuit against Benjamín Maureira Álvarez, who at the time was Regional Secretary of Education, claiming he had committed a crime of embezzlement of public funds between 2009 and 2010.

On March 17, 2013, the Guarantee Court of the Municipality of Concepción held a preliminary hearing in which the prosecution presented the charges against Mr. Maureira Álvarez. However, on May 11, 2018, The Court of Appeals of the Municipality of Concepción ruled in favor of the plaintiff and ordered the definite dismissal of the allegations in accordance with Article 250 b) of the Criminal Procedural Code.

* **Decision Overview**:

The main issue for the Supreme Court of Justice of Chile to analyze was if the news published regarding the investigation of Mr. Maureira Álvarez infringed his rights to privacy and honor.

Mr. Maureira Álvarez presented an appeal before the Supreme Court related to a previous judgment rendered by the Court of Appeals of Concepción, which had rejected his request for a writ of protection against Google.cl, El Mercurio SAP, Biobío Comunicaciones SA, La Plaza SA, CNN Chile Canal de Television Ltda., Nos Magazine, Radio University of Chile, National Television of Chile, Chilean Communications Company and Senator Alejandro Navarro Brain.

The plaintiff asserted that the respondents had arbitrarily and illegally maintained a series of publications online related to a Court hearing regarding a lawsuit that claimed that he had committed the crime of embezzlement of public funds. Mr. Maureira Álvarez contended that contrary to what was concluded by the Court of Appeals, the tort did not originate from the inaccuracy, lack of integrity, or falsity of the news, but rather in its permanence on the internet indefinitely, despite the fact that such events occurred seven years before.

Additionally, the plaintiff stated that the information had undoubtedly ceased to have a public interest, according to Article 1 of Law No. 19,733. Likewise, Mr. Maureira Álvarez claimed that the right to inform must dissipate over time, invoking the right to be forgotten. He argued that the permanence of the information online violated his right to privacy and honor and considered that such rights should prevail over freedom of expression.

The Court began its analysis by pointing out that it was undisputed by the parties that facts that were the basis of the information and the news search engines did occur. Likewise, the Court recognized that the records showed that the Court of Appeals of Concepción, on May 11, 2018, issued a definitive dismissal in favor of Mr. Maureira Álvarez under article 250 letter b) of the Code of Criminal Procedure.

Additionally, the Court stressed that since the so-called right to be forgotten invoked by Mr. Maureira Álvarez is not contemplated in the national legislation, thus its decision would require an analysis from the perspective of the potential rights affected. The Court deemed the possible rights in jeopardy were access to information and the right to private life and honor.

In light of Article 30 of Law No. 19,733 on Freedom of Opinion and Information and the Exercise of Journalism, the Court determined that the information requested to be deleted was of an alleged crime carried out when he held a position of public relevance, therefore was a matter of public interest.

Further, the Court explained that under Mr. Maureira Álvarez's approach, the so-called right to be forgotten must prioritize the protection of the right to information when the disclosure of facts is relevant to the public interest. Consequently, the Court highlighted that the information that tied the plaintiff, who served as Regional Secretary of Education, to the commission of a crime of embezzlement of public funds was undeniably a matter of public interest; thus, protected under the right to information.

The Court determined that the request for the deletion of the news was unfounded since it had been published lawfully. However, the Court concluded that the respondents *Sociedad La Plaza SA, Revista Nos, Televisión Nacional de Chile,* and *Compañía Chilena de Comunicaciones* had arbitrarily maintained a publication where the information was incomplete and had failed to incorporate the definitive dismissal of the charges against the plaintiff, therefore, violated Mr. Maureira Álvarez right to honor guaranteed by N°4 of Article 19 of the Constitution and ordered the respondents to update the information by including the Court Appeals decision, which dismissed the claims against the plaintiff. Additionally, the Court requested the media outlets to add a link to the full text of the Court of Appeals judgment so that readers may learn that the Courts had ruled in favor of Mr. Maureira Álvarez. The Court determined that the Court of Appeal's decision remained applicable for the rest of the respondents.

***Direction:***

* **Outcome**: Mix outcome
* The decision contracts Freedom of Expression since the Court ordered the media outlets to update a news report and include a link to a Court of Appel's ruling, therefore interfering with the free flow of information and autonomy of the media. However, the positive aspect of this case is that the Court stressed that the so-called right to be forgotten must prioritize the protection of the right to information when the disclosure of facts is relevant to the public interest.

***Perspective***:

* **Related International and/or regional laws**:

* **National law or jurisprudence**:
  + [Chile, The Political Constitution of the Republic of Chile, Article 19, N°4](https://www.oas.org/dil/esp/constitucion_chile.pdf)
  + Chile, Criminal Procedural Code, article 250 b)
  + Chile, Law No. 19,733 on Freedom of Opinion and Information and the Exercise of Journalism, article 30

**Other national law or jurisprudence**:

* **N/A**

***Significance***:

* The decision establishes a binding or persuasive precedent within its jurisdiction.
* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***:

* **Official Case Documents**:

**Examples:**

* **Reports, Analysis, and News Articles**: