ADMINISTRACION DE JUSTICIA

R. CASACION no.: 6147/2021

Speaker: H.E. Mr. Luis María Díez-Picazo Giménez

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

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

H. E. Messrs. and Excellencies. Excellencies and Excellencies.

D. Pablo Lucas Murillo de la Cueva, President

Ms. Celsa Pico Lorenzo

D. Luis María Díez-Picazo Giménez

Ms. María del Pilar Teso Gamella

Mr. José Luis Requero Ibáñez

In Madrid, on October 3, 2022.

This Court has heard an appeal in cassation No. 6147/2021, brought by **WOMEN ON WEB INTERNATIONAL FOUNDATION ("WOW"),** represented by Raquel Cano Cuadrado, lawyer and defended by Aintzane Márquez Tejón, lawyer, against the judgment of 6 July 2021, handed down by the Eighth Section of the Contentious-Administrative Division 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 issued in the special procedure for the protection of Fundamental Rights 2/2020.

represented y defended by Attorney at Law of Lawyer at under of the representation it legally holds.

The MINISTRY OF THE PROSECUTOR'S OFFICE having appeared in the present proceedings.

The rapporteur was Mr. Luis María Díez-Picazo Giménez.

FACTUAL BACKGROUND

FIRST.- The sentence appealed against contains the following wording:

"[…] WE FAILED:

In view of the foregoing, the Eighth Section of the Contentious-Administrative Chamber of the Audiencia Nacional has decided:

That we **DISMISS** AND DISMISS the appeal filed by the procedural representation of **WOMEN ON WEB INTERNATIONAL FOUNDATION** against the ruling handed down by the Central Contentious-Administrative Court No. 10 on 9 March 2021 described in the first legal basis of this ruling, which we uphold as being in accordance with the law.

Ordering the appellant to pay the costs, with the limitation indicated in the seventh legal ground. [...]".

SECOND.- Notified of the previous sentence, the procedural representation of **WOMEN ON WEB INTERNATIONAL FOUNDATION**, presented a document preparing the appeal, which the Eighth Section of the Contentious-Administrative Chamber of the National High Court took as prepared, 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 Chamber for Contentious-Administrative Proceedings considered Women On Web International Foundation as appellant, and the State Administration and the Public Prosecutor's Office as appellant.

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 sentence of 6 July 2021, of the Administrative Chamber, Eighth Section, of the Audiencia Nacional (appeal no. 30/2021).

Second. To specify that the questions that are of objective interest for the formation of jurisprudence consist of clarifying:

Whether judicial authorisation is necessary in cases where the Administration agrees to the measure consisting of 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 sale by telematic means of medicines that are not authorised for marketing in our country.

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

Third. Identify as legal rules that, 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, 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 fact that the judgment must be extended to others if the debate finally brought in the appeal so requires (art. 90.4 LJCA). [...]".

FIFTH.- Considering the cassation appeal to be admitted by this Chamber, the appellant was summoned so that, within thirty days, he could formalise the appeal, which he did, requesting:

"...] consider that this document has been filed and that the appeal against the Judgment of 6 July 2021 of the Chamber for Contentious-Administrative Matters, Eighth Section of the Audiencia Nacional (appeal no. 30/2021) has been formalised, continuing with all its proceedings and ruling on: (i) whether the AEMPS can agree and maintain the blocking measures, and (ii) whether the AEMPS can agree and maintain the blocking measures. 30/2021), continuing the proceedings in all their stages and issuing a judgment in which, with the appeal upheld, it rules on: (i) whether the AEMPS can agree and maintain measures to block the entirety of a mainly informative website 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 Royal Decree 81/2014 and articles 56 and 57 of the TFEU. And agree, with an express order for the respondent Administration to pay the costs: (iii) the revocation of the Judgment under appeal, annulling the Resolution of the AEMPS of 23 September 2020 with 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 appellants were summoned to file their opposition pleadings within thirty days.

The State Administration filed a brief in opposition to the cassation appeal, which ends with a plea:

"...] that, admitting these allegations, this representation of the State be considered OPPOSED to the cassation appeal filed on the contrary and, in due course, declare the cassation appeal to be dismissed, with express imposition of costs on the appellant. [...]".

Likewise, the Public Prosecutor's Office filed a brief expressing its position and requesting 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 matter, it was not deemed necessary to hold a public hearing.

EIGHTH.- By order of 22 June 2022, Judge Mr. Luis María Díez-Picazo Giménez was appointed as Judge Rapporteur and the hearing of 27 September 2022 was scheduled for voting and ruling, at which time the hearing took place, having observed the legal formalities relating to the procedure.

LEGAL FOUNDATIONS

FIRST.- The present appeal is filed by the procedural representation Women on Web International Foundation against the sentence of the Contentious-Administrative Chamber of the Audiencia Nacional of 6 July 2021.

The background to the matter, as it appears from the proceedings referred to this Chamber and so far as is specifically relevant here, is as follows. Women on Web International Foundation (hereinafter, WOW) is an organization based in Canada, whose purpose is to advise women on sexual health and reproductive rights. It has no physical establishment in Spain and operates only electronically through a Spanish-language website.

The Spanish Agency for Medicines and Health Products (hereinafter 'AEMPS'), which is the administrative body with police powers in the medicines sector, was informed that the WOW website offered the possibility of obtaining the medicines 'mifepristone' and 'misoprostol', the marketing of which is prohibited in Spain and, in any event, cannot be administered without a doctor's prescription. The dispatch of these medicines by the aforementioned telematic means to anyone who requested them was not

was presented as a purchase and sale, since the payment of a price was not required. However, it was required that the application be accompanied by a donation in the amount of €50 to €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 it that the marketing of these medicines by telematic means is illegal in Spain. Since WOW did not put an end to 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 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".

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

SECOND.- The contentious-administrative appeal was dismissed by judgment of the Central Contentious-Administrative Court no. 10 of 9 March 2021. It is appropriate to dwell briefly on the fundamental elements of the argumentation of this judgment, which - regardless of whether or not one agrees with its ruling - 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 setting out the facts to be regarded as established, 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 electronic means by asking for a donation, but whether WOW could lawfully offer the medicines 'mifepristone' and 'misoprostol' to be obtained by electronic means, but whether WOW could lawfully offer the medicines 'mifepristone' and

'misoprostol' for a donation.

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 authorisation. According to the lower court, if the answer to this question were negative, it would have to be concluded that the contested administrative act is illegal in any case; and this without the need to examine its substantive legality, i.e., whether any of the legally established factual assumptions that enable the interruption of access to an information society service to be ordered. In short, the lower court 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, he recalls that the relevant regulation is to be found in Law 34/2002, on information society services and electronic commerce, which transposes Directive 2000/31/EC (Directive on electronic commerce) into Spanish law. Article 8 of the aforementioned law lists the principles whose undermining enables the restriction of information society services to be agreed, including "the protection of public health or of natural or legal persons who are consumers or users". And he also points out that, according to art. 11 of the law itself, "the authorisation of the seizure of Internet pages or their restriction when this affects the rights and freedoms of expression and information and others protected in the terms established in article 20 of the Constitution can only be decided by the competent jurisdictional bodies". With this normative basis, the lower court concluded that the requirement of judicial intervention to decide the interruption or restriction of access to websites is not applicable to the present case, understanding that "the contested decision does not agree to any seizure, nor does it affect, as we will see, the rights and freedoms mentioned, since it is limited to requiring the cessation of the activity of selling medicines online". This is undoubtedly the *ratio decidendi of the* first instance judgment: the requirement of judicial intervention of art.
20.5 of the Constitution only comes into play, as indicated in art. 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 the only thing the Administration has done is to order the cessation of an activity of telematic marketing of medicines.

Having established that judicial intervention was not necessary in the present case, the Court of First Instance addressed the substantive analysis of the contested administrative act, concluding that it was in accordance with the law. He observes, in particular, that it falls within the factual situation consisting of the protection of public health, which legally enables the interruption or restriction of access to websites; that the marketing of the medicines referred to above is prohibited in Spain, indicating that the qualification as a "donation" of the consideration requested is not convincing; and that, in any case, the marketing of medicines over the Internet and without the corresponding European Union seal is illegal in Spain.

THIRD.- An appeal was lodged and was rejected by the sentence that is now being challenged in this appeal. The Court of Appeal, in essence, adopts the arguments of the lower court.

FOURTH: The appeal in cassation was prepared and admitted by the First Section of this Court by order of 13 January 2022. The question that it declares to be of objective appeal interest is to determine:

"Whether judicial authorisation is necessary in cases in which the Administration agrees to the measure consisting of 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 sale by telematic means of medicines not authorised for marketing in our country. The scope that, where appropriate, the measure should have taking into account the complexity of the contents of the web page".

FIFTH - In the appeal in cassation, 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 Constitution.

of the European Convention on Human Rights and arts. 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 the same vein, the appellant insists that, although the contested administrative measure ordered the discontinuance of the sale of those medicinal products by telematic means, the effects of the interim measure ordering the discontinuance 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 on appeal, which uphold it, infringe the principle of proportionality: in her 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 unimpeded. In the same vein, the appellant adds that it has always made it clear that the "I need an abortion" section is separate and identified within the website by its own URL, which technically would have made it possible to interrupt access only to that section without difficulty, without affecting the rest of the website.

As a further argument, citing 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. It states that the provision of medical services, which are covered by the abovementioned rules, is at issue here. In that 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 accepts that - as is clear from the judgment at first instance - it 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 brief opposing the appeal in cassation of the State Attorney, after a lengthy review of what has been said in the successive stages of the process, is limited to making several apodictic assertions without making an appreciable argumentative effort. His position is that judicial intervention was not necessary to agree to the interruption of access to the website, and that the administrative act appealed against is perfectly legal and proportionate.

SEVENTH - The Public Prosecutor's Office has been heard, given that the litigation has been processed through the special procedure for the protection of fundamental rights. The Public Prosecutor's Office understands that judicial authorisation for the interruption of access to websites is only required, according to articles 8 and 11 of Law 34/2002 in relation to article 20.5 of the Constitution, when it affects the freedom of information and expression; that is, when the content of the website consists of information or expressions. It is not necessary, in his opinion, when the content of the website does not inform about data or express opinions, but simply operates as a means to carry out an illegal activity. The latter is what, according to the Public Prosecutor's Office, would occur in the present case.

However, the Public Prosecutor's Office considers that the administrative act under appeal, like the judgments at first instance and on appeal upholding it, infringes 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. He therefore concludes that the appeal should not succeed, except with regard to the disproportionality of the measure adopted.

Lastly, the public prosecutor's argument concerning the freedom to provide services must be rejected, since WOW is a Canadian legal person.

EIGHTH.- Addressing the disputed issue, this Chamber has no doubt that the offer to obtain the drugs "mifepristone" and "mifepristone" and

The Court of First Instance and the Court of Appeal were quite right to point out that the marketing of "misoprostol" by telematic means on the "I need an abortion" section of the WOW website constitutes an illegal activity. The Court of First Instance and the Court of Appeal are absolutely right to point out that these are medicines which are not permitted to be marketed in Spain; that, in any event, the telematic marketing of medicines is not permitted, nor is the marketing of medicines which do not bear the European Union stamp; and that the classification as a "donation" of the consideration requested for the sending of the medicines is nothing more than 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 unauthorised medicines - even if it is not technically "marketing" - does not cease to be unlawful.

This means that the present case was perfectly subsumable in the section of art. 8 of Law 34/2002 that allows the interruption of access to websites in order to safeguard public health. The truth is that not even the appellant firmly fights this point, as it is clear from the simple reading of the opposition to the appeal.

However, this indisputable conclusion on the substantive aspect of the subject matter of the dispute does not allow us to avoid two other problems, the examination of which is essential to reach a legally satisfactory solution. One is the one that, in all lucidity, has already been pointed out by the lower court, namely: whether the interruption of access to a website requires judicial authorisation. If that were so, the whole argument on 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 litigation.

The other problem, 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 telemarketing of the medicinal products in question.

NINTH.- In order to adequately frame the first of the problems that have just been pointed out, several considerations should be made. In the first place, articles 8 and 11 of Law 34/2002 require judicial intervention to agree to the interruption of access to websites only when this is constitutionally required. Article 8 is unequivocal when it states that "in all 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, academic freedom and the right to information".

Secondly, it is worth noting that not in all the Member States of the European Union is judicial intervention constitutionally necessary for the seizure of publications and, consequently, the question of whether the interruption of access to web pages requires such judicial intervention does not arise in all of them. This is the reason why Law 34/2002, which - let us not forget - transposes the Directive on electronic commerce, merely refers to the Constitution to determine when judicial intervention in this matter is mandatory.

Thirdly, this leads, as it could not be otherwise, to the core of the question, which is to determine whether and to what extent websites are included in the reservation of jurisdiction of Article 20.5 of the Constitution. This, as is well known, states: "The seizure of publications, recordings and other means of information may only be ordered by virtue of a judicial decision". In this regard, it is obvious that the literal interpretation is insufficient, since the notion of website could not have been in the mind of the Spanish constituent of 1978. Nor does the case law serve as a guide, because the Constitutional Court has not had occasion to pronounce directly on this question, nor should this Court have ever had to address it.

Having made the above considerations, it should be noted that a finalist perspective sheds light on the issue. That art. 20.5 of the Constitution, surely as a reaction to arbitrary and abusive practices of the past, is intended to prohibit the administrative or governmental seizure of publications is undeniable. Thus, what is constitutionally prohibited is not to seize publications that incur in any illegality or 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 art. 20 of the Constitution-, but what is constitutionally prohibited is that the seizure is decided by the Administration alone. As in other reservations of jurisdiction provided for in the constitutional text, the constituent considered it preferable that certain particularly sensitive decisions for the effectiveness of certain fundamental rights should 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, subject only 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 legally complex and intellectually tempered reasoning.

In the light of all of the foregoing, the Board finds that the websites -although not "publications" or "recordings" in the proper sense- fall into the category of "other media". News, data and factual judgements (information), as well as opinions, positions and value judgements (expression) circulate publicly on the Internet; and, in this sense, websites fulfil a function comparable to that of the traditional media of information and expression. It follows that, in principle, art. 20.5 of the Constitution is applicable to the interruption of access to websites.

This statement, however, needs to be qualified: websites cannot be characterized as "information media" when they do not

contain no information or expression, but are merely an instrument for carrying out another activity. Thus, the case under consideration here offers a good illustration of this: making the public aware of 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 a consideration is neither one nor the other. It is simply the use of the website as a means of making a contractual offer and therefore falls outside Article 20.5 of the Constitution. In the opinion of this Court, this constitutional precept comes into play when publications, recordings or other means of information are channels for the broadcasting and circulation of ideas, whether they deal with facts or values. This means that Article 20.5 of the Constitution does not prohibit administrative seizure when the sequestered medium does not contain information or 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. But this is not the reading that the above-transcribed paragraph of art. 8 of Law 34/2002 makes of the call to the judicial authority, which it describes as "guarantor of the right to freedom of expression, the right to literary, artistic, scientific and technical production and creation, 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 other reasons. And given that this Chamber considers that the interpretation of art.
20.5 of the Constitution underlying art. 8 of Law 34/2002 is neither unreasonable nor extravagant, it is in line with it.

It is essential, at this point, to make one thing 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.

expression. Reporting certain information or expressing a certain opinion may be unlawful, in the sense of not being a legitimate exercise of the freedoms of information or expression. But unlawful information or expression is still information or expression and, as such, the disruption of the websites 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 in offering a good or service, but in disseminating mere information, such as instructions for the manufacture of devices, leaks of classified documents, etc.

TENTH.- The other problem that cannot be avoided is, as stated above, whether the interruption of access to the website in order to put an end to an unlawful activity carried out through it should only include that section of the website that is strictly necessary to achieve that purpose. The answer, obviously, must be in the affirmative, since the principle of proportionality requires always resorting to the least invasive or burdensome measure. 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 in terms of so-called "proportionality in the strict sense", i.e. that the cessation of the illegal activity by interrupting access to the website would be more valuable than the interests sacrificed thereby.

It is worth noting, in this vein, 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 proportionality in the strict sense, is predicated regardless of whether or not the Administration can or cannot agree to it on its own. In other words, also when the interruption of websites has to be authorised 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 must be that the Administration can agree to

by itself the interruption of a website, as long as any of the legally enabling circumstances are present, 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 in a website does not exclude the requirement of judicial authorisation to agree to the interruption of access to it. In any case, whatever the authority (administrative or judicial) that orders the interruption of access to the website, it must respect the principle of proportionality and, if technically possible, 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 in relation to the question of objective interest in the appeal, this Chamber considers it appropriate to respectfully draw the attention of the legislator: at least in the contentious-administrative jurisdictional order, there is no procedure for authorising the interruption of websites in all the cases that qualify for it. It is true that until now case law had not had occasion to deal with this problem, but the present case has highlighted the existence of this gap in our procedural legislation.

THIRTEENTH.- Applying the above to the present case, it should be recalled that both the precautionary measure adopted in the administrative proceedings and the final resolution of the same 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, there was information, recommendations and opinions on sexual health and reproductive rights. These other contents of the website are undoubtedly subsumable in the category of information and expression and, therefore, their interruption could not be done legally without judicial authorization. Moreover, organizations that promote so-called "reproductive rights" carry out an activity that, whatever one's assessment of it may be, has a political dimension in contemporary society. Y

This requires special attention from the point of view of freedom of information and freedom of expression.

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

As this Court must now resolve the contentious-administrative appeal, it has already been explained what the defect in the administrative act under appeal is: the AEMPS could not on its own order the interruption of access to the entire WOW website; but it could do so, without the need for judicial intervention, with respect to that section of the website where it offered to obtain the medicines "mifepristone" and "misoprostol" by telematic means in exchange for a purported cash donation. The consequence of this is that, in line with the suggestions of the Public Prosecutor's Office, the contentious-administrative appeal should be upheld in part, so that the resolution of the Director of the AEMPS of 23 September 2020 should be annulled in all that exceeds the mere interruption of access to the aforementioned section of the website. The interim measure adopted in the administrative proceedings should also be annulled, in so far as it retains any effect.

That conclusion is not altered by the fact that the grounds of the contested administrative act state that 'there is nothing to prevent the interested party, in the exercise of his freedom of expression, from freely reproducing and expressing those contents which he considers to be mere information on another website, or alternatively, from maintaining those contents on the website which is the subject of the present proceedings, provided that he removes or blocks access to those sections which allow Spanish consumers to purchase medicines'. Even ignoring the enormous vagueness of this

In the case at hand, it is true that the administrative act provided for the discontinuation of WOW's entire website, something which, by the way, has been acknowledged by the State Attorney.

FOURTEENTH.- Pursuant to Article 93 of the Jurisdictional Law, in the appeal in cassation, each party shall bear its own costs. As for the costs of the instance and appeal and in accordance with art. 139 of the same legal body, this Chamber considers that it is not appropriate to impose them given that the matter presented a notable juridical complexity.

F A L L O

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

FIRST.- The appeal filed by the Women on Web International Foundation against the sentence of the Administrative Chamber of the Audiencia Nacional of 6 July 2021, which we annul, is admissible.

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

THIRD.- To partially uphold the contentious-administrative appeal filed by the Women on Web International Foundation against the resolution of the Director of the Spanish Agency of Medicines and Health Products of 23 September 2020, which we annul in all that exceeds the interruption of access to the section of the website www.womenonweb.org where the medicines "mifepristone" and "misoprostol" can be obtained by telematic means, agreeing to

also annul, if any, the interim measure adopted by the Spanish Agency for Medicinal Products and Medical Devices on 25 June 2020.

FOURTH.- Not to impose costs.

Notify this resolution to theparties andinsert it in the legislative collection.

It is so agreed and signed.