**Don Dionisio v. Google LLC**

**Summary and Outcome**

The Third Section of the Administrative Chamber of the Supreme Tribunal of Spain decided that the right to be forgotten does not grant the right to get articles that impose criminal accusations de-indexed, even when the criminal investigation was closed without a guilty verdict.

Don Dionisio, CEO of an important company, was the subject of news reports regarding criminal allegations of espionage to members of the company’s Administration Board. The criminal investigations were eventually closed. Don Dionisio urged Google to take measures to prevent his name from appearing in search results in relationship to this negative coverage, which Google refused. The Supreme Tribunal decided that the right to information of users prevailed over Don Dionisio’s right to be forgotten, since the contested information was of public interest and relevant. The Court also considered that maintaining the information indexed in the search engine didn’t breach the presumption of innocence of the appellant.

**Facts**

Don Dionisio requested Google, before the Agencia Española de Protección de Datos (AEPD) (Spanish Agency for Data Protection), to adopt measures to de-index certain search results from his name.

The search results made reference to articles published in 2012 in two Spanish newspapers: *El País* and *El Confidencial*. The stories were about the “business activities of Dionisio and his directive role in a company of great market value […] The contested information reported about a criminal investigation for alleged acts of espionage against other members of the Administration Board of the company in which [Dionisio] acted as Chief Executive Officer” [p. 8].

The criminal investigations on the matter were eventually closed, since the five people who were potentially affected decided not to raise any charges.

On June 11, 2017, the AEPD protected the right to privacy of Don Dionisio through an administrative decision. Google LLC initiated judicial proceedings against this administrative decision, seeking its annulment. On December 27, 2018, the First Section of the Administrative Chamber of the National Audience overruled the decision issued by the AEPD, arguing that in this case “the right to freedom of information deserved priority over Mr. Dionisio’s right to be forgotten [p. 4].

Don Dionisio appealed the decision on September 19, 2019. On September 17, 2020, the Third Section of the Administrative Chamber of the Supreme Tribunal issued a decision on the matter.

**Decision Overview**

Justice María Isabel Perello Domenech delivered the opinion for the Third Section of the Administrative Chamber of the Supreme Tribunal. The main issue for the Tribunal was to determine whether Don Dionisio’s rights to be forgotten should prevail over the freedom of information and expression, taking into the account that the contested information referred to criminal investigations that were eventually closed without a guilty verdict.

According to the appellant, the court of first instance made a mistake when it considered that Don Dionisio “was excluded from the right to be forgotten because he was a businessman with a long trajectory in relevant companies” [p. 8]. He added that the decision issued by the lower court breached his presumption of innocence “in its extrajudicial aspect, since although he wasn’t found guilty in a criminal proceeding, he’s still suffering the negative consequences derived from the suspicion of not being innocent” [p. 9].

The decision makes no reference to the arguments made by Google LLC.

The Tribunal stated that the right to be forgotten is “intended to allow every person to build his or her life without the burden of the past, when there’s no public interest or utility that justifies the negative consequences associated to the publicity of lawfully disseminated news in the past, or when the passage of time has diluted the public interest” [p 4-5]. Subsequently, the Court made ample reference to national and international jurisprudence regarding the right to be forgotten and its limits against the right to freedom of information and expression.

The Tribunal cited the CJEU’s decision in [Google Spain SL v. Agencia Española de Protección de Datos](https://globalfreedomofexpression.columbia.edu/cases/google-spain-sl-v-agencia-espanola-de-proteccion-de-datos-aepd/)to explain the necessity of achieving a fair balance between fundamental rights of the affected party and the right to access information. While access to information through search results can affect the right to privacy and protection of personal data, deletion of the links can impact the legitimate interest of internet users

The Court also refers to jurisprudence from the Spanish Constitutional Tribunal (STC 292/2020) to affirm that “freedom of information prevails over personality rights, when the disseminated news, in digital media outlets, is truthful and contains facts of public relevance and of general interest” [p. 6]. Regarding the truthfulness criteria, the Tribunal, following the precedent laid out by the Constitutional Tribunal (STC 129/2009),explains that this factor doesn’t imply that facts must be rigorously true. The criteria is met when whoever transmits the information has done proper research “expected from a professional in the informative field” [p. 6].

According to the jurisprudence set forth by Civil Chamber of the Supreme Tribunal (545/2015), **“**the right to be forgotten doesn’t protect a tailor-made design of one’s past […] by eliminating from the internet negative information […] in such a way that the more favorable information occupies the first places […] This would seriously affect the informative mechanisms necessary for citizens to make decision in a democratic society” [p. 7].

Upon analyzing the facts of the case at hand, the Court concluded that the reasoning of the first instance judgment was right in all its parts. According to the Tribunal the contested news did not affect his right to private and family life, since the information found in the aforementioned press articles concerning his work and business activities are “clearly of public interest to society, since it allows users to know about alleged irregular business practices […] within a company with large economic weight” [p. 9]. Thus, the right to freedom of information of internet users and consumers must take prevalence in this context.

Regarding the violation of the presumption of innocence of the appellant, the Court considered that the fact that the criminal proceedings against him were closed without a guilty verdict didn’t affect the exactness of the published information “and don’t entail a harmful or adverse consequence against the affected party” [p. 11].

The Court concluded in this case that the right to information prevailed over the right to be forgotten, since the appellant was an important businessman **—**in charge of an important company**—**, the facts were exact and non-erroneous and concerned irregular practices, and the time between the publication of the news and the take down request was very short.

For these reasons, the Court rejected the appeal and upheld the decision made by the First Section of the Administrative Chamber of the National Audience.

**Decision Direction**

**Expands Freedom of Expression**

Through this decision the Supreme Tribunal of Spain expands freedom of expression by denying the right to be forgotten regarding the publication of news related to closed criminal investigations without a guilty verdict, thus giving special prevalence to freedom of information. The judgement recognized that facts about private actors in charge of large economic interests are of public interest and that the internet users’ right to freedom of information is key for democratic life.

**CASE SIGNIFICANCE**

**The decision establishes a binding or persuasive precedent within its jurisdiction.**

**Precedential effect**