IMPLEMENTATION OF THE RIGHT TO BE FORGOTTEN IN CHILE

The Right to One's Image as an Essential Part of All People

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ABSTRACT

The article analyzes the situation of the right to self-image in the context of Chilean legislation, specifically from its link with the new judicial cases in which the affected—as happens in other countries mainly in Europe, Russia, Japan, Mexico, or Argentina—appeal to the application of the right to be forgotten regarding information published on the Internet. To achieve this, the text begins with a review of the existing legal norms and confronts them with the best-known cases that have been recorded to date and that are creating jurisprudence in the country.
Keywords: Chile, Right to self-image, Right to be forgotten, Internet

The image is an essential part of all people. It is what makes them recognizable compared to the rest. Since the invention of the media, this right has acquired great importance, becoming an autonomous right with its own protected content several decades ago. A single image in which a person is recognizable can have great meaning, as well as an enormous impact on the life of any citizen.

At the same time, in the digital society of the twenty-first century, the digital right to be forgotten has also become a matter of capital importance due to the impact that the Internet has on citizens. It is important to define the configuration of this emerging right, because the mere passage of time leads to the expiration of certain data, information, and images whose protagonists must have the option to cancel and forget because they no longer have a public interest.

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Until recently, a photograph published in the media (press, radio, or television) disappeared soon from people's memory.[1] But today, the images shared by and on the Internet may remain accessible indefinitely, even in situations where the public interest[2] has already disappeared, because the images are made irrelevant over time or simply because their protagonists want to be able to forget.[3]

Therefore, this research article focuses, first, on the study of the insertion of the right to own images within the Chilean legal system, with the special impact that this should have on the current construction that is producing the right to be forgotten, due to the interrelation that exists between both elements. Next, a casuistic analysis will be exposed in which the importance of the image and the forgetfulness will be highlighted in the Chilean society, to finish with the essential aspects that must be taken into account at the time of their insertion into the Chilean legal system, so that the image of all people is adequately protected on the Internet, without the freedom of expression and information being affected.

The Image as an Essential Part of the Right to Be Forgotten in the Chilean Legal System

The right to one's own image, as a right of personality, has an essential importance in matters related to the right to be forgotten. In many occasions,

1. In this context it is important to establish the difference between traditional memory and virtual memory. While the first is limited by time, the second is accessible without limitation of time and space. However, there are authors who are in favor of the information always being accessible on the Internet, as is the case of Ana María Pérez.

However, it is important to emphasize that precisely because the information never disappears, it is very important to establish the assumptions in which forgetting has to be imposed on memory. In this sense, the article by Pérez, 173, is interesting. The author makes a defense of the benefits that virtual memory has over traditional memory.

2. The public interest is that which helps the formation of a truly free, well-formed public opinion that diligently fulfils its role in the democratic system. Information constitutionally protected by this criterion is what influences the social, cultural, economic, political, and so on, flow of a country, since it helps citizens to be fully aware of what is happening around them. See in this sense Moreno, *Intimidad*.

3. Simón, 62: "It is not unreasonable to imagine a near future, in which the information contained in the web—which at that time enjoyed public interest and was newsworthy, but over time has become irrelevant—, may suppose a constant and excessive reminder of some facts that may stain or cause damage to the rights of the personality. The casuistry is infinite, but in any case it is unquestionable that the accumulation of personal data on the network, accessible through search engines, poses a high risk to the privacy and people's reputation, to the point of preventing citizens from stealing away from their past."

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the requests made by the citizens are directly related to the elimination of a photograph of theirs that appears on the Internet, especially in the social networks area.

To understand the interrelation between both rights, one already firmly consolidated, and another in full debate regarding its configuration and implementation in the different legal systems, it is necessary to start by making a brief legal study regarding the significance of the right to one's own image within the Chilean legal system. It is true that the legal delimitation of the right to self-image is much clearer and less problematic than other rights of personality such as honor or intimacy, but no less relevant in matters related to the right to be forgotten. Therefore, an analysis will be carried out about the importance of the image as an essential element to be considered in the current configuration of the right to be forgotten that is taking place in Chile.

Current Situation of the Right to One's Own Image in the Chilean Legal System

Despite the patrimonial aspect and the relationship that the right to one's image has with civil law,[4] the fact is that the tendency of civil legal systems is to include it explicitly in the catalog of constitutional rights,[5] especially among the fundamental rights. This is due to its interrelation with the legal scope that protects both honor and privacy.

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4. Arancibia, 58: "The modern development of personality rights in private law is directly related to fundamental rights, corresponding to the way in which the new paradigms that underlie their recognition are understood and assumed by civil law doctrine."

5. There are several examples both in Europe and in South America:

Art. 18.1 Spanish Constitution of 1978: "The right to honor, to personal and family privacy and to one's own image is guaranteed."

Art. 7.2 Political Constitution of Peru of 1993: "Everyone has the right to honor and good reputation, to personal and family privacy, as well as to their own voice and image. Any person affected by inaccurate statements or aggrieved in any means of social communication has the right to have it rectified free of charge, immediately and proportionally, without prejudice to the responsibilities of law."

Art. 33 Constitution of Paraguay of 1992: "Personal and family privacy, as well as respect for private life, are inviolable. The behaviour of the people, as long as it does not affect the public order established in the law or the rights of third parties, is exempt from public authority. The right to protection of privacy, dignity and the private image of people is guaranteed."

Art. 21.1 Bolivian Constitution of 2009: "Bolivians have the following rights: To privacy, honor, self-image and dignity."

Art. 5.10 Political Constitution of the Federative Republic of Brazil of 1988: "People's privacy, honor and image are inviolable, ensuring the right to compensation for the material or moral damage resulting from their violation."

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It is also considered a personality right,[6] that is, a right that the legal system grants for the protection of interests, both internal and external, more personal to an individual.

In Humberto Nogueira's words, the right to one's own image

> guarantees an area of freedom concerning its most characteristic and personal attributes, which identify it as such, as is the visible physical image (. . .). The right to one's own image protects against the capture, reproduction, and publication of the image in a recognizable and visible way. Each person has the exclusive right to determine when, how, by whom and in what form they want their features to be captured, reproduced or published, controlling the use of that image by third parties, thus preventing their capture, reproduction and publication by any mechanical or technological procedure, without their express consent.[7]

It protects the person in a positive dimension, allowing them to capture, reproduce, and publish their own image, as well as in a negative dimension, preventing their capture, reproduction, or publication by an unauthorized third party, whatever their purpose.

The right to one's own image finds its raison d'être, like the rest of the fundamental rights, in the essential value of dignity,[8] included in paragraph 1 article 1 of the Political Constitution of the Republic of Chile of 1980[9] that says: "People are born free and equal in dignity and rights." Human dignity is, as the Constitutional Court has stated on several occasions, one

6. Anguita, 24: "The right to one's own image is one of the so-called rights or attributes of personality that have received little attention from the civil dogmatic of our country, which means neither recognition nor protection in the Political Constitution or in civil legislation. Much more abundant has been the recognition of the right to one's own image in constitutional headquarters, which has distinguished three areas of guardianship: associated with private life, the right to honor and finally the right to property, the latter does not constitute an interference with the scope of privacy in cases in which the reputation of the accused is not violated."

7. Nogueira, 261.

8. Ibid., 246: "The human dignity is the distinctive feature of human beings with respect to other living beings, which constitutes the person as an end in itself, preventing it from being considered an instrument or means for another purpose, in addition to provide it with the capacity for self-determination and for the realization of the free development of the personality. Dignity is thus a value inherent in the human being that manifests itself through the conscious and responsible self-determination of their life and that demands respect by others."

9. La Constitución Política de la República del Chile (the Political Constitution of the Republic of Chile) will be abbreviated as CPR from now on.

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of the core values of the Chilean Constitution that, along with freedom and equality, informs the legal system as a whole.

Therefore, it is at present an implicit constitutional right[10] of fundamental rank that finds its foundation in the constitutional precept in charge of regulating honor and privacy,[11] but that at the same time differs from both.

The thing is the right to one's own image may be infringed without violating the privacy and vice versa,[12] despite the fact that the three rights correspond to the moral sphere of personality. For instance, when someone posts a photograph on Facebook of a person walking in the street without their consent. In this case, the own image is being violated, but not the privacy. In the opposite case, if a comment about someone's sexual orientation is posted on Twitter, there is a violation of the right to privacy, but not of one's image.

Although it has some protection within Chilean law, it would be positive if it were explicitly included in the constitutional text, as well as in Law 19.628, which regulates private life, in order to clarify both its core guarantee as well as its limits.

The explicit recognition of fundamental rights is always less problematic when it comes to finding protection in different courts. Unfortunately, the Supreme Court has avoided the recognition of the right to one's own image in all pronouncements as an autonomous right, and thus has subsumed it within the protection of other fundamental rights, such as the right to honor, the protection of private life, or the right to property.

Due to the rapid evolution of society, it is necessary that the legislations adjust to the new situations requiring the intervention of the law, a clear example being the need for the right to one's own image to be recognized as an independent autonomous and fundamental right within

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10. Aillapán, 433: "The absence of explicit recognition of the 'right to one's own image' in the Constitution and in the Civil Code has led our doctrine and jurisprudence to build it on the basis of known sources such as art. 19 Nº 4 CPR (person's private life and honor) or art. 19 No. 24 (property on intangible things), ignoring those rules that rule, prohibit and allow people to be portrayed, scattered in the same Civil Code, Intellectual Property legislation, press law, the Criminal Procedure Code, etc."

11. Art. 19.4 CPR: "The Constitution guarantees to all people the respect and protection of the person's and their family's private life and honor."

12. Arancibia, 68: "The affectation of the right to honor or violation of the right to privacy are not necessary conditions for the protection provided by the right to one's image to operate, without prejudice to the possibility of conceiving the existence of multi-offensive actions that affect more than one right at a time."

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the Chilean constitutional text,[13] as it happens in other civil systems with similar characteristics.[14]

The Image as an Essential Element of the Legal Scope Protected by the Right to Be Forgotten in Chile

Likewise, the right to be forgotten has been revealed as a necessary one that today society has begun to demand in recent years because the Internet virtual memory neither forgets nor forgives. It is a right that includes different legal areas to be protected, one of which is the right to one's own image.

Who has never wanted to delete a photograph of themselves that appears on the web when their name is entered in a Google search?[15] The problem in this area is that on many occasions it is not a photograph that the person uploaded to a social network or for which he or she expressly gave their consent. Other times, the problem is that when a photograph is in the virtual universe, you lose control over it, making it practically impossible to eliminate its trace completely.

Furthermore, at this point it is necessary to take into account that in this case it is necessary to discern whether it is the image of a private person or a public person. In the first case, because they have a legally protected area of greater privacy, the protection of their own image will also be greater. However, in the case of public persons, such as political figures, their protection of the right to their own image will be less, since the recognizability of their graphic representation is directly related to the development of their profession. Therefore, there is an important limitation of the right to

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13. In this sense, there are authors who are against the idea that the right to their own image follows the worldwide trend of other legal systems similar to those of Chile, because the essence of national law must be maintained in each of the countries.

See in this sense Ferrante, "La protección a la imagen."

14. In Civil Law systems, as in the case of Chile, unlike those of the Common Law based on the precedent, it is important that rights are explicitly stated in the constitutional text, and subsequently developed into laws.

See in this regard: Cuñado and Gámez, *Introducción al Common Law*. The authors explain the main differences between civil systems, mainly in Continental Europe and South America, and the Common Law system in England, Wales, Northern Ireland, the United States, Australia, and a significant part of Canada, based on the judicial creation, that is to say, on the legal norms that arise from the judgments of judges and courts.

15. This search engine is used as a reference because it is the most used in the whole American continent, the scope of our subject of study.

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one's own image in the case of public persons, this being a theory accepted both in civil and common law systems.

Therefore, it would be interesting that the future personal data protection law that is currently being debated in the Chilean Congress since March 2017,[16] and that will be in charge of regulating the digital right to be forgotten, take into account the image of people as one of the aspects to be protected within the digital right to be forgotten.

For this, more appropriate would be for the text to regulate that depending on the medium in which the image is contained, the affected parties would be entitled to eliminate it if they revoke their consent. Thus, anyone would be allowed to eliminate a picture, if a third party posted it without their prior consent.

This situation, although limited to minors, is contemplated in California Senate Bill 568 of 2013, which allows, within the State of California, that minors can erase any information, including photographs that they have uploaded to the network.

This would be interesting to be contemplated not only for minors but also for any person, as long as it is a content that they have uploaded to the network. Perhaps, the future Chilean law could contain a proposal on the matter.

On the other hand, in the case of other information media that are considered communication media and therefore protected by freedom of expression,[17] the person should be able to request the future Data Protection Agency[18] (whose creation appears collected in the aforementioned proposal) the possibility that their image appears unindexed, so when their name is typed in a search engine the photograph does not

16. Bulletin No. 11.144-07.

17. Art. 12.19 CPR: "The Constitution guarantees all people the freedom to express opinions and to inform, without prior censorship, in any form and by any means, without prejudice to respond to the crimes and abuses committed in performing these liberties, in accordance with the law, which must be qualified quorum."

18. The protection of personal data has acquired the status of autonomous right, despite its intimate relationship with privacy. This right has been defined by Murillo de la Cueva, "Informática y protección," 32: "The control that corresponds to each of us on the information that concerns us personally, whether intimate or not, to preserve in this way and in last extreme, our own identity, our dignity and freedom. In its formulation as a right, it necessarily implies powers that allow its owner to define aspects of his life that are not public, that he wishes not to be known, as well as powers to assure him that the data that his person is handled by computerized third parties are accurate, complete and current, and that have been obtained in a fair and lawful manner."In this context, the Data Protection Agency is going to protect this right.

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appear. However, in these cases, the image should not be removed from the source of origin, so as not to affect the important right to information or freedom of expression, as well as the right to research.

At this point it is important to take into account the doctrine marked by the sentence in *New York Times Co. V Sullivan*,[19] that freedom of expression will protect any information, even that which is false, provided that there has been no fraud, expanding with this issue the protected area of the right to information, especially in the case of public figures.

With this, a right to be forgotten would be configured, which would take into account the protectable legal scope to one's own image, and which also does not always result in the total elimination of information, but in some cases only the dissociation of the person's name of that particular image.

In short, it is important that the current configuration that is taking place of the right to be forgotten in the Chilean legal system bears in mind that the right to own image is an essential part of it, but also be able to discern the different situations that may occur to offer different solutions in which neither the right to press nor the right to expression are affected.

Chilean Case Analysis

Despite the relative legal and informative novelty of the subject, a review of the Chilean case shows that there are a series of practical elements worthy of analysis, which position the country as an example of emerging public discussion and innovation in the area of legal resolutions.

"Social Condemnation" and the Emergence of a Regulatory Need

On October 10, 2015, within the framework of the irruption and climax of social networks and citizen participation in the digital sphere debate, the newspaper *El Mercurio* mentioned the existence of several examples of

19. Arellano and Cetina, 160: "The Supreme Court ruled that the Press Freedom Clause protects the publication of any information, even if it turns out to be false, when it deals with the behavior of public officials, except if there is fraud in the publication. Sullivan's Principle establishes that the publication of false information made with fraud is that which is made with the knowledge that it is indeed false or culpably ignoring its truthfulness or falsehood. According to the Court's criteria, the sentence in the Sullivan case had to be reversed."

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innocent people from the legal point of view, but already sentenced in the Internet context, with all the effects that it has on the social dimension and group stigmatization. For this reason, it posed the question: does Chile really have the right to be forgotten in Chile?

In this context, the newspaper cites the case of Cristián López, "the bicycle rapist," who in 2000 was accused of being responsible for a series of sexual attacks on women in the vicinity of the municipality of Ñuñoa in the capital of the country, Santiago. After a lengthy judicial process, which included DNA tests ordered by the courts, the Chilean judicial system determined his innocence. What could be understood as the end of a long suffering was only the beginning. Although his innocence was established, he continued to be eternally blamed on the Internet: "Whenever I found a job, weird things happened: I was hired for a few days and then they threw me out," he says. "It was clearly because they looked for me on the Internet and when they saw that I had been arrested for rape, they dismissed me." López defines everything he experienced as a "torment," with personal and family repercussions, from which it has been very difficult to recover. Even when he filed lawsuits against the police, his final judgment is lapidary: "The Chilean State destroyed my life."

Another case whose publication is remarkable is that of Mauricio Orellana, who was accused of theft in a commercial center by a supermarket teller. He was arrested and held in prison for nine months before the woman withdrew; arguing that one of her bosses had forced her to invent the situation. In the first instance, the subject could be understood as settled, but Orellana did not then consider the difference between the possible legal and virtual condemnation: whenever he wanted to access some work, the background available on the Internet diminished the possibilities. "I ended up living in the street after being imprisoned for nine months for a false accusation, I still live with this, since I have not had any repairs, neither online nor in real life," he complains. "I only ask for a repair," he adds.

There were responses in 2005 from the same Chilean administrative system. The Public Defender's Office (DPP) launched a massive campaign called "Every click a sentence," framed in the project "Innocents" (http://www.proyectoinocentes.cl/), with the aim of creating public awareness of the drama of those who continue to be blamed for information that circulates eternally on the web and of the right of those who are declared innocent to be recognized. "It is necessary that these innocent people have a space for image reparation," acknowledged the National Defender, Andrés Mahnke.

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In his opinion these people suffer a social condemnation that remains on the Internet, although the courts of justice have decreed their innocence and that they were not responsible for the facts for which they were accused, creating a decontextualized and distorted reality that generates mistrust in the community. The National Ombudsman recognized the need at that time that the information that harms people leaves the network to avoid these cases, generate a broad debate in society and the most important: lay the foundations so that all this process is regulated.

Recognition of the Courts of Justice

Another interesting case to analyze is that of the retired police officer of Carabineros with initials AGL, who was processed in 2004 in the context of the denominated "Spiniak Case,"[20] for sexual crimes against minors. After several years of trial, the Chilean courts sentenced him to 541 days of imprisonment, which was effectively carried out. After the deadline, the affected appealed to exercise the right to be forgotten, formally requesting the management of the newspaper *El Mercurio*, dated September 8, 2015, that the journal removed from the search engines of its digital version (*El Mercurio* Online, emol.com) the publication where it was reported that visiting Minister Sergio Muñoz had submitted it to process.

Having no response, AGL filed an appeal for protection before the Court of Appeals, arguing that the information implied a violation of its constitutional guarantees, since it had not allowed him to reintegrate into social life in peace, by being stigmatized with the information, affecting not only his person, but also his entire family. In the opinion of the affected party, having already passed a decade of the events, it was not justified from the journalistic point of view that the news would continue in the search engines, since that violated the guarantees contained in the Constitution, in particular that of number 1 of article 19, so there would be an impairment of his physical and psychological integrity, and the current news would generate

20. The so-called "Spiniak case" corresponds to a judicial process for rape, child prostitution, and production of pornographic material, started in 2003 in Chile. It began when the Chilean police arrested the businessman Claudio Spiniak due to his participation in pedophile networks in Santiago, Chile. The defendant was convicted of the charges and was imprisoned for a decade in the High Security Prison of Santiago. The case reached great repercussion and social impact by the supposed implication of three senators, finally exculpated, and by the behavior contrary to the ethics of several media in the information processing.

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serious psychological consequences. Also, he appealed to the violation of the protection of his private life and his family, according to number 4 of the same article, since the newspaper intended him to sign a settlement through which he renounced his right to take legal action against such company in exchange for eliminating the news, eventually setting up an extortion figure.

Thus, on January 21, 2016, the Third Chamber of the Chilean Supreme Court issued a ruling in which it ordered the elimination in the Internet search results pages of a link to a news item whose information refers to the case of AGL, placing Chile on the list of non-European countries that applied the right to be forgotten on the Internet, along with other nations such as Argentina and Mexico in the Latin American context, but also others such as Russia or Japan.

Although the right to be forgotten does not exist as such in Chilean legislation, it is an issue that has been on the country's political agenda for many months. "In our national legal system does not exist, for now, an express legislative solution on this issue, although it is not difficult to notice its commitment to the protection of honor, dignity and private life of people," says the ruling. However, for magistrates, keeping this news for more than a decade in the search records affects the fundamental rights of the person affected and mentioned in the news. Specifically, the sentence says that "it affects their right to honor and adequate social reintegration after the penalty of the crime has been served."

When justifying the decision, the judges rely on article 19 of the Political Constitution that guarantees "the respect and protection of private life and the honor of the person and their family" as well as in other articles of the Criminal Procedure Code of this country. But this argument goes a step further as it considers that the exercise of this digital right to be forgotten is a global trend and is also covered in the Universal Declaration of Human Rights, whose article 12 states "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."

However, due to the resolution novelty, another conflict appears here that requires interest and analysis due to its complexity and difficulty: the possible collision of the right to be forgotten with other rights such as the right to information.

The ruling of the case that is presented and examined indicates that there is no real collision between both constitutional guarantees, although in the first instance they may appear to be opposed. The Chilean magistrates say:

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each one has its own sphere of action that can overlap for a time, in which public information is necessary and useful against the personal right that may be invoked, but which declines with the extension of that course of time; and instead becomes extravagant and useless both for the right of the individual concerned to reintegrate fully to society, as for the latter to achieve the peace that is of primary concern and that an expired news item does not facilitate.

Right to Be Forgotten versus Right to Information

A more current case, but equally interesting because of constituting a precedent, is that of the gynecologist Víctor Valverde, who went to the Courts of Justice to force the Centre for Journalistic Research (CIPER Chile) to remove from their records a report on their bad practices in the use of the drug Mysotrol (substance banned in Chile to induce childbirths, according to the Institute of Public Health, ISP), arguing that it affected their right to honor.

On March 4, 2013, the aforementioned media published a report that reported on the practices of the physician, who until then was a reputed gynecologist at the *Clínica Alemana de Santiago*. The article points out that Valverde used false prescriptions to obtain Mysotrol abroad and how he administered that medication to a patient to accelerate a delivery in November 2012, without her being aware of the risks that this implied for her life and her son's life. According to the report, the doctor had planned to leave on a trip five days before the estimated date of Patricia Gomez's childbirth and insisted on inducing it without revealing his motives and putting at risk both mother's and child's lives.

Four years after the report was published, the doctor filed an appeal for protection against CIPER so that the courts forced the media to eliminate the report from the records available on the web. The affected said that this information violated his right to protection of his private life, his honor and that of his family (quote from the text). On July 31, 2017, the Court of Appeals of Santiago rejected the protection remedy stating that "We are in the presence of the disclosure of a fact of public relevance, in which, freedom of information prevails over the right to honor, for the right that citizens have in a democratic system to know those facts and behaviours of public relevance, given by the importance or public significance of the facts themselves."

Valverde raised his claim to the Supreme Court. But the result was the same. In a unanimous ruling, dated November 6, 2017, the Supreme Court

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decided their position, stating that the doctor had no arguments to argue that the report had broken their guarantees and freedoms. That statement was found to be the "truthful and public interest" information, containing facts that were proven, said the ruling.

"From the background of the case, it appears that with respect to the Ciper-Chile Foundation, as stated in the seventh motive of the judgment under review, the commission of an illegal act can not be attributed, since it was limited to publish background of a journalistic investigation in respect of which the facts that motivated it were proven, to the point that they meant the application of a sanction to the appellant by the Medical Association, due to the granting of false medical prescriptions of the so-called Mysotrol, situation that justifies fully the need to make information public, due to its relevance and connotation." The Third Chamber of the Supreme Court was clear in stating that "there is no legal norm that prevents the maintenance of information when the information has proven, as in the species, to be true and of public interest," points out.

The decision of the Supreme Court marks a precedent when putting the right to information above the right to be forgotten, when the journalistic information meets standards of truth and relevance, although it opens a debate that is in full development. A proof of this is the letter sent[21] by the Inter-American Press Association (SIP) to the Court of Justice of the European Union in the framework of the ruling by the Court of Justice of the European Union on a dispute between Google and the National Commission of Computer Science and Liberties (CNIL) of France. The latter wants the global search engine to eliminate certain information from its records around the world when a country so dictates, and not only within the borders where said requirement originated. Says the SIP: "We believe that eliminating the original publication or de-indexing it in Internet search engines would in any case not only affect press freedom but restrict the right to information of other citizens. We ask ourselves, to what extent citizens could continue to rely on the information published on the Web if the data is altered with unclear and changing criteria? Is it irrelevant that whoever is running for mayor of our city has been investigated for

21. The SIP is a nonprofit organization dedicated to the defence and promotion of freedom of the press and expression in America. It is composed of more than 1,300 publications from the Western Hemisphere; and is headquartered in Miami, Florida, and United States. The full text of the letter to the Court of Justice of the European Union (CJUE) can be read at http://media.sipiapa.org/adjuntos/185/documentos/001/814/0001814110.pdf (Accessed March 8, 2018).

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alleged embezzlement? Or that the one who takes our children to school has faced years ago a process for alleged corruption of minors?”

Conclusion

The current technological landscape and the multiple effects that it may have on the daily life of any subject is and will remain a research and permanent reflection subject, depending on the point of view to see the world: personal, legal, professional, community, and so on. In this context, it is vitally important to collect theoretical and normative information and put it into perspective based on casuistic reality, the objective of this text, since both the analysis and the proposals that will guide the academic and social debate emerge from it.

One cannot lose sight of the emergence of new contexts, which require permanent auditing and regulatory adaptation to regulate these relationships, especially when these are not generated specifically in the material environment, but in the virtual one. There, the multiplying effect of mass diffusion can profoundly affect the individual and social environment. There is evidence to point out that social/virtual condemnation is harsh, perverse, and lapidary, affecting not only the subject, but also their family and/or closed environment.

In light of the abovementioned facts, we think that Chilean society is beginning a new stage, one of greater awareness and recognition of rights. Proof of this is that it became one of the first countries in Latin America to have judicial pronouncements recognizing the right to be forgotten and the repercussions that this may have on the right to self-image of the affected individuals. This progress includes both civil society and the legal world, since the cases presented are shaping jurisprudence and granting legal certainty regarding the treatment of these situations.

The proposed analysis aims to generate debate about the urgent necessity of a Constitutional and statutory definition since the facts show that these situations will not only continue, but also increase. Special emphasis is placed on the study of the possible collision between rights (right to be forgotten vs. right to information), as well as the prevalence of the second in the exceptionality of public relevance with quality journalistic work, as demonstrated in the pronouncement of the Chilean courts and the ruling of the Third Chamber of the Supreme Court and the “Mysotrol Case,” arguing that although an individual may feel affected, “there is no legal

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norm that prevents it, when the information has proven, as in [this case], to be true and of public interest."

As a consequence, it would be desirable that the future law that regulates the scope of the personal data protection in Chile collects explicitly, as has happened in Europe, the right to be forgotten, breaking down the concrete situations in which this should prevail over the right to information. And it is that, in the environment of the civilian legal systems, the regulation and the explicit recognition of the rights provoke a decrease of the legal uncertainty.

Within this recognition, it is necessary to take into account that one of the protected legal areas of this emerging right is the legal core protected by the already consolidated right to one's own image. In this case, it would be interesting if both the element of public interest contained in that image and the support where it is located were present. And is that, in certain media, as is the case of social networks, the total elimination of images should be allowed, as long as they are photographs that lack such public interest, and are associated with the rights holder's personal life, such as a photograph that someone posts on the network during their college years. Otherwise, the protagonist should have the option to make a request so that image does not appear associated with their name.

Although it has some protection within Chilean law, it would be positive if it were explicitly included in the constitutional text, as well as in Law 19.628, which regulates private life, in order to clarify both its core guarantee as well as its limits. The explicit recognition of fundamental rights is always less problematic when it comes to finding protection in different courts.

In short, despite the opposition of an important part of the doctrine, and provided that a suitable balance is maintained with the right to information, it is necessary to explicitly recognize the digital right to be forgotten within the Chilean legal system, being the right to own one's image is one of their protected legal fields.

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