

HUMAN RIGHT TO BE FORGIVEN

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DOI: <https://doi.org/10.61345/1339-7915.2024.1.13>

Annotation. The article examines in detail the concept of “a person’s right to be forgotten” as an important aspect of a natural person’s right to information about himself, which allows a person to demand the removal or destruction of his personal information. The question is also devoted to the main aspects of the history and development of the “right to be forgotten” concept.

The author states that a significant contribution to the regulation of the right to be forgotten within the framework of the legislation on personal data protection was made by the European Union. After all, EU Regulation 2016/679 defines the conditions for obtaining this right, the conditions for fulfilling requests to delete information about yourself, and the circumstances under which this right may be limited. However, this Regulation does not take into account the entire amount of personal information, which complicates the process of realizing the human right to be forgotten.

It has been determined that different countries develop their own approaches to the right to be forgotten. It was found that the current legislation of Ukraine provides for two stages of “forgetting”: a court decision and filing a complaint for violation of the terms of consent to the processing and storage of personal data.

At the same time, the decision of the European Court, which became key in the world judicial practice regarding the human right to be forgotten, was considered. In addition, the balance between the right to be forgotten and freedom of information is described. The public interest and ethical aspects in the context of the right to be forgotten are studied. The need for transparency and a balanced approach to the researched law is substantiated.

The technical aspects of the human right to be forgotten and the challenges they generate are also described. The complexity of technical data deletion and the challenges of data caching and indexing have been studied. The general aspects of ensuring the security and protection of data during deletion are identified, as well as the impact of artificial intelligence and automation on the human right to be forgotten.

Key words: right to be forgotten, controller, personal data, protection of personal data, European Court, Internet network, right to information.

1. Formulation of the problem.

Modern digital society requires the actualization and transformation of the system of personal non-property rights of an individual, in particular the right of a person to information about himself. In the modern perception, the Internet is a tool that, on the one hand, has a wide reach and is a key force for modern processes of political and economic democratization, and on the other hand, with the spread of the Internet and social media, the problem of violation of the human right to privacy is increasing. However, in the context of legal mechanisms for the realization and protection of personal non-property rights of an individual in real life, legal instruments for online relationships are still at the stage of formation, discussion and active debate.

The modern scientific community is intensively looking for effective methods of increasing the virtual security of individuals, taking into account the aspects of the online environment in the current legislation. Recently, a lot of scientific research, both theoretical and practical, focuses on the aspects of protecting personal data of individuals, especially in connection with the Internet activation of society, where this data has become extremely accessible and rather weakly researched. Following the implementation of

the EU Regulation 2016/679 on data protection (GDPR), the need to protect “new” non-property rights of an individual, in particular the right to destroy information about oneself (the right to be forgotten), is being actively discussed. The right to be forgotten is one of the promising legislative decisions of the European Union in the field of personal data protection, giving a person the opportunity to control his data placed in the online environment.

2. The state of development of this problem.

It is worth noting that the following scientists were engaged in the study of issues related to the implementation of the right to be forgotten: O. Kalitenko, N. Kunitsyn, V. O. Tokareva and others. In particular, their research focuses on the definition of this right, the analysis of judicial practice, the comparative analysis of the concepts of the “right to be forgotten” in different countries and its implementation in court decisions when solving practical situations. They also address the issue of balancing private and public interests in the context of the right to privacy and the right to freedom of expression.

3. The purpose of the article is to determine the problems and perspectives of legal regulation and civil protection of the human right to be forgotten as an element of the right of an individual to information about himself.

4. Presenting main material.

The concept of “right to be forgotten” arose in the context of the growing digital footprint that everyone leaves on the Internet. With the advent of social networks and search engines, personal information has become easily accessible to a wide audience. The development of this concept is related to the protection of privacy and increasing the control of citizens over their personal information.

Thus, with the advent of the Internet and the expansion of the digital space, there is a need to regulate the rights of individuals to control their personal information. The concept of “right to be forgotten” defines the possibility of a person to control his data and demand their deletion. First of all, we consider it necessary to consider some aspects of the history and development of the “right to be forgotten” concept.

As you know, in the 20th century, especially after World War II, there was outrage over the large amount of personal information stored in government archives. This leads to the first recognition of the right to be forgotten as a mechanism to protect personal data and restore personal dignity. And already with the advent of the Internet in the 90s, the concept of the right to be forgotten becomes more relevant. People are beginning to face the growing number of traces that are left in the online space. From this moment, an active discussion about the need for legal regulation of this issue begins.

It should be noted that the European Union made a significant contribution to the regulation of the human right to be forgotten. Thus, in 2010, the European Commission started the development of EU Regulation 2016/679 on the protection of personal data. In 2012, the already published project included Article 17, which detailed the right of data subjects to be forgotten and the right to delete information about themselves. Later, this article was improved and expanded with the participation of the European Council and the European Parliament [5]. The specified Regulation establishes restrictions on the use of the right to be forgotten, in particular, in the cases listed in Part 3 of Article 17 of EU Regulation 2016/679:

- 1) when the processing of personal data is necessary for the realization of the right to freedom of expression and information;
- 2) compliance with the legal requirements of the legislation of the European Union and member states and the performance of tasks performed in the public interest or within the framework of the performance of official powers entrusted to the administrator;
- 3) when the information is used in the public interest in the field of health care;

- 4) when information is archived in the public interest, scientific and historical research, for statistical and other similar purposes;
- 5) when the information is used for the purposes of legal proceedings, in case of contesting legal claims and lawsuits [2].

It is worth noting that a natural person has the right to demand from the controller the immediate destruction of information concerning him. In addition, the controller is obliged to delete personal data immediately and without any delay, if there are grounds specified below:

- 1) lack of need to store such information;
- 2) consent to processing has been withdrawn;
- 3) a natural person objects to the processing of data about him/herself, applying a justified right to object and using legal grounds;
- 4) illegal nature of data processing;
- 5) personal data need to be destroyed to comply with a legal obligation;
- 6) personal data were collected in connection with the offer of information society services [2].

In the case of the need to eliminate already published data, the controller must inform other controllers processing this published personal data that the data subject has requested the deletion of any links, copies or reproductions of this personal data [2].

According to the statement of O. M. Kalitenko, the debatability of the legislative consolidation of the right to be forgotten stems from the fact that this right is located on the border of two personal non-property rights: the right to information, which is expressed in unlimited access to information and the right to express one's opinion (according to the article 19 of the Universal Declaration of Human Rights), as well as the right of a person to private life, inviolability and respect for family life and the protection of personal data in accordance with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and Article 12 of the Universal Declaration of Human Rights [3].

It is worth noting that EU Regulation 2016/679 (GDPR) legalizes and specifies the right to be forgotten for citizens of the European Union. Individuals have the right to request the deletion of their data, and companies must ensure this right. This regulation not only obliges companies to comply with this right, but also provides significant fines for its violation [2]

Although the GDPR sets standards for EU countries, different countries are developing their own approaches to the right to be forgotten. In the United States, for example, there are a number of state and federal data privacy laws and regulations that ensure the deletion of personal information. This approach emphasizes the importance of concerted legal efforts to protect personal data regardless of geographic location.

Unfortunately, in Ukraine there is no concept of "right to be forgotten" in civil law within the framework of the legal system [4]. However, according to para. 4 h. 2 st. 15 of the Law of Ukraine "On the Protection of Personal Data", personal data are subject to deletion or destruction, in particular, at the end of the storage period or at the termination of the legal relationship between the natural person who owns the data and the manager (specified in the consent), as well as at the adoption of a court decision on the deletion or destruction of personal data [1]. Thus, the current legislation provides for two stages of "forgetting": a court decision and filing a complaint for non-compliance with the terms of consent to the processing and storage of personal data.

The decision of the European Court of Justice of May 13, 2014 in the case of Google and M. Costeji Gonzalez became a key one in the world judicial practice regarding the right of a person to delete information about himself. M. Costeja González filed a complaint with the Agencia Española de Protección de Datos (AEDP), Spain's data protection agency, in 2010 against a local newspaper and Google Spain for claims related to auction notices mentioning González published before in 1998. Those messages were about auctions to pay off Gonzalez's Social Security debts. Gonzalez demanded that the pages be removed

because the proceedings had been settled several years ago and the links to them had become obsolete. He also appealed to Google Inc to remove his personal data from the search engine. The AEDP dismissed the claims against the newspaper but settled the claims against Google. Google appealed to the High Court of Spain, which referred the matter to the European Court [6]:

1. Do EU rules apply to search engines if they have a branch or subsidiary in a Member State?
2. Does the Directive apply to search engines?
3. Does a person have the right to request the removal of their personal data from search results (i.e. “the right to be forgotten”)?

The court recognized the application of Directive 95/46/EC of the European Parliament and the Council “On the protection of natural persons in the processing of personal data and on the free movement of such data” [7] to search engines, defining them as “controllers” of personal data. It was also decided that Google, having a subsidiary in Spain, is considered an “establishment” for the purposes of the directive. Thus, in certain cases, Google is obliged to remove links to pages displayed by third parties. The court also recognized the right of individuals to request the removal of links to their personal information, emphasizing the need to balance this right with the interests of search engines and the public [6]. It is also recognized for the first time that the operator of an Internet search engine is responsible for the processing it carries out of personal data appearing on web pages published by third parties. Thus, if, following a search made on the basis of a person’s name, the list of results displays a link to a web page that contains information about the person in question, such a data subject may contact the operator directly and, if the operator does not satisfy his request, refer the matter for consideration by the competent authorities in order to obtain, under certain conditions, the removal of this link with information about you from the list of results. The court decision set a precedent for the GDPR, which in 2018 enshrined the right to be forgotten among the rights of data subjects.

It should be noted that in the modern world of the Internet, where information becomes a currency, the right to be forgotten plays a particularly important role. Yes, individuals can request the deletion of their data after they stop using certain platforms or services. This is a necessary requirement to ensure personal freedom and privacy in the digital space. The GDPR recognizes the right of an individual to request the deletion of their data, but this is only justified in cases where the information is not generally known or is not in the public interest [2].

Determining the balance between the right to be forgotten and freedom of information remains a difficult task. If, on the one hand, this right provides individuals with control over their personal information, on the other hand, it may result in limiting access to important data for the public and the scientific community. The resolution of this conflict requires careful consideration of both sides and the establishment of a framework that does not limit freedom of speech or access to information.

Of course, the issue of public interest is important when discussing the right to be forgotten. For example, if the information has an important public context or historical significance, deletion may violate the right to information and freedom of expression. Consideration of these aspects is key in the development of ethical standards.

When considering the ethical aspects of the right to be forgotten, the impact of the information on the public should be taken into account. Publishing false or out-of-date information can harm an individual, but at the same time denying access to it can violate transparency and the right to information. It is thanks to global regulators such as GDPR that standards are set to protect an individual’s right to information deletion. This regulation takes into account both individual rights and the needs of society in access to information [2].

However, there is a risk of using the right to be forgotten to exceed the public interest and distort history. The possibility of removing part of the information can lead to an incomplete or distorted picture, which raises the question of the ethics of such an intervention. That is why, in order to maintain a balance between individual rights and the public interest, it is important to develop and follow transparent rules and procedures. Ensuring the ethical use of the right to be forgotten requires an understanding and coordination of the interests of all parties.

Undoubtedly, the human right to be forgotten, recognized in various legislative acts, becomes an important aspect of privacy protection in the era of digital technologies. However, the technical implementation of this right not only presents challenges, but also requires the development and implementation of effective mechanisms for deleting personal data. Thus, one of the key problems of the implementation of the right to be forgotten is the technical difficulty of deleting data completely. Back-up, archiving, information caching and other technical aspects make it difficult to guarantee data deletion from all aspects of the digital space, as copies can remain in different systems, even after formal deletion.

In addition, with the development of artificial intelligence and automation processes, it becomes important to consider their impact on data deletion. Algorithms and systems must be configured to ensure efficient and secure deletion of data in accordance with legal requirements. Developers and service providers must work together to create effective and transparent takedown mechanisms.

5. Conclusions.

Given the above, we can conclude that the development of the right to be forgotten is closely related to the growth of technology and the expansion of the digital space. Determining the limits of this right requires not only legal attention, but also practical and ethical decisions in the digital age.

It should be noted that the right to be forgotten is currently the subject of active discussions. In the European Union, significant progress has been made in the legal definition of a person's right to be forgotten, and the judicial system has already developed precedents for data deletion cases. Later, this right became a prerequisite for the development of a system that allows a person to submit requests to be "forgotten", ensuring that the association of search results with his personal data is removed.

Undoubtedly, a person's right to be forgotten is a key element in protecting personal privacy in the digital era. Legislative initiatives such as GDPR set the standards for this right, but it is important that other countries and regions pay attention to its implementation and defining its boundaries.

In addition, the balance between privacy and freedom of information in the context of the right to be forgotten is quite a significant challenge. Ensuring the deletion of personal data should not lead to restrictions on freedom of information and freedom of speech. Developing effective mechanisms that take into account both individual rights and the public interest is a key challenge for legislators and technical experts in the digital age.

Also, one of the key problems of enforcing the right to be forgotten is the technical difficulty of deleting data completely. Keeping backups, archiving information, and other technical aspects make it difficult to guarantee the removal of data from all aspects of the digital space.

As for the Ukrainian legislation, to date, unfortunately, there are no standards in it that guarantee the implementation of the right to be forgotten, and civil law does not define its content. In addition, the Law of Ukraine "On the Protection of Personal Data" is outdated and practically does not take into account the peculiarities of modern online relationships. New legislation is needed to implement the provisions of the GDPR, including the right to be forgotten, to meet modern requirements. Thus, in connection with the digital transformation of the country, the issue of personal information protection becomes relevant, in particular in the context of the right to be forgotten and the mechanism of its implementation.

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