

Book Review

Artemi Rallo, *El derecho al olvido en Internet. Google vs España*, Madrid: Centre for Political and Constitutional Studies, 2014, 295 pp, € 23.00, ISBN 978-84-259-1593-2.

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The challenges that technological advances pose for the protection and guarantee of fundamental rights are countless but none of these challenges has aroused such an intense debate as the one generated by the unexpected decision of the Court of Justice of the European Union (CJEU) delivered on 13 May 2014. The judgment has resolved a long dispute related to the liability of the search engines, the applicability of data protection law and the rights of citizens.

After the advent of the Internet and the ensuing explosion of social networks, Internet users are increasingly aware of the need to protect their privacy and individual reputation. The CJEU has faced this emerging legal issue and, in its ruling, the Court upholds the right to be forgotten online and acknowledges its exercise under certain conditions against a search engine in an unusual change of approach to the position taken by the General Advocate. The Court's approach unequivocally the innovative doctrine that the Spanish Data Protection Agency (AEPD) has maintained for years. This doctrine was largely forged during the period in which Artemi Rallo served as Director of the AEPD. This quality along with his status as Professor of Constitutional Law confers a special value to the work he authors on *El derecho al olvido en Internet. Google vs España*. On the basis of the author's experience, Rallo uses a practice-oriented methodology based on individual cases to explain the origins and profile of an emerging and diffuse concept and clarifies a certain amount of confusion over what the judgment actually said.

Despite the legal clarity provided by the CJEU decision granting the right to be forgotten on the Internet, Artemi Rallo's book opens with an emphatic denial: "The right to be forgotten does not exist" because there is not a precise definition of its profile and content. This is a task reserved to the legal operators, although parallels can be found in areas of law as time-passing has legal consequences in our systems. Prescription of crime or the deletion of criminal record are derived from the cessation of memory. At the basis of these constructions – as well as the right to be forgotten online – lies a conflict that is directly linked to human dignity and freedom: the need to analyze the impact that time may have on the rights to privacy, honor and reputation, and data protection. Furthermore, in the case of the right to be forgotten on the Internet, there is an interest to protect legitimate interests of network users to "regret" their online activities in a time when society was not so digitized. Today, these

activities remain globally accessible to the extent that they may adversely affect a person's private life.

In the opening pages of the book, the author warns against concerns that invoking the right to be forgotten would lead to the end of individual memory and historical integrity or may cause collateral censorship. Rallo clearly limits the impact of that right to strict "deletion of specific personal information". Faced with a proper understanding of the right to know and be informed that reaches all matters of general interest, the author argues that private citizens should be entitled to "review their own actions, updating their own history and reaffirming their identity after a certain time". The author asks for the need to provide a reaction mechanism for anonymous citizens in a kind of "information rehabilitation" when data are incomplete or inaccurate and there is a legitimate reason based on a specific personal situation. Meanwhile, the significance of freedom of expression in democratic societies is reflected in Directive 95/46, which provides for exemptions from its provisions for the processing of personal data carried out for journalistic purposes to the extent they are necessary to reconcile the right to privacy and freedom of expression. The author intentionally emphasizes the nuance introduced by the verb "reconcile" instead of the usual "balance" applied in conflicts between privacy and information which involves the sacrifice of one of them.

As the right to be forgotten is a question that cuts across national borders, the book devotes specific attention to present the status of the right to be forgotten in some European countries (France and Italy) as well as in other compared legal systems (Canada, Argentina and Nicaragua). This analysis serves as an introduction to the construction of the background of European jurisprudence on the right to data protection. But the core issue of the book is the narration of the construction of the right to be forgotten until its confirmation by the CJEU. Specifically, it details the approach of the questions referred before the CJEU by the Spanish National High Court. Despite the influential Advocate General's Opinion, the CJEU considered that an Internet search engine operator is responsible for the processing of personal data that it carries out which appear on web pages published by third parties, upholding a right to delete. The Court also observed that Google Spain is a subsidiary of Google Inc. on Spanish territory and, therefore, an 'establishment' within the meaning of the Directive. Finally, the Court held that, having regard to articles 7 (respect for private and family life) and 8 (protection of personal data) of the Charter of Fundamental Rights of the EU, European data protection law allowed the data subject to object at any time on compelling legitimate grounds relating to his particular situation to the processing of data "inadequate, irrelevant or excessive" relating to him.

Undoubtedly, the CJEU ruling in favour of the right to be forgotten has marked a turning point in establishing guidelines for search engines requiring them to

adapt their activities to comply with European Data Protection regulations and respect the fundamental rights of citizens.

The publication on *El derecho al olvido en Internet. Google vs España* is a contribution of great interest as it contains a precise and complete description of the first "online" right and it emphasizes how the right to be forgotten assists in strengthening fundamental rights regarding human dignity, liberty and privacy.

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