

16 March 2017

**The right to be forgotten? It is not an absolute right.  
No right to be forgotten in regard to personal data held in a companies' register.**

***Camera di Commercio Industria Artigianato e Agricoltura de Lecce v Salvatore Manni, Case C-398/15, 9 March 2017***

Mr Salvatore Manni was the sole director of a building company, Italiana Costruzioni Srl, which was awarded a contract for the construction of a tourist complex. Mr Manni commenced proceedings against the Lecce Chamber of Commerce on 12<sup>th</sup> December 2007. He stated that it was apparent from the companies' register that he had been the sole director and liquidator of another company (Immobiliare e Finanziaria Salentina Srl) which had been declared insolvent and struck off the companies' register during the 1990s. Mr Manni held the view that this publically available information was causing him to experience difficulties selling the properties in the complex and impeding his ability to carry on his business. Mr Manni sought an order requiring the Lecce Chamber of Commerce to erase, anonymise or block the data linking him to the liquidation of the company in the 1990s. Mr Manni also sought compensation for damage to his reputation.

In doing so, Mr Manni sought to rely on the *Costeja/Google Spain* ruling<sup>[1]</sup> or more commonly known as the Google Spain case. In May 2014, in the Google Spain case, the CJEU upheld the right of Mr González to have the Google search engine remove links to press articles which dealt with debt recovery proceedings in which he had been involved 16 years previously. The CJEU held that processing and returning his personal data when searching his name on the search engine was no longer legitimate.

Now back to Italy. The Court of Lecce in Italy upheld Mr Manni's claim and ordered the Lecce Chamber of Commerce to anonymise the publically available data which linked Mr Manni to the liquidated company, and awarded compensatory damages.<sup>[2]</sup> However, the Lecce Chamber of Commerce appealed the judgment of the Court of Lecce before the Court of Cassation in Italy, referring questions to the Court of Justice for a preliminary ruling. The Court of Cassation asked whether the Directive on the protection of personal data and the Directive on the disclosure of company documents prevented the public from accessing company data, and whether or not there was any time limit in relation to the length of time in which data should be freely and publically available.<sup>[3]</sup> The Court was asked to consider any conflict which arose between article 3 of Directive 68/151/EC (Company Law Directive) and article 6(1)(e) of Directive 95/46/EC (Data Protection Directive) and to decide whether or not Member States

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<sup>[1]</sup> *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González, Case C-131/12.*

<sup>[2]</sup> *Camera di Commercio Industria Artigianato e Agricoltura de Lecce v Salvatore Manni, Case C-398/15, paragraph 27.*

<sup>[3]</sup> *Ibid*, paragraphs 29(1) and (2).

should permit individuals to request that personal data held on a companies' register is limited after a specified period of time.<sup>[4]</sup>

The Court declined to uphold Mr Manni's request. In doing so, the Court acknowledged in its ruling that the purpose of public company registers is to ensure the legal certainty between companies and third parties, and to protect the interests of those third parties in relation to limited liability companies.<sup>[5]</sup> Directive 68/151/EC sets out the requirements for compulsory disclosure of specified corporate information which included the appointment of liquidators, and that the information must be kept in a publically accessible register.<sup>[6]</sup>

The Court held that in the circumstances, and it is significant, that:

- it was impossible to identify a suitable maximum retention period in relation to personal data held on publically available registers.

The Court considered that:

- (1) There are different limitation periods across the Member States<sup>[7]</sup>
- (2) Member States are therefore unable to provide for a general right to be forgotten from public company registers;
- (3) Member States cannot therefore guarantee the right of the individual to have personal data erased from the companies' register following the passage of a specified period of time from the date of the company's dissolution.

The Court acknowledged that the need for personal information to be publically available long after the dissolution of a company may conflict with an individual's right to private life and their right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the Union respectively.<sup>[8]</sup> The Court held that the interference with these rights was not disproportionate in that it was limited to the personal data entered into the companies' register, and justified as individuals setting up companies are required to disclose personal data and data relating to that company.<sup>[9]</sup>

The Court held there may be specific situations where an exception can be made due to overriding and legitimate reasons. In such cases, access to the data should be limited after the expiration of a sufficiently long period from the dissolution of the company to third parties who are able to demonstrate a specific interest in accessing the data in question. Member States will be entitled to decide whether or not to incorporate a limitation of access in its jurisdiction. Mr Manni's case was not an exception; it did not justify limiting third party access to the data held on the companies' register. There was a legitimate interest in third parties being able to access the data regarding Mr Manni's previous dealings and business history.

The fact that Mr Manni struggled to sell properties in the tourist complex due to potential purchasers being able to access data from the companies' register was not in this case a

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<sup>[4]</sup> PLC Article, 'ECJ rules that the right to be forgotten does not apply to company registry,' accessed 14/03/2017.

<sup>[5]</sup> *Ibid.*

<sup>[6]</sup> *Camera di Commercio Industria Artigianato e Agricoltura de Lecce v Salvatore Manni, Case C-398/15, paragraph 32.*

<sup>[7]</sup> PLC Article, 'ECJ rules that the right to be forgotten does not apply to company registry,' accessed 14/03/2017.

<sup>[8]</sup> *Articles 7 and 8 of the Charter of Fundamental Rights of the Union.*

<sup>[9]</sup> *Camera di Commercio Industria Artigianato e Agricoltura de Lecce v Salvatore Manni, Case C-398/15, paragraph 40.*

justifiable and overriding reason to limit third party access to this data. In holding that the right to be forgotten does not override the public interest in accessing company details from official public records, the Court limited its previous decision in the *Costega/Google Spain* ruling.

The Court of Justice of the European Union confirmed in its ruling that the right to be forgotten is not absolute. The right is qualified and needs to be balanced against all other fundamental rights. The right to be forgotten will require to be considered on a case by case basis.

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**16 March 2017**