The Right to Be Forgotten in the European Perspective

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Abstract: The article focuses on the right to be forgotten, which is at the center of changes in the concept of human rights in the digital age. The origins of the right to be forgotten in European legal doctrine and judicial practice, as well as its relationship with autonomy and identity, are analyzed. The article also examines the significance of the new understanding of “time” and “data” for the adoption of this right, considering the influence of two key cases of the Court of Justice of the European Union, such as *Google v. Spain* [2014] and *Google v. CNIL* [2019] on the concept of the right to be forgotten. The place of this right, its connection with privacy and European data protection law is debated. The article focuses on jurisdictional issues, paying particular attention to both the right to be forgotten and the understanding of the relationship between privacy and freedom of expression in the European Union and the United States, and possible jurisdictional disputes around the world. The article also addresses the issue of balancing rights and legitimate interests, as well as the proportionality for applying the right to be forgotten, both in the European and global contexts.

Keywords: *balancing rights, digital age, European data protection law, GDPR, human rights, information technologies, proportionality, right to be forgotten*

1. Introduction

In the digital age, in the new world of almost inexhaustible information sources, gradual forgetting has been replaced by automated memorization, and that, along with its advantages, entails a range of issues up to self-restraint and withdrawal, both in private and public life, and ceasing to participate in important processes in society. Until recently, people were not so concerned about the personal data they leave behind online, but now, it would seem, the data remain on the net forever and can keep affecting one's life in years and years to come. A past mistake, an involuntary negligence, a sudden emotional manifestation may unexpectedly surface long after someone and others have already forgotten about them, thus continuing to spoil a person's reputation, which means that he or she will be paying twice. Having our past recorded in the depths of the net is similar to having a detailed dossier. Where are the limits of control over people's digital life, given the imbalanced influence of individuals, states and corporations on information flows? Who owns the online records of shared data? What are the implications of storing the artifacts of an individual's digital activity? How do old data affect personal identity by suddenly surfacing over time? And how far should the protection of our data extend? Let us consider the burning issues of the digital age in connection with particular changes in the approach to human rights, and, in the first place, the right to be forgotten.

Despite the debate as to its sense and limits, application practices and potential collisions (see Castellano, 2012; Rosen, 2012; Andrade, 2014; Weber, 2015; Bunn, 2015; Bartolini & Siry, 2016; De Baets, 2016; Hoffman *et al.*, 2016; Sartor, 2016; Neville, 2017; Villaronga *et al.*, 2018, Holland, 2019), many unresolved issues remain. Therefore, the article will provide a broad overview of the concept of the right to be forgotten, its connection with other rights from the European perspective, while also paying attention to the issues of extending this right outside the European Union (EU).

What follows is an attempt to make a comprehensive analysis of the right to be forgotten with the emphasis on its origin and connection with other rights. The study attempts to show that the emergence of the right to be forgotten is natural, not accidental, and is brought about by a unique combination of conditions pertaining to the digital age. First and foremost, these conditions are a digital trail, the new perception of time and the new understanding of data. As the article will demonstrate, the right to be forgotten should be recognized as a separate human right, as part of a new generation of rights

associated with the achievements of technological progress, especially in the field of information technology, and also that the understanding and application of the right to be forgotten has not yet been fully established, and there are many problems associated with it, such as, in the first place, its jurisdiction and balance with other rights, the technical possibilities of “digital forgetting” or erasing data. It appears that satisfying the diverse conditions and adhering to proportionality in the application of this right will be complicated and needs further research.

The methods of research used have been the dialectic approach to form a complete overview of the right to be forgotten, its relationship with fundamental rights and legitimate interests; the axiological approach to study the relationship between this right and key values, autonomy and identity in the first place; the historical method to study the origins of the right to be forgotten; the comparison of laws, doctrines and practices of the European Union and the United States of America (USA) related to the right to be forgotten; the formal legal method to study legal documents, human rights legislation of the European Union and the practice of the Court of Justice of the EU. The article also looked at two key cases of the Court of Justice of the EU in detail—*Google Spain, Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos and Costeja González* [2014]¹ and *Google LLC, successor in law to Google Inc. v. Commission nationale de l’informatique et des libertés (CNIL)* [2019]². This choice is due to the fact that the cases appear to have changed the entire approach to the right to be forgotten twice—in 2014 and 2019.

2. The key changes in the scope and meaning of human rights in the digital age

The digitalization of the world has been bringing about many changes. Under the influence of information technologies, new rights are being formed, some of which are becoming widely recognized, while fundamental rights have changed significantly in scope and meaning. It can even be argued that we appear to be dealing with the next generation of rights and can observe a quantum leap in their development.

¹ Hereafter, *Google v. Spain* [2014].

² Hereafter, *Google v. CNIL* [2019].

The horizontal concept of human rights which departs from the fact that the addressees of human rights obligations are states is gaining momentum. This is, above all, due to how influential some business structures, organizations and individuals are becoming, concentrating in their hands the tools of new information technologies.

New rights that have never existed not only emerge but are being implemented. These include the right to be forgotten, the right to the internet and the right to anonymity. These new rights are forming unexpectedly fast. Not only do the technologies develop exponentially, but the same rapid development is observed in human rights practices. What Jean-François Blanchette calls “the convergence of pervasive forms of data collection, widespread digitization of analog records, economics of infinite storage” (Blanchette, 2011, p. 25) entails a long-lasting digital footprint, which has proved to be able to affect the majority as soon as information became so easy to store, search and access. This is not only seen in how difficult it is to have one’s address removed from the mailing list or to erase old geodata after relocating. This is observed in the risks one faces when suddenly encountering their “former self” in cyberspace. This means literally being chased by the consequences of one’s past wrong choices.

The right to be forgotten has become a natural response to this digital footprint issue. Its definitions vary. It is regarded as “a privacy claim even though it applies to information that is, at least to some degree, public” (Ambrose, 2013, p. 381); the right “to cancel and object personal data against unauthorized processing of personal data, even when this data is contained in public documents” (Castellano, 2012); as a possibility “to give all data subjects a right to control their history on the internet” (Rustad & Kulevska, 2015, p. 387); as an opportunity for a greater informational self-identification of individuals (Yang *et al.*, 2017). In 2016, General Data Protection Regulation (GDPR) defined the right to erasure or the right to be forgotten as “the right to obtain from the controller the erasure of personal data concerning him or her without undue delay” (Regulation (EU) 2016/679, para. 65), if one of legal grounds applies. Not only is it applicable to unlawfully processed or stored data, but also to the personal data that are no longer necessary in relation to the purposes for which they were collected or otherwise processed, or if the data subject withdraws consent on which the processing is based. Thus, to some extent, the ambiguity was eliminated; however, new gaps in legal practice and regulation are becoming increasingly obvious.

New, yet unrecognized rights are just around the corner—the rights that still look like science fiction, such as, for instance, the right to be saved and stored as a digital representation after death, as well as the right to use technologies for improving oneself. The very notion of what a human being is might very soon be changed with the arrival of state-of-the-art prosthetic and memory-enhancing technologies—with cybernization, so to speak, of the humankind. There seems to be nothing incredible about merging the biological and the digital. Therefore, despite warnings that the continued growth of human rights and the increasingly widespread calls for new rights could undermine the legitimacy and erode the concept (Hannum, 2016), some new rights are inevitable.

The meaning, limits and practice of protecting the fundamental rights are changing. Most importantly, freedom of expression, privacy, participation rights (the right to association, election rights), the right to information are all affected. This is due to the fact that in the digital age, new, implicit long-term threats to human rights appear, and they are next to impossible to predict. We should also take into account changes in everyday routine, such as, for example, the daily habit of using shared access self-updating maps, sharing various information on social media and actively generating content. All of these may also affect the realization of rights. Many users do not pay attention to the fact that the default privacy settings, both on the devices and in applications and on social networks, contain automatically enabled geolocation. Many users reveal too much not only about themselves but also about their friends on social networks. Big data analytics mechanisms not only reveal a lot about groups but can also lead to the invasion of an individual's privacy. The perception of privacy as such has changed significantly, the value of online privacy and data management has increased dramatically, and concerns about the potential for controlling personal information are rising. As noted, “although attitudes to what exactly constitutes ‘privacy’ differ widely, the ability to control what happens to personal data seems to be perceived as a valuable norm by most netizens already” (Graux *et al.*, 2012, p. 96). Easy availability and longevity of information can lead to self-censorship and abstinence from activity. Self-censorship negatively affects the right to freedom of expression. Refusal to participate brings about the problem with exercising participation rights, which, in turn, adversely affects democracy.

The limits of our understanding and perception of the world in the digital age are obviously shifting quickly and unpredictably, the right to be forgotten being at the heart of the paradigm shift.

3. The origins of the right to be forgotten and the possibility to “be forgotten” in the modern world

The right to be forgotten became widely known after the decision of the Court of Justice in the controversial case known as *Google v. Spain* [2014], the starting point of which was the appeal of a Spanish citizen Mario Costeja González, who, while searching for his name, came across some information about his bankruptcy that had taken place 16 years earlier. He considered this information to be irrelevant and not reflecting his present identity. Ultimately, the Court of Justice ruled that EU citizens have the right to be forgotten and may require the removal of links to outdated pages from search engines (*Google v. Spain* [2014]). In addition to confirming the right to be forgotten, this decision entailed several important consequences. First of all, the original article containing the unwanted data was not deleted; instead, it was removed from the first pages of search results, thus making them more difficult to find. Hence, the infringement of freedom of expression did not take place. Secondly, the demand to remove the link from the easy search results was addressed to the corporation, which, like other business structures, collects data for profit. This means that fundamental rights prevail over economic interests, and corporations are starting to carry more and more responsibility for human rights, which has never been more important than in the digital age, given their considerable economic power and political influence. Thirdly, even the legitimate processing of information can over time become incompatible with law, excessive or disproportionate. The stored information may become insufficient, outdated or irrelevant. This means that the rights of a private person can prevail over a public interest regarding access to information, depending on the balance of interests that tends to change over time.

The right to be forgotten is rooted in “the right to oblivion” in terms of the principles of public access to court records and the possibility for individuals to block the negative consequences of the opening of court cases, which should no longer be remembered because of the time elapsed since their occurrence (Castellano, 2012), as well as in the French *le droit à l’oubli* and Italian *diritto all’oblio*, conceived as the rights of a criminal who had served his sentence already, not encounter with information about his or her criminal past and object to its publication (Andrade, 2014). The right to oblivion is the opposite of the right to publicity regarded as “the right to silence on past events in life that are no longer occurring” (Pino, 2000, p. 237). As a rule, it is applicable when someone—most often the media—is interested in data

about a person's past. At the same time, the right to be forgotten does not require public interest. It protects a person, regardless of whether the media wants to intervene in one's privacy or not, whether someone found irrelevant data and made it public or not, or one just googled and found one's old data.

In addition, the origins of the right to be forgotten can be found in the legal doctrines and jurisprudence of some European countries. In particular, German law and jurisprudence contained the implicit right to be forgotten, which could be described as a right to delete long ago, and it is torn between the freedom of expression and the right to informational self-determination (Kodde, 2016). Swiss courts have used this right in criminal cases (Werro, 2009). The very concept of this right as at least the possibility to exercise some control over publicly available information goes far beyond the EU, and the discussion may date back to the beginning of the twentieth century (Holland, 2019).

As a side note, the right to be forgotten is also associated with the right to forget, although the former has more to do with privacy while the latter is connected to the freedom of expression. Both deal with information disclosure, but in dissimilar ways. In particular, according to Antoon De Baets, the right to forget is based on freedom of expression and may relate to a ban on coercion in the sphere of opinions, freedom not to express them (De Baets, 2016). As of today, some confusion of the two rights can still be observed.

The possibility to "be forgotten" in the modern world is limited. The emergence of the right to be forgotten was inevitable because of the automation of memory and data storage and due to easy access to the entire array of information as well as the fact that we are losing control over these processes. In particular, corporations are increasingly setting up new algorithms for manipulating people's data according to their own rules, which are not transparent and are often in the "gray zone" of legal regulation. The necessity for this right has also been seen in the public fears of many people that the information about them remains accessible longer and longer, that media resources abuse the stored data, that the development of new technologies and, especially, the internet takes away a person's right to make mistakes, because information about them may randomly surface on the network from time to time.

It should be noted that the right to be forgotten formed hand in hand with the concepts of autonomy and identity. In the digital age, both values can be seriously threatened, which could partially be prevented due to this right.

For example, information from the past can haunt people, thus making their further choices predetermined. One may have a feeling that nothing can be changed and they are destined to be dependent on the past *faux pas*. By the same token, these data can affect the image of a person and the representation in the public sphere, either online or offline. If someone has significantly changed their views and beliefs over time or altered their public image, a digital trail can destroy a carefully constructed identity. As noted, “the idea behind the right to be forgotten is to provide a legal claim for individuals in order to make sure that everybody has at any time an actual representation of the personal identity” (Pollicino & Bassini, 2014, p. 642).

The emergence of the right to be forgotten has also been influenced by changes in the concepts of “time” and “data” in the all-digital age. Information is now stored over an indefinite period, but found and disseminated instantly. It is as if we perceived time in two forms at the same time—as an instant and as an eternity. We are forced to think about the consequences of a post on a social network for years to come, and at the same time, people encourage one another to “live today”, respond now, run faster.

Our understanding of data as such and personal data, in particular, has also changed. While in the past “personal data” meant mainly and merely one’s name, surname, address and phone number, today the concept has inflated immensely embracing a person’s geodata, preferences, computer IP, search requests—many of which are arguably personal. That said, the amount of data is enormous and the pieces of data are much more closely connected and interrelated than ever before. It has become a lot easier to relate dispersed pieces. Moreover, online and offline data realms merge, posing new threats. Simply having a coffee in a coffee house may mean sharing much more data than one wishes by making an order through an application to avoid a queue. Innocent day-to-day situations one would not think twice about may lead to unforeseen consequences.

The information “that may be outdated, irrelevant, harmful, and/or inaccurate” sometimes “haunts the individual, causing undesirable repercussions for the subject, as well as society” (Ambrose, 2013, p. 376). An individual who has posted “indiscreet or inappropriate images, videos or statements” might suffer from a digital trail for a long time, because “it is sufficient that his or her name is connected to such materials via web search engines and the like to cause significant embarrassment, stigma or harm” (Graux *et al.*, 2012, p. 96). Due to automatic universal memorization the journalistic activity could potentially become “an even greater punishment

than a possible judicial sentence” (Santín, 2017, p. 308). In the modern world, “a robust, future-proof set of rules is required, in order to ensure that individuals will enjoy (and retain) effective control over their personal information” (Mitrou & Karyda, 2012). The opportunity to be forgotten is incredibly important now also because “by design many of the technologies from which we are requiring forgetfulness were not designed to be forgetful” (Pereira, *et al.*, 2014, p. 10), so they store everything without any time frame. But the balance of interests that influence data processing may change over time (Sartor, 2016). Time is considered to be an important factor in a balance of interests, primarily because information has a lifecycle and its value changes over time (Korenhof *et al.*, 2015), but also because the digital footprint of everyone has now become incredibly long and distinct.

Under these conditions, it is completely logical that the right to be forgotten has gained flesh. Even though it potentially contains room for abuse, such as attempts to get rid of important facts, change their emphasis, rewrite history or censor data and can adversely affect freedom of expression or the right of the society to know, there is no doubt that outdated personal information, revenge porn or references to petty offenses committed years ago may have a significant impact on a person’s life—but the society is made up of people. The right to be forgotten is definitely of crucial importance for the protection of other rights of individuals in an era of lack of oblivion.

4. The right to be forgotten, privacy and data protection in the EU

Based on the above, should we regard the right to be forgotten as a full-fledged right? Is it a separate human right according to the European doctrine? Is it part of the right to privacy or other rights?

Some authors refer to it as part of privacy. Others believe that it must be included in data protection. There is a degree of vagueness of its limits and overlaps. The right to be forgotten is regarded “as a comprehensive set of existing and new rules to better cope with privacy risks online in the age of “perfect remembering” (Mitrou & Karyda, 2012). The concept of this right is trying to turn public information into private, at some point no longer allowing third parties access to it (Castellano, 2012). This right “relates fundamentally to the creation and maintenance of a reasonable level of informational privacy through appropriate personal data control

mechanisms” (Graux *et al.*, 2012, p. 95). It could be considered a human right “due to rights of privacy and reputation” (Neville, 2017, p. 158). This right is regarded as “an aspect of a broader right to privacy”, not as a separate right, but as a justification for the existing legal rights and technological measures (Bunn, 2015). The right to be forgotten is also considered as a part of the fundamental right to data protection (Politou *et al.*, 2018). It secures the protection of the data subject rights to his or her “own” data (Weber, 2015), wherein reconciling data protection and freedom of information “requires considering that the enforcement of an individual’s right to be forgotten may impact on the right to receive information” (Pollicino & Bassini, 2014, p. 643). In turn, data protection “evolves at the level of principles, rights and rules” (De Hert, 2017, p. 179).

Thus, the right to be forgotten is closely related to both privacy and data protection but not fully contained within either of them. Privacy protects information about a person unwilling to make it widely known, and the right to be forgotten is responsible for erasing or blocking access to information that has been publicly known for some time. This right applies to true but outdated data that interfere with a person’s life, or may have a negative impact on them, or destroy their social reputation. Content that is removed from search engines may or may not be illegal, and data could be obtained and processed legally. Legal or not, one must have the right to get the data erased.

Since the right to be forgotten arose at the intersection of privacy and freedom of speech, data protection and the right to information, it might seem to be part of these broader rights. However, the right to be forgotten is not only natural in this day and age, it is very valuable and important as such, and it should be recognized as a separate human right. The status of this as a separate right can provide it with widespread recognition and protection. Also, it can claim this status for two reasons. Firstly, today it is crucial for other fundamental rights protection. Secondly, if this right gains the status of a human right, it will also gain a higher degree of protection by the government, which will indeed help individuals to partially regain control over their lives, removing the burden of the unforgiven past mistakes, reducing self-censorship and preventing withdrawal from participation in public life and democratic processes.

Despite the fact that the right to be forgotten is directed to personal data, its scope is bound to widen with time. The GDPR defined the personal data as “any information relating to an identified or identifiable natural person” (Regulation (EU) 2016/679, Art. 4); moreover, the person can be

identified directly or indirectly. In the world of big data and exponentially growing technologies, self-teaching artificial intelligence (AI) and powerful corporations, the indirect identification of a specific person by the smallest fragments of the digital trail is becoming more and more real. The very definition of the term “personal data” is likely to inflate. It is time we recognized it as a fundamental right to prevent the possible sad consequences.

The basic principles of European legislation on the protection of personal data—transparency, proportionality and data minimization—have largely become the basis for the realization of the right to be forgotten. At the same time, it does not simply stem “from the already-existing principles that form the basis of data protection in Europe” (Bartolini & Siry, 2016, p. 219), but carries new meanings.

Since the process of applying the right to be forgotten in practice has begun relatively recently, we can see what problems this is accompanied by. The implementation of this right in practice is rather complicated and controversial. The list of conflicts in its application includes the complexity of technical solutions and the obstacles for the operation of modern interfaces that are well adapted to the user based on the collected data (Politou *et al.*, 2018), the potential infringement of free speech in the form of subtle censorship (Ausloos, 2012), changes in content regulation that could create an online information ecosystem that violates ethical standards (Kritikos, 2018), the negative impact of data deletion requests on other people whose data is linked and maintaining a culture of mistrust (Garcia-Murillo & MacInnes, 2018). In addition, there are questions regarding an “appropriate transparency, as well as an accumulation of power in the wrong hands, and a lack of a strong voice for the affected public at large” (Holland, 2019, p. 40) in relation to data controllers, as well as questions about the role of arbiter of online content and the opportunity to rewrite history (Yang *et al.*, 2017) applied to corporations. In addition, we are faced with a lack of AI solutions for the implementation of the requirements of this right. In particular, Eduard Fosch Villaronga, Peter Kieseberg and Tiffany Li emphasized the divide in the legal and the technical languages about data deletion and “understandings of concepts like ‘memory’ and ‘forgetting’” (Villaronga *et al.*, 2018, p. 313). Indeed, an individual’s mechanism of forgetting is based on the gradual natural disappearance of memories, in a certain sense erasing data from our memory. Technological forgetting fundamentally differs from the physiological one—therefore, lawyers are to collaborate with IT people for the right to be forgotten to be effectively implemented.

The right to be forgotten, therefore, must be recognized as a separate human right, even if it does not eliminate the problems in its application. As Andrew Neville (2017, p. 172) rightly points out, “the right to be forgotten is not perfect, but it is a necessity”.

5. Jurisdiction issues, balancing rights and proportionality

Today, the right to be forgotten appears to be quite limited, especially against the backdrop of global jurisdictional battles. A few months ago, the Court of Justice of the EU ruled on the case of *Google v. CNIL* [2019], which established that the EU legislature “has not struck such a balance as regards the scope of a de-referencing outside the Union” (*Google v. CNIL* [2019], para. 61). This case is significant because it means the possibility for states to regulate content globally. On the one hand, the arguments of the French regulator, *Commission nationale de l’informatique et des libertés* (CNIL), were absolutely logical, because the application of the right to be forgotten only to the French branch of Google did not interfere with access to the erased content through Google.com and because the American companies cannot claim to be excluded from European law while providing services in the EU. On the other hand, Google rightly argued that CNIL did not have jurisdiction and authority to impose a global ban and generally could not demand the removal of information that the company stores outside the EU jurisdiction.

Transnational corporations declare their attention to the right to be forgotten and the search for technological solutions to the problem. However, corporations, no matter how global they are, have mother companies in the jurisdiction of concrete states and this creates a conflict in the realization of the right to be forgotten in addition to the conflict in its understanding. In the digital age, these conflicts look particularly acute, given the clash of opinions of the American and European sides in cyberspace.

The discussion about the difference in perception of the right to be forgotten in the EU and USA is largely due to a different understanding of the relationship between privacy and freedom of expression (see Werro, 2009; Coors, 2010; Rosen, 2012; Rustad & Kulevska, 2015; Neville, 2017). There are also many doubts about the possibility of considering the right to be forgotten as global, starting from the peculiarities of perceiving it in non-

European legal doctrines, continuing to harmonize points of view on the scope of this right (Bennett, 2012) and ending with the technical ability to provide protection of the law distributed from the EU (Shim, 2019).

The deep cultural foundations of the decision about the right to be forgotten in the European context are based on the collective memory of the Nazi era, including how the automation of data on punch cards, access to registries and archives probably contributed to the Holocaust (Onitiu, 2019), as well as on the memory of authoritarian communist regimes. At the same time, from the point of view of American jurisprudence, the European right to be forgotten is quite likely perceived as catastrophic for freedom of expression. Therefore, Jeffrey Rosen writes that the right to be forgotten “represents the biggest threat to free speech on the internet in the coming decade” (Rosen, 2012, p. 88). Writing about EU–US relations in this context, Lisa Marie Taylor notes that “it seems the implementation of a widely accessible right to be forgotten could alter geopolitical dynamics greatly” (Taylor, 2016, p. 103). Steven C. Bennett points to “a need for serious thinking about the means available to reconcile US and EU views on the subject” (Bennett, 2012, p. 168). In particular, proposals are being formed to “harmonizing US and European law by narrowing the right to be forgotten to apply mostly to private persons and limiting the right for public officials and public figures” (Rustad & Kulevska, 2015, p. 416).

Neither the European nor the American approach cast doubt on the fact that privacy and freedom of expression are fundamental rights; however, the issue of their balance is solved in different ways. But even if we solved the problems of jurisdiction and coordinated these approaches, we still would have the question of the balance of other rights in order to apply the right to be forgotten. First of all, this regards the right to dignity and autonomy, as well as the right to access to information. We should not forget that the balance may include not only the weighing of conflicting individual rights but also the legitimate interests of all subjects of legal relations, such as individuals, companies, organizations, society and the state. These may be the interests of a democratic society for the preservation of collective memory, security or health interests, economic interests, etc. In particular, it is noted that the right to be forgotten “would build on the rights of the personality, encompassing several elements such as rights to a private life, reputation, data protection, intimacy and dignity” (Castellano, 2012). There is the need to balance this right with “competing rights and interests, such as freedom of expression, freedom of contract, preservation of socially valuable information, and mutual parties with interests in the same data record”

(Mitrou & Karyda, 2012). In a broad sense, legitimate interests may pertain to fundamental values, as freedom or democracy, specific constitutional rights and various social values and goals, recognized at the constitutional or at the legislative–regulatory level (Sartor, 2016).

Thus, a fair balance must be maintained between autonomy and the rules of living together in a society, between the right not to suffer from a clash with the past and the preservation of collective memory. We also need to seek a balance between freedom of expression and the protection of privacy, as well as between legitimate interests, primarily related to access to information. The balance should be, moreover, dynamic and individualized, such that takes into account the nature of the data in respect of which the right to be forgotten applies, the time elapsed since their appearance, the degree of public interest and the degree of vulnerability of a particular person, the possible changes in the status of this person, his or her role in public life, as well as identity. Sounds like an almost impossible task, does it not?

That task can be solved on the basis of proportionality. The phrase “principle of proportionality” is not used here intentionally. There is some confusion about the meaning of the term “proportionality principle”. This principle has different interpretations in international law and national legal systems, it acts as part of the fundamental EU treaties and is embodied in the tripartite formula of the European courts (legitimate goal, the necessity in a democratic society, proportionality in a narrow sense). As the tripartite formula, this principle has been popularized by the practice of the European Court of Human Rights and the practice of the Court of Justice. From a standard about which concerns were expressed because that “gives courts the power to interfere substantially with legislative and administrative measures, and to engage in an overt process of assessing different and competing interests” (De Burca, 1993, p. 149) it has become a tool whose need is no longer in doubt, at least when it comes to human rights.

Speaking of proportionality in the context of the right to be forgotten, we refer to it as part of a broader concept of justice. And in that sense, a fair and reasonable balance will matter, as well as what Juan Cianciardo calls “adequacy, necessity, and proportionality *stricto sensu*” (Cianciardo, 2010, p. 179). The main goal of the right to be forgotten should be giving the control over their data back to individuals, and ultimately them regaining control over their lives and important life choices. Not a single norm of the new European data protection legislation has provoked such a heated and wide discussion as the right to be forgotten, despite the fact that European courts

appear to be good at dealing with proportionality issues. It will not be easy to comply with all terms and conditions and to adhere to proportionality in the application of this right, and further studies should be devoted to this. But the prospect may be the further expansion of the right to be forgotten (not only within the European doctrine), since (a) the concern about the digital footprint and the loss of control over one's life due to information technology will be growing, (b) the concept of personal data will be expanding, and (c) it will be necessary to solve the problem of decision-making machine algorithms that are non-transparent and unpredictable.

6. Conclusion

The right to be forgotten is based on the autonomy of the individual and the possibility to become the owner of personal information in a specific time frame. It emerged as a result of a unique combination of prerequisites—in the first place, the digital revolution and the changing perceptions of time and data. Interest in this right is flourishing in the digital age; however, its main contours formed quite a long time ago, although it was not always explicitly mentioned in legislation or judicial practice.

This right is based on privacy and data protection while being related to the freedom of expression and the right to information, but, certainly, it is a separate right, crucial for both human rights protection and promoting self-expression, development and democracy.

The right to be forgotten is yet to be developed and elaborated on. It unfolds before our eyes. It could be abused; attempts to erase important information relevant to the protection of other rights and legitimate interests of all subjects of legal relations could be made. There are also many questions regarding its understanding and application, both in European jurisdiction and beyond. Nevertheless, the right to be forgotten is necessary in the modern world, where technology has made it very difficult to be forgotten, and the digital trail lingers after each and every one almost endlessly.

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