**Don Segundo 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 2873/2020

**Summary and Outcome**

The Third Section of the Administrative Chamber of the Supreme Tribunal of Spain considered that a citizen’s claims regarding his right to be forgotten had no merit, since he wanted Google to remove from its search engine information that was of public interest. Don Segundo’s company was the subject of several online publications, in two different internet platforms, in which its services in the real estate business were criticized. Don Segundo wanted Google to take measures to prevent his name from appearing in the search results. The Tribunal considered that the right to be forgotten must be carefully weighed with the right to freedom of information and expression of internet users. Since the information Segundo wanted to take down was still today of public interest to consumers and users, the Court decided in favor of maintaining the information indexed in Google’s search engine.

**Facts**

Don Segundo presented a case against Google LLC before the Agencia Española de Protección de Datos (AEPD) (Spanish Agency for Data Protection). Don Segundo requested Google to take “any necessary measures to prevent his name from appearing in the search results” [p. 3] from specific URLs.

The aforementioned search results make reference to “three articles published in US-based platforms specialized in fraud allegations: Ripoff Report and Complaints Board, in which there were different criticism and some comments about the professional practices of Mr. Segundo. The information in dispute consists of opinions from a user and her experience when contacting [Segundo’s] company […] and the negative treatment she received upon showing interest in the purchase of real state property” [p. 8].

On June 28, 2017, the AEPD granted protection to the rights of Segundo. Google initiated judicial proceedings seeking the annulment of the administrative decision of the AEPD in favor of Segundo. The 14th of December 2018, The First Section of the Administrative Chamber of the National Audience overruled the decision issued by the AEPD.

This ruling prompted Don Segundo to appeal the decision. 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 in this case, Don Segundo’s rights to be forgotten, respect for private and family life, and protection of personal data should prevail when weighed against freedom of information and expression.

According to the appellant the first instance ruling erred in several aspects. Don Segundo argued that he’s not a “person of public interest, nor there’s any public interest in the access to information or data related to him” [par. 8]. The appellant also argued that the information against him is mainly composed of “insults regarding [his] professional work”, which shouldn’t merit any legal protection. Likewise, Segundo considered that the first instance judgement didn’t consider the temporal factor, according to which data collection should be adequate, pertinent, proportional and exact, not only at the time in which it’s collected, “but also during all the time the data is being processed” [p. 9].

The Supreme 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].

The Court also made reference to the Costeja case (Google Spain SL v. Agencia Española de Protección de Datos),from the ECJ**,** to bring to the light the fact that although personal data processing by a search engine can affect fundamental rights, such as private life, “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].

Following the precedent set by the Constitutional Court of Spain (STC 129/2009, June 1st, FJ 2), the Tribunal argued that “freedom of information prevails over personality rights, when the news that is being disseminated is truthful and refers to public relevance facts that are of public interest” [p. 6]. This set of criteria, as the Court notices, can also be found in the case of Brunet v. France, by the ECtHR.

For the Supreme Tribunal, in line with the precedent laid out by the Constitutional Court (STC 172/1990, November 12, FJ 2),public relevanceis determined by the matter or subject [of the information], or by the condition, public or private, of the person concerned”[p. 6].

Regarding the right to be forgotten, the Tribunal also reiterated jurisprudence by the Civil Chamber of the Supreme Tribunal of Spain (Decision 545/2015). According to it, “the right to be forgotten doesn’t protect a tailor-made design of one’s past, forcing web page editors, or search engine managers, to eliminate personal data, when it’s associated with negative facts” [p. 7].

When analyzing the specific case, in light of the criteria previously set forth, the Court acknowledged that the appellant is not a public figure and his work, in the real state sector, is essentially private in nature. That being said, the Court argued that “some professional aspects of [Segundo’s] activities are of public interest” [p. 9]. For example, consumers and users have a legitimate interest in accessing publications, through Google, with information and opinions about professionals. “What’s being disseminated in the publications that [the appellant] wants to take down, are experiences and opinions from a user in two platforms, consisting of complaints about professional services from the appellant’s company, and even though in some cases this criticism issues disqualifying statements, these are not disproportionate” [p. 9].

Similarly so, the Tribunal also held that the public interest regarding the complaints hasn’t diluted by the passage of time, “since the information is still relevant and of public interest” [p. 10]. Although the contested information was published in 2010, in 2014 and 2015 adverse commentaries from different users, about Segundo´s company, were published too. In 2017, subsequent publications were made regarding allegations about criminal activities linked to the appellant’s company. Considering the ongoing chain of news, and the importance and seriousness of the allegations, the Tribunal opined that the contested information was still relevant.

Regarding the truthfulness of the information, the Court argued that Google can’t be required “to verify on the truthfulness of opinions, nor its content, except when they are obsolete, defamatory, or disqualifying in an unproportionate manner or about issues that are not of public interest” [p. 12]. For the Court, Google successfully argued that the contested publication alludes to an important issue that is relevant for consumers.

For these reasons, the Tribunal upheld the decision taken by the lower court, thus confirming that in this specific case the right to be forgotten, when in collision to freedom of expression, couldn’t prevail.

**Decision Direction**

**Expands Freedom of Expression**

In this decision, the Supreme Tribunal expands freedom of expression by arguing that the right to be forgotten doesn’t apply to information of public interest. The Court also stated that Google can’t be compelled to act as a fact-checker for all the information indexed in the search engine. In this case, a robust protection is dispensed in favor of access to information and freedom of expression in relationship to online publications that include criticism of private actors.

**Global Perspective**

**National standards, law or jurisprudence**

* ECtHR, Brunet v. France, App. 21010/10 (Sep.18, 2014).
* 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, Constitutional Court, STC 129/2009 (2009).
* Spain, Constitutional Court, STC 172/1990 (1990).
* Spain, Constitutional Court, STC 292/2000 (2000).

**CASE SIGNIFICANCE**

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

**Precedential effect**