

REVIEW ON DOCTORAL DISSERTATION

University:	Palacký University at Olomouc
Faculty:	Faculty of Law
Department:	International and European Law
Author:	Mgr. Hovsep Kocharyan
Title of the doctoral	
Dissertation:	Evolution of the Right to be Forgotten in EU Law: Challenges and Perspectives
Doctoral supervisor:	JUDr. Ondřej Hamulák, PhD.
Reviewer:	doc. Monika Forejtová, PhD.

INTRODUCTION

The subject of the opponent's opinion is the candidate Mgr. Hovsep Kocharyan's dissertation entitled "*The Evolution of the Right to be Forgotten in EU Law*". The presented work deals substantively with issues related to the European Union, in particular the EU data protection regulation. The core of the work is the new digital '*right to be forgotten*', its legal nature and the scope of its application. Furthermore, the thesis deals with privacy, data protection, digital identity including legal protection within the territorial scope and a substantive analysis of the GDPR. At the same time, the scope of the use of personal data is also discussed, where the *de facto* exercise of the right to be forgotten is decided mainly by corporations with an economic interest in the active use of personal data of Internet users, databases, social networks, etc. In the author's opinion, the right to be forgotten is becoming a tool of market regulation and redistribution of power between data subjects and data processors among private entities. The candidate publishes properly in the field of IT technology law. The thesis was submitted and assessed in English.

KEY CONCEPT

The choice of the topic chosen by the candidate for his dissertation should be appreciated for its high degree of continuing relevance, as it concerns the issue of disclosure of personal data in digital space and its preservation in it. In particular, the preservation of personal data in digital space, often without the knowledge of the bearer of such data, is a phenomenon that has only been occurring in this world for the last few decades. The author defines the right to be forgotten as a legal requirement that allows for the erasure of 'digital traces' left on the Internet in order to protect the individual, his or her dignity, reputation, privacy and identity in the online world. In context, he refers to it as both an individual and a collective right.

The so-called "right to be forgotten", the comprehensive analysis of which is the core of the thesis under review, is currently a widely discussed topic in the field of European Union law and human rights in general from various perspectives, which is also confirmed by selected decisions of the Court of Justice of the European Union, which the candidate deals with in detail in his dissertation. The candidate has expressed the aim of his thesis as intending to carry out a comprehensive and detailed analysis of the 'right to be forgotten', including an in-depth analysis of the case law, mainly that of the Court of Justice of the European Union. The author sees this as an original contribution of his thesis, since in his opinion, previous works on the right to be forgotten and related issues have focused mainly on partial topics. He points out that the right to be forgotten has a different meaning in the case law of the CJEU and the ECtHR. In the candidate's view, EU case law does not create a uniform vision and precision in the development and implementation of the legal framework of the right to be forgotten, but it does shape the scope of the right to be forgotten on a case-by-case basis.

If, in the candidate's view, *"The best solution is for the courts to stick to the 'golden mean' principle in describing the facts in judgments. This means that, on the one hand, the courts must ensure that the privacy and confidentiality of the applicants are protected, so that the applicants and their data cannot be identified, and, on the other hand, the courts must state the facts in such a way that it is clear on which facts the courts base and develop their legal arguments."*, the question is what practical experience the candidate has with the process before the court and with the rules of evidence before the court, and whether these considerations are not more in the nature of academic reasoning without any link to practice.

It can be summarised that the candidate's thesis deals broadly with the right to be forgotten in the European environment, i.e. its material scope, its territorial scope. The comparative approach chosen by the candidate thus concerns primarily the judgments of the European Court of Human Rights and the Court of Justice of the European Union, but does not forget the judgments of the courts of the EU Member States. The author examines the essence and nature of this right, analyses the relevant European legislation, and does not neglect the problematic issues associated with this right. The author also focuses on the future challenges and development of the concept of the right to be forgotten. He draws attention to the risks of the flexibility of the concept of 'personal data' in legislation, case law and common practice.

STRUCTURE OF WORK

The thesis is clearly structured into seven chapters, each of which consists of several subchapters.

The thesis is divided into seven chapters, including an introduction and a conclusion. In Chapter 1 - "Introduction" - the author first presents basic information about the right to be forgotten, briefly outlining its essence. In this chapter, the author sets out the aims of his work and defines the basic research questions he attempts to answer in the thesis. The author also identifies two hypotheses 1. *The right to be forgotten has the potential to serve as a legal mechanism to enable the erasure of personal data left online in order to protect the individual, his or her dignity, reputation, privacy and identity in the online world.* 2. *The relevant jurisprudence of key European supranational courts shows differences in understanding the scope and content of the right to be forgotten.* It then intends to confront these hypotheses through a critical analysis of the relevant case law. In this chapter, the author goes on to describe the methodology used, defines the significance of his work in terms of legal theory and legal practice, and goes to great lengths to describe the structure and content of the work. The author concludes the chapter by presenting the partial results of his work as a necessary condition for successful completion of his doctoral studies.

In Chapter 2, entitled "Privacy in the digital society: concepts and new foundations", the author first briefly discusses the general history of data protection. He then names the different doctrinal approaches to privacy and concludes the chapter with a sub-section on different aspects of privacy, the phenomenon of digitalization and data protection.

Chapter 3, "The Introduction of the Right to be Forgotten", is closer to the topic of the thesis than the previous, more general chapter, because it deals with the process of introducing the right to be forgotten. First, the author presents the historical background of this right and explains why it cannot be considered as a completely new right when its roots can be traced back to the 1960s. The author provides a detailed theoretical definition of the right to be forgotten and follows this theoretical definition with a description of the development of the right under study. He then moves to a more practical level by analysing the key decision of the Court of Justice of the European Union known as 'Google Spain' (C-131/12), citing a range of subsequent CJEU and ECtHR case law and offering critical arguments against the content of this judgment. Here, it is suggested that the candidate considers that other subsequent judgments have the same shortcomings as the key Google Spain decision.

Chapter 4, entitled "The scope of the application of the right to be forgotten in practice", as the title suggests, discusses the right to be forgotten in terms of its material and territorial scope. In this context, the author also focuses on key concepts such as the criterion of establishment in the EU or personal data as understood by the GDPR.

In Chapter 5 - "Finding a balance between the right to be forgotten and freedom of expression", the author reports on the conflict between the two subjective rights mentioned in the title of the chapter. In his view, these two rights represent a kind of conflict between private and public interests. The search for the right balance between the two is then guided by an attempt to balance them, illustrated in particular by the following doctrinal discussions following the Google Spain case, to which the author returns and to which he devotes his further reflections.

In the last 'substantive' chapter, Chapter 6, entitled "The right to be forgotten: challenges and prospects for EU data protection law", the author outlines future perspectives relating to the right to be forgotten, in particular in the field of EU law and the Convention for the Protection of Human Rights and Fundamental Freedoms. The author also briefly covers the topic of post-

mortem privacy, to which the right to be forgotten is closely related. In this respect, the author also mentions the doctrinal discussions that address the issue of posthumous data protection. Last but not least, the author describes the so-called *Streisand effect*, through which he explains selected but unintended paradoxes related to the right to be forgotten. Finally, in this chapter, the author focuses on the global aspects of the right to be forgotten, in particular its reach, mainly through the lens of the case law of the CJEU.

In the seventh and final chapter, the author summarizes his findings. He discusses the different approach of the case law of the European Court of Human Rights and the Court of Justice of the European Union in approaching the right to be forgotten. He presents his reflections on the question of the territorial scope of the application of the right to be forgotten in the case law of the European courts. It defines the need to develop specific criteria to help regulate the application of EU data protection law beyond EU borders. The author also stresses the need for increased privacy protection in judicial proceedings in order to consistently protect the personal data of the parties. At the same time, the author concludes that the right to be forgotten should be part of the personal identity key, and this will provide an opportunity to ensure a new balance of interests. He concludes that the scope of the right to be forgotten should be broadened and the right to personal identity and human dignity should be considered as a justification.

In this thesis, the candidate does not elaborate on the current issues of the new AI, especially the question of the application and risk of Chat GPT, which affects the personal identity of the individual even more significantly.

A significant part of the thesis consists of references to the sources used, bibliography, keywords and list of literature.

SCIENTIFIC AND ACADEMIC LEVEL OF RESEARCH

The choice of a topic that is highly topical is undoubtedly to be appreciated. The topic has been widely debated in legal scholarship, especially in recent years, and EU law in particular has been searching for the ideal legal solution to find the ideal level of personal data protection. The author's work with sources, in particular the case law of the European courts and foreign sources, is to be appreciated. Nevertheless, it can be said that the whole work actually 'revolves' around one court decision, i.e. Google Spain, which might seem insufficient. However, the opposite is true, as the author goes on to analyse a number of related court decisions, e.g. from German courts, pointing out the positions of some European governments (e.g. French or Czech, especially on the issue of so-called hate speech). The author uses several research methods (comparison, analysis) and sets out two hypotheses, which he analyses in detail and draws his own legal conclusions. Consider the candidate's reflections on the extraterritoriality of the EU Court of Justice's legal conclusions to be very interesting, which lead to the global use of the right to be forgotten throughout the world.

The candidate has obviously been devoted to the topic of his dissertation for a long time, as he has published several papers as an author or co-author with other experts, for example in the Czech Yearbook of International Public and Private Law or in *Acta Baltica Historiae et Philosophiae Scientiarum*. *TalTech Journal of European Studies*, *Journal of Ethics and Legal Technology* or *The Review of European Law, Economics and Politics*.

The candidate states that, "*In the absence of a uniform standard of protection of fundamental rights in Europe, the right to be forgotten will continue to be a precarious right, the balancing of which has largely been delegated to private actors and the national legislator.*" However, it is debatable whether the standard of human rights protection is so different in Europe that it would not include the right to be forgotten as a right that is judicially, albeit difficult, but nevertheless enforceable.

THE LANGUAGE LEVEL OF THE WORK

The submitted thesis is written in English. The language level is of the required quality.

CONCLUSION

The assessed work is of high quality, sophisticated and meets the parameters of a dissertation. It brings many interesting and insights that have undoubted doctrinal and practical benefits. The author's work with sources, in particular foreign literature and the case law of the CJEU, should be highlighted. The author's arguments are thus very well supported by relevant materials. The choice of the topic, which is very topical, should also be appreciated.

It can therefore be summarised that the dissertation under review represents a significant contribution to the field of European Union law, as it deals comprehensively with the right to be forgotten, incorporates a number of sub-aspects related to this important and significant right, and thus presents a comprehensive body of information concerning this right.

The author has offered coherent, causal legal explanations of new concept of personal data in the internet era. The present dissertation qualifies to partake on the scientific discourse within its area of focus.

The dissertation, as submitted, fulfils the requirements placed on this kind of final academic thesis. I hereby recommend the present doctoral dissertation for the oral defence before a commission appointed by the Branch Council of the Faculty of Law at Palacký University in Olomouc. At the same time I recommend the thesis for publication.

In Pilsen on 9 January 2024

doc. JUDr. Monika Forejtová, PhD.

Faculty of Law, University of West Bohemia in Pilsen
