AGENCIA ESPAÑOLA DE PROTECCIÓN DE DATOS

Nota informativa

The Court of Justice of the European Union supports the thesis of the Spanish DPA on search engines and the right to be forgotten online

(Madrid, May 13, 2014) The Court of Justice of the European Union (ECJ) has issued today a judgment of great importance that resolves the request for a preliminary ruling submitted in March 2012 by the Spanish Audiencia Nacional on the interpretation of EU Data Protection law (Directive 95/46/EC) in relation to the activity of Internet search engines. The decision directly affects more than 220 appeals filed by Google against resolutions of the Spanish Data Protection Agency (AEPD) currently pending before the Court.

The judgement of the European Court, which has final say with regard to the interpretation of European Union law, fully clarifies the responsibilities of Internet search engines with regard to the protection of personal data and puts an end to the situation of lack of protection in which affected data subjects find themselves as a consequence of Google's refusal to comply with European and Spanish law on this matter.

In today's judgment the ECJ states that:

- The activity of search engines like Google's is a processing of personal data in which the search engine acts as controller, since it determines the purposes and means of this activity.

- This processing is subject to the data protection standards of the European Union, given that Google has created in a Member State an establishment for the promotion and sale of advertising space whose activity is directed to the people of that State.

- Individuals are entitled to request the search engine, under the conditions of the Data Protection Directive, the removal of search results that affect them, even though this information has not been deleted by the publisher nor this publisher has requested its de-indexation. If that request is not met, individuals are entitled to seek the protection of the AEPD and the courts.

- The right to data protection of individuals prevails generally over the "mere economic interest of the manager of the search engine" unless the claimant has public relevance and access to information is justified by the public interest.

In recent years, the Spanish DPA has had to deal with an increasing number of complaints of citizens who apply for relief against Google following its refusal to accept their demands to stop the dissemination on the internet, through its browser, of information lacking relevance and whose public disclosure is causing them a harm. In all cases the claimants complain that the company has rejected their request arguing as a first reason that its activity is not subject to Spanish law.

Contrary to that, the Agency has always maintained that Directive 95/46/EC and Spanish data protection legislation are applicable to the activities of Google's Internet search engine due to the fact that the company has an establishment in Spain linked to its activity and uses equipment situated in Spanish territory, even if the company does not have its headquarters in Spain. Similarly, it has been considered that the activity of the search engine, where it relates to information concerning an identified or identifiable natural person, is a "data processing operation" where the controller cannot be other than the company that manages it.

Along with this, the Agency has always understood that a correct interpretation of the Directive requires those responsible for Internet search engines to recognize those affected the so-called "right to be forgotten", which is nothing but the projection on the Internet of the traditional rights to object and to erasure, as part of the fundamental right to the protection of personal data. In exercising these rights, citizens should be able to address the browser in order to request it to stop disseminating data or personal information concerning them when such disclosure is causing them an injury to their rights and is without sufficient legitimate base.

This interpretation of Spanish and European law has been frontally challenged by Google, that has consistently appealed all resolutions of the Agency in which, on a case by case basis and after carefully studying the circumstances of each individual claim, the data subjects' right to erasure or to object has been upheld and therefore Google has been requested to withdraw search results that link to information which has harmful effects on the data subject.

The Agency welcomes that the ECJ supports its views and sets the correct interpretation of the Directive in a legally binding way. That will prevent the recurrence of new attempts to circumvent its application to the detriment of affected citizens. As stated by José Luis Rodríguez Álvarez, Director of the Agency, "we are confident that this ruling marks a turning point in Google's conduct and that from now on it complies with European data protection legislation and respects the rights of citizens. "

In any case, a complete assessment of the content and consequences of this important ECJ ruling, whose the implications go far beyond the scope of the right to be forgotten, requires a careful analysis of its foundations and of the very remarkable considerations it contains.

Notwithstanding this, it is worth recalling that the right to be forgotten, as it has been understood by the Agency and now confirmed by the ECJ, far from being an absolute right as it has sometimes depicted in an attempt to disqualify it, has limited range. Its scope matches the corresponding rights to erasure and to object through which it materializes. Accordingly, its recognition is not in any way incompatible with the full respect of the freedoms of expression and information and of its prevailing value in democratic societies.

In this sense, the Spanish DPA has always been particularly respectful of these essential freedoms and other fundamental rights that might eventually be at stake. First, because all decisions are made after careful consideration of the circumstances of the case and are only favorable to the claimant when the case involves personal information that lack

relevance or public interest but whose dissemination is causing harm to the affected individual. The Agency systematically rejects complaints concerning public figures or facts which are of public relevance. Second, because in no case the modification or amendment of the original sources is required. Decisions only request the end of the spread of information on the internet through search engines. Original documents, files or digital newspapers archives remain always unaltered.