**Google INC v. Agencia Española de Protección de Datos (AEPD)**

**Expands expression**

**Region and Country:** Spain, Europe

**Judicial Body:** First Section of the Administrative Chamber of the National Audience

**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:** 11 May 2017

**Outcome:** Annulment of administrative procedure

**Case Number:** SAN 2433/2017

**SUMMARY AND OUTCOME**

The First Section of the Administrative Chamber of the National Audience of Spain annulled a decision issued by Agencia Nacional de Protección de Datos (AEPD) that ordered Google to limit or block access to opinions on the Internet through a web search, when using a notorious doctor’s name**.** The contested information referred to comments on online forums that criticized Doctor Edmundo. Edmundo requested to the AEPD the blocking of its personal data, which the AEPD granted. Google initiated a legal action seeking the annulment of this decision. The Tribunal considered that in this case, when weighed against the right to be forgotten, freedom of expression prevailed since web users and potential patients have a legitimate interest in accessing information about a notorious doctor in the medical field.

**FACTS**

On 13 June 2014, Don Edmundo requested to the search engine Google, the deletion of its personal data as it appeared on an internet forum. The forum was hosted in a page called “my back hurts” and “its purpose is to share user experiences related to spinal cord ailments” [p. 3]. The comments Edmundo wished to eliminate referred to the concrete experience of a user who was a patient of Doctor Edmundo —who is an specialist in spinal endoscopic surgery— and was critical of the treatment he received from this medical expert. The user referred to the doctor as a “scam artist” and a “scoundrel”.

Google denied the request on July 14, 2014, arguing that the “contested URLs refers to matters of substantial interest to potential clients of [the doctor’s] professional services. Thus, it is justified, in the name of public interest, that people can access the document through a web search using [Edmundo’s] name” [p. 2].

Edmundo filed a request against Google before the Agencia Nacional de Protección de Datos (Spanish Data Protection Agency), demanding that access to the contested information shouldn’t be achieved by typing his name in an online query. On May 20, 2015, the AEPD issued a decision in favor of Edmundo, arguing that there was no public interest in the information and that “the information has not been proven to be true” [p. 3].

Google appealed this administrative decision. The AEPD upheld its decision on September 24, 2015, arguing that “freedom to express opinions was not affected by the deletion of search results to the concerned web link, because the information is still in its source” [p. 3].

On 4 April 2016, Google INC. initiated a judicial proceeding against the AEPD, seeking the annulment of the administrative decisions issued by the agency. The First Section of the Administrative Chamber of the National Audience issued a decision on the case on May 11, 2017.

**DECISION OVERVIEW**

Justice María Nieves Buisan García delivered the opinion for the First Section of the Administrative Chamber of the National Audience. The main issue for the Tribunal was to determine whether “the right to data protection of Doctor Edmundo must prevail over the right to information, freedom of expression and the general interest of the public to access the information” [p. 8] considering the nature and public relevance of what the AEPD blocked.

According to Google, the decision issued by the AEPD breached “article 20.1 of the Spanish Constitution, article 10 of the ECHR, article 11 of the Charter of Fundamental Rights of the European Union and article 19.2 of the International Covenant on Civil and Political Rights” [p. 4]. For the plaintiff the information that was blocked was of public interest. Google argued that Doctor Edmundo is an active medical professional who has appeared in “multiple reports and news articles related to spinal cord health” [p. 3]. In light of his professional trajectory and the fact that Edmundo still is an active doctor providing medical services through a private clinic, Google claimed, he’s exposed to public opinion, and potential patients have a right “to find not only positive feedback, but also negative criticism, to decide whether to have surgery with him” [p. 3].

Google also held that the contested information was protected by freedom of expression, since the comments made online “are not factual attributions but rather opinions, criticisms or judgements on the professionalism of a doctor” [p. 4]. As such, there’s no room to judge on the truthfulness on the information.

For these reasons, Google believed the AEPD breached “the right the public has to conduct investigations, search and get information in a free manner about the professional care of persons who work in the context of general healthcare and about Dr. Edmundo in particular” [p. 4].

For its part, the AEPD argued that the truthfulness of the contested information “is a valid criterion to take into account, since the indiscriminate dissemination of information whose veracity is in doubt allowed [the AEPD] to consider that […] freedom of expression must give way to the protection of the privacy of the affected person” [p. 5].

The Tribunal started its argumentation by outlining the content of the right to data protection and freedom of expression as discussed by the national case law. Following the jurisprudence laid out by the Constitutional Tribunal of Spain (STC 292/2000), the Court explained that data protection “is not limited to intimate data of a person, but to any type of data whose knowledge or use by thirds parties may affect their rights” [p. 6].

The Court referred to another decision by the Constitutional Tribunal (STC 23/2010) to explain that freedom of expression protects “thoughts, beliefs, opinions, value judgements and criticisms to others, even when those can be unpleasant, disturbing, or displeasing to the person they address to. Pluralism, tolerance, and openness, without which there is no democratic society, require it” [p. 6].

Following the precedent of the Constitutional Tribunal (STC 165/1987), The Court also clarified that freedom of expression is a wider concept than freedom of information, since the first refers to ideas, opinions, or subjective value judgements which by their abstract nature can’t be proven, and whose purpose is “not to establish facts or state objective data” [p. 6].

The Court explained that in cases where the right to data protection and freedom of expression collide it is necessary to find a fair balance between “the legitimate interest that internet users have in accessing information through a query using a person’s name and the fundamentals rights of the concerned person” [p. 7]. The role played in public life by an interested party, the Court stated, can justify the interference on the fundamental rights of a person, for example.

Upon analyzing the specific case, the Court considered that the contested comments made online “don’t refer to the personal life of Mr. Edmundo, rather exclusively to his professional life and role as a specialist in endoscopic spinal cord surgery, and solely in the context of his profession as a doctor” [p. 8].

The Court then proceeded to cite the Guidelines on the Implementation of the Court of Justice of the European Union Judgment on "Google Spain and Inc v. AEPD and Mario Costeja C-131/12. According to this document, regarding data processing, it is important to differentiate between private life and public and professional life: “the availability of information in search results becomes more acceptable the less information it reveals about a person’s private life […] information is more likely to be relevant if it is related to the professional life of the concerned party” [p. 8].

Considering this legal background, the Court found merit in the arguments laid out by Google. The Tribunal considered that web users have a legitimate interest in accessing the contested information, since the doctor “has a certain public notoriety in the healthcare industry, given that he’s a specialist in a particular method of intervention regarding the spinal cord […] and is the director of the so-called Morgenstern Institute of endoscopic laser spinal cord surgery” [p. 9]. For these reasons, potential patients have a right to know about “the experiences and opinions of those who, previously, have been patients of this doctor” [p. 9].

The Court also opined that the comments, made in webpage that the AEPD ordered to block, were mere opinions, rather than information, about Dr. Edmundo. According to the Tribunal, the scope of protection of the Spanish Data Protection Act alludes to information but doesn’t include opinions. Taking into consideration the jurisprudence of the Constitutional Tribunal (STC 51/1989), the Court argued that freedom of expression protects offensive expressions too, in cases where the information disseminated, or the criticisms made, reduce its offensive meaning.

The Court concluded, following the precedent of the Spanish Supreme Tribunal (STS 545/2015), that the right to be forgotten “does not allow everyone to build their own past, forcing web page editors, or search engine managers, to eliminate personal data, when it’s associated with negative facts” [p. 10].

It was because of these reasons, that the Tribunal annulled the decisions issued by the AEPD.

**DECISION DIRECTION**

**Expands Freedom of Expression**

This decision widens the scope of freedom of expression by considering that blocking or filtering internet search results by name it’s less acceptable in cases where the contested information refers to professional life. When balancing freedom of expression against the right to be forgotten, the Court gave prevalence to the first right by highlighting the fact that web users and potential patients have a right to access information in a free manner about persons of public interest in the private sector.

**Global Perspective**

**National standards, law or jurisprudence**

Charter of Fundamental Rights of the European Union, art. 11

ECHR, art. 10

ICCPR, art. 19.2

EU, Guidelines on the Implementation of the Court of Justice of the European Unión Judgment on "Google Spain and Inc v. AEPD and Mario Costeja C-131/12 (2014).

Spain, Const. art. 20.1

Spain, Law 3/2018, Protection of Personal Data and Digital Rights Act.

Spain, Civil Chamber of the Supreme Tribunal of Spain, Decision 545/2015 (2015).

Spain, Constitutional Court, STC 9/2007 (2007).

Spain, Constitutional Court, STC 20/2002 (2002).

Spain, Constitutional Court, STC 23/2010 (2010).

Spain, Constitutional Court, STC 51/1989 (1989).

Spain, Constitutional Court, STC 107/1988 (1988).

Spain, Constitutional Court, STC 151/2004 (2004).

Spain, Constitutional Court, STC 165/1987 (1987).

Spain, Constitutional Court, STC 292/2000 (2000).

Spain, National Audience, SAN13/2014 (2014)

Spain, National Audience, SAN31/2010 (2010)

**CASE SIGNIFICANCE**

This case did not set a binding or persuasive precedent either within or outside its jurisdiction.