**Don Dionisio v. Google LLC**

**Closed**

**Expands Expression**

**Region and Country**: Spain, Europe

**Judicial Body**: Third Section of the Administrative Chamber of the Supreme Tribunal

**Type of Law:** Constitutional Law, International Law

**Themes**: Right to be forgotten, Privacy, Data protection

**Tags**: Search Engines, Google, Filtering and Blocking

**Mode of Expression**: Electronic /Internet-based Communications

**Date of Decision**: 17 September 2020

**Outcome**: Affirmed lower court decision

**Case Number**: STS 2918/2020

**Summary and Outcome**

The Third Section of the Administrative Chamber of the Supreme Tribunal of Spain decided that there was no merit in the claim of a citizen who demanded Google to remove from its search engine negative press coverage related to criminal accusations of espionage, 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 when weighed against the right to be forgotten of Don Dionisio, 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 Don Dionisio.

**Facts**

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

These specific search results make 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 the right to be forgotten of Mr. Dionisio [p. 4].

Don Dionisio appealed the decision on September 19, 2019. The 17th of September of 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 in this case, Don Dionisio’s rights to be forgotten should prevail when weighed against 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 first instance decision 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]. Likewise, Don Dionisio considered 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].

In this decision there are no references to the arguments that Google LLC made in this instance.

The Tribunal started its argumentation by stating 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 when in collision to the right to freedom of information and expression.

The Tribunal cited the Costeja Case (Google Spain SL v. Agencia Española de Protección de Datos),from the ECJ, to explain how data processing can affect rights such as private life and the protection of personal data, when the results of search engines allow anyone on the internet access to a structured vision of a person. On the other hand, the ECJ argues too that “the deletion of links from search results by name of the affected physical person, can affect the legitimate interest of Internet users, who are potentially interested in accessing certain specific information. For this reason, it’s necessary to achieve a fair balance between this interest and the fundamental rights of the affected person” [p. 5].

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 a 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 specific case, the Court concluded that the reasoning of the first instance judgment was right in all its parts. For the Tribunal the contested news didn’t affect his right to private and family life, since the information found on 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 too 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.

**Global Perspective**

**National standards, law or jurisprudence**

* ECtHR, Brunet v. France, App. 21010/10 (Sep.18, 2014).
* ECJ, GC v. Commission nationale de l’informatique et des libertés, C-136/17 (2019).
* ECJ, Google Spain v. Agencia Española de Protección de Datos (AEPD), C-131/12 (2014).
* Spain, Civil Chamber of the Supreme Tribunal of Spain, Decision 545/2015 (2015).
* Spain, Civil Chamber of the Supreme Tribunal of Spain, Decision210/2016 (2016).
* Spain, Constitutional Court, STC 17/2013 (2013).
* Spain, Constitutional Court , STC 41/2011 (2011).
* Spain, Constitutional Court, STC 58/2018 (2018).
* Spain, Constitutional Court, STC 129/2009 (2009).
* Spain, Constitutional Court, STC 172/1990 (1990).
* Spain, Constitutional Court, STC 292/2000 (2000).
* Spain, Third Section of the Administrative Chamber of the Supreme Tribunal of Spain, Decision 12/2019.

**CASE SIGNIFICANCE**

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

**Precedential effect**