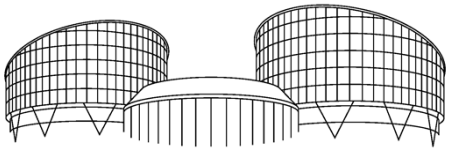

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF VICENT DEL CAMPO v. SPAIN

(Application no. 25527/13)

JUDGMENT

STRASBOURG

6 November 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vicent Del Campo v. Spain,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Vincent A. De Gaetano, *President,*
Branko Lubarda,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
María Elósegui, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 9 October 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 25527/13) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Mr Fernando Vicent Del Campo ("the applicant"), on 2 April 2013.

2. The applicant was represented by Mr G. Rodríguez González, a lawyer practising in León. The Spanish Government ("the Government") were represented by their Agent, Mr R. A. León Cavero, State Attorney.

3. The applicant complained under Article 6 § 1 of the Convention that his right of access to a court had been breached because his request to become a party to liability proceedings brought against the public administration (*responsabilidad patrimonial de la Administración*) had been refused despite his having a direct interest in defending himself against serious allegations of harassment in the workplace. He further complained under Articles 8 and 13 of the Convention that the judgment rendered within the framework of those proceedings had breached his right to honour and respect for his private and family life, and that no effective remedies had been available to him in that respect.

4. On 10 February 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Villavente (León).

6. He worked as a teacher, also acting as head of department, in a public school, the León School of Arts and Crafts (*Escuela de Artes y Oficios de León*). One of his colleagues – a teacher in the same department – filed a complaint against him with the education authorities for psychological harassment in the workplace. The complaint was dismissed on the basis that there had been no harassment but mere disputes at work.

7. On 20 June 2006 the colleague filed an administrative claim with the Department of Education of the Regional Government of Castilla-León aimed at seeking redress for the malfunctioning of the public administration. She requested that the administration be found liable for the alleged psychological harassment in the workplace. The competent authorities did not render a decision within the requisite time-limit.

8. On 25 January 2007 the colleague instituted judicial proceedings (*recurso contencioso-administrativo*) against the implied rejection of her request of 20 June 2006. She claimed that the applicant had subjected her to workplace harassment, from the academic year 2000/01 onwards in particular, and that the competent authorities had failed to take any measures to prevent it. She described a series of events in which the applicant had allegedly made false accusations against her and subjected her to discriminatory and humiliating treatment, disrespect, insults and death threats at work in the presence of students, parents and other colleagues. The colleague further requested compensation from the Regional Administration of Castilla-León in the amount of 74,434.12 euros (EUR), as well as reinstatement in her position as a teacher at the León School of Arts and Crafts, requesting that all appropriate measures be taken to prevent any possible risks, particularly psychosocial, in the workplace.

9. On 19 December 2007, after notice of the aforementioned application was given, the respondent – the Regional Administration of Castilla-León – contested the claims and requested the dismissal of the application.

10. By a judgment (no. 2491/2011) of 2 November 2011, the High Court of Justice of Castilla-León (Administrative Chamber) ruled against the Regional Administration of Castilla-León, ordering it to pay compensation to the plaintiff in the amount of EUR 14,500. It concluded that the situation suffered by her amounted to workplace harassment and that the education authorities, despite being aware of the situation, had not taken effective measures to bring it to an end. Although the court acknowledged that not all the acts or behaviour attributed to the applicant could be considered psychological harassment, it found that on the basis of the evidence

collected a situation of psychological harassment in the workplace had been shown to exist.

The High Court of Justice included the following reasoning concerning the applicant, who was frequently identified by name:

> "... from the documentary, witness and expert evidence [in the proceedings] [the court] can find that ... a situation of psychological harassment in the workplace has been shown [to exist] on the basis that the head of department's conduct towards the claimant met the material element – unjustified professional harassment – the temporal element – regular and repeated – and the element of intent – malicious and not by chance – of the so-called bullying (*mobbing*) ...
>
> a) Not all the acts or behaviour that the plaintiff attributed to Mr Vicent ... constitute psychological harassment towards her ...
>
> b) ... although it should also be considered established that the behaviour ... of Mr Vicent ... was to a certain degree general or collective, ... in the particular case of the plaintiff ... this general behaviour of a lack of respect and manners was translated, more intensively and strongly, into repeated and conscious professional discredit, of underestimation and mockery of her teaching ability, that resulted not only from the documented complaints already described ..., but particularly from the expressive witness evidence ..."

11. On 15 December 2011 the applicant requested to have access to the file and to become a party to the proceedings. He claimed to have learned of the judgment some days earlier through the publication of information in a León newspaper (*Diario de León*).

12. By a decision of 23 January 2012, the High Court of Justice of Castilla-León granted the applicant access to the file but refused his request to be a party to the proceedings on the basis that he could not be considered to be an interested party in liability proceedings against the public administration.

13. On 1 February 2012 the applicant lodged an appeal against the above-mentioned decision requesting the annulment of the proceedings. The High Court of Justice of Castilla-León dismissed it by a decision of 2 March 2012. On the one hand, the court held that the request for annulment of the proceedings had been made outside the time-limit prescribed by law, since an "appeal for annulment" (*incidente de nulidad*) should have been submitted within twenty days of the date the applicant became aware of a possible breach of his rights. The court took into account that the applicant had claimed that he had learned of the judgment through the publication of information in a newspaper on 9 and 10 December 2011, and that in any case on 15 December 2011 (the date on which he had requested access to the file and to become a party to the proceedings) he had clearly known the decisive elements for his complaints.

The court nevertheless decided on the merits. It stressed that the proceedings were aimed at determining liability for the damage suffered by the claimant as a result of the acts of the authorities and staff working for the public administration. Therefore, in line with section 145 of

Law 30/1992 and the relevant subordinate legislation, within such proceedings neither the authorities nor civil servants could be sued nor, accordingly, could they be a party to the proceedings. The national legislature had set up liability proceedings against the public administration excluding the possibility of its authorities or staff becoming interested parties to them even though in all cases the public officials concerned were identifiable; their professional conduct was being judged and hence their honour and moral integrity could eventually be affected; there was a possibility that the administration concerned would institute a "recovery action" against them; and the administrative or judicial decisions were subject to potential media coverage.

Despite acknowledging that public officials' professional conduct was being judged and that their honour and moral integrity could be affected, the court held: (i) that the proceedings involved disputes exclusively between the public administration and alleged victims of the acts of its public officials; (ii) that the authorities and staff allegedly causing the damage could not be considered to be interested parties for the purposes of section 31 of Law 30/1992; and (iii) that both liability and compensation are sought from the public administration, as opposed to the public officials concerned. Lastly, the court stated that the public official concerned would only be considered to be an interested party in a recovery action (*acción de repetición*) under section 145(2) of Law 30/1992, in which each and every one of the elements constituting the liability for which recovery was sought could be contested, including the acts attributed to him or her.

The court thus concluded that the concept of an "interested party" in liability proceedings brought against the public administration should be understood as referring to those allegedly injured by the acts of public officials. The restriction on public officials being a party to such (administrative or judicial) proceedings was however justified by the special nature, purpose and scope of liability proceedings brought against the public administration. According to the court, such proceedings were set up to facilitate redress and compensation for those affected by the acts of public officials. Otherwise, the proceedings would require each and every public official concerned (including, for example, the school management board and education inspectorate, or doctors, nurses, porters and so forth in cases related to healthcare) to be summoned to appear in proceedings in their own defence and with their own representatives, contrary to the regulatory developments, that essentially simplified the proceedings for the benefit of those injured or affected by the public administration.

14. The applicant then lodged an *amparo* appeal with the Constitutional Court, invoking a breach of Article 24 of the Spanish Constitution (right to a fair trial). He claimed that, despite his having a direct and personal interest in the proceedings on the basis that his rights and legitimate interests had been affected, he had not been summoned to appear and his request to

become a party to the proceedings had been refused. The court declared the appeal inadmissible by a decision of 2 October 2012 (served on the applicant on 9 October 2012) on the grounds that it had not duly justified its special constitutional significance.

II. RELEVANT DOMESTIC LAW

A. The Constitution

15. The relevant provisions of the Constitution read as follows:

Article 24

"1. Everyone has the right to obtain effective protection by the judges and the courts in the exercise of his or her rights and legitimate interests, and in no case may he or she go undefended.

2. Likewise, everyone has the right to be heard by a court established by law, to the defence and assistance of a lawyer, to be informed of any charges brought against him or her, to a public trial without undue delay and with full guarantees, to make use of evidence relevant to their defence, not to incriminate him or herself, not to declare him or herself guilty, and the right to be presumed innocent."

Article 120

"1. Judicial proceedings shall be public, with the exceptions provided for in the laws on procedure.

2. Proceedings shall be predominantly oral, particularly in criminal matters.

3. Judgments shall always contain a statement of the grounds on which they are based and be delivered in a public hearing."

B. Procedure in administrative matters

16. The relevant provisions of Law 30/1992 on the legal regime applicable to the public administration and on common administrative procedure (*Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*), as in force at the relevant time, read as follows:

Section 31

"1. The following shall be considered interested parties in administrative proceedings:

(a) ...

(b) Those who, without having instituted the proceedings, have rights that may be affected by the decision adopted.

(c) Those whose legitimate interests, whether individual or collective, may be affected by the decision and appear in the proceedings as long as no final decision has been taken.

...”

Section 139

“1. Individuals shall have the right to be compensated by the [public administration] concerned for any damage to their goods and rights, except in cases of force majeure, provided that the damage is the consequence of the normal or abnormal functioning of public services.

...”

Section 145

“1. For liability [of the public administration] to be effective, individuals shall claim compensation for the damage caused by the authorities and staff directly from the [Administration] concerned.

2. The [Administration] concerned, when it has compensated those who have suffered damage shall, of its own motion, seek liability from its authorities and its other staff for wilful misconduct or gross negligence ...

To seek such liability the following criteria, among others, shall be weighed: the damage caused, the existence or [non-existence] of intent, the professional liability of the [public officials] and their relation to the occurrence of the damage.

...”

17. The rules of procedure on the liability of the public administration in force at the relevant time were approved by Royal Decree 429/1993 of 26 March 1993.

18. The relevant provisions of Law 29/1998 regulating judicial proceedings in administrative matters (*Ley reguladora de la Jurisdicción Contencioso-administrativa*), as in force at the relevant time, read as follows:

Section 21

“1. The following shall be considered to be a respondent party:

(a) The [public administration] and whichever bodies referred to in section 1.3 against whose activity the action is directed.

(b) Persons or entities whose rights or legitimate interests may be affected should the claimant’s claims be upheld.

(c) The [public administration’s] insurer, which shall always be a co-defendant along with the [Administration] insured.

...”

Section 48

“1. The court registrar ... shall require the [Administration] to forward [him or her] the administrative file, ordering it to issue the summonses referred to in section 49 ...”

Section 49

"1. The decision to forward the file shall be notified within five days of its adoption to those appearing as interested parties in it, summoning them to appear as defendants within nine days ...

...

3. Once the file has been received, the court registrar ... shall check that the summonses have been issued and, if it becomes apparent that they are incomplete, [he or she] shall order the [Administration] to issue the necessary [summonses] to ensure the defence of the interested parties that are identifiable.

..."

19. Constitutional Court judgment no. 15/2016 of 1 February 2016 interpreted the above-mentioned legal provisions in respect of liability proceedings brought against the public administration. The relevant passages of the judgment read as follows:

" ... what is at stake in liability proceedings brought against the [Administration] by an aggrieved party is not the possible liability of the public official who has participated in or contributed to causing the damage (*lato sensu*), but the strict liability of the [Administration] for any normal or abnormal functioning of public services, ...

...

... section 139 [of Law 30/1992] has specified the causal element that triggers ... the strict liability of the [Administration] for the functioning of public services, namely that the damage is the consequence of the normal or abnormal functioning of such services, except in cases of force majeure or of damage that the individual has the legal duty to sustain in accordance with the law. Law [30/1992] makes no mention of ... identifying the public official that may have caused the damage ..., nor does it make [the liability] conditional upon establishing [the public official's] negligence, fault or intent, a perspective which does not even require examination, it being sufficient to prove the damage and the link between the functioning of the public service and the damage caused, ...

The regulation of the action for liability against the [Administration] set up by the legislature, in short, implies that the affected right or legitimate interest is that of the aggrieved party bringing the action for compensation for the objective damage sustained, with the [Administration] being the defendant, without judging any additional, different and subjective liability of the [public officials] who have intervened in the situation at issue by act or omission.

The legal regime of liability in this type of case nevertheless provides that ... the [Administration] may seek indemnity of the amount paid for the functioning of its public services from the public official subjectively liable, by bringing a recovery action under section 145 [of Law 30/1992] ...

...

... the reasoning contained in the legal conclusions of the judgment resulting from the first proceedings (strict liability of the [Administration]) or the statement of facts arising from evidence examined that may relate to the subjective liability of the authorities or staff of the public administration, if they had been made on the occasion of the adduced objective damage examination, shall not under any circumstances entail, insofar as they are not the subject of the strict liability proceedings, the positive

effect of substantive res judicata in subsequent proceedings judging the public officials' subjective liability ...

...

In the light of the above conclusion, the impugned decisions finding the applicant's lack of legal standing to be a party to the strict liability proceedings against the [Administration] in the absence of a legitimate interest did not cause defencelessness, given that the declaration of liability of the [Administration] does not entail any automatic benefit or damage to [his rights]. It shall be at a later stage, either when bringing the recovery action ... or when instituting a possible disciplinary action, where the applicant may make submissions, present and examine evidence admitted and, where appropriate, lodge an appeal for judicial review of the final administrative decision rendered, thus keeping his opportunities for defence intact.

..."

C. Publication of judgments

20. The relevant provisions of Organic Law 6/1985 of 1 July 1985 on the Judiciary (*Ley Orgánica del Poder Judicial*), as in force at the relevant time, read as follows:

Section 186

"Courts and tribunals shall hold public hearings ... for ... the publication of judgments passed ..."

Section 205

"The judge rapporteur shall be responsible ... for:

...

6. Delivering judgments in a public hearing."

Section 232

"1. Judicial proceedings shall be public, with the exceptions provided for in the laws on procedure.

2. Exceptionally, for reasons of public policy or for the protection of rights and freedoms, courts and tribunals, by reasoned decision, may restrict the publication and decree the secrecy of all or part of the proceedings."

Section 235

"Interested parties shall have access to books, files and judicial records which are not of a confidential nature ..."

Section 266

"1. Judgments, once issued and signed by the magistrate or by all the judges who passed them, shall be deposited in the Court Office [*Oficina Judicial*] and access to the text shall be given to any interested party.

Access to the text of a judgment, or to certain matters therein, may be restricted when it could affect the right to private life, rights of individuals requiring special protection or the guarantee of anonymity of victims or aggrieved parties, where appropriate, as well as, in general, in order to prevent judgments from being used for purposes contrary to the law.

..."

21. The relevant provisions of Law 1/2000 on Civil Procedure (*Ley de Enjuiciamiento Civil*), supplementing Law 29/1998 on the matters not provided for therein, as in force at the relevant time, read as follows:

Section 212

"1. Judgments and other final decisions, once issued and signed by those who passed them, shall be published and deposited in the Court Office [*Oficina Judicial*] ..."

22. Issues pertaining to public access to judicial documents and the publication of judicial decisions and proceedings are further regulated by Regulation 1/2005 on additional aspects of judicial proceedings, approved by the plenary of the General Council of the Judiciary (*Consejo General del Poder Judicial*) in the Agreement of 15 September 2005. Section 4 provides that it is for the court registrars to facilitate access to judicial documents, including judgments, for those having an interest in them. They may decide to restrict access to or omit personal data where the protection of the honour or private life of any person affected by the judicial decision so requires. A decision to refuse access by the court registrar may be reviewed by the judge or president at the request of the interested party.

23. The processing and dissemination of judicial decisions is also subject to legislation on data protection, particularly Organic Law 15/1999 of 13 December 1999 on the protection of personal data (*Ley Orgánica de Protección de Datos de Carácter Personal*) and its developing regulation approved by Royal Decree 1720/2007 of 21 December 2007.

24. The plenary of the Constitutional Court of Spain approved the Agreement of 23 July 2015 regulating the exclusion of personal identity data in the publication of judicial decisions. Under that agreement, the Constitutional Court of its own motion preserves the anonymity of those who are not party to constitutional proceedings in its judicial decisions. The publication of personal data of parties to such proceedings may also be restricted for the protection of their right to private life. In such cases, the names of those concerned by the publication of Constitutional Court decisions are replaced by their initials, and any other data allowing for their identification is omitted.

The Agreement developed the criteria set forth in Constitutional Court judgment no. 114/2006 of 5 April 2006, which stated the following:

"7. The constitutional requirement for maximum dissemination and publicity of the full text of judicial decisions of [the Constitutional Court] ... is not absolute and may

be excluded in certain cases ... [This] principle may be restricted by the possible prevalence of other conflicting fundamental rights and constitutional guarantees, and that should be weighed in each case.

...

The need to weigh and identify the particular interests to take into consideration to justify the exception of full publicity of the decision has been the consistent practice of this Court, it being dependent on a number of criteria also followed by foreign, supranational and international High Courts and, particularly, by the European Court of Human Rights. Hence, this Constitutional Court ... notwithstanding the special care shown in order not to include in its decisions any personal data other than that strictly necessary to formulate its reasoning and rulings, on different occasions ... has proceeded to omit the identification of certain persons mentioned in its decisions, either considering the guarantee of anonymity of victims and aggrieved parties in special cases ...; or the specific duty to protect minors ...

This ... is consistent with the practice followed by the European Court of Human Rights both in its rules of procedure and its case-law ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

25. The applicant complained of a violation of his right to respect for his private life on the grounds that the judgment rendered by the High Court of Justice of Castilla-León within the framework of the liability proceedings brought against the public administration (proceedings to which he was not a party), establishing allegations of harassment made exclusively against him, had amounted to unjustified interference with his right to honour and reputation.

He relied on Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

26. The Government maintained that the alleged breach of the applicant's right to respect for his private life had not come from the judgment itself but from its dissemination by the press. Hence, the applicant could have used the following remedies: (a) a criminal complaint for offences against honour filed against those accusing him of a criminal

offence knowing that the accusation was false (Article 205 of the Criminal Code); (b) a claim for protection of honour and privacy against those who made or published defamatory statements even when they did not constitute a criminal offence (Organic Law 1/1982 on civil protection of the right to honour and to respect for private and family life); (c) a claim for correction or retraction against the media (Organic Law 2/1984 of 26 March 1984). Accordingly, the Government claimed that the applicant had failed to use any of the aforementioned criminal or civil remedies available, and therefore requested the Court to declare his complaint under Article 8 inadmissible for failure to exhaust domestic remedies.

27. The applicant contested that objection. He stressed that the interference with his privacy and consequent breach of his right to honour and private life had come from the judgment rendered by the High Court of Justice of Castilla-León. He further claimed to have duly exhausted domestic remedies: he had requested the annulment of the proceedings, lodged an appeal against the refusal of his request to be a party to the proceedings, and lodged an *amparo* appeal with the Constitutional Court. The applicant emphasised that criminal or civil actions against the judges had not been possible in the instant case.

28. The Court is of the opinion that the crux of the issue lies in the actions of the State authority, namely the disclosure of the applicant's identity in the High Court of Justice's judgment coupled with the statement of his acts as part of its own reasoning. The dissemination of the judgment and the applicant's identity in the media certainly had a greater impact on the applicant's reputation. However, the Court notes that the core of the complaint lodged by the applicant relates to the judgment itself and not to its press coverage or repercussions in the media.

29. Accordingly, the Court dismisses the Government's preliminary objection.

30. The Government have not raised any other objection concerning admissibility. However, the Court further notes that the applicant's appeal lodged with the Constitutional Court solely invoked a breach of Article 24 of the Spanish Constitution (right to a fair trial). Under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application. Accordingly, the normal practice of the Convention organs has been, where a case has been communicated to the respondent Government, not to declare the application inadmissible for failure to exhaust domestic remedies, unless the matter has been raised by the Government in their observations (see *Dobrev v. Bulgaria*, no. 55389/00, § 112, 10 August 2006; *Yordanov v. Bulgaria*, no. 56856/00, § 76, 10 August 2006; and the references cited therein). As the Government have failed to raise such an objection, it follows that the present application

cannot be rejected by the Court on the grounds that the domestic remedies have not been exhausted.

31. The complaint must therefore be declared admissible as it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and neither is it inadmissible on any other grounds.

B. Merits

1. The parties' submissions

(a) The applicant

32. The applicant maintained that the judgment rendered by the High Court of Justice of Castilla-León had affected the enjoyment of his "private life" by prejudicing his honour and reputation as a result of it establishing that he had committed acts of harassment in the workplace such as humiliating treatment, insults and death threats that had allegedly caused psychological damage to his colleague; all without him having been given the opportunity to defend himself against the allegations made exclusively against him.

33. The applicant also contended that the judgment and its media coverage had adversely affected his moral and psychological integrity and that he had suffered personally, socially, psychologically and professionally. Once the judgment had been made public, the applicant's reputation amongst his neighbours, the educational community and his friends and family in a small city had been damaged, causing him irreparable harm. He claimed to have been unfit for work for over a year, to have received psychological treatment, and to have encountered hostility and mistrust from his colleagues, as well as students and their parents after returning to work.

(b) The Government

34. The Government maintained that the High Court of Justice of Castilla-León had delivered a judgment setting out facts exclusively referring to the subject matter of the proceedings. They had been exclusively aimed at judging the acts of the public administration and its eventual liability, and thus the applicant had had no legitimate interest in being a party to the proceedings because he had not been affected at all by them. Moreover, the judgment had only been served on the parties to the proceedings.

35. The Government contested the applicant's claim, alleging that any possible damage to him was exclusively caused by the dissemination activities carried out by private individuals, notably the applicant's colleague and the media, against whom judicial proceedings had not been instituted. The Government further argued that the High Court of Justice

could not be deemed responsible for the subsequent publication of the text of the judgment by any of the parties to the proceedings. They further reiterated that the applicant had had effective remedies available against the misuse of the text of the judgment by any of the parties; remedies that he had failed to use.

2. The Court's assessment

(a) General Principles

36. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 40, 21 September 2010; *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007; and the authorities cited therein). This also applies to a person's honour (see *A. v. Norway*, no. 28070/06, § 64, 9 April 2009; *Sanchez Cardenas v. Norway*, no. 12148/03, § 38, 4 October 2007; and *Egill Einarsson v. Iceland*, no. 24703/15, § 33, 7 November 2017). The concept of "private life" is a broad term not susceptible to exhaustive definition (see, among other authorities, *Fernández Martínez v. Spain* [GC], no. 56030/07, § 109, 12 June 2014, and *Gillberg v. Sweden* [GC], no. 41723/06, § 66, 3 April 2012), which covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of a person's identity, such as a name or elements relating to a person's right to their image (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 66, 4 December 2008, and *Axel Springer AG* [GC], cited above, § 83; with further references therein). It covers personal information which individuals can legitimately expect should not be published without their consent (see *Axel Springer AG* [GC], cited above, § 83; *Saaristo and Others v. Finland*, no. 184/06, § 61, 12 October 2010; and *Flinkkilä and Others v. Finland*, no. 25576/04, § 75, 6 April 2010).

37. While the essential object of Article 8 of the Convention is to protect individuals against arbitrary interference by public authorities, it may also impose on the State certain positive obligations to ensure effective respect for the rights protected by Article 8 (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 108, 5 September 2017; *Hämäläinen v. Finland* [GC], no. 37359/09, § 62, ECHR 2014; and the authorities cited therein). These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Fernández Martínez* [GC], cited above, § 114, and *Evans v. the United Kingdom* [GC], no. 6339/05, § 75, ECHR 2007-I).

38. The boundaries between the State's positive and negative obligations under the Convention do not lend themselves to precise definition. The

applicable principles are nonetheless similar. In both contexts regard must be had in particular to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, subject in any event to the margin of appreciation enjoyed by the State (see *Bărbulescu* [GC], cited above, § 108; *Fernández Martínez* [GC], cited above, § 114; and *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 62, ECHR 2011).

(b) Application to the present case

39. The Court observes at the outset that the applicant was not a party to the liability proceedings brought against the public administration. The national courts justified such restrictions by the special nature, purpose and scope of that type of proceedings. As described in paragraphs 13 and 19 above, the courts held that such proceedings solely concerned the public administration's strict liability for the "normal or abnormal" functioning of public services. Therefore, the rights and legitimate interests affected were those of the injured party who brought the action to obtain compensation for damage sustained as a result of acts by public officials in the exercise of their duties. The possible liability of the public officials who had intervened in the situation at stake or had allegedly caused damage was not the subject of the proceedings, and consequently they could not participate in them. It was only the public administration concerned which was obliged to pay compensation as a result of the administrative or judicial decision, which was why it was the only party responsible for defending its acts and, therefore, the acts of its authorities and staff. A declaration of liability of the public administration did not entail any automatic benefit or damage to the public officials' rights. Hence, according to the courts, the applicant could have defended himself in person and contested all the constituent elements of liability, including the acts attributed to him, in a possible recovery action (*acción de repetición*) under section 145(2) of Law 30/1992. As the Constitutional Court noted, neither the reasoning nor the statement of facts set out in liability proceedings against the public administration had under any circumstances the force of *res judicata* with regard to subsequent proceedings judging the liability of the public official concerned.

40. The Court reiterates that the concept of private life extends to aspects relating to personal identity, such as a person's name or physical and moral integrity, as well as to reputation and honour. In this connection, the Court notes that the judgment of the High Court of Justice of 2 November 2011 disclosed the applicant's identity and held that the applicant's conduct had amounted to psychological harassment and bullying. The publication of these findings was capable of adversely affecting his enjoyment of private and family life. Therefore, in the Court's view, the facts underlying the applicant's complaint fall within the scope of Article 8 of the Convention.

41. The Court also reiterates that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence (see, *inter alia*, *Gillberg* [GC], cited above, § 67; *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII; and *Mikolajová v. Slovakia*, no. 4479/03, § 57, 18 January 2011). The Court is of the opinion that in the instant case it can reasonably be supposed that the applicant could not have foreseen the consequences that the judgment of the High Court of Justice entailed for him. On the one hand, he was reportedly unaware of the proceedings. He had not been summoned to appear and was not a party to the proceedings, which in addition were solely aimed at determining the strict liability of the public administration concerned as a result of professional acts and omissions by public officials in the exercise of their duties. Furthermore, the complaint lodged against him by his colleague for psychological harassment in the workplace had been previously dismissed (see paragraph 6 above), and the colleague concerned had not taken further action against him. The Court also lays emphasis on the fact that the applicant was never charged with or proved to have committed any criminal offence. It follows that the disclosure of the applicant's identity in the reasoning of the judgment of the High Court of Justice cannot be considered to be a foreseeable consequence of the applicant's own doing.

42. Accordingly, the Court finds that the inclusion by the High Court of Justice of the applicant's identity, coupled with the statement on his acts as part of its own reasoning in the judgment constituted an "interference" with the applicant's right to respect for his private life as guaranteed by Article 8 § 1 of the Convention (see, *mutatis mutandis*, *C.C. v. Spain*, no. 1425/06, § 26, 6 October 2009; *Sanchez Cardenas v. Norway*, no. 12148/03, § 34, 4 October 2007; and *Z v. Finland*, no. 22009/93, § 71, 25 February 1997).

43. It therefore remains to be examined whether the interference was justified under Article 8 § 2. Such interference will give rise to a breach of Article 8 of the Convention unless it can be shown that it was "in accordance with the law", pursued one or more of the legitimate aims referred to in paragraph 2 and was "necessary in a democratic society" in order to achieve them.

44. In this regard the Court notes that it is undisputed that the interference was "in accordance with the law" and the Court finds no reason to hold otherwise.

45. As to the question of whether the inclusion of the statement in the aforementioned judgment pursued any of the legitimate aims, the Court recognises that there is a public interest in ensuring the transparency of court proceedings and thereby the maintenance of the public's confidence in the courts (see *Z v. Finland*, cited above, § 77). The Court is of the view that the reasoning of the High Court's judgment may have pursued one or more

of the legitimate aims enumerated in Article 8 § 2, notably "the protection of the rights and freedoms of others", particularly of the applicant's colleague – as an alleged victim of harassment in the workplace – by acknowledging and publicly disclosing the facts as a way of reparation for the damage suffered and in the interests of the proper administration of justice.

46. The Court further reiterates that an interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, for example, *Fernández Martínez* [GC], cited above, § 124; *S. and Marper* [GC], cited above, § 101; and the authorities cited therein).

47. The Court accepts that the liability proceedings against the public administration had specific features that must be taken into account. Notwithstanding this, the Court notes that the High Court of Justice did not confine its reasoning to simply declaring the strict liability of the public administration or to concluding that the situation suffered by the applicant's colleague had amounted to workplace harassment and that the education authorities, despite being aware of the situation, had not taken effective measures to prevent it or bring it to an end. It went beyond this by stating that the applicant's conduct had amounted to repeated psychological harassment. The High Court of Justice drew its conclusion by conducting a thorough analysis of the facts and the evidence before it that identified the applicant by stating his full name and other relevant data.

48. Furthermore, the Court observes that the above portrayal of the applicant's conduct in an authoritative judicial ruling was likely to have great significance by the way it stigmatised him and was capable of having a major impact on his personal and professional situation, as well as his honour and reputation. In fact, the High Court of Justice itself acknowledged in its decision of 2 March 2012 (see paragraph 13 above) that in this type of proceedings the public officials concerned were identifiable, their honour and moral integrity could be affected, and the administrative or judicial decisions were subject to potential media coverage.

49. The Court is therefore of the opinion that the disclosure of the applicant's full name in the High Court of Justice's judgment coupled with the statement of his acts as part of its own reasoning was not supported by any cogent reasons. As the Constitutional Court pointed out (see paragraph 19 above), Law 30/1992 made no mention of identifying the public official who had caused the damage, nor did it make the liability conditional upon establishing the public official's negligence, fault or intent. This was not even required, it having been sufficient to prove the damage and its link with the functioning of the public service. In this connection, the Court reiterates that the protection of personal data is of fundamental importance

to a person's enjoyment of his or her right to respect for private and family life (see *Z v. Finland*, § 95, and *C.C. v. Spain*, § 31, both cited above).

50. The Court also observes that under the relevant Spanish law (see paragraphs 20-24 above), the High Court of Justice had a discretion to omit mentioning any names in the judgment permitting the identification of the applicant or to restrict publication of the judicial proceedings for reasons of public policy or for the protection of rights and freedoms. Moreover, access to the text of a judgment, or to certain matters therein, could be restricted when any person's right to private life was affected.

51. Hence, the High Court of Justice had the ability to adopt protective measures to preserve the applicant's anonymity and decide of its own motion not to disclose the applicant's identity or to remove identifying information in protection of his rights and freedoms. This could have been achieved by, for instance, referring to him simply by his initials. Such a measure would have to a great extent limited the impact of the judgment on the applicant's right to reputation and private life. It is not apparent to the Court why the High Court of Justice did not take measures to protect the applicant's identity, particularly given that he was not a party to the proceedings and had not been summoned to appear in them.

52. The Court points out that the practice of refraining from disclosing the identity of certain individuals in judicial decisions is also followed by the Constitutional Court of Spain itself (see paragraph 24 above). The Court also follows the same practice. Although the general rule is that all documents shall be accessible to the public, the President of the Chamber can decide otherwise by restricting public access to a document or to any part of it where "the protection of the private life of the parties or of any person concerned so require" (Rule 33 of the Rules of Court). Moreover, the Court may authorise anonymity or grant it of its own motion (Rule 47 § 4 of the Rules of Court).

53. The Court also takes note that the applicant reported that he only knew about the proceedings through the publication of information in a León newspaper some time after the judgment had been delivered. This was accepted by the domestic courts (see paragraph 13 above) and has not been challenged by the Government. It means that he would not have been aware of the proceedings until around a month after the judgment had been rendered. That is, more than five years after the complaint against the applicant had been dismissed by the competent education authorities (see paragraph 6 above) and after his colleague had filed a claim requesting that the administration be found liable for alleged psychological harassment in the workplace (see paragraphs 7 and 8 above). Nor does it emerge from any of the documents in the case file that the applicant was informed, questioned, summoned or in any other way notified by any other domestic authority of her colleague's latter complaint. The Court further observes that his colleague did not reportedly take any (criminal or other) judicial action

against the applicant after the complaint of harassment lodged with the education authorities had been dismissed. Accordingly, the applicant did not have the opportunity to request the non-disclosure of his identity or personal information by the High Court of Justice before its judgment was passed. The interference with the applicant's private life was thus not accompanied by effective and adequate safeguards.

54. The Court lastly observes that under domestic law judicial proceedings are in principle public unless decided otherwise for reasons of public policy or for the protection of rights and freedoms. As a result, judgments are delivered in public and, once issued and signed by those who delivered them, published. The High Court of Justice's judgment itself made reference to its own publication. Although the Government have suggested that the publication of the text of the judgment could have been caused by any of the parties to the proceedings, the Court observes that this argument is not sufficiently substantiated by the material in the case file. The manner in which the media had access to the information has not been established. Nonetheless, the case had a significant impact and repercussions in media. The press certainly had access to the applicant's full name, as shown by the fact that his identity was disclosed in the information published; publications that followed its disclosure in the High Court's judgment.

55. In this connection, the Court further notes that the parties have not disputed whether the judgment, once passed, was fully accessible by third parties not involved in the proceedings. The Court observes that it is not a judge but a court registrar who is in charge of authorising the disclosure of documents relating to judicial proceedings (see paragraph 22 above). Therefore, once the judgment was delivered, the access to the judgment was beyond the control of the High Court of Justice. Taking this into consideration, and the State authorities' obligation to protect individuals' right to reputation, the High Court of Justice should have adopted appropriate measures to protect the applicant's right to respect for private life in drafting the judgment.

56. In the light of the above, the Court finds that the interference with the applicant's right to respect for his private life occasioned by the High Court of Justice's judgment, was not sufficiently justified in the particular circumstances of the case and, notwithstanding the national court's margin of appreciation in such matters, was disproportionate to the legitimate aims pursued. Accordingly, there has therefore been a violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

57. The applicant complained under Article 6 § 1 of the Convention that, by refusing his request to become a party to the liability proceedings

brought against the public administration despite his having a direct interest in them, he had not been given the opportunity to defend himself against serious allegations of harassment in the workplace in violation of his right of access to a court. The applicant further alleged that the lack of effective remedies to challenge the interference on his right to reputation and honour complained of under Article 8 had given rise to a violation of Article 13 of the Convention.

58. The Government contested that argument.

59. The Court notes that the complaints are linked to the one examined above under Article 8 of the Convention and must therefore likewise be declared admissible.

60. Having regard to its findings under Articles 8 of the Convention, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Articles 6 § 1 and 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

62. The applicant claimed a total of 37,061.62 euros (EUR) in respect of pecuniary and non-pecuniary damage. He claimed this amount as a result of the time he had been unfit for work while receiving psychological treatment and because he had suffered various after effects.

63. The Government contested that claim.

64. The Court observes that the applicant has not substantiated his claim concerning pecuniary damage; it therefore rejects this claim. On the other hand, it awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicant also claimed EUR 9,268.60 for the costs and expenses incurred before the domestic courts and before the Court.

66. The Government did not contest these claims.

67. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as

to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 9,268.60 covering costs under all heads.

C. Default interest

68. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;

3. *Holds*, by five votes to two, that there is no need to examine the complaints under Articles 6 § 1 and 13 of the Convention;

4. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 9,268.60 (nine thousand two hundred and sixty-eight euros sixty cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Vincent A. De Gaetano
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Keller and Serghides is annexed to this judgment.

V.D.G.
J.S.P.

JOINT PARTLY DISSENTING OPINION OF JUDGES KELLER AND SERGHIDES

1. We respectfully disagree with the majority's conclusion that there is no need to review the applicant's claim under Article 6 § 1 of the Convention. While we agree with the Court's finding that the applicant's Article 8 right has been violated, we cannot accept that such finding makes it unnecessary to examine a potential violation of Article 6 § 1.

2. The applicant's claim that he had sustained a violation of his right of access to a court under Article 6 § 1 is distinct from the interference with his right to respect for his honour and reputation under Article 8 of the Convention. Under Article 6 § 1, the applicant complained that he did not have an adequate opportunity to address the allegations of harassment in the workplace made exclusively against him during the proceedings in the High Court of Justice of Castilla-León. Following those proceedings, in which the applicant was not allowed to take part, the High Court of Justice issued a judgment which included the applicant's identity and described his conduct as amounting to repeated psychological harassment. The applicant argued that this judgment was an unjustified interference with his right to respect for his honour and reputation as guaranteed by Article 8 of the Convention. Thus, the two complaints, although related, are separate: one, under Article 6 § 1 of the Convention, relates to his right to participate in the proceedings, while, the other, under Article 8 of the Convention, concerns the harm caused by the inclusion of his name in the judgment (see paragraph 28 of the judgment).

3. In other words, these two claims may be adjudicated with entirely different outcomes. For instance, the finding that the High Court of Justice did not adequately and sufficiently protect the applicant's right to respect for his private life in drafting its judgment does not necessarily mean that the refusal to grant party status to the applicant failed to proportionately pursue a legitimate aim. Similarly, finding a violation of the right to access to court would not inevitably lead to the proposed finding that the disclosure of the applicant's identity in the judgment violated his right to respect for his private life.

4. Indeed, the Court's own questions communicated to the parties on 10 February 2015 had made a clear distinction between the two claims:

> *1. Did the failure to summon the applicant, as a concerned party with interests at stake, to the adversarial administrative proceedings before the High Court of Justice of Castilla-Leon breach the applicant's right to access to a court under Article 6 § 1 of Convention? (See* Cañete de Goñi v. Spain*, no. 55782/00, ECHR 2002 VIII).*

2. Did the national courts, in particular the High Court of Justice of Castilla-Leon, take all the necessary and appropriate measures that could reasonably be expected of them to ensure that the decision taken would not affect the applicant's honour and reputation under Article 8 in conjunction with Article 13 of the Convention?

5. Considering that the Court had thus acknowledged to the parties that there was a difference between the nature of the two claims, it would have been advisable to fully address both issues in the judgment.

6. Moreover, the Government's submission in the case highlights that the Spanish law on administrative proceedings narrowly restricts those who may become parties to such proceedings. Yet it is unclear whether such strict limitations to party status are compatible with Article 6 § 1 of the Convention. Given that the relevant law had been brought to the Court's attention, this would have been an opportune time to provide guidance on the compatibility of such a regulation with the Government's obligations under Article 6 § 1.