

CORRECT REPETITION

Athens, 27/02/2019

PRINCIPLE FOR DATA PRIVACY

FOR OPIC CHARACTER

Prot. No.: G/EX/10365/27-02-2019

A P O F A S H A . 74/2018

The Personal Data Protection Authority met, following an invitation of its President in a regular meeting at its headquarters on 19-07-2018 at 10:00 a.m., following the 15-05-2018 meeting that took place as adjourned by meeting of 08-05-2018, in order to consider the case referred to history of the present. The President, K. Menoudakos and regular members K. Christodoulou, A. ymbonis, . Vlachopoulos, K. Lamprinoudakis, C. Anthopoulos, as rapporteur, and E. Martsoukou. they also attended the meeting by his order President, without the right to vote, E. I. Tsakiridou, lawyer - expert scientist, as assistant rapporteur, who left after the debate and before the conference and the decision making, and E. Papageorgopoulou, employee of the administrative department affairs, as secretary.

The Authority took into account the following:

An appeal was submitted to the Authority to delete a link from the search engine Google Web Search based on the CJEU decision of 13-5-2014 for Google Spain SL & Google Inc v Agencia Espanola De Proteccion De Datos & Mario Costeja Gonzalez C-131/12 (hereinafter Google Spain CJEU Decision). specifically, A (hereinafter "h applicant") submitted the application with no. prot. G/EI /5520/11-09-2016 appeal to the Authority, with the attached data (see also G/EI /6294/30-08-2017), against the denial of Google Inc to remove link, which appears in search results based on the name of the applicant. on 13-08-2016 the applicant

sent to Google Inc the completed relevant form (with registration number...)

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with her name and the specific link she wishes to remove. THE

the link in question refers to the website of the National Printing Office (...), where

a summary of the presidential decree was published, in accordance with the relevant provisions

of the granting of pardon (Government Gazette ...), with which, among others, the "according to law

consequences, deriving from the conviction of ... of ... with no. ... his decision

Three members of the Athens Court of Misdemeanors sentenced to four (4) months in prison

with a three-year suspension for consecutive defamation, in order to

not be an obstacle to her appointment in the Public wider public – private

sector, as well as the teaching profession, in the Public or private sector

education". The request in question was based on the reasoning that: "the inclusion of

of a specific URL in the search results is not appropriate because: a) h

above decision took into account the evidence submitted for the

[her] innocence, b) is contrary to the main purpose of the above decree, that is not to

[her] professional-personal course is affected, c) the conviction is now time-barred and

[the applicant] has a clean criminal record, d) violates [her] human rights".

Google Inc's response to the request to remove the link they point to

specific gazette based on the name of the applicant, was negative (see

attached documents to G/EI /5520/11-09-2016 appeal as well as to

G/EI /6294/30-08-2017, Google's response to ...). specifically, the machine

search answered that by evaluating the various elements he decided that it is about the

website of the National Printing Office and for an act legally published by

government body or organization, in order to be available to the public, that is

government's choice to make this material available to the public and

search engines on an ongoing basis, and that by extension the availability of these

information in the search results is justified by the public interest.

("It appears that the content of the URLs is being published and provided to search engines, on an ongoing basis, by a government body or agency. In light of the government's ongoing choice to make this material available to the public, our conclusion is that Google's reference to this information in our search results is justified by the public interest. At this time, Google has decided not to take action on this URL.")).

on 27-12-2016 the Authority sent a letter to Google Inc and Google Hellas (G/EX/8521/27-12-2016) with clarifying questions and subject: "Deletion requests links from the search results of the Google search engine

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(right to be forgotten)". specifically, forwarded to its company/operator

Google search engine the present appeal, and requested the reconsideration of the case and the more precise documentation of its final decision. Furthermore, the Authority asked Google to explain the wider public interest that may exist justifies in this particular case the inclusion of the link in question at search results. The Authority also asked Google to provide reasons fully any rejection of the above request of the applicant and to document its conclusion (if it sticks to it) about the violation of its rights applicant.

on 30-01-2017 Google sent a response to the Authority in English (G/EI /662/30-01-2017), while on 07-02-2017 the answer in Greek was also sent (G/EI /935/07-02-2017). Google with the above documents remained in the original its negative decision not to remove the link that leads to the aforementioned gazette (Official Gazette ...), on the grounds that the link in question concerns information that are legally made public by their publisher, i.e. the ETC, are recent and

accurate and relevant as the applicant benefited from its publication

granting of pardon to the ETC. (“... we consider delisting of the URL in question as inappropriate due to its recent information, its accurate nature and, furthermore, due to the fact that it is published in public governmental source choosing to be listed in search engines.”)

The Authority, with no. prot. C/EX/3270/30-04-2018, C/EX/3269/30-04-2018 calls to hearing, called the company/operator of its search engine

Google, as legally represented, as well as the applicant to attend meeting of the Authority on 08-05-2018, to discuss the present appeal, and after postponement, on 05-15-2018. the aforementioned meeting of the Authority Ioannis - Dionysios Filiotis (...) and Chariklia Daouti (...) were legally present, authorized attorneys of the anonymous company Google Inc, which is based in State of California, USA and was legally represented, and the applicant

A. During the meeting, the invitees presented their views orally. Subsequently, applicant A also submitted, within the set deadline, a written memorandum (with no. prot. G/EI /3872/22-05-2018), in which he explained in more detail the same as those mentioned in the 11-09-2016 appeal of the reasons for deletion of the person in question link.

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The Authority, applying the legal framework that was in force when the appeal was filed on 11-09-2016 but also during the discussion of the case before the Plenary on 05-15-2018, i.e. Directive 95/46/EC and its implementing law 2472/1997, after after examining all the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who left after the debate and before by conference and decision-making, and after thorough discussion,

## THOUGHT ACCORDING TO THE LAW

1a. The CJEU decision of 13-5-2014 for Google Spain SL & Google Inc v. Agencia

Espanola De Proteccion De Datos & Mario Costeja Gonzalez C-131/12 recognized it

right of the individual (natural person) to ask the search engines to

delete from the list of results that appears after a search that

has been conducted on the basis of his name, links to published by

third party websites that contain information related to this person, when the

this processing is incompatible with the requirements of Directive 95/46/EC. according to

decision (order 3): "Articles 12, point b' and 14, first paragraph, point a', h

of Directive 95/46 have the meaning that, in order to exercise the right that

provided by these orders and if the things specified by them are fulfilled

conditions, the operator of the search engine is obliged to remove from

a horse of defects, which appeared on examination to have

carried out on the basis of a person's first name, links to published

from pages that contain information about that person, and

circumstance in which the first name last name or this information has not

is deleted previously or at the same time from the above pages, and the obligation

applies even if this or that the publication of the information in question in said

equal pages is legal'.

b. With this decision it was decided that the operations of a search engine (art

in the case of Google Search), which displays search results in

responding to requests from Internet users to search for information about someone

person based on his name constitute processing of personal data, v

the meaning of article 2 par. b' of Directive 95/46/EC and its operator

search engine (in this case Google Inc) is designated as responsible

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processing in the sense of article 2 par. d' of Directive 95/46/EC. The decision this applies to search engine activity, as a provider of contents, which consists of locating information that they publish or posted on the internet by third parties, in their automatic indexing, in the temporary storing them and finally making them available to internet users with certain order of preference, when said information includes data of a personal nature.

specifically, according to the decision in question, "Taking into account the purpose of this of Directive 95/46/EC and the letter of Article 4, paragraph 1, letter a, must accept all the processing of personal data carried out by the needs of a search engine service, such as Google Search, which the company that has its headquarters in a lower country but has an establishment in a of a certain member state, otherwise "in the framework of the activities" of the said installation, as long as it has the purpose of promotion and sale, in one the aforementioned member state, the advertising space available in the context of search engine and which aims at the economic operation of the service which provided with the machine in question" (paragraph 55, see also dispositive 2), and therefore, for the said processing of personal data is subject to the Directive 95/46/EC.

c. according to the decision, the legal basis for the processing is article 7 par. f of Directive 95/46/EC (article 5 par. 2 letter e of Law 2472/1997), i.e. the necessity to serve the legal interest of the person in charge processing or the third parties to whom the data is communicated, after balancing between the right to privacy and the right of the public updating and accessing this information.

In the decision, it was decided in particular that (order 4): "...Given that the subject of the data may, based on the fundamental rights and articles 7 and 8 of the Thanks to the Fundamental Rights of the European Union, to seek an end to information at issue should be made available to the general public due to its appearance in aforesaid a case from defects, a right to a principle prevail not the sole financial interest of the operator of the search engine, but also the interest of the public to gain access to this information or search box based on the subject's first and last name. Nonetheless, where it does not apply if, for special reasons, such as the role played by the person in question 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr)

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subject to public life, the interference with a fundamental right arises subject is justified by the public interest for access to it controversial information as a result of its appearance on the aforementioned horse". the act, however, as stated in the Guidelines issued by Working Group of Article 29 of Directive 95/46/EC on the implementation of Google Spain decision (WP Opinion 225, 26-11-2014),<sup>1</sup> the consequences of deletion regarding the individual rights of freedom of expression and access to information will be very limited, since when evaluating the relevant incidents, search engines must take into account its interest public to access the information and if this overrides his rights data subject, the deletion of the information is not required. Such as it is pointed out, the fundamental right of freedom of expression, under concept of "freedom to receive and impart information and ideas" according to Article 11 of the EU Charter of Fundamental Rights must be taken into account when evaluation of data subjects' requests.

d. Besides, it does not appear from the Court's decision that the exercise by subject of its rights to the original website, on which it exists posting is a condition for their exercise against search engines.

The processing carried out in the context of the activity of the machine search must be distinguished from that carried out by publishers websites. the case where a specific search result is deleted from the results list, the content may remain available in the original website and possibly accessible through machines search using other search terms.

e. The Article 29 Working Group, in the Opinion of WP 225, 26-11-2014, formulated a list of common assessment criteria for handling by European authorities data protection of the relevant appeals, which are submitted to the national offices them, after refusing to delete/remove link/s from search engines.

These criteria are taken into account on a case-by-case basis by the national supervisory authorities when examining the relevant cases. The common evaluation criteria are dependent with the following questions:

1 [http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp225\\_en.pdf](http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp225_en.pdf)

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1. Does the search result concern a natural person, i.e. a person? And search result is displayed based on the subject's name data?

2. Does the data subject play a role in public life? Is public figure?



3. Is the data subject a minor?
  4. Is the data accurate?
  5. Is the data relevant and not more than needed?
  6. Do they relate to the professional life of the subject?
  7. The result of the search is linked to information that is alleged to constitute hate speech/slander/defamation or similar offenses to field of expression against the applicant?
  8. Data reflects personal opinion or appears to confirmed fact?
  9. Is personal data sensitive?
  10. Is the data up-to-date? Data is available for a limited time longer than necessary for the intended purpose?
  11. The disclosure of the data has a disproportionately negative impact on the privacy of the data subject?
  12. The search result is linked to information that sets the data subject at risk?
  13. What are the circumstances under which the data was published?  
Was this data made public by the subject himself? He could there is a reasonable expectation from the subject that the data will be made public?
  14. Has the original text been published for journalistic purposes?
  15. The publisher of the data has, according to the law, the right or obligation to make the publicly available data?
  16. Does the data relate to a criminal offence?
- according to the above Opinion/Guidelines, these criteria must
- are implemented in accordance with the relevant national legislative provisions and none

a single criterion is not decisive in itself. Respectively

evaluation criteria have also developed some data protection principles, such as

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the English Authority (I.C.O.).<sup>2</sup>

2. For the application of Greek law: a) there must be real

establishment in Greece (see article 3 par. 3 letter a' of Law 2472/1997, in which

this law applies to any processing of personal data,

if it is performed by a controller or processors,

established in the Greek Territory or in a place where based on public international

of law, Greek law applies), and b) the processing is carried out in the context

of the activities of the controller's establishment (see article 4 par. 1

item a' of Directive 95/46/EC, Opinion 8/2010 of the Article 29 Working Group on

Applicable Law, WP 179, 16-12-2010, section III.1 a and b, p.13 ff. and WP 179

update, 16-12-2015).

Regarding point a), Google Inc. has an establishment in Greece through its

subsidiary of Google Hellas (Fragokklissias 7, Marousi, Athens). Regarding sub

b) element regarding "processing carried out in the context of the activities",

the processing carried out by Google Inc, i.e. the display of the results

search, takes place in context

of commercial and advertising

activity of the installation of Google Inc in Greece, since it is accompanied by

the display of advertising messages linked to the search terms, with

the two activities, of the operator and its establishment in

Greece, to be inseparably connected (see above, under 1b). Therefore, Art

due to processing, as the company itself accepts, is governed by Greek law

2472/1997.

3. by seeking a fair balance between fundamental rights and

interests and applying in the present case the above-mentioned generalities

criteria that have been formulated at the European level (WP Opinion 225, 26-11-

2014), the justified or not of the negative response of the Google company is examined

Inc, operator of the Google search engine.

In this case, Google Inc stuck to its original position and refused it

satisfaction of the applicant's request to remove the link which

refers to her request with no. cat. ....

The act of pardon in question was issued, at the request of the person concerned,

2 <https://ico.org.uk/for-organisations/search-result-delisting-criteria/>

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so that there is no obstacle to her appointment in the public and private sector,

while the summary of the deed was published in accordance with the law in the CoE. This publication

is imposed by law as a necessary form for the deed to acquire legal force.

It is, therefore, legally published data on its website

of the National Printing Office, in which they are published, in accordance with its principle

of transparency, in full or in summary, in order to acquire legal force according to

provided for in the law (see in particular Law 3469/2006), acts of public authorities, which

are available to the public electronically (freely) and free of charge, indefinitely (see n.

3861/2010). Therefore, the criterion of the issuer's legal obligation is also met

of the data to make the data available to the public. Not the search for them

of deeds on the website of the National Printing Office is relatively easy to combine

criteria (year, Issue, keywords, e.g. with the name of the interested party who

contained in the published act).

4. Furthermore, "public persons are understood to be persons who hold a public position and/or use public money or even everyone who plays a role in public life, such as in politics, economics, the arts, the social sphere, in sports or in any other field." (see also Resolution 1165 (1998) of Parliamentary Assembly of the Council of Europe). the examinee case, the applicant does not play a role in the public life of the place nor is he a public figure since he did not hold, nor used, a public position public money and was not found in any political office. therefore, it had no properties due to which, according to the decision of the CJEU Google Spain but also the corresponding guidelines of the Article 29 Group, he should not be happy of the same degree of protection as private individuals' data.

In addition, the data to be examined do not concern her professional life applicant. specifically, the link that appears in the result search, whose abolition the applicant requested, does not contain information related to professional activity or professional her behavior, while not from the one mentioned in the link above, criminal offence, to which the pardon is concerned, a connection with the professional one arises her life.

5. From the assessment of the appeal, the documents of Google to the Authority, of of views presented by the applicant and Google during the Authority meeting and

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of all the elements of the file, the following can be concluded:

The disputed link with the above content is for the applicant

disproportionate adverse effects and a more general negative impact that are exacerbated due to the easy public access to said data on its own typing her name. And yes, the publication in its Journal Government of the above presidential decree, as well as its maintenance publication, is legal and serves the public purpose of transparency, as already exposed, the possibility, however, of access to the information contained in this decree, including sensitive personal data (criminal conviction), through a search engine with only the mention of the name, even and after issuance, according to the provisions on criminal records (see articles 573 et seq. CPC), a copy of a blank criminal record for general use is a stronger intervention in privacy than the publication of the information on the original website and excessively infringes on the individual right to protection of personal data applicant.

6. Based on the aforementioned, after weighing the public interest and of the conflicting relevant rights and interests, it must be accepted that the operator of the Google search engine, as controller, must satisfy the request of the applicant for the abolition of the specific link.

#### FOR THOSE REASONS

1) It is unanimously decided that the negative response given by Google Inc to request of the applicant to remove the link mentioned in the application of with no. cat. ... is not legally justified according to what is stated in reasoning of the present.

2) It imposes, unanimously, the company Google LLC (formerly Google Inc), as responsible processing, pursuant to the provision of article 21 par. 1 sec. a' of Law 2472/1997, to remove without delay the offending link listed in the history

of the present.

The president

Konstantinos Menudakos

The Secretary

Paleologo Georgia

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