The Right to be Forgotten in European Union Law

Abstract

Aim of this thesis was to analyze a rising legal institute called 'right to be forgotten' and to find an appropriate place for substantive form of this right in European Union law (or out of it). This paper explains the term 'right to be forgotten' and puts it into historical and international law context. It was necessary to analyze a term 'privacy' and its conflict with the right to freedom of speech and expression. From this point of view, the groundbreaking judgement of the Court of Justice of the European Union from 2014 in Google Spain case comprising arguments in support of balancing these fundamental rights for the first time set the parameters of the right to be forgotten.

The Google Spain case indicated conceptual changes concerning the right to be forgotten in the EU legislature headed by the GDPR effective as of 2018. Loud criticism against the European Commission's idea of the right to be forgotten declares how controversial this legal institute is. Article 17 of the GDPR as the most questionable provision of the regulation is finally called 'Right to erasure ('right to be forgotten')' which is an obvious compromise in order to satisfy both the critics and the Commission. Many professionals consider the right to be forgotten as an unprecedented form of online censorship or even as the worst threat to freedom of speech on the Internet of the following decade.

This thesis analyses how the Court of Justice of the European Union sets the limits of the right to be forgotten in its decisions. The CJEU decided that the right to be forgotten should not apply on information in public registers and it should not have global effect if performed under EU law. Google (as well as other search engine providers) implemented a mechanism for personal data removal request, which has already been submitted by millions of Internet users. However, an assessment as well as the final decision whether a processing of particular personal data is in conflict with the GDPR is only in Google's own discretion and the decisions are not publicly accessible.

The second part of this thesis addresses the question of an ideal form of the substantive right to be forgotten in European Union law or outside of the EU legal order. As the first option were considered two secondary law instruments - regulation and directive. Another alternative investigated in this work was to regulate the right to be forgotten on the member states' level. The third option was forming the right to be forgotten only by the CJEU decisions. The last and finally the most suitable alternative for the substantive form of right to be forgotten was to include this legal institute into an international treaty.
Regarding global potential of the currently active international treaties, The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe (Convention 108) was assessed as the most appropriate one. Many provisions of Convention 108 have been already implemented into legal orders of the countries outside of the EU. Research concerning a dynamic phenomenon of the right to be forgotten showed us how insufficiently explored this legal institute is and how fascinating it is to observe its development.

Key words: law – data - Internet