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Right to be forgotten – new personal right in digital EU market



Zagreb, 22 March 2016, Dr. Rajko Knez

Introduction: Issues raised by the development of the digitalization:

- issues that we were not aware in the past
- information become ever increasing market value
- with huge interest of the capital
- having immediate cross border elements
- having *B. Straisand* effects
- where ISP are not without the responsibility
- where filtering of information is wanted
- where freedom of expression have lax borders
- where privacy becomes vulnerably
- where personal dignity can easily be attacked/destroyed
- where it is hard to be forgotten

Charter of fundamental rights of the EU

Article 8:

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Personal data v. right to speech/info

- a **broad fundamental** rights obligation to protect personal data under the Charter
- processing personal data shall be in line with secondary law...i.e. only for **specified, explicit and legitimate purposes**; **fairly and lawfully**; **only as long as necessary** (Dir. 95/46 on personal data)
- **Abstract terms, enacted long before the Charter**

The case of Mr. Gonzalez opened the Pandora's box



The case concerned a reference for a preliminary ruling made by the Spanish High Court to the CJEU, which arose out of a dispute between Google Inc and Google Spain on the one hand, and *Mr Gonzalez* and the *Spanish Data Protection Agency* on the other. The dispute began when he lodged a complaint with the *Spanish DPA* against a daily newspaper, *La Vanguardia*, as well as against *Google Inc* and its *Spanish subsidiary, Google Spain*, for failure to protect his privacy.

The basis for complaint was that, whenever a Google search of his name was carried out, the top results listed linked the Internet user to two property auction notices for the recovery of social security debts that he had owed **16 years earlier**, which still appeared on *La Vanguardia's* website. The applicant sought to obtain an order to the effect that the **newspaper should alter, delete, or protect this information**, and that **Google should either delete or conceal the links to those pages**.

The CJEU

- The CJEU decided (diff. as AG):
 - the search engines are „processing personal data“
 - Google is a „controller of the data“
 - processing personal data through the name & search engine can affect the personal data tremendously
 - individual can claim to remove his data from the search list – as a matter of principle
 - but the fair balance needs to be found: between inter. users and individual's data protection
 - *the difference shall be made between public persons and individuals (i.e. information of public relevance)*
 - economic interest of the inform. holder is in the backstage

The judgement

- is controversial
- ... you either like it or hate it
- to certain extent different to the ECHR approach
- Google reacted immediately












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-  Image Search
-  Google Photos and Picasa Web Albums
-  YouTube

Lots of harsh critiques*

Case comment: Google Spain SL, Google Inc v Agencia Espanola de Proteccion de Datos, Mario Costeja González

Guy Vassall-Adams, Matrix
Chambers

This important judgment concerns the interpretation of Directive 95/46/EC (the Data Protection Directive) and was handed down by the Grand Chamber of the European Court of Justice on 14 May. Although the ruling is of



*most critiq. come from US,
where 9 of 10 (sic) would like
to be forgotten?!

This judgment will affect not only Google and other search engines, but potentially all websites sharing information with the public which can't avail themselves of a specific defence under the Directive. The ramifications are enormous. Operators of websites in Europe will be drawn into endless arguments with individuals about whether there is a specific public interest in publication of that specific piece of information, even where it is neither private nor prejudicial. It appears that the court never asked itself if these large corporations can be relied on to protect the public interest in freedom of expression, taking a principled stance in response to unmeritorious complaints, as opposed to simply following the easy (and cheap) course of erasing information on request. Across the Atlantic and around the world other countries will look on us with bemusement as they read information which we are denied. This judgment is profoundly harmful to the operation of the internet and a betrayal of Europe's great legacy in protecting freedom of expression.

Analysis

- Google Spain is a „Copernicus revolution“
- CJEU has **lowered protection** of the freedom of expression and the right to be informed but...
- freedom of speech and right to information – when it comes to individual's name, is **clearly limited**
- **ECHR has diff. standards** to limit the right to be informed (particularly strong reasons must be provided to justify limitations... (Case 33846/07, *W & S v. Poland*)
- **proportionality** is used... the criteria is whether the information is in public interest

- **information can be seen as a product** of certain market value and the CJEU does not mind to limit it... in case of individuals at the one hand and private corporations (making profit with information) on the other
- media/info/press needs, **finally, not to be favored**
- **irrelevant and unwanted data... shall be forgotten**
- currently the one and only remedy against „improper freedom of speech“ in case of **hidden servers**



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Pianist Dejan Lazic demands bad review be removed from Google under EU 'right to be forgotten' ruling



(Foto: Reuters)

Right to be forgotten

□ is he right?

JENN SELBY | Sunday 02 November 2014



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Disgruntled classical pianist Dejan Lazic probably wasn't expecting an entire article in response to his request for a 2010 review on his performance to be removed under the European Union "right to be forgotten" ruling.

But then, the *Washington Post* weren't expecting such an ask from the Croatian-born maestro either – the first of its kind the publication has ever received.

The original review was written by critic Anne Midgette. The *Post* described her words on Lazic as "tepid" and "peppered" with citations on his achievements.