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RIGHT TO BE FORGOTTEN IN EUROPEAN UNION AND THE US

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SUMMARY

In digital era, access to information is very high and easy. Especially, the internet is the unique information pool and search engine operators have offers high opportunity to reach information. Although the access to information sounds good at first glance, some information is bad memory of individuals in theirs past. Especially, search engine operators make easier to access such information from news websites. As a result of this situation, individuals may would like to remove the content of these information from the websites based on the right to be forgotten. However, it is not still recognized universal human rights. The EU law and the US law have opposite approaches related to removal the content and the right to be forgotten. The GDPR(General Data Protection Regulation) recognizes the right to be forgotten in Europe but there is no relevant legislation which recognizes the Right to be Forgotten in the US. While it is possible to remove bad memories from the websites under European Union law as a rule, the US law rejects the right to be forgotten in favour of the freedom of expression. This situation is related to the liability of the websites and search engine operators. The purpose of this paper addresses the comparison of two opposite approaches on the right to be forgotten.

KEY WORDS

Right to be Forgotten, Personality Right, Private Life, Data Privacy.

INTRODUCTION

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The philosopher John Locke considered “trust” and “prestige” as two basic elements that human considers the most. Because of the internet, bad memories are one click away in search engines are open to the public.[2] Bad memories constitute the core part of privacy. This situation endangers the privacy of people. Due to this situation, privacy became one of the most debated topics in digital era. It can be defined as “*an individual condition of life characterised by exclusion from the public and publicity. This condition embraces all those personal facts which the person concerned has determined should be excluded from the knowledge of outsiders and in respect of which there is a will that they be kept private*.”[3] It has been taking attention of scholars due to various reasons, e.g. deliberate data sharing in social media, utilisation of cloud computing, and increasing communication. People share a bulk of personal data intentionally while learning, education, teaching, socializing, making business and so on.[4] Since the internet creates a platform which offers numerous accessible information to public, privacy of many individuals become more transparent. Any data remains on the internet, and cannot be erased. Sometimes, such data may be information which holders want to keep confidential. If free access to such an information is harmful for dignity of an individual, the right of personal data is subject to exclusion from the internet.[5] Even though many years pass, bad memories remain and are more accessible through search engines on the internet.[6] This situation has opposite direction to the freedom of expression and media. As the technology provides easier access to the news in digital world, conflicting between the human dignity and the freedom of expression has emerged more clearly within the context of the right to be forgotten on the internet.

The roots of the right to be forgotten bases on the right to oblivion which offers opportunity to block negative consequences for individuals. Ex-convicted people are not wanted to be known for their criminal past because of correctional nature of felony and time elapsed.[7] For example, in a 1983 judgment, the plaintiff, whose father had been sentenced to the death penalty in 1939, granted Swiss television’s request to prevent the broadcasting of a documentary based on official records describing his father’s life and the execution of his sentence, on the basis of the prisoner’s right to oblivion.[8] In the following years, many plaintiffs won their lawsuits

[2] FAİSAL Kamrul, Balancing Between Right to be Forgotten and Right to Freedom of Expression in Spent Criminal Convictions, Security and Privacy, Volume:4, Issue:4, July/August 2021(e157), page 1.

[3] Die Reg op Privaatheid(UNISA 1976) pg 287.; BASSON Andre Stephan, The Right to be Forgotten: A South African Perspective, LLM Dissertation, University of Pretoria Faculty of Law, Supervisor: Sylvia Papadopoulos, October 2015, page 42.

[4] ISLAM Toriqul, KARIM Mohammad Esshadul, Sejarah: Journal of History Department, University of Malaya; No:28, Issue:2, 2019 p.169.

[5] ANDRYUSCHCHENKO Ekaterina, Right to be Forgotten on the Internet in Europe and Russia, Conhecimento Diversidade, Niteroi, v.8, n. 15, 2016, p.16.

[6] NEVILLE Andrew, Is it a Human Right to be Forgotten? Conceptualizing the World View, Santa Clara Journal of International Law, Volume:15, Issue:2, 2017, page 158.

[7] RAZMETAEVA Yulia, The Right to Be Forgotten in the European Perspective, TalTech Journal of European Studies, Vol.10, No.1, page 63.

[8] X v. Societe Suisse de Radio et de Television, BGE 109 II 353 (1983), WERRO Franz, “Right to Inform v The Right to be Forgotten: A Transatlantic Crash” (May 8, 2009). Liability in the Third Millenium, Aurelia Colombi Ciacchi, Christine Godt, Peter Rott, Lesile Jane Smith, eds., Baden-Baden, F.R.G., 2009; Georgetown Public Law Research Paper No.2, s. 290, ÖNOK Rıfat Murat, Kişisel Verilerin Korunması Bağlamında Unutulma Hakkı ve Türkiye Açısından Değerlendirmeler, İKÜHFD, 16(1), 2017, p. 162.

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based on the personality rights before Swiss courts because of the publication of information concerning their convictions in the past.[9] Especially, it should be emphasized that convictions in the past affect the employment process negatively.[10] Therefore, expungement of criminal records and the right to be forgotten are necessary for people to shape their future. The right to be forgotten played important role to remove the personal data from the internet. However, while the E.U. accepts the right to be forgotten in its legislation based on the human dignity, the U.S. rejects the right to be forgotten based on the freedom expression and freedom of press. Both systems follow opposite approaches.

Right to be forgotten was firstly recognized in Google Spain SL, Google Inc. v. Agencia Espanola de Proteccion de Datos (AEPD) and Mario Costeja Gonzalez('Costeja') case in 2014. Before this judgment was given, the Right to be Forgotten terminology was being discussed under the current European data privacy law, the 1995 Data Protection Directive(DPD). This judgment has sparked an already complex debate concerning whether a Right to be Forgotten should be covered in legislation as part of European Data Privacy Law.[11] The 1995 Data Protection Directive(DPD) covers the root of the right to be forgotten under the title of "Right of Access". Pursuant to this article, individuals may request the controller to remove any data when any data turns unnecessary or considered as incomplete or inaccurate. The controllers have an obligation to manage and protect the confidential and private information from abusing them.[12] After this judgment, two important results occurred. The first result is that Google received approximately 170.000 requests for the deletion of links to almost 600.000URLs, with links being deleted to about 40% of the URLs. To cope with this high number of requests, Google set up an expert Advisory Council on the Right to be Forgotten which organized meetings as part of process to provide policy on how to assess to the ruling.[13] The second result is that right to be forgotten was started to be a recognized right in many countries.[14]

RELATIONSHIP OF RIGHT TO BE FORGOTTEN WITH FUNDAMENTAL RIGHTS AND FREEDOMS

Right to be forgotten is a very new type of the right related to basic rights and freedoms. On the hand, personal rights, right to private life and data privacy and secrecy are legal basis of right to be forgotten, on the other hand, right to information and freedom of expression and media are refusal reasons of right to be forgotten. If right to information and freedom of expression and

[9] Werro, s. 290-291., ÖNOK Rıfat Murat, Kişisel Verilerin Korunması Bağlamında Unutulma Hakkı ve Türkiye Açısından Değerlendirmeler, p. 162.

[10] O'CALLAGHAN Patrick, The Right to be Forgotten in Ireland, The Right to be Forgotten a Comparative Study of the Emergent Right's Evolution and Application in Europe, the Americas, and Asia, Editor: Franz Werro, Springer, 2018, p. 143.

[11] LİNDSAY David, The 'right to be forgotten' by search engines under data privacy law: a legal and policy analysis of the Costeja decision, Journal of Media Law, Volume:6, Issue:2, 2014, p. 199.

[12] CHINPONGSANONT Daongoen, The Right to be Forgotten under Thai Law, LLM Thesis, Supervisor: Munin Pongsapan, Thammasat University Faculty of Law, 2016, page 33.

[13] LİNDSAY David, p. 200.

[14] ANDRYUSCHCHENKO, p.16.

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media prevails over the personal rights, right to private life and data privacy and secrecy in a legal system, there is no recognition of right to be forgotten.

Personality Rights

Personality rights are recognition of a person as bodily and moral being and enjoyment of her or his own sense of existence in modern legal systems and doctrine.[15] Dignity, reputation, privacy, bodily integrity constitute personality rights etc. in doctrine. Personality rights may be accepted as an element of human dignity.[16] Therefore, since a person may request the deletion of negative news or link about himself from the digital platforms based on elements of personality rights for human dignity, it is considered one of the legal grounds of right to be forgotten.

Right to Private Life and Data Privacy

Right to private life is accepted human rights principle in European Human Rights Convention Article 8 as follows:

"*1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others."

Since all European Union countries are signatory parties of the European Human Rights Convention, this article is binding on European countries. As it is seen from this article, there is no right to private life or privacy definition. Private life can be defined as "person's personal relationships distinct from their public life." Emotional relationship, sexual life, or medical treatment etc. constitute right to private life.[17] Its limitations are contained in Article 8 of European Human Rights Convention. Unless there is national security, public safety or the economic interest of the country etc., the right to private life is a reason of right to be forgotten. European legislations have also similar articles which give preference the right to private life to the right to be forgotten.

[15] NEETHLING Johann, Recognition and Protection of Personality Rights: Classification and Typology, Journal of European Tort Law, Vol.9, Issue:3, 2019, page 243.

[16] NALBANTOĞLU Seray, Bir Temel Hak Olarak Unutulma Hakkı, TAAD, Yıl:9, Sayı:35, Temmuz 2018, page 585.

[17] GOMEZ-AROSTEGUI H. Tomas, Defining Private Life Under the European Convention on Human Rights By Referring to Reasonable Expectations, California Western International Law Journal, Volume:35, Spring 2005, Number:2, page 162.

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Data Privacy and Secrecy

Privacy is “a situation whereby one is free to do any acts that do not affect other person’s rights and such acts are done for his own benefits.” The right to privacy is “the right of an individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information.”[18] It is related to individual’s peace and tranquillity which cannot be subject to misuse, abuse, or violation.[19] If individuals do not need privacy for their personal life, affairs etc., they can share their such situations and information with third persons or public because they can be capable of disposing of their data and information. Therefore, right to privacy is a legitimate reason of the Right to be Forgotten.

Freedom of Expression and Media

Freedom expression is a basic human right that guarantees expression of people with their free will without fear, public authority, and legal sanction. Freedom of media is a very sensitive extension of the freedom expression. It offers information to people and serves individuals’ right to information which is very important for self-development of people. The freedom of expression and press are fundamental principles in a democratic society. They are very important cornerstone human rights principle guaranteed by modern constitutions and international human rights conventions. European Human Rights Convention Article 10 expresses the freedom of expression as follows:

“*1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

As it is seen from the Article 10 of European Human Right Convention, freedom of expression can be limited under exceptional conditions such as national security, public safety, prevention of felony, protection of health or morals, and the reputation of individuals. Based on reputation of individuals, such a restriction creates legal base of the right to be forgotten. It means that freedom of media has conflict with the right to be forgotten. Therefore, the right to be forgotten can be considered as exception of freedom expression.

[18] Calcutt D. Report of the Committee on Privacy and Related Matters H. M. S. O, London. 1990 Jun; Cm 1102:7.; MOHAMED Duryana Binti, The Privacy Right and Right to be Forgotten: the Malaysian Perspectives, Indian Journal of Science and Technology, Vol.9, Issue:1, 2016, pp. 1-2.

[19] MOHAMED, p.1

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EUROPEAN UNION PERSPECTIVE

Conseja Decision

Mr. Costeja Gonzalez saw a news of La Vanguardia which he sold his property to pay his social security debts 16 years ago whenever he wrote his name on Google search engine. This situation created his dissatisfaction that his reputation was damaged. Therefore, he lodged a complaint with the Spanish Data Protection Agency against the Spanish newspaper, La Vanguardia, Google Inc.(the parent company) and Google Spain(the Spanish subsidiary).[20]

The Data Protection Agency dismissed the complaint relating to La Vanguardia stating that the original text of the news was completely legitimate, but confirmed the complaint to Google removing links to La Vanguardia from the search results regarding Mr. Gonzalez. The Data Protection Agency decided that although the search engine did not operate the website storing the information, the operation of the search engine falls on the scope of data protection law who was directly responsible for the dissemination of information. Therefore, the Data Protection Agency ordered to delete personal information from the search results, even though the content of the newspaper website was legal. Google Inc. and Google Spain filed a case against this decision before the Spanish High Court which asked for a preliminary ruling before the CJEU for the interpretation of the Data Protection Directive.[21] The main legal problems before the CJEU were referred as follows:

- the territoriality of the application of the Data Protection Directive for search engine operators; (especially where the headquarter of a search engine operator is outside the European Union but with European subsidiaries)
- whether a search engine operator is data controller or not;
- whether a search engine operator has obligation to remove the relevant links from search results.

The reference of these legal problems to the CJEU became a big opportunity to clarify contentious provisions of the data protection directive.[22] Therefore, the Costeja case is an important step for the interpretation of the Data Protection Directive.[23]

[20] FRANTZIOU Eleni, Further Developments in the Right to be Forgotten: The European Court of Justice's Judgment in Case C-131/12, Google Spain, SL, Google Inc v Agencia Espanola de Proteccion de Datos, Human Rights Law Review, Volume:14, 2014, page 762.

[21] ANDRYUSCHCHENKO, p. 17.

[22] LINDSAY, p. 205.

[23] FABBRINI Federico, CELESTO Edoardo, The Right to be Forgotten in the Digital Age: The Challenges of Data Protection Beyond Borders, German Law Journal, Volume:21, Issue:1, 2020, p. 59.

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a. Is Google data controller?

Advocate-General Jaaskinen assessed that the main legal problem in applying the Data Protection Directive to Google was whether a search engine operator is a controller or not.[24] Controller means "*the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing data*."[25] Advocate-General did not face any difficulty determining search operator engine activities. Google's activities locate information published on the internet by third parties, index it automatically, stores it and makes it available. However, the characterisation of search engine operators as a data controller is a more complex legal issue.[26] At first glance, it seems that search engine operators have purely intermediary functions to provide access to information for third parties. Advocate-General does not classify search engine operators as a controller in characterisation of the search engine operators due to reasons as follows:[27]

- Search engine operators have the function of information location tool. They do not have the effect on the information provided by third party websites, cannot change the information or data.
- In indexation process, Search Engine Operators determines whether or not exclusion codes are fulfilled or met with. It is data controlling function.
- Search Engine Operators have no control over the automatic caching content unless very exceptional situations such as updating a cached website as a response to a request.

Based on this analysis, the Advocate General effectively stated that circumstances in which the provider can be forced under the Data Protection Directive to delete material from its search engine system would be if there is the failure of exclusion codes, or rejected a request from internet website to keep cached material updated. Therefore, the Advocate General reached the conclusion that Google could not be undergone an obligation to remove materials from its search index since there is insufficient intentional control over these materials.[28] However, the CJEU approached different characterization than the Advocate-General's. First of all, it explained that the Search Engine Operator automatically searches ("crawls") websites, retrieves, indexes and makes the information offered by the websites accessible to users. The search engine indexes all accessible information without discrimination and can also process personal data included in such information. Therefore, the personal data is collected, retrieved, recorded and organized in search index of search engine, stored in developed servers of search engine, revealed and made available to its users together with any other information. All such activities are personal data process pursuant to Article 2(b) of the Data Protection Directive. Secondly, the court also explained that since the search engine operator determines the purpose of personal data process. It is immaterial that the personal data is not selectively processed by the search engine operator or that personal

[24] LINDSAY, p. 209.
[25] Article 2 of Data Protection Directive.
[26] LINDSAY, p. 209.
[27] LINDSAY, p. 210.
[28] LINDSAY, pp. 210-211.

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data is already accessible on third party websites.[29] This characterization of search engine operators as data controllers creates problem due to at least two reasons as follows:[30]

- It is impossible to meet all the obligations imposed on data controllers for the search engine operators. For instance, the Data Protection Directive imposes strict obligations on the processing of sensitive personal data (such as sex life, political, religious or philosophical beliefs, information regarding health). Processing of such personal data is subject to data subject's consent. It is impossible in practice for search engine operators to get permission from all data subjects whose sensitive data is subject to indexation of search engine.

- If such a wide interpretation of the terms "data controller" and "processing" is accepted, nearly everybody can be considered as a data controller. For instance, Internet users searching information on Google can be considered data controllers, since personal data is retrieved by them.

Therefore, the CJEU's decision -characterization of search engine operators as data controller- is contentious.

b. Territoriality of Data Protection Directive

The internet has no border. It is open to not only the public but also users from all over the world. It creates jurisdiction and applicable law problems including foreign element disputes. In Costeja case, Mr. Costeja Gonzalez, Spanish national, has conflict with Google Inc whose headquarter is in the U.S. and Google Spanish subsidiary.[31] At first glance, it seems that conflict of law rules determines the applicable law in this dispute. Since there is no contract between Mr Gonzalez and Google or its any subsidiary, The Rome II Regulation should be examined. Article 1(g) of Rome II Regulation explicitly excludes the determination of the applicable law arising out of privacy and personality rights.[32] Therefore, the Data Protection Directive (1995) was considered to be applied since it was in effect at the date of dispute. Article 4.1 of the Data Protection Directive states as follows:

"Each Member State shall apply the national provisions it adopts pursuant to this Directive to the processing of personal data where:

(a) the processing is carried out in the context of the activities of an establishment of the controller on the territory of the Member State; when the same controller is established on the territory of several Member States, he must take the necessary measures to ensure that each of these establishments complies with the obligations laid down by the national law applicable;

(b) the controller is not established on the Member State's territory, but in a place where its national law applies by virtue of international public law;

(c) the controller is not established on Community territory and, for purposes of processing personal data makes use of equipment, automated or otherwise, situated on the

[29] NURULLAEV Ruslan, Right to Be Forgotten in the European Union and Russia: Comparison and Criticism, Pravo. Zhurnal Bysshey Shkoly Economiki, No.3, 2015, page 183.

[30] NURULLAEV, pp. 183-184.

[31] ALMLÖF Frida, The Right to be Forgotten – The Extraterritorial Reach of EU Data Protection Law with Special Regard to the Case of Google v. CNIL, Master's Thesis in EU Law and Private International Law, Supervisor: Maarit Jantera Jareborg, Uppsala University, 2018, page 37.

[32] ALMLÖF, p. 23.

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territory of the said Member State, unless such equipment is used only for purposes of transit through the territory of the Community."

In Costeja case, the Court held that the territorial application of the Data Protection Directive is applied for Google search engine. Although the seat of the parent company -Google Inc.- is in the United States, its Spanish subsidiary act as a commercial agent for the Google company groups in Spain, where it provides advertising activities on "www.google.com." Because the general revenue source of search engine operators is the sale of advertising space connected to the user's search terms, the court ruled that Google Spain's activity was "inextricably linked" to Google Inc.'s -parent company- data processing activity. Therefore, it is considered that activities performed by Google Inc. is in the EU territory to be subject to the Data Protection Directive. It is broad interpretation of the Article 4.1 of Data Protection Directive because the CJEU stated that the purpose of the EU legislation is to provide efficient privacy protection and extensive interpretation became necessary. Therefore, this decision opened the doors to right to be forgotten claims against data controllers from the outside of the EU.[33] Therefore, as a response to Conseja decision, The General Data Protection Regulation entered into effect after Costeja decision in 2016. Article 3.1 of the General Data Protection Regulation is regarded as the successor of the Article 4.1 of Data Protection Directive but, it includes an additional clause for clarification. Clarification is that the GDPR applies "*regardless of whether the processing takes place within the Union or not*." There is less emphasizing on the place of data process than the Data Protection Directive. This additional clause is in accordance with Conseja decision.[34]

European Legislation

After Conseja decision, the EU General Data Protection Regulation was enacted instead of Data Protection Directive. The new EU General Data Protection Regulation sets out a right to erasure which is also known as the right to be forgotten. The regulation creates a right for a data subject to remove personal data from data controllers under certain conditions. Some of these involve basic data protection principles, including where personal information is not necessary for the collection reason, where the data subject withdraws his consent based on the processing reason, and unlawful processing of personal information.[35]

European legislation creates a balance between legitimate interests of the data controller or third persons in data processing and the basic rights and freedoms of the data subject or owner. CJEU admitted the balancing approach and improved it in a test. It has the list which has a number of criteria depends on cases in particular as follows:[36]

- whether the person is public or private figure,

[33] ALESSI Stefania, Eternal Sunshine: The Right to Be Forgotten in the European Union after the 2016 General Data Protection Regulation, Emory International Law Review, Vol.32, Issue:1, 2017, pp. 157-158.
[34] ALMLÖF, pp. 48-49.
[35] SLANE Andrea, Search Engines and the Right to be Forgotten: Squaring the Remedy with Canadian Values on Personal Information Flow, Osgoode Hall Law Journal, Issue:2, Volume:55, Spring 2018, p.370.
[36] ANDRYUSCHCHENKO, p. 19.

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- the nature of the subject-matter information,
- information about private life of the data subject's,
- the effect of the information on the public interest.

Although there is the balancing test, it explained that privacy rights "*override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in finding that information upon a search relating to the data subject's name*." Therefore, it is deduced that the court admitted a presumption of supremacy of privacy rights while applying balance test. Some authors criticized that sensitivity of the information for the private life is unclear. Actually, if an individual dislikes information about himself or find the information distributive, it is subject to the erasure or removal.[37]

Secondly, it is undisputed fact that balancing test is applicable for ordinary people, not public figures, for whom "*the interference with his fundamental rights is justified by the preponderant interest of the general public in having on account of inclusion in the list of results, access to the information in question*." In such situation, freedom of expression and right to information prevails over the privacy of the data owner.[38]

THE U.S. PERSPECTIVE

While the right to be forgotten is recognized in European countries, there is no federal legislation governing the right to be forgotten in the U.S.A. because the freedom of expression has been interpreted in favour of the dissemination of truthful information concerning convicted persons according to the First Amendment. U.S. courts states that restrictions on the freedom of expression would "invite timidity and self-censorship and very likely lead to the suppression of many items that would otherwise be published and that should be available to the public."[39] In 1966, the United States Congress passed the Communication Decency Act(CDA) to regulate censorship of pornographic or obscene materials on the Internet. It offers legal protection to the websites against third persons and ensures that the Internet companies will continue their activities without the litigation fear from the activities.[40] Therefore, the freedom of expression has prevailing over other fundamental rights regarding the Right to be forgotten before U.S. courts.[41]

Privacy law was further discussed in the United States in two famous cases where the border of privacy right was drawn.[42] The first case was Melvin v. Reid(1931) case in California. In this case, the plaintiff was an ex-prostitute who was claimed to be murderer, but was acquitted. Subsequently, she decided to abandon her former life to be part of the respectable society for rehabilitation, and had kept secrecy on her past until the movie "The Red Kimono" revealed her

[37] ANDRYUSCHCHENKO, pp. 19-20.
[38] ANDRYUSCHCHENKO, p. 19.
[39] Cox Broadcasting v. Cohn, 420 U.S. 469, 493-496 (1975); Grisworld v. Connecticut, 381 U.S. 479, 482-486 (1965). WEBER Rolf H., The Right to Be Forgotten More Than a Pandora's Box?, JIPITEC, Vol.120, Issue:2, 2011, page 122.
[40] CHINPONGSANONT, p. 42.
[41] WEBER, p. 122.
[42] CHINPONGSANONT, p. 37.

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unfortunate story without her knowledge and permission. In the judgment, the court restricted the boundary of privacy right by emphasizing that "a person has become so prominent by his very prominence; it means that he has dedicated his life to the public and thereby waived his privacy right."[43]

In Sidis v. F-R Publishing Corporation, the plaintiff was a famous child prodigy. At the age of 11, Mr. Sidis delivered math lessons on the subject of 4D Bodies. He graduated from Harvard College when he was sixteen. He decided to continue his life far from the public. Many years later, an article mentioned his personal life from his initial fame to his current ordinary life. In this case, the right to be forgotten is not recognized since he became famous person, he became public figure. There is public interest for his life.[44]

For many years, the U.S. case law defined the potential scope of the right to be forgotten in quite narrow since the justification to restrict the freedom of speech is incompatible with the high standard of the freedom of speech guaranteed by the U.S. constitution.[45] However, Google recognized very limited right to be forgotten in the U.S. This situation is under the discretion of the Google company. Revenge porn is an example of the Google Right to be Forgotten policy.[46]

CONCLUSION

1. The Right to be Forgotten is a very new right but it is not universally recognized. While the E.U. adopts it in its legislation for the protection of personal data from third persons on the internet, the U.S. does not accept it's legislation. The EU adopted the right to be forgotten based on the prevalence of personality rights, right to private life and data privacy over the freedom of expression and right to information. The Right to be Forgotten is a very new right but it is not universally recognized. While the E.U. adopts it in its legislation, the U.S. does not accept it in the U.S. legislation. The EU adopted the right to be forgotten based on the prevalence of personality rights, right to private life and data privacy over the freedom of expression and right to information. Since the U.S. law attaches great importance to freedom of speech, it does not recognize right to be forgotten at the federal level. This situation shows that the EU and the US follow opposite perspectives regarding the balancing fundamental rights related to the right to be forgotten. It is important to note that the right to be forgotten is not an absolute right in Europe. It is necessary to balance other relevant rights.[47] Since the U.S. law attaches great importance to freedom of speech, it does not recognize right to be forgotten at the federal level. This situation shows that the EU and the US follow

[43] CHINPONGSANONT, p. 38.

[44] MANTELERO Alessandro, The EU Proposal for a General Data Protection Regulation and the Roots of the 'right to be forgotten', Computer Law & Security Review, Volume:29, 2013, pages 230-231.

[45] WEBER, p. 122.

[46] LEE Edward, The Right to Be Forgotten v. Free Speech, I/S: A Journal of Law and Policy for the Information Society, Vol:12, Issue:1, 2015, page 106.

[47] DAENGOEN Chinpongsanat, The Right to be Forgotten under Thai Law, Thammasat Business Law Journal, Vol.6, 2016, page 77.

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opposite perspectives regarding the balancing fundamental rights related to the right to be forgotten.

2. Secondly, the E.U. recognizes the right to be forgotten in certain circumstances. In the E.U., not only website owner but also search engine operators must remove the content that is subject to the Right to be Forgotten. The General Data Protection Regulation imposes the obligations to the search engine operators to remove relevant content from its searching results because search engine operators are liable for the right to be forgotten in the EU. However, since the U.S. legislation do not recognize the right to be forgotten at federal level, the search engine operators and website owners cannot be held for the right to be forgotten. They can be liable if only right to be forgotten may be recognized at state level in the U.S.

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SANTRAUKA

TEISĖ BŪTI PAMIRŠTAM EUROPOS SĄJUNGOJE IR JAV

Skaitmeninėje eroje internetas, be kita ko, suvokiamas kaip unikalus informacijos šaltinis, kuomet paieškos sistemos operatorių pagalba įvairi informacija yra plačiai prieinama. Nors tai, jog tam tikra informacija apie asmens praeitį yra pasiekiama naujienų svetainėse, gali trukdyti asmeniui pasinaudoti teise būti pamirštam, ES ir JAV teisės aktai turi priešingą požiūrį į asmens teisę reikalauti pašalinti tam tikrą turinį iš interneto. Viena vertus, Bendrajame duomenų apsaugos reglamente pripažįstama teisė būti pamirštam įprastai suteikia galimybę pašalinti tam tikrą informaciją apie asmenį iš interneto svetainių, kita vertus, JAV teisinėje sistemoje vyrauja nuostatos, jog žodžio laisvė yra svarbesnė už teisę būti pamirštam ir ji nepripažįstama visuotine žmogaus teise. Šio straipsnio tikslas – palyginti du skirtingus požiūrius į teisę būti pamirštam.

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