

Turkish Constitutional Court: Right to be Forgotten Trumps Press Freedom for Fourteen Year Old News about an Individual's Drug Use

25 Oct 2016

The Turkish Constitutional Court recently considered a claim seeking to remove 1998 and 1999 content from an online news archive regarding the Petitioner's past illegal drug use and trial. The court balanced constitutional press freedom and freedom of expression against the Petitioner's right to be forgotten. Ultimately, it granted the Petitioner's request to remove the content, ruling in favor of the Petitioner's right to protect and improve corporal and spiritual existence (Article 17 of the Turkish Constitution).

The Petitioner initially sought to have the newspaper remove the news content from its online archive by sending a cease and desist letter. The newspaper ignored the letter, so the Petitioner initiated a criminal action against the newspaper. The first instance court accepted all of the Petitioner's claims, holding that the news in question was outdated. Accordingly, the lower court held that the news breached the Petitioner's privacy rights because there is no public interest in continuing to publish the content.

The first instance court's decision was reversed on appeal. The Petitioner subsequently brought the matter to the Constitutional Court, claiming breaches of their constitutional rights to protect and improve corporal and spiritual existence, as well as their right to respect for privacy and family life.

The Constitutional Court ruled that the content should be removed, in order to protect the Petitioner's right to protect and improve corporal and spiritual existence, protected by the Article 17 of the Turkish Constitution. In reaching the decision, the Constitutional Court noted:

- A fair balance must be found between:
 - The Petitioner's right to reputation.
 - The Petitioner's right to protect and improve corporal and spiritual existence.
 - Press freedom
 - Freedom of expression.
 - The right to be forgotten is clearly outlined in the 19th Supreme Court Assembly of Civil Chambers' decision dated June 17, 2015 and numbered E. 2014/4-56 and K. 2015/1679. In this case, a party's right to privacy and reputation was held to have been violated by news published online, which was easily accessible (more).
- The right to be forgotten aims to balance press freedom, freedom of expression and the spiritual existence of individuals.
- The news in question is fourteen years old and describes the Petitioner being arrested and tried for using drugs. Accordingly, the Constitutional Court deemed the news to be outdated because there is no need for the information to be easily accessed on the web archive.

Recent judicial decisions about the right to be forgotten have begun to act as precedents in later cases, including recent decisions by Constitutional Court and Supreme Court Assembly of Civil Chambers.

The Turkish jurisdiction's similar approach to Decision No C-132/12 of the European Court of Justice, considered as the base for the right to be forgotten, will result in re-evaluating the obligations of online search engines and content providers.

In the scope of right to be forgotten, natural and legal persons who provide or link to content will be considered to be both "data processor" and "data controller" because the content is actually stored in the archives/available within search results.

Please see this [link](#) for full text of the Constitutional Court's decision, made on 3 March 2016, with application number 2013/5653 (only available in Turkish).

Related Attorneys

- [BURCU TUZCU ERS?N, LL.M.](#)
- [YONCA ?ELEB?](#)