NEWSLETTER ON CONTRACTUAL AND PERSONAL DATA PROTECTION

The Supreme Court endorses the “right to cancellation” recognized by the Court of Justice of the European Union.

On October 15th 2015, the Supreme Court, applied for the first time in Spain the called “right to digital cancellation”, this is, the right of cancellation and opposition to the dissemination of personal information via Internet, supporting, thus, the pioneer and well-known judgement of the Court of Justice of the European Union (ECJ) of May 13th 2014.

The Supreme Court resolves a cassation appeal on a judgement concerning the lawsuit filed by two individuals against a well-known newspaper. They requested the adoption of the necessary measures to avoid the current and ongoing dissemination of facts occurred in the eighties, when they were involved in drug dealing and consumption.

Despite having served their sentence and rebuilding their personal, familiar and professional life, if keywords as their names in the search engine were introduced, the news of their arrest, imprisonment and abstinence syndrome, appeared at the top of the search.

In that judgement, the Supreme Court seeks a balance between the right to information and the right to honor, privacy and image, considering as determining factors for a proper valuation: the time elapsed, the exercise of freedom of information, the right to honor, privacy and protection of personal data, the offensive potential of the information published and the public interest in such information. Thus, recognizes the right to digital cancellation, although with some constraints.

The plenary of the Civil Division of the High Court considers justified that, at the request of these affected parties, the newspapers are obliged to take the necessary technological measures to avoid that the news appear in the Internet search engines, but also considers that this news should not be removed from the newspaper files, since this would be an excessive restriction of the right of freedom of information.

In short, while recognizing the right of cancellation, it is emphasized that this right does not cover that “each one can build up its own tailored past, preventing the dissemination of such information that is considered negative”.

To exercise this right of cancellation, the Spanish law requires as a prerequisite that the person concerned, either in his own name or through a representative, previously makes the request to the entity that is keeping his data. The main search engines have enabled their own forms (Google, Bing or Yahoo) to receive these requests to exercise these kind of rights. If
such entity does not respond to the request or the applicant considers that the response is not adequate, it may request to the Spanish Data Protection Agency the safeguard of his rights before the concerned responsible. Depending on the circumstances of each case, the Agency will determine whether or not it accepts such petition. Nevertheless, the decision of the Agency, can be appealed before courts.

The information contained in this note should not be regarded in itself as specific advice on the matter discussed, but only a first approach to the subject. Therefore, it is highly recommended that the recipients of this note search professional advice about their particular case before taking specific measures or actions.

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