



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-460/20  
Google (De-referencing of allegedly inaccurate content)

**According to Advocate General Pitruzzella, a request for de-referencing on the basis of information alleged to be false requires the operator of the search engine to carry out the checks which fall within its specific capacities**

*Furthermore, in the context of a request for removal of thumbnails from the results of an image search, only the informative value of the images in their own right should be taken into consideration*

TU and RE brought an action against Google LLC seeking to obtain, on the one hand, the de-referencing of certain links displayed in searches made using the search engine operated by Google LLC, which lead to online third-party articles identifying TU and RE and, on the other, cessation of the display of the photographs accompanying one of those articles in the form of preview images (thumbnails). TU works in a position of responsibility, or is involved, in various companies which provide financial services. RE was TU's cohabiting partner and, until May 2015, held general commercial power of representation in one of those companies. Three articles appeared on the website *g-net* which criticised and expressed doubts as to the reliability of the investment model of several of those companies, one of which featured four photographs showing TU and RE driving luxury cars, in a helicopter and in front of a charter plane, thereby suggesting that the applicants were enjoying a life of externally financed luxury. TU and RE requested Google LLC to de-reference the articles in question, which, in their view, contain a number of incorrect allegations and defamatory opinions based on false statements, and to remove the thumbnails from the list of search results.

The German Federal Court of Justice referred two questions to the Court of Justice for a preliminary ruling. The first concerns **the specific feature of the function performed by search engines, and the tension that this creates between the fundamental rights laid down in Articles 7, 8 and 11 of the Charter of Fundamental Rights of the European Union**,<sup>1</sup> in a scenario which has not yet been examined by the Court, that is to say a situation in which the data subject challenges the truth of the processed data and requests, for that reason, the de-referencing of links to the content published by third parties in which those data appear. The second question concerns the need, in examining a request for removal of thumbnails from the results of an image search to take into account the content of the web page containing the images in question.

In today's Opinion, **Advocate General Pitruzzella, as a preliminary step, analyses the Court's case-law**<sup>2</sup> **on the obligations incumbent on the operator of a search engine** and identifies **four established points** in respect of the matter.

The **first** concerns the classification of search engines' activities as 'processing of personal data', and the identification of the operator of a search engine as 'the controller' of the processing of that personal data within the meaning of Directive 95/46<sup>3</sup> and of the General Data Protection

<sup>1</sup> Respect for private and family life (Article 7), protection of personal data (Article 8) and freedom of expression and information (Article 11).

<sup>2</sup> Judgment of 13 May 2014, *Google Spain and Google*, [C-131/12](#) (see also press release [No 70/14](#)); judgment of 24 September 2019, *GC and Others*, [C-136/17](#), (see also press release [No 113/19](#)).

<sup>3</sup> Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

Regulation ('GDPR').<sup>4</sup> The **second** point which emerges from the Court's case-law concerns the potential serious interference with the fundamental rights of the data subjects arising from the operation of a search engine. The **third** point established by the Court concerns the need to take into consideration all the fundamental rights concerned in the context of a request for de-referencing made to the operator of a search engine and to strike a balance between those rights, which takes account not only of the circumstances of the case but also of the technological characteristics of the internet environment. The **fourth** point, finally, is the attribution to the operator of the search engine of the role of weighing up the fundamental rights concerned in order to ensure that that processing meets the requirements laid down in the GDPR (and previously those laid down in Directive 95/46). That role was however codified in Article 17 of the GDPR.

It is in the light of the abovementioned principles deriving from the Court's case-law that the Advocate General proposes a judicial solution to the questions referred to the Court.

In the first place, he clarifies **the obligations incumbent on the operator of a search engine when dealing with a request for de-referencing based on a claim, which is not supported by evidence, that some of the information which appears in the referenced content is false.**

The Advocate General notes first of all that the fundamental rights to respect of private life and protection of personal data are not absolute; the right to protection of personal data must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality, due weight being given to the right to inform.

In that context, while, where the data subject plays a public role, the right to inform and the right to be informed prevail, that tendency is reversed where it is established that the information processed is untrue. Not only does the accuracy of the data constitute one of the conditions of lawfulness of the processing of personal data but the right to freedom of expression and information, with its dual significance, both active and passive, when relating to false information, cannot in any event be placed on an equal footing with the fundamental rights to a private life and protection of personal data. In this case, according to the Advocate General, a prevailing criterion rooted in one of the fundamental values of the European Union, that of human dignity, established in Article 1 of the Charter of Fundamental Rights, applies. Untrue information not only infringes the fundamental right of the person concerned to protection of personal data but also ultimately affects his or her dignity in that it puts forward a false representation of him or her, thus altering his or her identity.

Where the truth of the information processed by the operator of the search engine is at issue, the issue of balancing the fundamental rights concerned thus arises in quite specific terms, at least at the stage at which it has not yet been established whether the information is true or false. While the operator of a search engine cannot be required to carry out general monitoring of the content hosted and to verify the truth thereof, that operator will also have to play an active role in eliminating from search results content that includes false personal data, in accordance with the special responsibility associated with the function of gatekeeper of information.

In the light of the above, the Advocate General states that de-referencing cannot be carried out on the basis of a mere unilateral request by the data subject and that the data subject cannot be required to apply to the editor of a web page and request the removal of the content claimed to be false. According to the Advocate General, **it is for the data subject to indicate the evidence on which the request is based and provide prima facie evidence of the false nature of the content whose de-referencing is sought. The operator of the search engine is required, for its part, to carry out checks** to confirm or otherwise the merits of the request that are within its capabilities, by contacting, where possible, the publisher of the referenced web page, and therefore to decide whether or not to grant the request for de-referencing. If the article concerns a person who has a public role, the decision to de-reference will have to be based on particularly

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<sup>4</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

strong evidence that the information is false. Finally, in order to avoid irreparable harm to the data subject, the operator of the search engine will be able temporarily to suspend referencing or to indicate, in the search results, that the truthfulness of some of the information is contested.

In reply to the second question referred for a preliminary ruling, the Advocate General notes that the same rules apply **to name searches for images via a search engine on the internet as apply to web searches** and that by retrieving the photographs of natural persons published on the internet and reproducing them, the operator of a search engine offers a service in which it carries out autonomous processing of personal data which is distinct both from that of the publisher of the web page from which the photographs are taken and from that of referencing that page.

According to the Advocate General, **in the context of the balancing of conflicting fundamental rights to be carried out for the purposes of examining a request for removal of thumbnails from the results of an image search, account should be taken only of the informative value of the in their own right, independently of the content of which they form part on the web page from which they are taken.**

Considering that an individual's image is in fact one of the chief attributes of his or her personality, it follows that the protection of the right to privacy takes on a particular importance in that context **given the capacity of photographs to convey particularly personal and even intimate information about an individual or his or her family.**

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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