

GARRIGUES

July 28, 2020

Foundation for Financial Journalism
Att.: Roderick Boyd, William D. Cohan
3819 Park Avenue
Wilmington, NC, 28403
United States of America

Also by e-mail to: roddy@ffj-online.org and wdcohan@me.com

Dear Sirs,

We are writing you on behalf of our client Mr. Michael Shillaker (“**Mr. Shillaker**”). We refer to the e-mail addressed by Foundation for Financial Journalism (“**FFJ**”) to Mr. Shillaker on July 17, 2020 where you inform Mr. Shillaker of FFJ’s intention to publish a piece on an alleged incident involving Mr. Shillaker and his former colleague Ms. Walker (“**Story**”).

The Story contains severe accusations against Mr. Shillaker, which date back to April 2010. As you are well aware, after the initial allegations were made, the events were investigated on two separate occasions by law enforcement authorities in the United Kingdom. None of the evidence gathered throughout these investigations sustained Ms. Walker’s narrative of the Story. If anything, witness declarations evidenced Ms. Walker’s accusations to be completely false.

The events were also internally investigated by Mr. Shillaker and Ms. Walker’s former employer, Credit Suisse. As a result, as you also know, Mr. Shillaker was cleared of any wrongdoing and finally left the company under unfair dismissal.

As Mr. Shillaker currently resides in Madrid, if the Story is published, Spanish courts would be competent for any liability actions brought against FFJ. In this regard, CJEU jurisprudence has consistently recognized residence –or, in other words, *center of interests*– as a connecting factor for infringements of personality rights¹. In addition, if the Story is accessible from Spain, Spanish courts would also have jurisdiction and Spanish law would be applicable to the controversy.

¹ See CJEU judgements C-509/09 and C-161/10 *eDate Advertising and Olivier Martinez* and C-68/93 *Fiona Shevill*.

In this regard, we bring to your attention article 18 of the Spanish Constitution, which recognizes the fundamental right to honor. This right is regulated in Law 1/1982², which establishes that the attribution of facts or the statement of opinions through actions or expressions which in any way harm another person's dignity or attack their reputation constitute a violation of one's right to honor³.

Case law defines honor as good reputation, fame and social consideration, meaning the opinion about a person held by society. When conflicting with another fundamental right, such as freedom of information, the rights in conflict must be balanced against one another. In order for freedom of information to prevail over the right to honor, the published content must be truthful and of general interest. It is apparent that the Story fails to fulfill any of these requirements.

First, police investigations concluded that the accusations made against Mr. Shillaker were unfounded. Given the outcome of the investigations, Ms. Walker has clearly proven to be an unreliable source. Publishing the Story, which contains claims that public authorities have found to be unsupported by evidence, would be a clear breach of the duty of truthfulness expected from any publisher. This obligation concerns the author, editor and publisher of the information, all of whom are jointly liable under Spanish law⁴.

The lack of factual evidence supporting the Story transcends jurisdictions and legal considerations: it is obvious that this is what lead publications of the caliber of the *New York Times* or *Vanity Fair* to refuse to publish the Story.

In addition, according to the jurisprudence of the Spanish Constitutional Court⁵, it is necessary that the publication must be proportional, resulting in more good than harm. In the case at hand, publishing the Story would cause a completely disproportionate harm to Mr. Shillaker.

Spanish jurisprudence consistently sustains that the general interest of a piece of information must be assessed when it is published and not when the actual or alleged events took place. In other words, information loses public interest with the passing of time and becomes outdated. This must be put in connection with Spanish and EU data protection provisions and the *rationale* of the so-called right to be forgotten: personal data use which could once be based on freedom of information can become "*inadequate, excessive and impertinent*" due to the lapse of time⁶ and the loss of general interest of the information in question.

² Law 1/1982, of May 5, on civil protection of the right to honor, personal and family intimacy and one's own image.

³ Article 7(7) of Law 1/1982.

⁴ Article 65(2) of Law 14/1966 on press and printing.

⁵ Spanish Constitutional Court judgments no. 66/1995 and 55/1995.

⁶ Spanish Constitutional Court judgment no. 58/2018, dated June 4, 2018 [[ECLI:ES:TC:2018:58](#)]

This line of interpretation is also sustained by the Spanish Supreme Court, which has stated that a content's general interest is not everlasting and can be lost over time when the people concerned have no public relevance and the facts, linked to such people, lack historical interest⁷. The events to which the Story refers allegedly took place over ten (10) years ago and Mr. Shillaker is a private figure. Furthermore, even if Ms. Walker's account of the Story was true –which it is not– the Story refers to clearly outdated events that lack any general interest. As such, the violation of Mr. Shillaker's right to honor cannot be justified by freedom of information or general interest under article 6.1(f) of the GDPR⁸.

These unsubstantial and outrageous allegations have chased Mr. Shillaker for a decade. Accusations such as Ms. Walker's can easily ruin a man's life, deprive him from his career, his family and the esteem of his friends and colleagues. After having no choice but to refute these groundless claims on countless occasions, Mr. Shillaker could only hope that the course of time would allow him to put all of it behind. Publishing the Story would lead an outdated controversy to resurface and put an end to any hope for Mr. Shillaker leading a normal life again.

Given the lack of any evidence supporting the accusations made against Mr. Shillaker and the large period of time that has elapsed, publishing the Story in 2020 would evidently entail a disproportionate attack on Mr. Shillaker's right to honor. This could not only provide grounds for a civil claim for damages but also and most importantly may give rise to criminal liability. The Spanish Criminal Code include criminal offences against honor comprising the criminal offences of defamation and slander⁹.

In light of the foregoing, we trust that FFJ will reconsider its decision to publish the Story.

⁷ Spanish Supreme Court (Civil chamber) judgment no. 545/2015, dated October 15, 2015 [[ES:TS:2015:4132](#)]

⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁹ Slander: Section 205 of the Spanish Criminal Code ("SCC") reads as follows, "*slander involves accusing another person of a criminal offence while knowing it is false or recklessly disregarding the truth*". Slander shall be punished with a prison term of six months to two years or with a fine ranging from twelve to twenty-four months when, as is the case here, the malicious accusations are propagated with publicity. Defamation: Section 208 of the SCC sets forth that "defamation is the deed or expression that harms the dignity of another person, detracting from his reputation or attacking his self-esteem".

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This is a confidential legal communication and is not intended for publication.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Carolina Pina". The signature is written in a cursive style with a long horizontal stroke at the end.

Carolina Pina
carolina.pina@garrigues.com