[FR] The right to be forgotten: first decision delivered in application of CJEU jurisprudence

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Amélie Blocman
Légipresse

The Google Spain decision delivered by the Court of Justice of the European Union (CJEU) on 13 May 2014 upheld the possibility, subject to certain conditions, for Internet users to ask search engine operators to de-reference links appearing in hits for searches on their names. The operators, starting with Google, have put de-referencing request forms online for Internet users to fill in. Since operators have not always complied with these requests, a number of French courts have been called on to deal with a number of cases involving the CJEU's criteria, and the first judgments under the urgent procedure have been handed down.

In a judgment in a case brought under the urgent procedure before the regional court (Tribunal de Grande Instance - TGI) in Paris, delivered on 19 December 2014, an applicant obtained an order for Google to de-reference a page detailing a sentence imposed on the applicant party for fraud. In this case, the sanction in question, which dated back to 2006, appeared as the top hit when the party's name was entered into Google search. The party concerned served official notice on Google ordering it to delete the link in question. Google did not delete the link as it claimed it was in the public interest. A second link also appeared in the intervening period. The applicant party then summoned Google to appear before the court under the urgent procedure on the basis of Article 38 of the Information Technology and Liberties Act of 6 January 1978 as amended, so that the deletion of the link at issue could be ordered. The judge referred to the decision delivered by the CJEU on 13 May 2014 recalling that the court was required to reconcile the right to protect personal information with the right to freedom of information, and the right to seek a fair balance between the legitimate interest of Internet users in having access to information and the rights of the person concerned. He noted firstly that the publication in 2006 of the press article at issue, reporting the sanction imposed on the applicant party for fraud, was legitimate, and that the party had not opposed its publication. The fact that the applicant did not bring a case against the editor of the article did not deprive her of the right to request de-referencing directly from the search engine operator. The court went on to examine the arguments put forward by the applicant party in support of the applicant's case, including the claim that the results shown by Google were damaging to the applicant's job-hunting. The judge found that, in view of the length of intervening time since the sanction was imposed more than eight years ago, and the fact that the sanction was not indicated on the person's criminal

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record, the applicant party's claims were legitimate and overrode the public's right to information. The court concluded that the request to be de-referenced was justified, and enjoined Google to de-reference or delete the links to the newspaper sites at issue.

On the other hand, in a case under the urgent procedure on 21 January 2015 at the TGI in Toulouse, Google provided proof that it was in the public interest to have access to the information at issue. This case involved three links referring to acts of harassment on the part of the applicant, in respect of employees. Although the facts were not proven, the person concerned had been dismissed and was contesting the lawfulness of this in pending legal proceedings. The court dealing with the matter under the urgent procedure recalled that the CJEU's decision applied various levels to the entitlement to being de-referenced according to the person's prominence in public life or other reasons justifying the existence of overpowering public interest in having access to the information at issue. It found that none of the disputed links were to information concerning the applicant's private life, but solely to the complaints expressed by his employer; the information concerned his professional life, and have given rise to legal decisions which had been handed down in public, which were freely accessible, and had been reported in the media. Additionally, the facts at issue were recent (2011), and it could not be claimed that they were inaccurate, inadequate, irrelevant or excessive. Indeed 'the mere fact that legal proceedings are in hand does not suffice to establish their falsity'. The application was rejected, and in this case the court found that the right of the public to be informed about a current legal case took precedence over an individual's 'right to be forgotten'.

TGI de Paris (ord. réf.), 24 novembre et 19 décembre 2014 - Marie-France M. cl Google France et Google Inc.

Regional court of Paris (under the urgent procedure), 24 November and 19 December 2014 - Marie-France M. v. Google France and Google Inc.

TGI de Toulouse (ord. réf.), 21 janvier 201 - Franck J. c/ Google France et Google Inc.

Regional court of Toulouse (under the urgent procedure), 21 January 2015 - Franck J. v. Google France and Google Inc.

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