

ORGANIC LAW XX/2025, OF XX XXXXXXX, REGULATING THE RIGHT TO RECTIFICATION

EXPLANATORY NOTE

I

Organic Law 2/1984, of 26 March, regulating the right to rectification, has fulfilled the objective of developing and specifying the content of a right which, despite not being expressly included in the Spanish Constitution, fulfils an essential function as a tool for the protection of certain fundamental rights, such as the right to honour and to one's own image, and the right to freely communicate and receive truthful information by any means of dissemination.

As a legal construct, this right is conceived as the right of any person concerned by the information appearing in social media, about facts that they consider inaccurate and the dissemination of which they consider may harm them, to rectify such information with their version of those facts and to request the dissemination of their version in the same media.

During the many years that Organic Law 2/1984, of 26 March has been in force, the Constitutional Court has been refining the nature and meaning of the right to rectification, emphasising its dual legal form. On the one hand, as a means that allows the person mentioned to protect their right to honour, or to very personal assets associated with their dignity, social recognition or public respect, against information that affects how that person is presented to public opinion. And, on the other hand, as a complement to the information offered to the public, encouraging the free formation of public opinion by providing a "counter-version" of the facts contained in the information disseminated by a communication medium. In this sense, the Constitutional Court explains that the exercise of the right to rectification cannot be considered an impediment to the freedom of information "but rather promotes this freedom", because rectification "allows [the public] to contrast competing versions, as long as none has been accredited as accurate, or discredited as definitively false, i.e. with the effects of res judicata" (Constitutional Court Ruling 139/2021 of 12 July, Legal Basis 4, which synthesises the settled opinion on constitutional law).

In accordance with its legal construct as found in Organic Law 2/1984 of 26 March, which the present Organic Law preserves, this right is not identified as imitating a power of reply in the broad sense, since it is limited to the possibility of contesting a certain factual basis. In other words, it is not about the possibility of replying to opinions conveyed by a media outlet, but about the power to rectify the facts expressed in a given piece of information, so that the right holder can give their own version of those facts. Its role is limited to making both versions available to the public. Except in the case of manifestly uncertain rectifications, the rectification does not in principle enter into the veracity or falsity of the information originally disseminated or of the subsequent rectification, since that is an aspect elucidated by other legal mechanisms available to individuals. For this reason, the exercise of the right of rectification, which is organised through a quick and simple procedure, is compatible with other criminal, civil or other claims.

More than forty years after the enactment of Organic Law 2/1984 of 26 March 1984, the changes in the media resulting from the use of new technologies have been remarkably profound, affecting both the subjects who prepare and publish information, and the channels of dissemination and even the content and form of the messages.

In addition to the traditional media - print, radio and television - the digital press has obtained a strong foothold. Moreover, a large volume of information is currently disseminated through online platforms and digital services, which have become regular channels for the dissemination of content. This situation poses new challenges for the exercise of the right of rectification and for the safeguarding of fundamental rights.

Another relevant change is that the information circulating in these new media often comes from users or individuals with a large number of followers, who, as opinion makers, play a role very similar to that played up to now by journalists. In other cases, these media disseminate messages from individuals who remain anonymous or information that has been generated through artificial intelligence.

In this new context, changes in society's communication process also affect the structure and content of the messages. On the one hand, in order to attract the attention of the audience and encourage them to continue to

pay attention, there is a tendency to simplify the content of the messages and sometimes to give them an emotional slant to the detriment of the complete and objective reporting of the facts. On the other hand, the problem of false information or fake news is increasing in social relevance.

Another circumstance to take into account is that information circulating on digital platforms and media is disseminated and replicated with enormous ease and can reach any part of the world at an extraordinary speed. The specific problem of the right to rectification on the Internet has been addressed in Spanish law, albeit incidentally and in a narrow view, by Organic Law 3/2018, of 5 December, on the Protection of Personal Data and Guarantee of Digital Rights, Article 85 of which expressly recognises this right and defines its content as part of the regulation of the "Guarantee of digital rights" which it incorporates in its Title X.

At present, in order to strengthen the effectiveness of the right to rectification, especially in digital environments, a more complete and specific regulation is nevertheless necessary to update the system contained in Organic Law 2/1984 of 26 March, so as to cover the actual circumstances of the publication of information on digital media and online platforms.

In this context, in order to strengthen the right to freedom of expression and to guarantee the right to truthful information enshrined in Article 20 of the Spanish Constitution, the Government has also adopted the so-called "Action Plan for Democracy", which implements and elaborates on the recommendations that have already been adopted by the European Commission in 2020 and 2023.

Thus, among the different core lines of action around which the Plan is structured is the strengthening of the transparency, plurality and accountability of our information ecosystem. In keeping with this purpose, a need has also been identified to update the regulatory framework for the right to rectification.

In essence, the present organic law fulfils this purpose by updating the applicable regulations and facilitating the exercise of this right.

This organic law preserves a large part of the regulations contained in Organic Law 2/1984, of 26 March. The main changes apply specifically to the case in which the information to be rectified has been published in digital media or online platforms; in the case of online platforms, however, it applies only to users of special relevance, who achieve a level of impact in dissemination of information, equal to or greater than the social communication media. By the same token, the reform has been used to introduce different adjustments: some of these adjustments address the need to facilitate the exercise of the right to rectification, while others serve to bring the regulation of this right into line with the legislative changes that have taken place since 1984 and also to incorporate into the text of the law some contributions from case law from that period.

The most relevant innovations would be the following: in Article 1, when delimiting the origin of the information to be rectified, reference is made, together with social media -including digital media-, to online platform users of special relevance.

These are users who disseminate information and other content through these platforms and who, due to the number of their followers, enjoy a reach and an influence comparable to that of the traditional media, which makes them true shapers of communication and public opinion. Therefore, these users must remain subject to possible rectification of their contents.

The concept of online platform is taken from Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October on a Single Market for Digital Services, which amends Directive 2000/31/EC (Digital Services Regulation), which in turn defines this concept in its Article 3(1)(i).

The same Article 1 also contains two new additions with regard to the persons entitled to this right. On the one hand, an express reference is made to persons with disabilities, in terms that are consistent with Law 8/2021 of 2 June, which reforms civil and procedural legislation for the support of persons with disabilities in the exercise of their legal capacity. On the other hand, the list of individuals who may exercise the rectification of

information concerning deceased persons has been extended to include the closest family members and for the person expressly designated by the deceased for that purpose, if any.

Article 2, on the exercise of the right to rectification, contains three important new additions. The first is the extension of the period for requesting the rectification, which in the general case is increased from seven to ten calendar days, to facilitate the exercise of the right. In the particular case of information published by digital media or by users of particular relevance on online platforms, a longer period of 20 calendar days is set, which takes into account the fact that in the digital context information is accessible for a longer period than when it is published in a traditional medium.

Secondly, the processing of the request for rectification is adapted to the type of medium in which the information to be rectified has appeared.

For traditional communication media, the current procedure is maintained, which consists of forwarding the claim to the specific communication medium in any way that allows its date and receipt to be recorded, although the requirement that the forwarded claim be specifically addressed to the director of the communication medium is dispensed with, since this individual is not always easily identified in the organisation of certain media. In this way, the rectification can be addressed to the specific communication medium or to its director, as representative of the former.

For online platforms, the procedure is adapted to their characteristics and mode of operation. It is often the users of these platforms who act as communicators of the opinions and information disseminated in this type of digital environment and decide autonomously what to publish on their channels or profiles, and therefore their activity is in many ways comparable to editorial decision-making or the exercise of editorial responsibility traditionally applicable to the communications media (and recognised in Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April, which establishes a common framework for media services in the internal market and amends Directive 2010/13/EU [Media Freedom Regulation] or in General Law 13/2022 of 7 July on Audiovisual Media). In particular, this is the case of the users of particular relevance mentioned above.

Adaptation to this new digital environment requires that, when it is the users of online platforms who decide autonomously - and effectively control - the information and content that is published on the profiles or channels of online platforms that they manage, the right of rectification must be asserted against such users, as they are responsible for the management of the profile or channel created on the online platform, as well as for the selection and organisation of the content that is published within it.

For this reason, the text or content of the rectification will be sent to the user who has effective control over the selection of the content or information, within the same period and following the procedural steps established for the case of digital communication media.

In order to make the exercise of the right to rectification more effective, this regulation establishes the obligation for online platforms to have an easily visible and accessible mechanism that makes available to the applicant, whether or not the applicant is a user of the platform in question, a tool that ensures the direct and immediate transmission the rectification, as well as the acknowledgement of receipt. The aim of this is to avoid imposing excessive obligations on platforms or, as regards the exercise of right to rectification, to prevent the platforms from becoming involved in a possible dispute between the parties regarding content that the platforms simply convey in their capacity as intermediaries. Accordingly, this obligation is also laid down for digital media in a manner consistent with the way in which they disseminate information.

Thirdly, although the provision maintains the basic principle derived from the very nature of the right to rectification that rectification must be limited to the facts mentioned in the information, and that it may not be accompanied by opinions or assessments, there is a new proviso that introduces an important nuance in line with the most recent case law, of allowing such opinions or assessments to be incorporated when they are essential to understand the context and cannot be decoupled from the facts.

Article 3 maintains the current system of publication of the rectification by the specific communication medium, based on the speed, integrity, equivalent level of impact and non-remunerated nature of the publication. However, some additional specific regulations have been

established depending on the medium where the information has been published.

In the case of information appearing on a platform, the party obliged to disclose the rectification shall be the user who exercises effective control over the selection of the content or information, which reflects a concept taken from Law 13/2022, of 7 July, on Audiovisual Media in general. The party obliged to disclose the rectification shall fulfil their obligation by publishing the rectification in a visible place together with the original information and an express notice that such publication results from the exercise of the right to rectification.

When the information has been disseminated by digital communication media, the continuing availability of the information requires two actions for the effectiveness of the rectification: the text of the rectification shall be published by means of a new link to the original information, with a level of impact similar to that of the original information, and in addition, the digital communication medium will publish, in a visible place together with the original information, a notice that makes it evident that such information has been rectified, incorporating a link to the text of the rectification.

When the information has been disseminated on multiple channels, whether communications media or online platforms, the rectification must be published on all of them in compliance with the requirements applicable to each. This measure recognises that content is usually disseminated on multiple platforms and seeks to ensure that the rectification reaches the same audience as the initial information.

Articles 4 to 7 refer to the procedural rules governing proceedings before the civil courts, which may be brought when the affected person considers that their right has not been properly fulfilled by the person with this obligation.

As was the case with Organic Law 2/1984, of 26 March, this organic law assumes the regulation of oral proceedings with the same specific characteristics, pursuant to Law 1/2000, of 7 January, on Civil Procedure.

The main new development in procedure is the permission to lodge a succinct application, thereby waiving the submission of a written statement of defence, in order expedite the proceedings.

By the same token, a consistent line of case-law, which allows the court to engage in weighing the contents and to order the partial publication of the rectification, while suppressing non-essential opinions or assessments has also been taken into account. Thus the court would accept opinions and assessments that are essential to an understanding of the context, thereby preventing that rectification texts that have failed to completely suppress opinions or value judgements should always be ineffective.

Finally, an amendment is incorporated to adjust the regulation of the right to rectification on the internet contained in Article 85(2) of Organic Law 3/2018, of 5 December, on Personal Data Protection and Guarantee of Digital Rights, in order to bring its content into line with this organic law.

III

In drafting this Organic Law, the principles of good regulation referred to in Article 129 of Law 39/2015 of 1 October on the Common Administrative Procedure of Public Administrations have been observed; namely, the principles of necessity, effectiveness, proportionality, legal certainty, transparency and efficiency.

With regard to the principles of necessity and effectiveness, from the foregoing it follows that there is a need for each of the measures adopted, which are considered to contribute to the greater effectiveness of the right to rectification under the new circumstances resulting from the dissemination of information in the digital environment.

In accordance with the principle of proportionality, care has been taken to ensure that the scope and content of the new obligations imposed on online platforms are strictly necessary to ensure the effectiveness of the right to rectification when information is disseminated through such platforms.

By the same token, the law meets the requirements of legal certainty because it harmonises the regulation of this right with the regulatory reforms that have taken place since 1984 affecting its content, while at the

same time incorporating into its positive regulation some provisions that have arisen gradually based on established judicial practice.

In accordance with the principle of transparency, the procedure for drawing up the present organic law has made it possible for potentially affected parties to participate. Likewise, the regulation defines clearly the objectives of the measures that it incorporates and both the factual part of the regulation and the RIA report contain an explanation of the reasons that justify such measures.

In application of the principle of efficiency, the law does not incorporate new administrative burdens, and its content does not affect public expenditure.

This organic law has followed a procedure pursuant to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015, which lays down a procedure for the provision of information in the field of technical regulations and of regulations on information society services, and pursuant to Royal Decree 1337/1999 of 31 July, which governs the sending of information in the field of technical regulations and standards and regulations related to information society services.

Article 1. Object and subjects of the right to rectification.

1. Any individual or legal entity has the right to rectify information on facts relating to themselves, whether directly or indirectly, which they consider to be inaccurate and the disclosure of which is likely to cause them harm, that is disseminated by any social communications medium, or by users of particular relevance on online platforms.

For the purposes of this Organic Law, a user of an online platform who, at the time of disseminating the information, has a number of followers equal to or greater than 100,000 on a single platform; or a number of followers equal to or greater than 200,000, on an aggregate basis, taking into account all platforms on which the user conducts their activity, shall be considered to be a user of special relevance.

2. The right to rectification may be exercised by the person concerned or by their representatives. People with disabilities may exercise this right on their own, or with their voluntary, court-appointed or de facto support.

If the person in question has died, then the right to rectification may be exercised by their spouse or civil partner; their descendants, ascendants, siblings or heirs; or by the person whom the deceased had expressly designated, if any.

Article 2. Exercise of the right.

1. The right shall be exercised by sending the text or content of the rectification to the director of the communication medium, or directly to the medium itself, within ten calendar days of the publication or dissemination of the information to be rectified, in a manner that permits recording of the date and acknowledgement of receipt.

The period shall be 20 calendar days in the case of information published by digital communication media or by users of particular relevance on online platforms.

For this purpose, the digital communications media shall have in place an easily accessible and visible mechanism that allows claimants to directly and immediately forward the text or content of the rectification, ensuring a record of the date of transmission and acknowledgement of receipt.

2. In the case of information published by users of particular relevance on online platforms, the rectification shall be addressed to the user exercising effective control over the selection of the content or information.

Online platforms through which information with the characteristics described in Article 1(1) may be disseminated shall have in place a mechanism provided for in the previous subparagraph for the transmission of the rectification.

3. The rectification shall be limited to the facts of the information to be rectified and shall not incorporate opinions or assessments by the person concerned, unless such opinions or assessments are essential to understand the context and cannot be decoupled from the facts. The length of the rectification shall not substantially exceed the length of the information to

be rectified, unless absolutely necessary.

Article 3. Publication of the rectification.

1. Whenever the right is exercised in accordance with the provisions of the previous article, the communication medium or, in the case of information published on online platforms, the user who exercises effective control over the selection of the content or information, must publish or disseminate the rectification in full, within three calendar days of its receipt, with a level of impact similar to that with which the information that is corrected was published or disseminated, without comments or assessments.

2. If the information to be corrected was disseminated in a publication that only appears at regular intervals and hence does not allow the publication of the correction within the specified period, the correction shall be published in the following issue.

3. If the information to be rectified has been disseminated on a radio or television programme which, because of its broadcasting scheduling, does not allow the rectification to be disseminated within three calendar days, the person requesting the rectification may demand that it be disseminated in another programme with a similar audience and level of impact within that period.

4. If the information to be rectified has been disseminated on online platforms, compliance with the provisions of this article shall be ensured by publishing the rectification in a visible place together with the original information, including after the original information an express notice that this is a case of exercise of the right to rectification.

If it is not possible to publish the rectification together with the original information, then the rectification shall be disseminated in another appropriate way that makes it known to a similar audience with a similar level of impact.

5. If the information has been disseminated by digital communications media, then the rectification shall be published through a new link to the original information with a similar level of impact to that enjoyed by the publication or dissemination of the information that is rectified.

Furthermore, in this same case, the digital communications media shall publish in their digital archives a notice clarifying that the original information has been rectified by the person concerned. This notice shall be displayed in a visible place together with the original information and shall include a link to the text of the rectification.

6. If the information has been disseminated in different communications media or on different online platforms, then the rectification must be published or disseminated in all the media and on all the platforms on which the information has been disseminated or published, so as to comply with the provisions of the corresponding sections of this article, as appropriate for each of the channels used for dissemination.

7. The publication or dissemination of the rectification will always be free of charge.

Article 4. Period for filing the claim and jurisdiction.

If, within the time limits indicated in the previous article, the rectification has not been published or disseminated, or express notice has been given that it will not be disseminated, or it has been published or disclosed without complying with the provisions of the previous article, then the injured party may file the claim for rectification before the court corresponding to their domicile within seven working days, and if their domicile is not in Spanish territory, then the claim must be filed, at the complainant's choice, before the court corresponding to the location where the communication medium has its headquarters, branch office or establishment, or before the court corresponding to the domicile of the user entitled to select the content or information on an online platform.

Article 5. Judicial procedure for rectification.

1. The claim shall be brought by means of a succinct application, (no lawyer or court representative shall be required), together with the rectification and the verification that the rectification was sent within the prescribed period; the corrected information shall also be submitted if it was disseminated in writing; or, in other cases, the most accurate possible reproduction or description of the information shall be submitted.

2. The court shall, on its own authority and without granting a hearing to the defendant, issue an order dismissing the claim if it considers that it lacks jurisdiction or that the rectification is manifestly inadmissible. Where it considers that it does not have jurisdiction *ratione loci*, after hearing the Public Prosecutor's Office, it shall refer the proceedings to the court which it considers to have jurisdiction *ratione loci*.

Otherwise, it shall call the claimant pursuing rectification and the communications medium, or the user exercising effective control over the selection of the content or information if the content or information has been disseminated on an online platform, to a hearing.

3. The hearing shall be held within seven working days of the filing of the claim. The summons for the hearing shall be served pursuant to Law 1/2000, of 7 January, on Civil Procedure, with the copy of the claim being sent to the defendant.

Article 6. Procedure.

1. The trial shall be conducted pursuant to Law 1/2000, of 7 January, on Civil Procedure for oral judicial hearings, with the following modifications:

- a) The trial shall be scheduled without allowing for a procedure giving the defendant the opportunity to respond in writing to the claim.
- b) The court may, on its own authority, require the defendant to transmit or submit the information at issue, or a recording or written reproduction of such information.
- c) Only evidence that is relevant and may be examined at the hearing shall be admissible.
- d) Judgement shall be rendered on the same day or on the day following the trial.

2. The operative part shall be limited to either refusing the rectification or ordering its publication or dissemination in the manner and within the time periods laid down in Article 3, counting from the date of serving notice of the judgement. Payment of the costs shall be imposed on the party whose petitions have been rejected in their entirety.

Nevertheless, the judgement may order the partial publication of the rectification, eliminating opinions or value judgements, and allow the inclusion of such opinions or value judgements that are essential to understand the context and cannot be decoupled from the facts.

3. The judgement upholding the petition for rectification must be complied with on its own terms.

4. The aim of these proceedings is compatible with the filing of a criminal, civil, personal data protection claim or any other claims to which the party injured by the information disseminated may be entitled.

Article 7. Appeals system.

In these judicial proceedings, the appeals system established in Law 1/2000, of 7 January, on Civil Procedure, shall apply.

Sole transitional provision. Rules applicable to pending judicial proceedings.

Judicial proceedings relating to the exercise of the right to rectification which were pending at the entry into force of this Organic Law shall continue to be conducted in accordance with the regulations in force on the date on which they were initiated.

Sole repealing provision. Repeal of regulations.

Organic Law 2/1984, of 26 March 1984, which regulates the right to rectification, and any other regulations of the same or lower rank that contradict the provisions of this Organic Law are hereby repealed.

First final provision. Amendment of Organic Law 3/2018 of 5 December on the Protection of Personal Data and the guarantee of digital rights.

Article 85 (2) of Organic Law 3/2018, of 5 December, on Personal Data Protection and the guarantee of digital rights, is amended as follows:

"2. Those responsible for social networks and equivalent services shall make it possible to exercise of the right to rectification in accordance with the requirements and procedures set out in Organic

Law xx/xx of xx xxxx, which regulates the right to rectification, and shall adopt appropriate protocols to deal with users who disseminate content that violates the right to honour, and to personal and family privacy on the Internet and the right to freely communicate or receive truthful information.

When the digital communications media must comply with a request for rectification made against them, they must always proceed in accordance with the provisions of Organic Law xx/xxxx, of xx xxxx, which regulates the right to rectification."

Second final provision. Areas of competence.

This organic law is issued under the powers that Article 149(1)(1)(a), 8(a) and 27(a) of the Spanish Constitution attributes to the State for regulating the basic conditions that guarantee the equality of all Spaniards in the exercise of rights and in the fulfilment of constitutional duties; civil legislation and basic regulations governing the press, radio and television and, in general, all social communication media, without prejudice to the powers that the Autonomous Communities are entitled to develop and exercise.

The most relevant obligations in this case imposed on online platforms and users are also covered by the exclusive competence of the State in telecommunications matters, pursuant to Article 149(1)(21)(a) of the Spanish Constitution.

Articles 4 to 7 and the single transitional provision are covered by the State competence for procedural regulations, established in Article 149(1)(6)(a) of the Spanish Constitution.

Third final provision. Development of regulations.

The government is hereby authorised to issue any regulatory provisions required for the development and application of the present organic law.

Fourth final provision. *Entry into force.*

This Organic Law shall enter into force on the twentieth day following that of its publication in the Official State Gazette.