



PRESS RELEASE No 197/22

Luxembourg, 8 December 2022

Judgment of the Court in Case C-460/20 | Google (Dereferencing of allegedly inaccurate content)

Right to erasure ('right to be forgotten'): the operator of a search engine must dereference information found in the referenced content where the person requesting dereferencing proves that such information is manifestly inaccurate

Such proof need not however result from a judicial decision made against the publisher of the website

Two managers of a group of investment companies requested Google to de-reference results of a search made on the basis of their names, which provided links to certain articles criticising that group's investment model. They assert that those articles contain inaccurate claims.

They also requested Google to remove photos of them, displayed in the form of 'thumbnails', from the list of results of an image search made on the basis of their names. That list displayed only the thumbnails as such, without reproducing the context of the publication of those photos on the referenced internet page. In other words, the original context of the images' publication was neither stated nor otherwise visible when the thumbnails were displayed.

Google refused to comply with that request, referring to the professional context in which those articles and photos were set and arguing that it was unaware whether the information contained in those articles was accurate or not.

The German Federal Court of Justice, before which the dispute was brought, requested the Court of Justice to provide an interpretation of the general data protection regulation, which governs the right to erasure ('right to be forgotten') as well as the directive on the protection of individuals with regard to the processing of personal data, read in the light of the Charter of Fundamental Rights of the European Union.

In today's judgment, the Court points out that the **right to protection of personal data** is not an absolute right but **must be considered in relation to its function in society and be balanced against other fundamental rights**, in accordance with the principle of proportionality. Accordingly, the general data protection regulation expressly provides that the right to erasure is excluded where processing is necessary for the exercise of the right, in particular, of information.

The data subject's rights to protection of private life and protection of personal data override, as a general rule, the legitimate interest of internet users who may be interested in accessing the information in question. That balance may, however, depend on the relevant circumstances of each case, in particular on the nature of that information and its sensitivity for the data subject's private life and on the interest of the public in having that information, an interest which may vary, in particular, according to the role played by that person in public life.

However, the right to freedom of expression and information cannot be taken into account where, at the

very least, a part – which is not of minor importance – of the information found in the referenced content proves to be inaccurate.

As regards, first, the **obligations of the person requesting de-referencing** on account of inaccurate content, the Court states that it is for the person making such request to establish the manifest inaccuracy of the information or of a part of that information which is not of minor importance. However, in order to avoid imposing on that person an excessive burden which is liable to undermine the practical effect of the right to de-referencing, that person has to provide only evidence that can reasonably be required of him or her to try to find. That person therefore cannot be required, in principle, to produce, as from the pre-litigation stage, a judicial decision made against the publisher of the website in question, even in the form of a decision given in interim proceedings.

As regards, second, **the obligations and responsibilities incumbent on the operator of the search engine**, the Court considers that, following a request for de-referencing, the operator of the search engine must take into account all the rights and interests involved and all the circumstances of the case, in order to determine whether content may continue to be included in the list of search results carried out using its search engine. However, **that operator cannot be required to play an active role in trying to find facts which are not substantiated by the request for de-referencing**, for the purposes of determining whether that request is well-founded.

Therefore, **where the person who has made a request for de-referencing submits relevant and sufficient evidence capable of substantiating his or her request and of establishing the manifest inaccuracy of the information** found in the referenced content, **the operator of the search engine is required to accede to that request**. That is all the more so where that person submits a judicial decision making a finding to that effect. By contrast, where the inaccuracy of information found in the referenced content is not obvious, in the light of the evidence provided by the person making the request, that search engine operator is not required, where there is no such judicial decision, to accede to such a request. However, in such a situation, the person making the request must be able to bring the matter before the supervisory authority or the judicial authority so that it carries out the necessary checks and orders that controller to adopt the necessary measures. Furthermore, the Court requires the operator of the search engine to warn internet users of the existence of administrative or judicial proceedings concerning the alleged inaccuracy of content in so far as it has been informed of such proceedings.

As regards the display of photos in the form of thumbnails, the Court states that the display, following a search by name, in the form of thumbnails, of photos of the data subject is such as to constitute **a particularly significant interference with that person's rights to private life and their personal data**.

The Court observes that when the operator of a search engine receives a request for de-referencing concerning photos displayed in the form of thumbnails, it must ascertain whether displaying those photos is necessary for exercising the right to freedom of information of internet users who are potentially interested in accessing those photos. In that regard, contribution to a debate of public interest is an essential factor to be taken into consideration when striking a balance between competing fundamental rights.

The Court clarifies that **a separate weighing-up of competing rights and interests is required**, where, on the one hand, what is at issue are articles containing photos which, when placed into their original context, illustrate the information provided in those articles and the opinions expressed in them, or, on the other hand, photos displayed in the list of results in the form of thumbnails by a search engine outside the context in which they were published on the original internet page. In the weighing-up exercise concerning photos displayed in the form of thumbnails, the Court holds that **account must be taken of the informative value of those photos without taking into consideration the context of their publication on the internet page from which they are taken**. However, any text element which accompanies directly the display of those photos in the search results and which is capable of casting light on the informative value of those photos must be taken into account.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which

have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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