



CASSATION APPEAL no.: 6147/2021

Rapporteur: Mr. Luis María Díez-Picazo Giménez

Legal Counsel of the Administration of Justice: Ms. María Pilar Molina López



ADMINISTRACION DE JUSTICIA

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SUPREME COURT Chamber for Contentious-Administrative Proceedings Fourth Section Judgment No. 1231/2022

Excellencies, Ladies and Gentlemen.

Mr. Pablo Lucas Murillo de la Cueva, President

Ms. Celsa Pico Lorenzo

Mr. Luis María Díez-Picazo Giménez

Ms. María del Pilar Teso Gamella

Mr. José Luis Requero Ibáñez

In Madrid, on 3 October 2022.

This Chamber has heard the appeal No. 6147/2021, brought by WOMEN ON WEB INTERNATIONAL FOUNDATION ("WOW"), represented by Raquel Cano Cuadrado, and defended by Aintzane Márquez Tejón, against the judgment of 6 July 2021, handed down by the Eighth Section of the contentious-administrative Chamber of the National High Court, which dismissed the appeal no. 30/2021 filed by the appellant against the judgment of 9 March 2021 of the Central Contentious-Administrative Court no. 10, handed down in the special procedure for the protection of fundamental rights 2/2020.

The respondent being the ADMINISTRATION OF THE STATE (SPANISH MEDICINES AND MEDICAL PRODUCTS AGENCY, "AEMPS"),

Signed by: LUIS MARIA DIEZ-PICAZO GIMENEZ 03/10/2022 13:28 Minerva04/10/2022

Signed by: CELSA PICO LORENZO 11:58 Minerva04/10/2022

Signed by: JOSE LUIS REQUERO 13:02 13:59 Minerva

Signed by: PILAR TESO GAMELLA MURILLO DE LA CUEVA

: PABLO MARIA LUCAS Minerva

represented and defended by the State's attorney by virtue of the powers of representation he legally holds.

**The Public Prosecutor** having appeared in the present proceedings.

The rapporteur was Mr Luis María Díez-Picazo Giménez.

## FACTUAL BACKGROUND

**FIRST** - The judgment under appeal contains the following operative part:

"[...] WE FAILED:

In view of the foregoing, the Eighth Section of the Contentious-Administrative Chamber of the National High Court has decided:

WE SHOULD **DISMISS** AND DO DISMISS the appeal lodged by the legal representation of **WOMEN ON WEB INTERNATIONAL FOUNDATION** against the judgement handed down by the Central Contentious-Administrative Court No. 10 on 9 March 2021 described in the first legal ground of this judgement, which we uphold and declare in accordance with the law.

Ordering the appellant to pay the litigation costs, subject to the limitation set out in the seventh legal ground. [...]"

**SECOND** - Once notified of the above judgement, the legal representation of **WOMEN ON WEB INTERNATIONAL FOUNDATION**, filed a brief preparing the appeal, which the Eighth Section of the Contentious Administrative Chamber of the National High Court considered to have been filed, ordering the summons of the parties and the referral of the proceedings to this Chamber of the Supreme Court.

**THIRD** - Having received the proceedings before this Court, by order of 5 November 2021, the Contentious-Administrative Chamber considered Women

On Web International Foundation as the appellant, and the State Administration and the Public Prosecutor's Office as the respondents.

**FOURTH** - By order of 13 January 2022, the First Section of this Chamber agreed:

"First. To admit the cassation appeal prepared by Women on Web International Foundation (WOW) against the judgement of 6 July 2021, of the Eighth Section of the Contentious-Administrative Chamber of the National High Court (appeal no. 30/2021).

Second. Specify that the questions which are of "objective interest for the formation of case-law" consist of clarifying:

Whether judicial authorization is necessary in cases where the Administration agrees to the measure consisting in the interruption of access to the website by telecommunications network operators that provide service in Spain, in the event that an illegal activity is detected, in particular, the online sale of medicines that are not authorized for marketing in our country.

Where appropriate, the scope that the measure should have in view of the complexity of the contents of the website.

Third. To identify as legal rules which, in principle, should be subject to interpretation, those contained in Article 20.5 of the Spanish Constitution, Article 10 of the European Convention on Human Rights, Article 8, paragraphs 1, 2 and 3 and Article 11.3 of Law 34/2002, of 11 July, on Information Society Services, and Article 18.1 of Directive 2000/31/EC, of 8 June (Directive on electronic commerce) on legal aspects of information society services.

All of this, without prejudice to the analysis of other legal rules if it is necessary to debate the issues brought in the appeal (art. 90.4 of the Law Regulating the Administrative Jurisdiction). [...]"

**FIFTH** - The appeal being deemed admissible by this Chamber, the appellant was summoned to file a written appeal within thirty days, which WOW did, pleading to:

"[...] consider that this document has been filed and that the appeal against the Judgment of 6 July 2021 of the Eighth Section of the Contentious-Administrative Chamber of the National High Court (appeal no. 30/2021) has been formalized, continuing with the proceeding in all its stages and issuing a judgment upholding the appeal, and ruling on: (i) whether the AEMPS

can agree and maintain measures to block a mainly informative website in its entirety without, at any time, a judicial body having to intervene; and (ii) whether the interruption of the provision of a service such as that of my client, infringes Articles 8 and 20 of the Royal Decree 81/2014 and Articles 56 and 57 of the TFEU. And to agree, with an express order for the respondent Administration to pay the litigation costs: (iii) the revocation of the Judgment under appeal, annulling the Resolution of the AEMPS of 23 September 2020 with the cessation of the blocking of WOW's website and the recognition of the infringement of its fundamental rights. [...]"

**SIXTH** - By order of 10 March 2022, the respondent parties were summoned to formalize their statements of opposition within thirty days.

The State's attorney filed a statement of opposition to the cassation appeal, which concludes with the following plea in law:

"[...] that, admitting these allegations, the Supreme Court considers the State's representation to be OPPOSED to the cassation appeal lodged by the appellant and, in due course, declares the cassation appeal to be inadmissible, with express attribution of the litigation costs to the appellant. [...]"

The Public Prosecutor's Office also submitted a written statement of its position, pleading with the Chamber:

"THE PROSECUTOR considers that the present cassation appeal should be DISMISSED, in the terms already expressed. [...]"

**SEVENTH** - In accordance with the provisions of Article 92.6 of the Law of this Jurisdiction, in view of the nature of the case, it was not considered necessary to hold a public hearing.

**EIGHTH** - By order of 22 June 2022, Judge Luis María Díez-Picazo Giménez was appointed as Judge-Rapporteur and the vote and ruling was scheduled for the 27 September 2022, at which time the hearing for this procedure took place, in accordance with all the legal formalities.

## THE LEGAL BASIS

**FIRST** - The present cassation appeal is brought by Women on Web International Foundation against the judgement of the Contentious-Administrative Chamber of the National High Court of 6 July 2021.

As per the proceedings transferred to this Chamber, the background of the case, which is especially relevant, is as follows. Women on Web International Foundation (hereinafter, WOW) is an organization based in Canada, which purpose is to advise women on sexual health and reproductive rights. It has no physical establishment in Spain, and it only operates in Spain electronically through a Spanish-language website.

The Spanish Medicines and Medical Products Agency (hereinafter 'the AEMPS'), which is the administrative body with policing powers in the medicines sector, became aware that the WOW website offered the possibility of obtaining the medicines 'mifepristone' and 'misoprostol', which marketing is prohibited in Spain and, in any event, cannot be administered without a doctor's prescription. The dispatch of those medicines by telematic means to those who requested them was not presented as a purchase agreement, since no price was required to be paid. However, the application to get the aforementioned medicines had to be accompanied by a donation of between €50 and €70. There is no evidence that WOW is a profit-making entity.

In view of this situation, on 29 May 2019, the AEMPS sent an email to WOW, warning that the marketing of these medicines by telematic means is illegal in Spain. Given that WOW did not stop the activity, the AEMPS decided on 25 June 2020 to initiate an administrative procedure aimed at the interruption or withdrawal of the information society service; and adopted the precautionary measure of ordering internet access providers in Spain, to interrupt the access to WOW's website. Once the administrative procedure had been processed, on 23 September 2020, the Director of the AEMPS issued a resolution agreeing to "the interruption and/or withdrawal of the information society service consisting

of the sale of medicines by telematic procedures through the website [www.womenonweb.org](http://www.womenonweb.org)".

An appeal for reconsideration was lodged but it was rejected by administrative silence. Then, WOW resorted to contentious-administrative proceedings.

**SECOND** - The contentious-administrative appeal was dismissed by the judgment of the Central Contentious-Administrative Court no. 10 of 9 March 2021. It is worth briefly examining the fundamental elements of the argumentation of this judgment, which - regardless of whether or not one agrees with it- is a model of meticulous, orderly and clear reasoning, especially given the difficulty of the matter and the absence of case law on the subject.

After establishing the facts considered to be proven, the Court of First Instance states that the first issue to be determined is not whether WOW could lawfully offer to obtain the medicines 'mifepristone' and 'misoprostol' by telematic means against a donation, but whether the interruption of access to WOW's website - both as a precautionary measure and as a final decision - could be taken by an administrative body, such as the AEMPS, without the need for prior judicial authorization. According to the Court of First Instance, if the answer to this question is no, it should be concluded that the contested administrative act is illegal in any event; and this without the need to examine its substantive legality, that is to say, whether any of the qualifying conditions for ordering the interruption of access to an information society service, was met. In short, the Court of First Instance considered that establishing whether or not judicial intervention was necessary in this case, constitutes a *prius* with respect to the analysis of the substantive issue.

In this regard, the Court of First Instance recalls that the relevant legal regulation can be found in Law 34/2002, on information society services and electronic commerce, which transposes the Directive 2000/31/EC (Directive on electronic commerce) into Spanish law. The Court of First Instance points out that Article 8 of that law lists the principles, which infringement allows the

restriction of information society services, and that one of these principles, is "the protection of public health and of natural or legal persons who are consumers or users". The Court of First Instance also points out that, in accordance with Article 11 of the law, "the authorization of the seizure of Internet pages or their restriction, when this measure affects the rights and freedoms of expression and information and others protected in Article 20 of the Constitution, may only be decided by the competent jurisdictional bodies". On this legal basis, the Court of First Instance concludes that the requirement of judicial intervention to decide on the interruption or restriction of access to websites is not applicable to the present case, as it understands that "the contested decision does not order any seizure, nor does it affect, as we shall see, the aforementioned rights and freedoms, since it online requires the cessation of the activity related to selling medicines online". This is undoubtedly the *ratio decidendi* of the first instance judgment: the requirement of judicial intervention set for in Article 20.5 of the Constitution, only comes into play, as stated in article 11 of Law 34/2002, when the interruption or restriction of access to the website affects the freedom of information or expression; something that would not happen in the present case, because all the administration would have done is to order the cessation of an activity of online marketing of medicines.

Having established that the judicial intervention was not necessary in the present case, the Court of First Instance addresses the substantive analysis of the contested administrative act, concluding that it is in accordance with the law. In particular, the Court of First Instance observes that it falls within the factual situation consisting in the protection of public health, which allows the Administration to legally interrupt or restrict the access to a website; that the marketing of the medicines in question is prohibited in Spain, indicating that the qualification as a "donation" of the amount requested is not convincing; and that, in any event, the marketing of medicines over the Internet and without the corresponding European Union stamp, is illegal in Spain.

**THIRD** - An appeal was lodged and dismissed by the judgement that is now being challenged in this appeal in cassation. The Court of Appeal, in essence, supports the arguments of the Judge of First Instance.



**FOURTH** - The cassation appeal was admitted by the First Section of this Chamber, by order of 13 January 2022. The question, which it declares to be of an “objective appeal interest”, is to determine:

"Whether judicial authorization is necessary in cases in which the Administration agrees to the measure consisting in the interruption of access to the website by telecommunications network operators providing service in Spain in the event that an illegal activity is detected, in particular, the online sale of medicines not authorized for marketing in our country. Where appropriate, the scope that the measure should have in view of the complexity of the contents of the website".

**FIFTH** - In the legal brief initiating proceedings before this Chamber, with extensive citation of Spanish and European case law, WOW alleges that the contested judgment infringes Article 20 of the Constitution, as well as Article 10 of the European Convention on Human Rights, and Articles 8 and 11 of Law 34/2002, stressing that the interruption of access to its website agreed by the AEMPS should have been authorized by a judicial body.

Furthermore, still in that connection, the appellant insists that, although the contested administrative measure ordered the interruption of the online sale of medicines, the effects of the interim measure ordering the interruption of access to its entire website have been maintained, that is to say, the website remains inaccessible. The appellant therefore considers that the contested administrative measure, and the judgments at first instance, and in the appeal which uphold it, infringe the principle of proportionality: in the appellant’s view, in order to achieve the aim sought by the administrative measure, it would have been sufficient to prevent access to the section or tab 'I need an abortion' - where the possibility of obtaining the abovementioned medicines by telematic means is offered - while leaving access to the rest of the content of WOW's website. In the same vein, the appellant adds that it has always made it clear that the section 'I need an abortion' is separate and identified within the website by its own URL, which technically allows the possibility to easily interrupt access only to that section, without affecting the rest of the website.

As a further argument, based on Royal Decree 81/2014 and Articles 56 and 59 of the Treaty on the Functioning of the European Union, the appellant submits that the contested judgment infringes the freedom to provide services. The appellant states that the provision of medical services, which are covered by the abovementioned rules, is at issue here. In this context, the appellant also relies, without further argument, on the freedom of association.

Finally, the appellant submits that the rules on the burden of proof have been infringed because the judgment under appeal upholds that the appellant did not prove that it did not sell medicines by telematic means. That constitutes, in the applicant's view, requiring proof of a negative fact.

**SIXTH** - The State Attorney's statement of opposition, after a lengthy review of what has been said in the successive stages of the proceedings, limits itself to several apodictic assertions without any appreciable argumentative effort. His position is that judicial intervention was not necessary in order to agree to the interruption of access to the website, and that the administrative act under appeal is perfectly legal and proportionate.

**SEVENTH** - The Public Prosecutor has been heard, given that the litigation has been processed under the special procedure for the protection of fundamental rights. The Public Prosecutor considers that judicial authorization for the interruption of access to websites is only required, in accordance with Articles 8 and 11 of Law 34/2002 in relation to Article 20.5 of the Constitution, when the freedoms of information and expression are affected; that is, when the content of the website consists of information or expressions. The authorization is not necessary, in his opinion, when the content of the website does not inform about data or expresses opinions, but only serves the purpose of carrying out an illegal activity. The latter, according to the Public Prosecutor, would be the case here.

However, the Public Prosecutor considers that the contested administrative act, together with the judgment at first instance and the judgment

under appeal upholding it, infringe the principle of proportionality, because, in its view, it would have been sufficient to order the interruption of access to the section through which the medicines in question were offered. Therefore, the Public Prosecutor concludes that the appeal should not succeed, except for the disproportionality of the measure adopted.

Finally, the Public Prosecutor states that the argument concerning the freedom to provide services must be rejected, since WOW is a Canadian legal person.

**EIGHTH** - Turning now to the matter at issue, this Chamber has no doubt that the offer to obtain the medicines "mifepristone" and "mifepristone" by telematic means, which was made in the section 'I need an abortion', constitutes an illegal activity. The Court of First Instance and the Court of Appeal are entirely right to point out that these medicines cannot be marketed in Spain; that, in any event, the online marketing of medicines is not permitted, nor is the marketing of medicines which do not bear the European Union stamp; and that the labelling the amount requested as a "donation" constitutes a simulation. To this last point it could be added that, even if it were not a simulation, the conclusion would not change; and this is because the free distribution of unauthorized medicines - even if it is not technically "marketing" - is still unlawful.

This means that the present case falls perfectly in the section of Article 8 of Law 34/2002 which allows the interruption of access to websites in order to safeguard public health. The truth is that, not even the appellant strongly contests this point.

However, this indisputable conclusion on the matter at issue does not allow us to avoid two other problems, which need to be addressed to reach a legally satisfactory solution. The first one was clearly pointed out by the Court of First Instance, namely: whether the interruption of access to a website requires judicial authorization. If that is the case, all the arguments regarding the substantive correctness of the administrative act under appeal would be irrelevant, since the latter would have been issued in disregard of an undeniably

essential procedural requirement. It is true, therefore, that clarifying this question constitutes a *prius* with respect to any other aspect of this dispute.

The other issue, to some extent independent of the previous one, is whether the interruption of access to WOW's entire website was disproportionate, in the sense that it would have been sufficient to interrupt access to one of its sections to prevent the online marketing of medicines.

**NINTH-** In order to adequately address the first of the problems, several considerations should be made. First, Articles 8 and 11 of Law 34/2002 require judicial intervention to agree the interruption of access to websites, only when this is constitutionally required. Article 8 is unequivocal when it states that "in all the cases in which the Constitution and the laws regulating the respective rights and freedoms so provide, only the competent judicial authority may adopt the measures provided for in this article, as guarantor of the right to freedom of expression, the right to literary, artistic, scientific and technical production and creation, the academic freedom and the right to information".

Second, it is worth noting that not in all EU Member States is judicial intervention constitutionally required for the seizure of publications and, consequently, not in all of them the question arises as to whether the interruption of access to websites requires such judicial intervention. This is the reason why Law 34/2002, which - it should be remembered - transposes the Directive on electronic commerce, merely refers to the Constitution to determine when judicial intervention in this area is mandatory.

Third, this leads to the heart of the matter, which is whether and to what extent, the seizure of websites must be subject to the issue of a court warrant, as per Article 20.5 of the Constitution. As it is well known, this Article stipulates: "The seizure of publications, recordings and other means of information may only be ordered by virtue of a judicial decision". In this respect, it is obvious that the literal interpretation is insufficient, as the notion of a website could not have been in the mind of the Spanish Constituent Assembly of 1978. Nor does the case law

serve as a guide, because the Constitutional Court has not had the occasion of ruling specifically on this question, nor has this Chamber ever had to address it.

Having made the above considerations, it should be noted that a finalist perspective sheds light on the issue. It is undeniable that the purpose of Article 20.5 of the Constitution, surely as a reaction to arbitrary and abusive practices in the past, is to prohibit the administrative or governmental seizure of publications. Thus, what is constitutionally prohibited is not to seize publications that incur in any illegality nor to prevent their dissemination - this has to do with the limits of the freedoms of information and expression, which are dealt with in the previous sections of Article 20 of the Constitution itself - but what is constitutionally prohibited is for the Administration to decide on the seizure by itself. As in the case of other reservations of jurisdiction provided for in the constitutional text, the Constitution considered it preferable for certain decisions, which are particularly sensitive for the effectiveness of certain fundamental rights, to be taken by a judicial body. The aim is not only to curb possible administrative temptations to arbitrariness, but above all to entrust the assessment of the facts and the weighing of interests to an impartial, independent authority, which only responds to legal reasons. It should be borne in mind that deciding whether a publication deserves to be seized - as with the interception of communications, house searches or the dissolution of associations - often requires a legally complex and intellectually tempered reasoning.

In the light of all the foregoing, the Chamber considers that the websites fall into the category of "other media", even though they are not "publications" or "recordings" in the proper sense. News, data and factual statements (information), as well as opinions, positions and judgmental statements (expression) publicly circulate through the Internet; and in this sense, websites fulfil a function comparable to that of traditional media of information and expression. Consequently, in principle, Article 20.5 of the Constitution is applicable to the interruption of access to websites.

However, this statement needs to be nuanced: websites cannot be characterized as "information media" when they do not contain information or

expression, so that they are merely an instrument to carry out another activity. In this regard, the case under consideration offers a good illustration of this: informing the public about the properties of the medicines "mifepristone" and "misoprostol" is undoubtedly information, just as advising certain women to use them is undeniably expression; but offering to obtain them by telematic means in exchange for payment is neither one nor the other. It is simply the use of the website to make a contractual offer and therefore it falls outside Article 20.5 of the Constitution. In the opinion of this Chamber, this constitutional precept comes into play when publications, recordings and other means of information are channels for the broadcasting and circulation of ideas, whether they deal with facts or judgments. This means that Article 20.5 of the Constitution does not prohibit the administrative seizure when in the support subject to the seizure, there is no information nor expression.

It is true that this constitutional precept could be interpreted in a broader sense, in such a way that the seizure of any publication, recording or means of information would be objectively subject to the reservation of jurisdiction, whatever its content is. However, this is not the reading that arises from the above transcribed section of Article 8 of Law 34/2002, which describes the judicial authorization as "guarantor of the right to freedom of expression, the right to literary, artistic, scientific and technical production and creation, the academic freedom and the right to information"; in other words, judicial intervention in the interruption of access to websites is necessary because it affects the freedoms of information and expression, not for any other reason. And given that the interpretation of Article 20.5 of the Constitution underlying in Article 8 of Law 34/2002 is neither unreasonable nor extravagant, the Chamber upholds it.

It is essential, at this point, to make one point crystal clear: what falls outside Article 20.5 of the Constitution are websites that do not contain any information or expression. And not containing information or expression is not the same as the illegality of the information or expression disseminated.

Reporting a certain piece of information or expressing a certain opinion may be unlawful, in the sense that it is not a legitimate exercise of the freedoms of information or expression. But unlawful information or expression is still information or expression, and therefore the interruption of the website on which

they are found will require judicial intervention. This is far from trivial, as many of the serious illegalities committed on the Internet do not consist of offering a good or a service, but of disseminating mere information, such as instructions for the manufacture of devices, leaking classified documents, etc.

**TENTH** - The other problem that cannot be avoided is, as stated above, whether the interruption of access to a website in order to put an end to an illegal activity carried out through it, should only include the section of the website that is strictly necessary to achieve that purpose. Obviously, the answer must be in the affirmative, as the principle of proportionality requires that the least intrusive or burdensome measure should always be used. It goes without saying that this applies to the extent that it is technically possible to interrupt access only to the section concerned. If it were only possible to interrupt access to the website as a whole, the issue would have to be considered under the so-called "proportionality in the strict sense", i.e. the cessation of the illegal activity by interrupting access to the website would be more valuable than the interests sacrificed by the interruption.

In this vein, it is worth noting that respect for the principle of proportionality in the interruption of access to websites, both in its facet of less invasive or burdensome measure and in its strict sense, applies irrespective of whether the Administration can or cannot agree to it on its own. In other words, also when the interruption of websites must be authorized by a judicial body, the latter is obliged to respect the principle of proportionality.

**ELEVENTH** - In view of the foregoing, the answer to the question of "objective appeal interest" must be that the Administration can agree to the interruption of a website on its own, if any of the legal grounds for doing so is met, and only when the content of the website does not consist of any information or expression. It should also be borne in mind that the illegality of the information or expressions contained on a website does not exclude the requirement of judicial authorization, to agree to the interruption of access to it. In any case, whichever authority (administrative or judicial) orders the interruption of access

to a website, the principle of proportionality must be respected and, if technically possible, the measure must be limited to the section where the illegal activity, information or expression is contained.

**TWELFTH** - In relation to the criterion that has just been established regarding the “objective appeal interest” , this Chamber considers appropriate to make a respectful warning to the legislator: at least in the contentious-administrative jurisdictional order, no procedure is foreseen to authorize the interruption of websites, when it is necessary. It is true that until now, the case law had no occasion to deal with this problem, but the present case has shown the existence of such gap in our procedural law.

**THIRTEENTH** - Applying the above to the present case, it must be remembered that both the precautionary measure adopted in the administrative proceeding and the final resolution, ordered the interruption of WOW's website without any judicial authorization. And no one has disputed that, on that website, along with an offer to obtain certain medicines online, there was information, recommendations and opinions on sexual health and reproductive rights. These other contents of the website fall, undoubtedly, into the category of information and expression and, therefore, their interruption could not be done legally without prior judicial authorization. Moreover, organizations which promote the so-called "reproductive rights" carry out an activity that, whatever may be everyone's opinion on the matter, has a political dimension in our contemporary society. And, from the point of view of the freedoms of information and expression, this requires a special attention.

The consequence of the lack of judicial authorization is that the decision of the Director of the AEMPS of 23 September 2020 is not in accordance with the law; nor is the interim measure adopted on 25 June 2020 in the administrative proceedings, if it retains any effectiveness. Having failed to do so, the judgment at first instance and the judgment under appeal must be set aside, by upholding this cassation appeal and the previous appeal.



As this Chamber must now rule on the contentious-administrative appeal, it has already been explained what the flaw in the administrative act under appeal is: the AEMPS could not order on its own the interruption of access to the entire WOW website; but it could do so, without the need for judicial intervention, with respect to the section of the website where the medicines "mifepristone" and "misoprostol" were offered online in exchange for an alleged cash donation. Consequently, in line with the suggestion of the Public Prosecutor, the contentious-administrative appeal must be upheld in part, so that the decision of the Director of the AEMPS of 23 September 2020 is annulled in all that exceeds the mere interruption of access to the aforementioned section of the website. The interim measure adopted at the time in the administrative proceedings must also be annulled, if it retains any effectiveness.

This conclusion is not altered by the fact that the contested administrative act under appeal states: "there is nothing to prevent the interested party, in the exercise of its freedom of expression, from freely reproducing and expressing content which WOW considers to be mere information on another website, or alternatively, from maintaining that content on the website which is the subject of these proceedings, provided that WOW removes or blocks access to those sections which allow Spanish consumers to purchase medicines". Even ignoring the enormous vagueness of this passage, it is certain that the administrative act provided for the interruption of WOW's entire website, something which, by the way, has been acknowledged by the State's attorney.

**FOURTEENTH** - Pursuant to Article 93 of the Jurisdictional Law, each party shall bear its own litigation costs regarding the cassation appeal. Concerning the litigation costs of the first instance and in appeal, in accordance with Article 139 of the same law, this Chamber considers that it is not appropriate to attribute the litigation costs to one party, given that the case was of considerable legal complexity.

## JUDGEMENT

For all the foregoing reasons, in the name of the King and by the authority vested in it by the Constitution, this Court has decided

**FIRST** – To uphold the appeal brought by Women on Web International Foundation against the judgement of the Contentious-Administrative Chamber of the National High Court of 6 July 2021, which we annul.

**SECOND** - To uphold the appeal lodged by Women on Web International Foundation against the judgement of the Central Contentious-Administrative Court no. 10 of 9 March 2021, which we annul.

**THIRD** - To partially uphold the contentious-administrative appeal brought by Women on Web International Foundation against the decision of the Director of the Spanish Medicines and Medical Products Agency of 23 September 2020, which we annul in all that exceeds the interruption of access to the section of the website [www.womenonweb.org](http://www.womenonweb.org) where the medicines "mifepristone" and "misoprostol" are offered online, also agreeing to annul, if it retains any effectiveness, the interim measure adopted by the Spanish Medicines and Medical Products Agency on 25 June 2020.

**FOURTH** - No express order in relation to the attribution of the litigation costs.

Notify this resolution to the parties and add it to the legislative collection.

It is so agreed and signed.