EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Joint Factsheet

Right to be forgotten
ECtHR and CJEU Case-Law

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This factsheet has been prepared by the Registry of the European Court of Human Rights ("ECtHR")[1] and the European Union Agency for Fundamental Rights as part of a collaborative effort to highlight jurisprudence in selected areas where European Union ("EU") law and the law of the European Convention on Human Rights ("ECHR" or "the Convention") interact.

The "right to be forgotten"

The concept of a "right to be forgotten" has many facets and has been interpreted in a variety of ways[2]. It first emerged in the jurisprudence of the Court of Justice of the European Union ("CJEU"), as an aspect of the right to privacy of data subjects in the context of processing of personal data[3]. The CJEU provided an interpretation of the Data Protection Directive[4], emphasizing the fundamental rights granted by the Charter of Fundamental Rights of the European Union. Further developments emerge in national jurisprudence and in the case-law of the ECtHR in the context of republication by the press of previously disclosed information of a judicial nature, with the person claiming a "right to be forgotten" effectively seeking to obtain a judgment against the person who republished the information. Subsequently, a new aspect of this right arose in the context of the digitisation of news articles, originally published in paper, following the online publication of digital archives. In such cases, the issue was less the resurfacing of the information but rather its continued availability online[5].

The accelerated development of technology and communication tools, the availability of information online, and the ease of access to it by means of searches linked to a person's name can have far-reaching negative impact on how a person is perceived by public opinion. Individuals may live in constant fear of being unexpectedly confronted with their past actions or public statements, in a variety of contexts such as, job seeking and business relations[6]. To address these challenges, various measures have emerged in national jurisprudence to manage the way in which past information is currently made available online. These measures relate either to the content of an article (for instance, the removal, alteration or anonymisation of the article by the news publisher) or to limitations on the

[1] The content of this factsheet is not binding on the Court.

[2] The scope of the right presents some differences in EU law and in the case-law of the ECtHR (please refer to the paragraphs below). For the sake of comparison between the two systems, this factsheet will focus on interferences with the "right to be forgotten" stemming from the publication of personal information by news publishers and search engine operators. It will not deal with a "right to be forgotten" invoked irrespective of any publication of personal information on the media, for example as a right to obtain erasure of personal data unlawfully collected by a public or private data controller or following withdrawal of the consent on which data processing was originally based.

[3] CJEU, judgment of 13 May 2014, *Google Spain and Google*, C-131/12, EU:C:2014:317

[4] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

[5] ECtHR, *Hurbain v. Belgium* [GC], no. 57292/16, §§ 187 and 194, 4 July 2023.

[6] ECtHR, *Hurbain*, cited above, § 191; for a similar approach at EU level, see CJEU, judgment of 13 May 2014, *Google Spain and Google*, C-131/12, EU:C:2014:317, § 80.

accessibility of the information. In the latter case, limitations on access may be put in place by both search engines and news publishers[7].

The choice of measure to be implemented in the specific circumstances of each case may vary depending on factors such as the veracity or inaccuracy of the information[8], the extent to which the information contributes to a debate of public interest[9], whether it has any historical, research-related or statistical interest[10], the negative repercussions on the individual's personal sphere of the continued availability of the information online[11], as well as the amount of time that has elapsed since the events referred to in the article or since the publication of the information[12].

While protecting the individual's "right to be forgotten" each of these measures also constitutes a limitation to the right to impart information of search engine operators or news publishers and to the related right of the public to obtain that information. Thus, the right to be forgotten must be balanced against these opposing interests, having regard to the essential role played by the press in a democratic society and to the role of search engines for rendering content on the Internet accessible to the public[13].

The "right to be forgotten" in EU law

A "right to be forgotten" was first recognised by the CJEU in the *Google Spain and Google* judgment[14] as an aspect of the right to privacy of data subjects related to processing of personal data by internet search engines in the context of delisting requests. The CJEU interpreted the relevant data protection framework in force at that time[15], in the light of the fundamental rights under Articles 7 (respect for private and family life) and 8 (protection of personal data) of the Charter of Fundamental Rights of the European Union (hereinafter "the Charter").

Following its recognition in the case-law of the CJEU, the "right to be forgotten" was specifically enacted by Article 17 of the General Data Protection Regulation (hereinafter "GDPR")[16] concerning the "Right to erasure ('right to be forgotten')". Article 17 (1) of the GDPR provides for a right to obtain from the controller the erasure of an individual's personal data without undue delay, when those data are no longer necessary in relation to the purposes for which they were collected or processed, following withdrawal of the consent on which data processing was originally based, or when the data had been processed unlawfully[17]. As a result of its combination with the right to erasure, the right to be forgotten may apply to contexts other than publication of personal information by news publishers and search engine operators, such as requests to delete personal information from public registers

[7] ECtHR, *Hurbain*, cited above, § 175.
[8] CJEU, judgment of 8 December 2022, *Google (De-referencing of allegedly inaccurate content)*, C-460/20, EU:C:2022:962, § 65.
[9] ECtHR, *Fuchsmann v. Germany*, no. 71233/13, §§ 34-39, 19 October 2017; ECtHR, *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, §§ 98-105, 28 June 2018.
[10] ECtHR, *Hurbain*, cited above, §§ 222-225; CJEU, *Google Spain and Google*, cited above, §§ 72 and 92.
[11] ECtHR, *Hurbain*, cited above, §§ 231-235.
[12] *Ibid*, §§ 220-221.
[13] CJEU, *Google Spain and Google*, cited above, § 81; CJEU, judgment of 24 September 2019, *GC and Others (De-referencing of sensitive data)*, C-136/17, EU:C:2019:773, §§ 66, 68 and 75; ECtHR, *Hurbain*, cited above, § 180.
[14] CJEU, *Google Spain and Google*, cited above.
[15] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, p. 31).
[16] Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (GDPR) (OJ L 119, p. 1; 'the GDPR').
[17] See also Article 8 c) the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981.

after a certain period of time[18] or to erase unlawfully processed personal data, irrespective of their publication[19].

Moreover, under Article 17 (2) of the GDPR, where the controller has made the personal data public and is obliged to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.[20]

The GDPR also identifies a number of criteria in the context of balancing the right to be forgotten with other public or private interests, including freedom of expression and information[21].

Following the entry into force of Article 17 of the GDPR, the CJEU provided guidance on the interpretation of the obligations stemming from it on operators of a search engine, in the light of the fundamental rights guaranteed, on the one hand, by Articles 7 and 8 of the Charter, and, on the other, by Article 11 of the Charter (freedom of expression and information).[22]

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[18] See for example the judgment of 9 March 2017, *Manni*, C-398/15, EU:C:2017:197, where the CJEU was called upon to determine if EU law recognised a right to obtain erasure of personal data from a Chamber of Commerce register, on the basis that that information prejudiced his potential clients and could have a negative impact on his commercial interests. In reaching its conclusion, the CJEU balanced EU data protection rules and Mr Manni's commercial interest in removing the information about his former company's bankruptcy with the public interest in access to the information. It took due note of the fact that disclosure to the public registry of companies was provided for by law. The disclosure was important to protect the interests of third parties who may want to conduct business with a specific company. In view of the importance of the legitimate aim pursued by the register, the CJEU held that Mr Manni did not have a right to obtain erasure of his personal data, as the need to protect the interests of third parties in relation to joint-stock and limited liability companies, and to ensure legal certainty, fair trading and thus the proper functioning of the internal market, took precedence over his rights under data protection legislation. However, the CJEU held that it could not be excluded that there may be specific situations in which the overriding and legitimate reasons relating to the specific case of the person concerned justify exceptionally that access to personal data entered in the register is limited, upon the expiry of a sufficiently long period to third parties who can demonstrate a specific interest in their consultation.

[19] See for example the CJEU judgment of 14 March 2024, *Újpesti Polgármesteri Hivatal*, C-46/23, EU:C:2024:239. In 2020, the Újpest's municipal administration in Hungary sought personal data from the Hungarian State Treasury and the government office to provide financial aid to those impacted by COVID-19. The Hungarian supervisory authority (SA) found that Újpest and the other entities violated the GDPR rules by not informing people about the use of their data, and fined them. In addition, the Hungarian SA found that the Újpest municipal administration had not informed the data subjects, and ordered the erasure of the data of those who didn't apply for the aid. The municipal administration contested this decision in court, arguing the authority lacked the power to mandate data erasure without a prior request from the individuals. The Hungarian court had sought an interpretation of the GDPR from the CJEU.
In its judgment, the CJEU responded that the supervisory authority of a Member State may order of its own motion, namely even in the absence of a prior request made by the data subject to that effect, the erasure of unlawfully processed data if such a measure is necessary in order to fulfil its responsibility for ensuring that the GDPR is fully enforced. If that authority finds that the treatment of data does not comply with the GDPR, it must remedy the infringement found, even without a prior request from the data subject. A requirement that there be such a request would mean that the controller, where no request is made, could retain the data at issue and continue to process them unlawfully. Moreover, the CJEU held that a supervisory authority of a Member State may order the erasure of unlawfully processed personal data both where those data originate directly from the data subject or originate from another source.

[20] See Article 17 (1) and (2) of the GDPR; see also recitals 65, 66 and 156 of the GDPR.

[21] Article 17 (3) of the GDPR; see also recitals 65 and 156 of the GDPR.

[22] See also European Data Protection Board (2020), Guidelines 5/2019 on the criteria of the Right to be Forgotten in the search engines cases under the GDPR (part 1) | European Data Protection Board (europa.eu).

The "right to be forgotten" in the case-law of the ECtHR

The "right to be forgotten" has been linked to Article 8 of the ECHR (right to respect for private life), and more specifically to the right to respect for one's reputation. According to the case-law of the ECtHR, a claim of entitlement to be forgotten does not amount to a self-standing right protected by the ECHR and, to the extent that it is covered by Article 8, it can concern only attacks on a person's reputation that attain a certain level of seriousness[23].

The ECtHR has been called on to rule on the right to be forgotten either from the standpoint of individuals whose personal information has been displayed by news publishers and search engine operators, and who complained about a violation of their right to respect for reputation[24], or from the standpoint of administrators of newspaper or journalistic archives accessible through the Internet, complaining about an interference with their freedom of expression and freedom to impart information[25].

Irrespective of the standpoint in a specific case, the ECtHR has been called upon to examine whether a fair balance has been struck between, on the one hand, freedom of expression and the right of the public to have access to the information, protected by Article 10 of the ECHR, and, on the other, the data subjects' right to protection of their reputation, as enshrined in Article 8 of the ECHR[26].

In exercising this supervisory function, the ECtHR's task is to review, in the light of the case as a whole, whether the decisions of the domestic courts have struck a fair balance between the rights at stake and ruled in accordance with the criteria established by the ECtHR for that purpose[27]. The ECtHR clarified that these criteria should be adjusted according to the specific features of each case, for example depending on whether the case relates to removal of information included in an initial publication[28], de-indexing[29] or alteration of information included in the electronic archived version of an article[30].

If the ECtHR considers that national authorities acted in conformity with the criteria laid down by its case-law, it will require strong reasons to substitute its view for that of the domestic courts[31].

Case-law of the Court of Justice of the European Union (CJEU) and of the ECtHR concerning the "right to be forgotten"

Prohibition to publish

ECtHR, *Mediengruppe Österreich GmbH v. Austria*, no. 37713/18, 26 April 2022

The facts – Within the context of reporting on the social circles of a presidential candidate during the 2016 run-off elections for the office of Federal President of Austria, the applicant company, the media owner of a daily newspaper, was ordered to refrain from publishing a photograph of the plaintiff, the brother of the candidate's office manager, if at the same time he was called a convicted

[23] ECtHR, *Hurbain*, cited above, §§ 199 and 210.
[24] See for example ECtHR, *Węgrzynowski and Smolczewski v. Poland*, no. 33846/07, 16 July 2013; ECtHR, *Fuchsmann*, cited above; ECtHR, *M.L. and W.W. v. Germany*, cited above.
[25] See for example ECtHR, *Hurbain*, cited above; ECtHR, *Mediengruppe Österreich GmbH v. Austria*, no. 37713/18, 26 April 2022; ECtHR, *Biancardi v. Italy*, no. 77419/16, 25 November 2021, where the ECtHR also specified that similar issues may raise with respect to Internet search engine providers.
[26] ECtHR, *Hurbain*, cited above, § 201.
[27] ECtHR, *Mediengruppe Österreich GmbH v. Austria*, cited above, § 54.
[28] ECtHR, *Fuchsmann*, cited above, § 34.
[29] ECtHR, *Biancardi*, cited above, § 64.
[30] ECtHR, *Hurbain*, cited above, §§ 201-205.
[31] ECtHR, *Hurbain*, cited above, § 201.

neo-Nazi in the accompanying text. His conviction and release from prison dated from many years before the publication of the photo (and accompanying article) in question. The conviction had meanwhile been deleted from his criminal record.

The law – Article 10: The applicant company complained of a violation of its freedom to impart information. The ECtHR referred to the judgments of the domestic courts, noting that they did not generally prevent the applicant company from reporting on the plaintiff and on the serious crimes once committed by him, but only prohibited it to publish his picture if at the same time he was called a convicted neo-Nazi in the accompanying text. Having regard to a number of factors, including that the article had not concerned the plaintiff, but only his brother; the text accompanying the contested photograph had lacked the information that the plaintiff had meanwhile served his sentence and had behaved well since, so it was correct but not complete; there was no temporal connection between the photograph taken in 1987, the plaintiff's criminal conviction in 1995, and the applicant company calling him a "convicted neo-Nazi" in the impugned article of 2016, the ECtHR concluded that in the specific circumstances of the case the reasons adduced by the domestic courts were undertaken in conformity with the criteria laid down in its case-law and were relevant and sufficient to justify the interference. It therefore held that it saw no strong reasons to substitute the domestic courts' views with its own.

Conclusion: No violation of Article 10 of the ECHR.

Removal of information

ECtHR, *Węgrzynowski and Smolczewski v. Poland*, no. 33846/07, 16 July 2013

The facts – Two lawyers complained that a newspaper article that was damaging to their reputation continued to be accessible to the public on the newspaper's website. The lawyers requested the removal of the article, which alleged that they had made a fortune by assisting politicians in dubious business deals. The domestic courts, ruling on an earlier defamation action, had held that the article in question was based on insufficient information and was in breach of the rights of the persons concerned.

The law – Article 8: Having declared inadmissible the application in respect of the first applicant, the ECtHR assessed the merits of the case with regard to the second applicant only. It held that the Internet, which was an information and communication tool particularly distinct from the print media, serving billions of users worldwide, was not and potentially would never be subject to the same regulations and control. Therefore, the policies governing the reproduction of material from the print media and the Internet might differ. The rules concerning the latter undeniably had to be adjusted according to technology's specific features in order to secure the protection and promotion of the rights and freedoms concerned.

In the specific circumstances of the case, following the reasoning of the domestic courts, the ECtHR noted that, even if it was not in dispute that that article was in breach of the applicant's rights, it was not the role of judicial authorities to remove from the public domain all traces of publications which had in the past been found, by final judicial decisions, to amount to unjustified attacks on individual reputations. It further emphasised that the applicant did not seek to secure the effective protection of his reputation by less restrictive means than total removal, for example by requesting that the information be rectified by means of the addition of a reference to the earlier judgments in his favour. The ECtHR concluded that the domestic courts' refusal to remove the article was not disproportionate.

Conclusion: No violation of Article 8 of the ECHR

ECtHR, *Fuchsmann v. Germany*, no. 71233/13, 19 October 2017

The facts – The case concerned the rejection by the German courts of an action brought in July 2002 by the applicant – an international businessman – seeking an injunction against certain statements that had been published about him in June 2001 in an article in the online edition of the *New York Times*, in which he had been accused of involvement in gold smuggling and embezzlement and of having links to Russian organised crime.

The law – Article 8: The ECtHR agreed with the domestic courts' findings, observing that they had struck a fair balance of the competing rights by applying the following relevant criteria: the contribution to a debate of public interest; the degree to which the person affected is well-known; the subject of the news report; the prior conduct of the person concerned; the method of obtaining the information and its veracity; and the content, form and consequences of the publication. The ECtHR held in particular that the article in question had contributed to a debate of public interest; that there had been a certain interest in the article since the applicant was a German businessman internationally active in the media sector; that it had a sufficient factual basis; that the journalist had complied fully with his journalistic duties and responsibilities; that the article had been free from polemical statements and insinuations; that the information disseminated had mainly concerned the applicant's professional life; and that the consequences of the article in Germany had been limited.

Conclusion: No violation of Article 8 of the ECHR

Alteration of information

ECtHR, *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28 June 2018

The facts – The case concerned the refusal of the German Federal Court of Justice to prohibit three different media organisations from keeping on their respective Internet portals press files concerning the applicants' conviction for the murder of a well-known actor, in which the applicants were referred to by their full names.

The law – Article 8: In assessing whether a fair balance had been struck between the applicants' rights under Article 8 and the media organisations' freedom of expression and the public's freedom of information under Article 10, the ECtHR noted that its task was not to take the place of domestic courts, but rather to review, in the light of the case as a whole, whether the decisions they had taken were compatible with the provisions of the Convention relied on. In finding that there had been no violation of Article 8 of the Convention, the ECtHR had regard to the domestic courts' appreciation of the following elements: the fact that at the time the applicants' requests for anonymisation were lodged the impugned reports had continued to contribute to a debate of public interest; the fact that the applicants were not simply private individuals unknown to the public; the applicants' conduct with regard to the media, which they had approached after their conviction with a view to having the proceedings reopened; the fact that the reports had related the facts in an objective manner and without the intention to present the applicants in a disparaging way or to harm their reputation; and the limited accessibility of the information.

Conclusion: No violation of Article 8 of the ECHR

ECtHR, *Hurbain v. Belgium* [GC], no. 57292/16, 4 July 2023

The facts – The applicant, the publisher of a Belgian daily newspaper, was ordered to anonymise, on grounds of the "right to be forgotten", the electronic online version of an article – originally published in 1994 in the print edition of the newspaper – made available in 2008 in a digital archive,

which mentioned the full name of G., the driver responsible for a fatal road-traffic accident in 1994. He was also ordered to pay one euro to G. in respect of non-pecuniary damage.

The law – Article 10: In assessing whether the contested measure was necessary in a democratic society, the ECtHR considered that the case at issue concerned the alteration of the electronic archived version of an article rather than its original version. It therefore adjusted the criteria set out in its previous case-law to the specific features of the case and assessed whether the analysis carried out by domestic courts was consistent with the following criteria: the nature of the archived information; the time elapsing since the events and since initial and online publication; the contemporary interest of the information; whether the person claiming entitlement to be forgotten was well known, and his or her conduct since the events; the negative repercussions of the continued availability of the information online; the degree of accessibility of the information in the digital archives; the impact of the measure on freedom of expression and more specifically on freedom of the press.

The ECtHR considered that the domestic courts took account in a coherent manner of the nature and seriousness of the judicial facts reported on in the article in question, the fact that the article had no topical, historical or scientific interest, and the fact that G. was not well known. In addition, they attached importance to the serious harm suffered by G. as a result of the continued online availability of the article with unrestricted access, which was apt to create a "virtual criminal record", especially in view of the length of time that had elapsed since the original publication of the article. Furthermore, after reviewing the measures that might be considered in order to balance the rights at stake – a review whose scope was consistent with the procedural standards applicable in Belgium – they held that the anonymisation of the article did not impose an excessive and impracticable burden on the applicant, while constituting the most effective means of protecting G.'s privacy.

In those circumstances, and regard being had to the States' margin of appreciation, the ECtHR found that the contested measure could be regarded as necessary in a democratic society.

Conclusion : No violation of Article 10 of the ECHR

Delisting/de-referencing (by search engine operators) and de-indexing (by the news publishers)

ECtHR, *Biancardi v. Italy*, no. 77419/16, 25 November 2021

The facts – The applicant, the editor-in-chief of an online newspaper, was held liable under civil law for failing to de-index an article reporting the facts of a criminal case instituted against private individuals. Domestic courts ordered him to pay to each claimant EUR 5,000 in compensation for non-pecuniary damage.

Article 10: The applicant complained that the interference with his right to inform the public had been unjustified and that the penalty imposed on him had been excessive.

The law – The ECtHR held that the obligation to de-index material could be imposed not only on Internet search engine providers, but also on the administrators of newspaper or journalistic archives accessible through the Internet. It noted that this case did not concern the content of the article, nor an imposition to permanently remove it from the Internet, but solely the applicant's failure to de-index it, thus allowing the possibility – for a period whose length has been deemed to be excessive – of typing into the search engine the claimants' names in order to access information relating to the criminal proceedings. In assessing whether the contested measure was necessary in a democratic society, the ECtHR took into consideration the following criteria: the length of time for which the article was kept online, the sensitiveness of the data and the gravity of the sanction

imposed. In finding that there had been no violation of Article 10 of the Convention, the ECtHR considered that i) the article was not de-indexed for eight months following the claimants' request for removal; ii) it related to criminal proceedings instituted against the claimant and therefore contained sensitive data; iii) the applicant was held liable under civil and not criminal law, he had not actually been required to remove the article from the website and the amount of compensation awarded was not excessive.

Conclusion: No violation of Article 10 of the ECHR

CJEU, judgment of 13 May 2014, *Google Spain and Google*, C-131/12, EU:C:2014:317

The facts – The Spanish Data Protection Agency ordered Google to adopt the measures necessary to withdraw the claimant's personal data from its index and to prevent access to the data in the future. The company challenged that decision before the *Audiencia Nacional*. The Spanish Court referred the case to the CJEU for a preliminary ruling on the extent of the rights and obligations relating to internet search engines arising out of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The law – The CJEU found that the activity of a search engine was to be classified as the "processing of personal data" within the meaning of Directive 95/46/EC. It held that such processing of personal data was liable to affect significantly the fundamental rights to privacy and to the protection of personal data (as guaranteed under Articles 7 and 8 of the Charter) when a search by means of that engine was carried out on the basis of an individual's name, since such processing enabled any Internet user to obtain (through the list of search results thus attained) a structured overview of the information relating to that individual that could be found on the Internet and thereby to establish a more or less detailed profile of him or her. Furthermore, the effect of such interference on the rights of a data subject would be heightened on account of the important role played by the Internet and search engines in modern society, which rendered the information contained in such a list of results ubiquitous. In the light of the potential seriousness of that interference, it could not be justified merely by the economic interest of the operator.

The CJEU held that in certain cases the operator of a search engine was obliged to remove from the list of results displayed (following a search made on the basis of a person's name) any and all links to Internet pages published by third parties and containing information relating to that person, even when the publication of that information on the Internet pages in question was in itself lawful. That was so in particular where the data in question appeared to be inadequate, irrelevant or no longer relevant, or excessive, given the purposes for which they had been processed and in the light of the time that had elapsed since the date of the processing in question.

The CJEU held that a fair balance had to be sought between the legitimate interest of Internet users in having access to such information and the data subject's fundamental rights. It deemed that a data subject's fundamental rights, as a general rule, overrode the interests of Internet users, but that that balance might, however, depend on (i) the nature of the information in question and its sensitivity as regards the data subject's private life and (ii) the interest of the public in having that information.

CJEU, judgment of 24 September 2019, *GC and Others (De-referencing of sensitive data)*, C-136/17, EU:C:2019:773

The facts – Private individuals brought proceedings in the French *Conseil d'État* against the French Supervisory Authority, the National Commission on Data Processing and Civil Liberties (CNIL) concerning four decisions of the CNIL refusing to serve formal notice on Google to de-reference various links appearing in the lists of results displayed following searches based on their names. The links led to web pages published by third parties containing, among other things, a satirical photomontage placed online pseudonymously and depicting a female politician, as well as a number of articles referring respectively to the position held by one of the applicants as public relations officer of the Church of Scientology, the judicial investigation into a male politician and the conviction of one of the applicants for sexually assaulting children. The *Conseil d'État* put several questions to the CJEU on the obligations of operators of a search engine in the context of a request for de-referencing relating to sensitive data.

The law – After reiterating the findings made in its *Google Spain and Google* judgment (cited above), the CJEU emphasised that the GDPR, which had entered into force in the meantime, and in particular its Article 17(3)(a), expressly required that a balance be struck between the fundamental rights to privacy and protection of personal data guaranteed by Articles 7 and 8 of the Charter on the one hand, and the fundamental right to freedom of information guaranteed by Article 11 of the Charter on the other.

The CJEU added that where the operator of a search engine received a request for de-referencing relating to a link to a web page on which sensitive data were published, the operator was required to ascertain, on the basis of all the relevant factors of the particular case and taking into account the seriousness of the interference with the data subject's fundamental rights to privacy and protection of personal data, whether the inclusion of that link in the list of results displayed following a search on the basis of the data subject's name was strictly necessary for protecting the freedom of information of Internet users potentially interested in accessing that web page by means of such a search.

Lastly, the CJEU ruled that, with regard to web pages containing data concerning criminal proceedings brought against specific individuals, concerning an earlier stage of the proceedings and no longer corresponding to the current situation, the operator was required to assess whether, in the light of all the circumstances of the case, the individuals had a right to the information in question no longer being linked with their name by a list of results displayed following a search carried out on the basis of that name. However, even if it was not the case because the inclusion of the link in question was strictly necessary for reconciling rights to privacy and the protection of personal data with the freedom of information of potentially interested internet users, the operator was required, at the latest on the occasion of the request for de-referencing, to adjust the list of results in such a way that the overall picture it gave the internet user reflects the current legal position, which means in particular that links to web pages containing information on that point had to appear in first place on the list.

CJEU, judgment of 24 September 2019, *Google (Territorial scope of de-referencing)*, C-507/17, EU:C:2019:772

The facts – The French Supervisory Authority, CNIL, imposed on Google a penalty of EUR 100,000 for failure to comply with a formal notice requiring the company, when granting a request from individuals for links to web pages to be removed from the list of results displayed following a search conducted on the basis of their name, to apply the removal to all its search engine's domain name extensions.

The company sought annulment of that decision before the *Conseil d'État*, which raised several questions to the CJEU concerning the territorial scope of de-referencing obligations.

The law – The CJEU specified that EU law did not require the operator of a search engine to carry out de-referencing on all versions of its search engine. Nevertheless, it was required to do so on the versions of the search engine corresponding to all the member States and to put in place measures to discourage Internet users conducting a search from one of the member States from gaining access to the links in question found on non-EU versions of the search engine. Furthermore, EU law did not prevent a supervisory or judicial authority of a member State from weighing up the fundamental rights at stake in the light of domestic standards of protection of fundamental rights and, after weighing those rights against each other, from ordering the operator of such a search engine, where appropriate, to carry out de-referencing in relation to all versions of the search engine.

CJEU, judgment of 8 December 2022, *Google (De-referencing of allegedly inaccurate content)*, C-460/20, EU:C:2022:962

The facts – Two senior managers of a group of investment companies challenged Google's refusal to de-reference a number of articles published in 2015 containing allegedly inaccurate information from the results of a search carried out on the basis of their names. They had also requested the company to remove photographs representing them, displayed in the form of preview images ("thumbnails"), from the list of results of an image search based on their names, as the list showed only the thumbnails themselves and not the context in which the photographs had been published on the web page concerned. Following their appeal on a point of law, the German Federal Court of Justice made a request to the CJEU for a preliminary ruling on the interpretation of the GDPR and Directive 95/46/EC.

The law – The CJEU held that in the context of the weighing-up exercise to be undertaken between the interests and rights at stake, the right to freedom of expression and information could not be taken into account where, at the very least, a part – that was not of minor importance – of the information found in the referenced content proved to be inaccurate. The CJEU added, firstly, that it was for the person requesting de-referencing to establish the manifest inaccuracy of the information or of a part of the information that was not of minor significance. However, that person could not be required in principle to produce, as of the pre-litigation stage, a judicial decision given against the publisher of the website in question, even in the form of a decision given in interim proceedings. Secondly, the search engine operator could not be required to play an active role in trying to find facts that were not substantiated by the request for de-referencing, for the purposes of determining whether that request was well founded. Such an obligation would impose on that operator a burden in excess of what can reasonably be expected of it and would entail a serious risk that content meeting the public's need for information would be de-referenced quasi-systematically, in order to avoid having to bear such a burden of investigating. Therefore, where the request was substantiated by relevant and sufficient evidence establishing the manifest inaccuracy of the information found in the referenced content, the operator of the search engine was required to accede to that request. By contrast, where the inaccuracy of such information was not obvious, the operator was not required, in the absence of a judicial decision, to accede to the

request. The CJEU added that the individual should be able to challenge the refusal before the supervisory authority or the judicial authority.

With regard to the photographs displayed in the form of thumbnails, the CJEU held that a separate weighing up of the competing rights and interests was required. Account had to be taken of the informative value of the photographs regardless of the context of their publication on the web page from which they were taken, but taking into consideration any text element which accompanied directly the display of the photographs in the search results and which was capable of casting light on their informative value.