



The Right to Be Forgotten under Turkish Law: Right to Be Unassociated, Forgotten or Erasure?

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We were introduced with right to be forgotten (“RTBF”) in 2014 with Court of Justice of the European Union’s (“CJEU”) Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González decision (“González decision”)¹. Since then, it has become an essential part of privacy rights and had seen many applications all around the world.

We have seen its applications in Turkey in litigation, mostly through high court decisions. However, recently, specifically in the year 2020, we have seen RTBF reference taking its part in the legislation, as well as being officially recognized as a data protection right by the Turkish Data Protection Authority (“DPA”) through Turkish Data Protection Board’s (“Board”) relevant decision explained below.

Right to Be Forgotten in Turkey

The first recognition of RTBF in Turkey was through a Supreme Court General Assembly of Civil Chamber and a Constitutional Court decision.

The Supreme Court General Assembly of Civil Chambers with its decision of June 17, 2015 with no. 2014/4-56, 2015/1679, defined the RTBF as the right to ask for the negative events in the digital memory (i) to be forgotten after a while, (ii) erasure of personal data which the individual does not want others to know, and (iii) the prevention of its dissemination.

The Constitutional Court, through its decision of March 3, 2016 with application no. 2013/5653², which was on the online archive records of a newspaper’s website, has considered the individual request asking access ban to personal data in the Internet news archive in order to ensure that the person's past actions are forgotten, within the scope of RTBF. The Constitutional Court referred to the foregoing Supreme Court General Assembly of Civil Chambers decision as well as CJEU’s decision. Constitutional Court stated that RTBF is in question when certain news are available on the internet for a long period of time and for that reason, damages a person’s honor and reputation. Constitutional Court also recognized RTBF as a part of the right to protection of personal data and emphasized that a balance between RTBF and freedom of expression and freedom of press shall be maintained.

After being evaluated within the scope of the foregoing precedents for several years, in the year 2020, the Data Protection Board’s (“Board”) decision of June 23, 2020 with no. 2020/481 and Article 9/10 which was added to the Law with No. 5651 (“Internet Law”) and entered into force on July 31, 2020 explicitly introduced two different legal grounds to pursue the RTBF in Turkey:

1. The RTBF Provision Added To the Internet Law

The Constitutional Court’s and Supreme Court General Assembly of Civil Chambers decisions were already in place for application of the RTBF cases within the scope of Internet Law before the Article

¹ Google Spain SL, Google Inc. v AEPD, Mario Costeja González available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=152065&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=76156>, accessed on March 15, 2021

² Available at <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/5653>, accessed on March 15, 2021



9/10 was added to the law on July 31, 2020, so the hosting providers could already be subject to requests based on RTBF.

However, the Article 9/10 now allows judges to decide on not associating the applicant's (whose personal rights are violated due to the content broadcasted on the Internet) name with the websites subject to the decision, and stipulates that the decision should point the search engine to be notified to the Access Providers Union (may be referred to as a “delisting” decision).

Although this decision does not specifically address RTBF, it now makes it possible for the criminal judgements of peace to include search engines to a removal decision by deciding on delisting.

2. The Board's RTBF Decision

On the other hand, the Board's RTBF decision of June 23, 2020 with number 2020/481³ specifically addresses RTBF but it is based on the protection of personal data. The Board, with its decision, evaluates the search engines as data controllers and their indexing activities -in terms of the data they collect from third party websites- as data processing activities. Accordingly, the Board enables delisting of contents from search engines based on the RTBF. As the Board's decision refers to a precise list of criteria⁴, the search engines are guided with a list consisting of thirteen criteria to evaluate upon RTBF complaints directed to the search engines. These criteria are based on Article 29 Working Party's Guidelines on the Implementation of the Court of Justice of the European Union Judgment on “Google Spain And Inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González” C-131/12⁵ with minor differences, which shows us that the DPA adopts a similar approach to Europe.

The Relationship Between the Board's RTBF Decision and Article 9/10 of Internet Law and Their Practical Applications

The Board's RTBF decision refers to the access ban procedure under the Internet Law as an example for tools for the application of RTBF. The Board also refers to data subject's right to erasure under the Law No. 6698 on Personal Data Protection (“DPL”).

Internet Law does not offer any criteria for decision on delisting. As we see international application of delisting in RTBF situations, a similar approach may be expected from the courts. However, as it has not even been a year since this clause was introduced, it is still early to expect a consistent approach.

The Board provides particular criteria to be followed by the search engines for evaluation of the RTBF requests, the Board expects each individual request to be evaluated by making a balance test between the data subject's fundamental rights and freedoms and public's interest for obtaining the information. Such balancing is also emphasized in the Constitutional Court's RTBF decision.

As example of this test, the Board recently published its decision on an investigation upon a complaint wherein the complainant claimed that they requested removal of the relevant news from the relevant search engine, and search engine decided not to take any action and that the news articles were affecting their lives and profession, requested the relevant contents to be de-listed. The Board in its decision⁶, evaluated the case within the scope of each criteria and concluded that the search engine's

³ Available at <https://kvkk.gov.tr/Icerik/6776/2020-481>, accessed on March 15, 2021

⁴ Available at <https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/95d8ad1b-e849-48c6-ba93-02ecedeffde5.pdf>, accessed on March 15, 2021

⁵ Available at https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=667236, accessed on March 15, 2021

⁶ Available at <https://kvkk.gov.tr/Icerik/6871/2020-927>, accessed on March 15, 2021



decision of not removing the contents was in accordance with the relevant criteria published by the Board's decision with no. 2020/481 and that there were no additional steps to be undertaken regarding the issue in terms of DPL.

Criminal judgements of peace already started granting decisions referring to delisting. Such decisions do not specifically refer to the Board's criteria. This may be due to DPL being a specialized law. DPL regulates specific sets of procedures for protection of a specific right. On the other hand, Internet Law is expansive in scope and includes remedies for many situations from violation of personal rights to privacy and specific sets of crimes committed through internet. Article 9/10 is introduced as a remedy for violation of personal rights, which may not be through a violation within the scope of DPL in every case. However, RTBF is an application for protection of right to privacy and such criteria is actually to provide the balance between freedom of expression and freedom of press and the fundamental rights of the person in question. Therefore, even though not explicitly, the courts may take those criteria into consideration or in any case they would at least be expected to make a balancing test before deciding on delisting.

RTBF applications and acknowledgements through precedents, decisions and legislation are based on the well-known González decision; hence, they are in a close relationship albeit not always visible. Therefore, the interested parties would at least be expected to consistently conduct a balancing test between protection of fundamental rights of the person and freedom of expression and freedom of press before deciding on any deindexing or delisting decision based on RTBF.

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