CJEU, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, Case C?131/12

Deciding bodies and decisions

CJEU, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, Case C?131/12
France, Tribunal de Grand Instance Paris, ordonnance de référé, 16 September 2014, n° 14/55975
France, Tribunal de Grand Instance Paris (ord. réf.), 24 novembre et 19 décembre 2014 - Marie-France M. cl Google France et Google Inc.
Netherlands, Rechtbank Amsterdam, 18 september 2014, ECLI:NL:RBAMS:2014:6118
Netherlands, Rechtbank Amsterdam, 11 march 2015, C/13/563401/HA ZA 14-413, ECLI:NL:RBAMS:2015:1958
Netherlands, Rechtbank Den Haag, 12 januari 2017, ECLI:NL:RBDHA:2017:264
Germany, Urteil des Oberlandesgerichts Hamburg vom 7 Juli 2015 (Az. 7 U 29/12)
Belgium, Cour de cassation, C.15.0052.F, 29 avril 2016
UK, Information Commissioner’s Of?ce, Enforcement Notice to Google Inc., 18 August 2015

France, Tribunal de Grand Instance Paris, ordonnance de référé, 16 September 2014, n° 14/55975[1]

France, Tribunal de Grand Instance Paris (ord. réf.), 24 novembre et 19 décembre 2014 - Marie-France M. cl Google France et Google Inc.[2]

Netherlands, Rechtbank Amsterdam, 18 september 2014, ECLI:NL:RBAMS:2014:6118[3]

Netherlands, Rechtbank Amsterdam, 11 march 2015, C/13/563401/HA ZA 14-413, ECLI:NL:RBAMS:2015:1958[4]

Netherlands, Rechtbank Den Haag, 12 januari 2017, ECLI:NL:RBDHA:2017:264[5]

Germany, Urteil des Oberlandesgerichts Hamburg vom 7 Juli 2015 (Az. 7 U 29/12)[6]

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[1] English summary of the case available at

[2] Emglish summary of the case available at

[3] English summary of the case available at

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Area of law

Freedom of expression - data protection

Subject matter

Which is the balance between freedom of expression and data protection in case of past press publications?

Is there a different proportionality test in case of search engines and news outlets?

Which are the available remedies in case of violation of the right to data protection?

Summary Facts Of The Case

In 1998 the Spanish newspaper La Vanguardia published two announcements in its printed edition regarding the forced sale of properties arising from social security debts. The announcements were published on the order of the Spanish Ministry of Labour and Social Affairs and their purpose was to attract as many bidders as possible. A version of the edition was later made available on the web.

One of the properties described in the newspaper announcements belonged to Mario Costeja González, who was named in the announcements. In November 2009, Costeja contacted the newspaper to complain that when his name was entered in the Google search engine it led to the announcements. He asked that the data relating to him be removed, arguing that the forced sale had been concluded years before and was no longer relevant. The newspaper replied that erasing his data was not appropriate since the publication had been on the order of the Spanish Ministry of Labour and Social Affairs.

Costeja then contacted Google Spain in February 2010, asking that the links to the announcements be removed. Google Spain forwarded the request to Google Inc., whose registered office is in California, United States, taking the view that this was the responsible body.

Costeja subsequently lodged a complaint with the Spanish Data Protection Agency (AEPD) asking both that the newspaper be required to remove the data, and that Google Spain or Google Inc. be required to remove the links to the data. On 30 July 2010, the Director of AEPD rejected the complaint against the newspaper but upheld the complaint against Google Spain and Google Inc., calling on them to remove the links complained of and make access to the data impossible.

Google Spain and Google Inc. subsequently brought separate actions against the decision before the Audiencia Nacional. The Audiencia Nacional joined the actions and stayed the proceedings pending a preliminary ruling from the CJEU on a number of questions regarding the interpretation of the Data Protection Directive:

“1. With regard to the territorial application of Directive [95/46] and, consequently, of the Spanish data protection legislation:

(a) must it be considered that an “establishment”, within the meaning of Article 4(1)(a) of Directive 95/46, exists when any one or more of the following circumstances arise:

- when the undertaking providing the search engine sets up in a Member State an office or subsidiary for the purpose of promoting and selling advertising space on the search engine, which orientates its activity towards the inhabitants of that State, or
- when the parent company designates a subsidiary located in that Member State as its representative and controller for two specific filing systems which relate to the data of customers who have contracted for advertising with that undertaking, or
- when the office or subsidiary established in a Member State forwards to the parent company, located outside the European Union, requests and requirements addressed to it both by data subjects and by the authorities with responsibility for ensuring observation of the right to data protection, even where such collaboration is engaged in voluntarily?

(b) Must Article 4(1)(c) of Directive 95/46 be interpreted as meaning that there is “use of equipment … situated on the territory of the said Member State”:

- when a search engine uses crawlers or robots to locate and index information contained in web pages located on servers in that Member State, or
- when it uses a domain name pertaining to a Member State and arranges for searches and the results thereof to be based on the language of that Member State?

(c) Is it possible to regard as a use of equipment, in the terms of Article 4(1)(c) of Directive 95/46, the temporary storage of the information indexed by internet search engines? If the answer to that question is affirmative, can it be considered that that connecting factor is present when the undertaking refuses to disclose the place where it stores those indexes, invoking reasons of competition?

(d) Regardless of the answers to the foregoing questions and particularly in the event that the Court … considers that the connecting factors referred to in Article 4 of [Directive 95/46] are not present:

- must Directive 95/46 … be applied, in the light of Article 8 of the [Charter], in the Member State where the centre of gravity of the conflict is located and more effective protection of the rights of … Union citizens is possible?

2. As regards the activity of search engines as providers of content in relation to Directive 95/46 …:

(a) in relation to the activity of [Google Search], as a provider of content, consisting in locating information published or included on the net by third parties, indexing it automatically, storing it temporarily and finally making it available to internet users according to a particular order of preference, when that information contains personal data of third parties: must an activity like the one described be interpreted as falling within the concept of “processing of … data” used in Article 2(b) of Directive 95/46?

(b) If the answer to the foregoing question is affirmative, and once again in relation to an activity like the one described must Article 2(d) of Directive 95/46 be interpreted as meaning that the undertaking managing [Google Search] is to be regarded as the “controller” of the personal data contained in the web pages that it indexes?

(c) In the event that the answer to the foregoing question is affirmative: may the [AEPD], protecting the rights embodied in [Article] 12(b) and [subparagraph (a) of the first paragraph of Article 14] of Directive 95/46, directly impose on [Google Search] a requirement that it withdraw from its indexes an item of information published by third parties, without addressing itself in advance or simultaneously to the owner of the web page on which that information is located?

(d) In the event that the answer to the foregoing question is affirmative: would the obligation of search engines to protect those rights be excluded when the information that contains the personal data has been lawfully published by third parties and is kept on the web page from which it

originates?
3. Regarding the scope of the right of erasure and/or the right to object, in relation to the “derecho al olvido” (the “right to be forgotten”), the following question is asked: must it be considered that the rights to erasure and blocking of data, provided for in Article 12(b), and the right to object, provided for by [subparagraph (a) of the first paragraph of Article 14] of Directive 95/46, extend to enabling the data subject to address himself to search engines in order to prevent indexing of the information relating to him personally, published on third parties’ web pages, invoking his wish that such information should not be known to internet users when he considers that it might be prejudicial to him or he wishes it to be consigned to oblivion, even though the information in question has been lawfully published by third parties?”

The CJEU ruled that an Internet search engine operator is responsible for the processing that it carries out of personal data which appear on web pages published by third parties, upholding a right of erasure.
Concerning the obligations and duties of the operator of a search engine, the court held that in the present case Article 7(f) of the directive, relating to legitimacy of processing, requires a balancing of the opposing rights and interests of the data subject and the data controller taking into account art 7 and 8 CFR.
Article 14(a) of the Directive, relating to the data subject's rights, allows the data subject, at least in the cases covered by articles 7(e) and 7(f), to object at any time on compelling legitimate grounds relating to his particular situation to the processing of data relating to him, save where otherwise provided by national legislation. Article 12(b) of the directive, relating to the data subject's right of access to the data, allows the data subject to request erasure of the data. Such request may be made directly of the controller, who must then duly examine the merits of the request. If the request is not granted, the data subject may then direct the request to a supervisory authority or the judicial authority so that it carries out the necessary checks and orders the controller to take specific measures accordingly.
Regarding the question relating to the so-called right to be forgotten, the court held that the processing of data which is "inadequate, irrelevant or excessive" (i.e. not merely inaccurate) might also be incompatible with the directive. In such cases, where the data is incompatible with the provisions of article 6(1)(e) to (f) of the directive, relating to data quality, the information and links in the list of the results must be erased. It is not necessary that the information is prejudicial to the data subject.

The decision of the CJEU had a big impact on the jurisprudence of national courts which depending on the facts of the cases led to different balancing exercises with the freedom of expression principle.

Relation to the scope of the Charter

The EU Charter was very relevant in the decision of the CJEU, however the court addressed only the articles dedicated to data protection and privacy, namely articles 7 and 8. The Court did not refer in any occasion to freedom of expression and to art 10, nor provided the needed balancing exercise between the two fundamental rights. This missing element was instead analysed in detail in some of the national decisions implementing the right to be forgotten, not only when the party to the case was a search engine, but also, and most importantly, when it was a news outlet.

Impact on Jurisprudence

Application of the Google Spain decision to search engines

In France, the Tribunal de Grand Instance of Paris decided a case where Google only partially complied by a delisting request by an individual who was subject in 2006 to a sanction for fraud. The decision of 19 December 2014 applied the criteria identified by the CJEU in Google Spain and on the basis of the time passed, and that the sanction was not indicated on the person's criminal record, the request to the delisting was legitimate and did not interfere with the public's right to information.

In the Netherlands, the District Court of Amsterdam on 18 September 2014, addressed the issue of the removal request presented by a convicted criminal against Google, which the latter only partially complied with. The Dutch court addressed the case in the light of the reasoning in Google Spain decision evaluating if the information available was "irrelevant, excessive or unnecessarily defamatory". The court went on in the balancing exercise between right to privacy of the plaintiff and the freedom of information of the search engine as well as the interests of Internet users. In this case, however, the plaintiff had neither suf?ciently substantiated that the search results in question were irrelevant, excessive or unnecessarily defamatory, nor had he shown compelling, legitimate grounds relating to his situation that would have required Google to remove the links. Consequently, the court rejected the removal claim.

In a more recent case, the The Hague District Court decided a case where the applicant requested the delisting on the search results regarding a criminal investigation conducted in 2005 for mortgage fraud. The decision dated 12 January 2017 referred directly to Google Spain decision as well as to Art 11 CFR, art 10 ECHR and 7 of the Dutch constitution, resulting in a denial to the request to delisting. The court in particular affirmed that Google's right to freedom of expression and information, as well as that of its users weights more that the "right-to-be-forgotten" since the news articles to which Google linked were caused by the applicant's own behaviour.

Application of the Google Spain decision to online archives

The District Court of Amsterdam in a case dated 11 March 2015 granted the right to be de-listed also against the online archives of a media company of online archives. In particular, the court upheld the request of an individual who demanded that two articles deemed to be no more relevant to be untraceable for search engines. Thus, the court ordered to the media company to request Google not to list the articles in its search results.

The Hamburg Court of Appeal in a case dated 7 July 2015 addressed the case of an individual seeking an injunctive relief against a publisher of a printed and online newspaper as regards a set of articles reporting on the investigation proceedings brought against the plaintiff between 2010 and 2011. The claim was dismissed by the Hamburg District court, as deletion or amendment to articles that had initially been lawfully disseminated constituted a serious violation of press freedom. The Court of Appeal then set aside the district court decision and partially allowed the complaint affirming that the breach of the plaintiff personality rights perpetuated by the online availability of the information online and its easy retrievability through search engines was a serious one, and at the same time the public interest in the case was no more existing. Interestingly, the court of appeal affirmed that if according to the Google Spain decision such a right could be claimed against the operators of Internet search engines, then it could be asserted all the more against the authors of the relevant articles.

In Belgium, the Court of Cassation confirmed the decision of the Court of Appeal of Liège which granted the request of an individual to anonymise an article from an online archive on the basis of the right to be forgotten. The decision, dated 29 April 2016, affirmed that the online archive of newspapers can be subject to the application of the right to be forgotten, due to the fact that the

online article availability, after several years, may cause disproportionate harm to the applicant vis-à-vis the newspaper's freedom of expression.

Publication of delisting requests
In the UK, the Information Commissioner's Of?ce decided a case where an individual, who had successfully requested the delisting to Google, request a further delisting in relation to the search results linking to articles published by a news outlet focused on the successful and unsuccessful procedures ran by Google for the application of the right to be forgotten, where also his name was included. Given that the request was refused by Google, the individual lodge a claim before the ICO.
The independent authority disregarded the allegation of Google regarding the fact that the delisting itself was a story in the public interest and addressed the balance between data subject's rights and public's interest on the basis of the criteria identified by the Art 29 WG in the guidelines on the application of Google Spain decision. In this sense, the ICO affirmed that the removal of search engine links may be a matter of public interest in itself, but the information regarding the applicant were not.

Sources - EU and national law
art 11 CFR
Directive 95/46
