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Turkey's Court of Constitution officially recognizes right to be forgotten

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While the world has already discussed, debated and come to a conclusion by adopting different measures and amendments regarding the right to be forgotten, Turkey has also taken some firm steps forward with the decisions of the Court of Appeals in the way of establishing the right to be forgotten. The evaluation of the right to be forgotten in light of the fundamental rights has never been done before, until March 03, when the Constitutional Court of Turkey ruled to a parallel verdict with the most famous case of Mario Costeja González (Google Spain SL, Google Inc. v. Spanish Data Protection Authority Mario Costeja Gonzales, C-131/2, 13/05/2014) and explained the justifications and grounds of the practice of the right to be forgotten in Turkey.

Similar to Gonzalez's case, the Turkish citizen N.B.B. also filed an application due to the news and notices relating to their criminal records within the internet-based archive of a newspaper. The news subject to the case dated back to 1998 - 1999 and the applicant argued that the fact that the news was accessible from the internet-based archive was damaging their honor and dignity. The citizen therefore filed for the removal of the content. The claim was accepted by the Criminal Court of Peace, however rejected by the Criminal Court of First Instance as a result of an objection. N.B.B. then elevated the case to the review of the Constitutional Court.

The Constitutional Court has approached the case from the perspective of two different fundamental human rights stipulated under the Constitution of Turkish Republic:

- The right to protection and development of the moral existence of an individual, and
- The right to protection of personal data.

The Constitutional Court evaluated that the main issue to be considered herein is to avoid remembrance of the actions of an individual that were already published on the internet as news in the past. Similar to Gonzalez's case, the Constitutional Court has also evaluated the fine balance between the right of freedom of expression and media and the right to be forgotten and stated that the right to be forgotten is not absolute but needs to be established in order to ensure the balance between the foregoing rights.

Although there were decisions given by the Turkish Court of Appeals with respect to the right to be forgotten, the Court recognized the right to be forgotten for the first time by justifying that the state has a positive duty to provide individuals an opportunity to start with a clean slate, without prejudice to himself due to the actions of the past. It should also be kept in mind that the Constitutional Court has made this evaluation without the presence of the currently applicable Data Protection Law, which was enacted as of April 07. The new-born Data Protection Law does not explicitly refer to the right to be forgotten either; however, as a side note, some serious obligations have been imposed on data controllers, including the deletion of personal data when there is no ground to store it.

While the EU Court stated that right to be forgotten applies in cases where the personal data is "inadequate, irrelevant or no longer relevant, or excessive in relation to intended purposes and in the light of the time that has elapsed" during its evaluations, the Constitutional Court laid down the issues to be examined while analyzing whether a news content can be removed from internet based on the right to be forgotten as following:

- The content of the news,
- The time period of publication of the news,
- Whether the news has lost its worth of being up-to-date,
- Whether the news can be accepted as a historical information,
- The level of contribution to the public welfare (the news value of the data),
- Whether the individual subject to the news is a political or social figure,
- Whether the subject of the news includes value judgment or facts, and
- The interest of the public towards the news.

By applying these thresholds to the case at hand, the Constitutional Court accepted the claims of the applicant and came to the conclusion that the result of a criminal procedure going back to 17 years does not have any worth of being up-to-date, the criminal record regarding the usage of drugs does not serve any scientific or statistical purposes, the individual is neither a political nor a social figure and therefore the individual's right to be forgotten must be protected in the case at hand.

With the help of this decision, it is a fact that from now on, Turkish citizens will also have a right to be forgotten and use this precedent in order to protect their rights. The application of the right to be forgotten will not be the same in all cases or applications, each case must be analyzed diligently to balance the right of freedom of expression and media and the right to be forgotten, but it is for sure that the Constitutional Court's decision will have an impact especially on on-line services. Although the aforementioned case did not have a search engine aspect similar to Gonzalez's case, with the presence of the newly enacted Data Protection Law, not only e-newspapers but also search engines that are deemed as data controllers with appreciation to the Gonzalez's case, will need to inspect their archives and be ready to receive similar deletion requests.

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