On the Protection of the Right to be Forgotten in the EU Member States: An Analysis on the German Federal Constitutional Court's "The Right to be Forgotten" Decisions

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Abstract

Since the Google Spain v. AEPD decision of the European Court of Justice (ECJ) acknowledged the right to be forgotten (RtbF), there have been many discussions about this topic. The German Federal Constitutional Court (GFCC), along with the ECJ and the European Court of Human Rights (ECtHR), recently issued two decisions on the right to be forgotten in the contexts of online archives of the press and search results of search engines. This essay aims to analyze these two decisions (RtbF I and RtbF II) and explain the reasons why they are called "a Magna Carta for the internet".

After clarifying the issue of normative competitiveness between the EU Charter of Fundamental Right and the German Basic Law, the GFCC, for the purpose of giving shape to the RtbF, distinguishes the general right of personality from the right to informational self-determination, and weighs the former against conflicting rights and interests such as freedom of speech of the press, freedom to conduct a business of the relevant search engine and informational interest of the public in the framework of modern internet communications. Accordingly, the GFCC acknowledges a RtbF in the sense of a request to delist certain website from the results of a name-based search.

In short, because the GFCC not only makes a very clear analysis about the relations between the government, the press (the content provider), the search engine (the intermediary) and the information subject, but also gives a clear shape

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to the RtbF in these decisions, Rtbf I and RtbF II can be seen as a milestone in the development of a German RtbF in the context of European integration.

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