Google Inc. v. Sala B de la Cámara Nacional de Apelaciones en lo Civil

Corte Suprema de Justicia

Argentina

CIV 23410/2014/3/RH2

December 3, 2019

**Summary and outcome**

The Supreme Court of Argentina overruled an injunction granted by the National Chamber of Civil Appeals ordering [www.google.com.ar](http://www.google.com.ar) to remove from its search engine, within 10 days, specific search suggestions involving José Paquez. The information and opinions that the injunction de-listed concerned attacks against students participating in political groups, allegedly carried out by Paquez, in his role as Secretary General of a public university. The Supreme Court argued that the measures imposed on Google were an act of censorship, since they restricted publications disrupted the access and dissemination of public interest information.

**Facts**

The B Hall of the National Chamber of Civil Appeals in Argentina granted an injunction, requested by José Paquez, ordering the website [www.google.com.ar](http://www.google.com.ar) to remove from its search engine, within 10 days, specific search suggestions involving the plaintiff. The publications the plaintiff sought to de-index referred to “[Paquez’s] performance in his role as Secretary General of a public university. Specifically, they allude to alleged attacks against students participating in political groups” (par. 12).

Google appealed the decision arguing a violation to freedom of expression. On December 3, 2019, the Supreme Court of Justice of Argentina issued a decision on the matter.

**Decision Overview**

The Supreme Court of Argentina analyzed whether the injunction issued by B Hall of the National Chamber of Civil Appeals, ordering Google Inc. to remove specific search suggestions about José Paquez was valid. The main issue before the Court was to decide whether in this instant case the right to freedom of expression of Google should prevail over the right to honor of Paquez.

According to Google, the injunction granted by the National Chamber affects “a community of users, unable to access public interest information” (par. 4). Likewise, according to Google, the decision affects freedom of expression, considering that this search engine “is the most common channel to access the [contested] information, thus highlighting the difference between content by ‘available’ on the internet and being ‘accessible’”. (par. 4).

For its part the National Chamber of Civil Appeals considered that granting the injunction didn’t affect freedom of expression, since the measures were only precautionary and only limited the “massive and indiscriminate proliferation on the internet of some specific content, without deleting it” (par. 2), that affected the honor of a public official.

The Supreme Court of Argentina began its considerations by mentioning **art. 10 of the Law 26.032**. According to this provision “the search, reception and dissemination of information and ideas of all class, through the internet, are protected by the constitutional guarantee of freedom of expression” (par. 7).

In light of this, the Court highlighted the role of search engines in the current informational ecosystem. For this Tribunal, the global dissemination of ideas is eased by search engines that allow users access to information according to specific search criteria.

Given this important role, the Court considered that the injunction granted by the lower court was an act of censorship´: “the decision of eliminating provisionally some search suggestions, of ceasing the dissemination of some webpages linked to the name of [Paquez] and deleting contents stored by the search engine, is an act of censorship that interrupts the communicative process […] or at least makes it overly difficult (par. 12). For this reason, the Court considered that the contested decision was an extreme measure that “seriously restricts the circulation of public interest information, upon which rests a strong presumption of unconstitutionality” (par. 11).

In its assessment of the legality of the decision issued by the National Chamber of Civil Appeals, the Court also studied whether the information that was de-listed was of public interest. For the Tribunal it was clear that the expressions included on web-pages regarded a public official, and the exercise of his duties. “From this, it follows that the information and opinions there included are of public interest and are on the opposite side of the spectrum of the exceptional cases regarding openly illicit content not protected by freedom of expression” (par. 12).

Hence, the Supreme Court considered that the National Chamber of Civil Appeals held without basis, and in arbitrary manner, that the information that was censored sought to affect the honor of a public official, “without conducting a proper analysis of the content of the publications” (par. 12).

For these reasons, the Court decided to grant protection to the freedom of expression of Google and overruled the decision issued by the National Chamber of Civil Appeals.

**Decision Direction**

Expands freedom of expression

By revoking an injunction that de-indexed information and opinions regarding the behavior of a public official, the Supreme Court provided robust protection to freedom of expression against cautionary or provisional measures. The Court also acknowledged that upon any measure, seeking to disrupt the access and dissemination of information on the Internet, lays a presumption of unconstitutionality. Thus, restrictions imposed on search engines can only be applied on exceptional cases.