THE NATURE OF THE RIGHT TO BE FORGOTTEN AND ITS ROLE IN THE HUMAN RIGHTS SYSTEM *

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The purpose of the study is to reveal the concept and content of the right to be forgotten, also the characteristics of the relationship with other human rights. Within the framework of the article, the international and domestic legislations, practice and theoretical approaches, which are necessary to understand the nature of the right to be forgotten and the problems arising around the provision and protection of this right in RA, the legislative gaps underlying them and the main goal of their recovery, were studied.

To achieve the above-mentioned goal, the legal basis of the right to be forgotten, some theoretical interpretations of it, and the approaches of the international, European and American legal systems are distinguished and compared to the legislative approaches in RA.

The research was carried out using dogmatic, legal comparative, combination, logical analysis and legal modelling methods. We comprehensively studied the relationship and balance between the right to be forgotten and other rights, highlighted the need to solve the problems that have become uncontrollable in the electronic domain and adopt regulations that exclude possible mass violations of human rights, discussed their absence and the resulting issues.

Based on the results of the research carried out within the framework of this work, it was proposed to make relevant legislative changes and additions in several areas of RA legislation. The proposed changes and additions will have an important and fundamental significance from the point of view of modelling legal norms.

Keywords: *right to be forgotten, European directive, recognition of the information, personal data protection, right to the protection of private life, public interest, conflict of law, international private organizations, the relevance of information.*

Introduction

In the late 20th and early 21st centuries, the unprecedented growth of technology changed the process of human rights development, evolving and changing its nature and application.

The existence of the right to be forgotten and the objective need for recognition arose with the spread of information technology, as a result of which any person with

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Internet access had the opportunity to get to know any information related to other persons, their life and activity, especially without the absence of their consent or with them.

The Internet creates the possibility for anyone to post, share, and simultaneously receive any kind of information on the Internet, including not only about themselves but also about other people. As a result, there have been recorded cases when information about a person is published, which is sometimes from unreliable or untrue sources and causes unwanted consequences for that person, especially disinformation and vulnerable groups, such as children and the dead.

Therefore, to protect human rights, further peaceful life and existence, avoid unnecessary suffering, and the risks and dangers of constant pursuit of the past in the digital age, there is a need to create legal regulations that will protect people from private entities (such as Google, Facebook, etc.) the possibility of managing their life.

The Nature of the Right to be Forgotten and its Formation Process

The existence of the right to be forgotten and the objective need for recognition arose with the spread of information technologies, as a result of which any person with Internet access had the opportunity to get to know any information related to other persons. Furthermore, the Internet has made it possible for anyone to post, share, and simultaneously receive any type of information (text, photo, and video), including information not only about themselves but also about others. As a result, there have been cases when information about a given person is published, which is sometimes from unreliable or untrue sources and causes unwanted consequences for that person, especially about false identification and vulnerable groups, such as children and the dead. In this way, it was formed and there was a need to recognize, fix and define the right to be forgotten, which would make it possible to exclude mass violations of human rights to some extent.

Still, the European Data Protection Directive, which entered into force in 1995, enshrined the right to be forgotten in its Article 12 as follows: "Member States guarantee the right of each subject to obtain data from the controller, as well as b) as necessary, to correct, delete or block data, the processing of which does not comply with the provisions of this Directive, in particular, due to the incomplete or inaccurate nature of the data."

For the first time, the Court of Justice of the European Union referred to the right to be forgotten in the case of Google Spain v. AEPD (Mario Costeja Gonzalez) (Judgement 2014), recognizing that the right to be forgotten exists and is a general principle. This principle needs to be updated, defined and clarified for the digital age and electronic systems.

Digital (internet) law scholar Victor Mayer-Schönberger noted that the digitization and disclosure of personal details of life "will bind us forever to all our past actions, making them virtually impossible to escape" (Mayer-Schönberger 180-270).

The "right to be forgotten" generally refers to a legal remedy that allows individuals, in certain circumstances, to request that search engines remove information about them that appears in searches of their name. It may also refer to requests from website hosts, such as deleting certain information. More broadly, it has been viewed in judicial and doctrinal commentary as the right of individuals to "determine for themselves when, how, and to what extent information about them is disclosed to others" (Jones 284), or a right that gives an individual greater control over the information released about him.

The right to be forgotten is not clearly recognized either by international human rights documents or national constitutions.

According to Rolf Weber, the right to be forgotten is the right of an individual to request the deletion of certain information about him that will become unavailable to third parties (Rolf 29).

The right to be forgotten is based on the argument that information may lose its relevance during time and that its access should be limited. In other words, the right to be forgotten, in the broadest definition, is his right to remove information about a person from the Internet that has lost relevance, as well as unreliable, insulting and slanderous information.

The "legislative origin" of the right to be forgotten can be said to have taken place in 2010 in France, where the first legislative project providing for the right to be forgotten was developed (Charter). As a result, the "Charter of the Right to be Forgotten" was adopted, which provided for participation in the voluntary exercise of the right to be forgotten by private organizations, while such large organizations as, for example, "Facebook" and "Google" did not join the charter.

Later, in November of the same year, the EU Commission recognized the right to be forgotten in the "Personal Data Protection Directive 95/46", but its practical application was still uncertain. According to the EU, the person with the right to be forgotten was allowed to request to no longer process and remove unnecessary (not used for legal purposes) information about him from the Internet (a comprehensive approach, clause 2.1.3).

On 5 March, 2010, Mr. Mario Costeja González, a resident of Spain, filed a complaint with the National Data Protection Agency against Google Spain, Google Inc and La Vanguardia Ediciones SL, a daily newspaper with a wide circulation. The factual basis of the complaint was that the Google search engine continued to provide information on the real estate of Mario Gonzalez, which was put up for auction in 1998 for the latter's social security debts, even though the relevant proceedings had long been terminated. The agency rejected the complaint against "La Vanguardia Ediciones SL", arguing that the publication of the information was legally justified, as it was done by order of the Ministry of Labor and the Council dealing with Social Affairs and was aimed at ensuring maximum publicity for the auction.

The court ruled as follows:

- The right to be forgotten can be defined as the right of a person, under certain circumstances, to request the person who processes or controls the data to remove the information containing personal data concerning him, if this may endanger the basic rights of personal data protection, privacy and dignity.
- Even information, that publication was legal, may, after a certain period, become inconsistent, transgressive and inadequate to the objectives of the Directive, thus becoming illegal and subject to removal from publicly available and generally accessible sources.
- In any case, a fair balance should be sought between the public interest and the right to information and the fundamental rights and freedoms of the individual, particularly the protection and privacy of personal data. In giving precedence to these two rights, the nature of the information, the entity and its activities to which the information relates must be taken into account. To this end, Member States may provide for the circumstances under which personal data may be provided to a third party, regardless of whether it is carried out on a commercial basis or by a charity or any other association or foundation.

According to the court ruling of May 13, 2014, "Google" was obliged to destroy the link to the article "Google Inc. from the subdomain based on the 95/46 EC directive in the Spanish territory, although the data was processed in the US territory. The original

information remained available on the La Van-guardian newspaper website, and the Google search link was removed (Judgement C-131/12).

This ruling was the first court precedent in similar cases. Importantly, the court held that this case is not universal and the right to be forgotten is absolute. Decisions in similar cases should be made taking into account specific circumstances to exclude the contradiction and unjustified restriction of these two fundamental human rights (freedom of speech and press). The case had a great response. Google received 12,000 requests for data destruction on the first day of the European Court of Justice's ruling. Google was forced to destroy that information, but in 2014 the Court of Justice of the European Union issued a new ruling, according to which Google does not have to delete information that people request because it may be in the public interest, have this or that meaning or harm the interests of the person requesting destruction. In such cases, to maintain the balance between a person's integrity and the right to be forgotten, "Google" must transfer the case to the relevant body of the given state, the agency, and act only after the decision of that body.

In this context, it is also important to consider that the right to be forgotten acts and refers to the data being ‘necessary’. In terms of this particular right, the reference to ‘necessary’ suggests that at one stage there was a legitimate processing need for the use of the original personal data purpose in question – but that is now no longer valid. Once the legitimate purpose necessity has expired, there is an automatic right for the individual data subject to demand erasure, forgetting or takedown, and corresponding obligation on the controller to ensure the right is complied with (Lambert 218).

The European Court of Human Rights has also referred to the right to be forgotten in some cases. The court noted that it is necessary to be guided by the principle of balance and defined the criteria important for its application:

- contributing to a discussion of general interest,
- the degree of popularity of the interested person,
- the subject of the report,
- the previous behavior of the interested person,
- the content, form and consequences of publication,
- the circumstances in which the photographs were taken.

The court also noted that the greater the value of information to society, the more the person's interest in being protected from publication should be limited and vice versa. Although it is noted that freedom of expression also includes the entertainment press, at the same time the court confirmed that the interest to entertain the reader is less important than the interest to protect the private sphere. In this case, the court considers that the applicants are undoubtedly extremely well-known persons and should be considered public figures. Taking into account the competing interests and balancing the limits of discretion afforded to domestic courts, the Court found that there had been no violation of the Convention.

Despite the rights granted to data subjects (individuals) by Article 14 of Directive No. 95/48/EC, the "right to be forgotten" is applied based on the judgments of the Court of Justice of the European Union. At the same time, due to several changes taking place in the field of personal data protection, including new risks and challenges in the digital world, a new data protection law, currently known as the General Data Protection Regulation, has been developed by European authorities. One of the articles of the Regulation (Article 17) refers to the right of a specific individual to block or delete data contrary to legitimate interests under certain circumstances. However, the "right to be forgotten" has been replaced by the "right to delete" data in the GDPR, which according to European experts has a more limited scope of application. Article 17 stipulates that the data subject in several cases, including when the legal interests of an individual arising

from human rights and fundamental freedoms conflict with the legal interests of the organization that uses (manages) the data, has the right to demand the deletion of personal data.

However, the scope of EU data protection law in general – and of the right to be forgotten in particular – has been increasingly facing a question of jurisdictional boundaries. One of the most debated features of EU data protection law is its capacity to apply beyond the borders of the EU (Svantesson 4).

The extraterritorial reach of EU data protection law has led to important challenges – notably with regard to the right to be forgotten, as the ECJ has attempted to work out the circumstances when requests to remove online content bound businesses established overseas, and with world-wide effect. In particular, the matter was at the heart of two recent ECJ judgments concerning Google and Facebook (Fabbrini and Celeste 7).

The approach to the right to be forgotten, however, is not so precise in the United States and other countries around the world. In the US, the application of the concept of the right to be forgotten is based on case law and depends on the extent to which an individual's "right to be forgotten" outweighs the public interest in "being informed of the facts" (Article).

To speak of the right to be forgotten in the US may mean to refer to a reality that essentially does not exist, or rather, that does not meet the same context in which it is known and operates in European systems. The reasons for this radical difference mainly stem from cultural factors, by which the concept of privacy and its protection differ significantly from their perception in the European system. In the United States, the concept of privacy is closely related to freedom and has much more political value than in Europe (Hiltzik 7).

It should also be noted that US legislation does not contain direct norms protecting the right to privacy. There is a provision establishing "invasion of another's private life" as a tort, which is based on common law regulations and allows an aggrieved party to bring an action against a person who unlawfully interferes with his private affairs, discloses personal information, defames him or uses his name for personal gain.

In the United States, the right to privacy can also be based in part on the Fourth Amendment, which states that "a citizen, his home, property, and documents are protected from all unreasonable searches, seizures, and seizures," and "a search, seizure, or arrest may be carried out only when there is a valid legal decision for it, which clearly states the place of search, the person subject to arrest or the property subject to confiscation". Furthermore, it only considers immovable property (houses, etc.) as property and does not apply to electronic data used or held by third parties.

In "Melvin v. Reid" case, a citizen once accused of murder but later acquitted discovers that his story has been reproduced identically in the film "Kimono Red" and sues the film's producer, and the court settles the citizen's claim. The lawsuit was based on the principle that the publication of information about a person is considered an offence that violates a person's right to privacy. "Every person who lives a just life has the right to be happy, which implies that he should be protected from unnecessary attacks on his person, social status and reputation".

Contrary to the case described above, in another case, the court did not satisfy a citizen's right to privacy claim, arguing that a public figure cannot enjoy the same level of privacy as ordinary citizens. The defendant, F-R Publishing Corporation, had published an article about the plaintiff, former public figure William James Sidis. Although the article dealt with issues of public interest, it also addressed several issues that directly affected the plaintiff's private life. The plaintiff accused the defendant of violating his right to privacy.

In this case, the court ruled that there are certain limits beyond which privacy of data and facts about personal life cannot be guaranteed, particularly in cases where a person is a famous person and the publication of facts about him has social significance.

There can also be content with degrees of sensitivity and importance for adults, as opposed to other content.

The importance of attacks such as revenge porn are also emphasized by the increasing number of criminal offences relating to the act in countries around the world (Lambert 168).

However, it might also be considered that having an independent right to erasure, forgetting and takedown while important in and of itself, it can be important especially because there is not a criminal law or other solution available to the injured data subject. RtbF may be the best available remedy to solve the needs and interests of the individual victim or data subject.

One of the problems arises because humans (often) eventually forget, but machines and computers – and the internet – remember. The rise of artificial intelligence (AI) has increased computer and internet memory and enhanced it with the ability to connect more and more dots to make data chains identifying increasing amounts of personal data relating to individuals (Lambert 64). This has implications in terms of the right to be forgotten in making it more timely, reasonable and justified.

In 2009, a man sentenced to 14 years' imprisonment for the murder of German actor Walter Seide Merer sent a letter to Wikipedia demanding that his and his friend's names be removed from an English-language article, citing a 1973 German precedent ruling that the names of criminals could be withheld after serving their sentences (Charles 4). However, the authors of the English text refused to delete it, because Wikipedia was registered in the USA and German laws did not apply to it. In 2008, the applicant's name was removed from the German-language version of the article at the request of a German court. In 2009, the German Constitutional Court modified the court's decision, stating that it was a restriction of the constitutionally guaranteed right to print.

In the 1996 Falcionelli, Esteban P. Vs Organizaciçn Veraz S.A. case, the Supreme Court of Argentina decided that personal data that is 10 years old or older can be destroyed at the request of a person because they are outdated and limited the person's right to be forgotten and make him a prisoner of his past. Later, in 2000, the Personal Data Protection Law established five years for the protection of personal data (Datos caducos). In 2011, the Supreme Court of Argentina, using the concept of the right to be forgotten in a case, confirmed that there is a five-year period for the protection of this right. In late 2009, Da Cunaña won a case in which a court in Argentina ordered Google and Yahoo to remove a link to material that included his name under pornographic images that defamed his honor and dignity (Carter, 24-39).

In nearly a hundred similar cases, notably the 2014 case of Marie a Belen Rodriguez v. Google and Yahoo, a claim to destroy a link to images was denied. Courts have emphasized the fact that search engines are only responsible for image content in exceptional cases.

The standards of protection established in the US for the rights of the press and freedom of expression differ significantly from those provided for in the legal systems of European countries and the European Union itself. This element is not only a factor of cognitive interest but has also caused political and legal tension between the US and Europe. After the judgment of the Court of Justice of the European Union on October 6, 2015 (called the "Schrems" judgment in case No. C-362/14), the so-called "Safe Harbor" agreement between the USA and Europe has not been concluded, because it was considered that the principles of European law on data transfer do not meet the minimum standards of protection offered by the US legal system. As a result of the judgment of the

Court of Justice, long political-diplomatic negotiations began, which eventually led to the approval of a new treaty, the so-called "Privacy Shield", which is more faithful to the principles of European law.

The right to be forgotten has long been formed as a separate branch of law and although many theorists and legal systems of certain countries do not accept the fact that it is a separate branch of law, it already exists and the further course and developments of the digital age are directly related to it.

The Main Direction of Improving the Legal Basis of the Right to be Forgotten in RA Legislation

In the Republic of Armenia, legal regulations on the right to be forgotten exist in several legislative acts. First of all, these relations in RA are regulated by the RA Law "On Protection of Personal Data", which regulates the processing of personal data by state administration or local self-government bodies, state or community institutions or organizations, legal or natural persons, and state control over them. In addition, the Republic of Armenia is a member of the International Convention "On the Protection of Individuals in the Event of Automated Processing of Personal Data". The purpose of the Convention is to ensure respect for the rights and fundamental freedoms of every individual, regardless of his nationality or place of residence, in the territory of each Party, in particular his right to privacy, concerning the automated processing of personal data related to him. Article 19 of the Civil Code of the Republic of Armenia stipulates that a person's honor, dignity, and business reputation are subject to protection from insults and defamation publicly expressed by another person, in the cases and procedures defined by this Code and other laws.

There have also been cases in RA where the right to be forgotten was touched upon and where the plaintiffs demanded to remove from the website the material containing information that has lost relevance or defames their honor and dignity. For example, in the case of "Lilit Hovhannisyan vs. Aram Antinyan, editor-in-chief of the news site "BlogNews.am", the plaintiff, in addition to denying the information defaming the honor and dignity, also demanded to remove the material containing such information from the given website. According to the position of the Appellate Civil Court in the aforementioned court case, "the requirement to remove the material from the website as a measure of responsibility is not provided for by Article 1087.1, Clause 7 of the Civil Code of the RA (claims submitted by a person in court in case of an insult), and the Court is not authorized to apply such a measure of responsibility, which is not provided by law. The request to remove the material can be submitted to the court based on Article 8 of the RA Law "On Mass Media", and in the event of a dispute in court, the Claimant can request one or more of the measures of responsibility exhaustively defined by Article 1087.1, Clause 7 of the RA Civil Code. As we can see, the fact that the right to be forgotten is not recognized in the Republic of Armenia in practice causes certain problems in the protection of the rights.

The study of international and local practice documents the importance and necessity of the right under discussion. Although the right to be forgotten is not yet recognized in RA, the news site iravaban.net has allowed its readers to contact their news site with a request to remove material about the applicant. This once again proves the importance and necessity of recognizing the discussed right in RA. The study of the legislation in force in the Republic of Armenia shows that the norms contained in certain normative acts can replace the right to be forgotten to some extent and achieve the goal pursued by it. However, all that can be done only if these norms are interpreted correctly. Thus, the RA Civil Code in the exhaustive list of claims submitted by a person in case of

insult and defamation (art. 1087.1) did not include the request to remove the material from the Internet, which, as we saw in the above court case, does not give people the opportunity to file a request to remove the material containing the insult or defamation by judicial order, therefore also achieving the goal of the right to be forgotten. The Civil Code of the Republic of Armenia defines the restoration of the situation before the violation of the right among the methods of protection of the right (Article 14, Clause 2). If offending material has been placed on the Internet and the person requests to restore the situation before the violation of the right (the posting of the offending material on the Internet), it turns out that the person who uploaded the given material must restore the previous situation (the condition before the posting of the material on the Internet, when the given material was not available on the Internet) and remove the material from the Internet.

The right to be forgotten, as we mentioned, also includes the removal of data about a person that has lost relevance, but still exists on the Internet. Certain possibilities of achieving this goal were provided and exist in the old and current criminal codes of the Republic of Armenia, in particular by paragraph 8 of Article 84 of the former Criminal Code of the Republic of Armenia, removing or erasing the conviction eliminates all legal consequences related to the conviction. According to Article 93, Clause 8 of the current Criminal Code of the Republic of Armenia, the expungement or dismissal of the conviction on the grounds provided for in this Article leads to the elimination of the criminal consequences related to the conviction. A broad interpretation of this norm, in our opinion, can also lead to the removal of data on the criminal case and conviction of the given person from the Internet.

Thus, as the above study shows, there are some legal norms in the RA legislation that will be able to make the right to be forgotten and the goals pursued by it applicable only in the case of a clear interpretation. For this reason, we propose recognition of the right to be forgotten in RA by making changes in the relevant legislation, for example, in the RA Law on Personal Data Protection to provide for a person's right to be forgotten, according to which a person will have the right to apply to a personal data processor authority (including any website processing personal data) or a court with a request to remove his data from the Internet and make it inaccessible to third parties (personal data - any information about a natural person that allows or may allow direct or indirectly identify a person's identity, Article 3, Part 1 of the Law) or information containing personal data in its entirety, which: 1. has lost relevance and can no longer achieve the purpose pursued by the publication of that data, 2. has been recognized as an insult or defamation by a court ruling containing information, 3. contains unreliable information.

In this case, the unreliability of the information is proved by the person who submitted the request to remove the material.

We believe that the presented amendments will increase to some extent the possibility of protection of the rights of individuals, which are violated day by day and are of great relevance in RA. Meanwhile, taking into account a large number of foreign websites on the Internet (mainly on social networks), we believe that the approaches put forward by us are also not sufficient, because they can only be applied to websites registered in the Republic of Armenia, and foreign websites operating in the Republic of Armenia, in this case, the problem will remain unsolved.

Thus, the general concept of the privacy of a person in the legislation of Armenia is based on the rights declared by the "European Convention on Human Rights" and the "Council of Europe Convention on the Protection of Personal Data of Individuals in Automated Systems". The legislation mainly establishes the legal basis and procedures for the seizure of paper and electronic correspondence, the interception of telephone conversations, the search and seizure of private property, and the seizure of personal video and audio recordings for purposes of the criminal investigation.

The general legislation on privacy in the Republic of Armenia does not contain any provision or legal norm that could be interpreted as a "right to be forgotten" and would allow a citizen to prohibit the storage, use and (or) publication of data concerning him. Such an opportunity is provided only for information related to an individual's personal life under Article 204 of the RA Criminal Code, "Violating the confidentiality of personal or family life". The article talks about "Personal or family secrets of a person", but does not specify what this means when logically any information can be presented as "personal or family secrets". For example, personal or family secrets are considered information that: a) is not open to the public, b) is considered confidential by the given person, and c) is protected from third parties by appropriate security systems.

The Law of RA "On Protection of Personal Data" addresses the issues of legality of collection, storage and processing of personal data and can be considered as general legislation on the inviolability of personal life. However, the rights of data subjects defined in Article 15 of the law do not include the concept of "right to be forgotten". Despite this, the RA Law "On Protection of Personal Data" contains very important provisions on "publicly available personal data" (Article 11). First of all, the law defines the concept of "publicly available personal data", that is, "information that, with the consent of the data subject or the performance of conscious actions aimed at making his data publicly available, becomes available to a certain or undefined circle of persons". "Traditional" examples of publicly available data are data contained in telephone and factual directories, but today more relevant is information presented or published on social networks, blogs and other online services.

The same Article 11 stipulates that publicly available data can be removed from publicly available sources of personal data at the request of the data subject or by court order. However, the article does not define the circumstances and (or) conditions that could be the basis for the "removal of data", that is, for making a legal decision by the organization that processes the data or by a court. In cases where the data has been voluntarily provided by the data subject, it is logical to expect that the organization processing the data will refuse the request to remove the data from circulation, but may satisfy the request to no longer use the data.

Conclusion

Although the European standards set for the right to be forgotten and its application provide certain guidelines for application, domestic legislation must establish the mechanisms that will contribute to the proper realization of human rights and the effective application of protection mechanisms. The results of the study show that its enshrined and applicability in domestic systems has become a priority, because its absence led to massive violations of human rights, such as after the 44-day war of Artsakh in the Republic of Armenia.

The issue of enshrining and applicability of the right to be forgotten is also important from the point of view of the protection of children's rights. For example, the disclosure of certain information by one of the parents in the past creates problems in the child custody or adoption processes.

A person should be given the opportunity to live without the hauntings of the past, without additional pressures, if, of course, the preservation or presentation of such information, in any case, does not have the overriding public interest.

Summarizing the abovementioned, we propose to make the following changes in RA legislation:

1. Within the framework of Article 11 of the RA Law "On Protection of Personal Data", publicly available information can also be viewed as information

containing personal data, the awareness of which is in the public interest, if the right to privacy and dignity does not prevail in this case.

2. According to the RA Law "On Protection of Personal Data", not only personal data obtained illegally should be considered illegal, but also such data, which, even though they were obtained legally at one time, after some time began to pose a threat to the integrity of a person's personal life and dignity, thereby becoming disproportionate and inconsistent with the legitimate purpose of the processing.
3. At the legislative level, establish procedures that will enable the relatives of recognized dead or missing persons by submitting relevant documents:

 to remove from the Internet the available information about their relatives, which is not of great importance to the public, and which in any way insults the honor and dignity of the deceased,

 to delete their relatives' social (also personal) pages from social networks.

4. At the legislative level, define the following information to be removed:

 Information the collection of which once served a particular purpose, but has now ceased to serve that purpose;

 Information that once had legal consequences for individuals has ceased to have such consequences;

 Information obtained in violation of the law;

5. At the legislative level, define the clear divisions between the "right to be forgotten" and the "right to freedom of information" so that the rights do not conflict with each other, as well as minimize their possible conflicts.
6. Establish an appropriate body or department within the body that will deal with issues related to the right to be forgotten.

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ՄՈՌԱՑՎԱԾ ԼԻՆԵԼՈՒ ԻՐԱՎՈՒՆՔԻ ԷՈՒԹՅՈՒՆՆ ՈՒ ԴԵՐԸ ՄԱՐԴՈՒ ԻՐԱՎՈՒՆՔՆԵՐԻ ՀԱՄԱԿԱՐԳՈՒՄ

ՍՈՆԱ ՀԱՅՐԱՊԵՏՅԱՆ
Երևանի պետական համալսարանի
Իրավագիտության ֆակուլտետի մագիստրոս,
Իրավունքի և արդարության կենտրոն
«Թաթոյան» հիմնադրամի իրավախորհրդատու,
ք. Երևան, Հայաստանի Հանրապետություն

Ուսումնասիրության նպատակն է բացահայտել մոռացված լինելու իրավունքի հասկացությունը և բովանդակությունը, ինչպես նաև մարդու այլ իրավունքների հետ փոխհարաբերությունների առանձնահատկությունները: Ուսումնասիրվել են միջազգային և ներպետական օրենսդրությունները, պրակտիկան և տեսական մոտեցումները, որոնք անհրաժեշտ են հասկանալու մոռացված լինելու իրավունքի էությունը և ՀՀ-ում այդ իրավունքի ապահովման ու պաշտպանության շուրջ առաջացող խնդիրները, դրանց հիմքում ընկած օրենսդրական բացերը և վերահանման հիմնական նպատակը:

Վերոնշյալ նպատակին հասնելու համար անդրադարձ է կատարվում մոռացված լինելու իրավունքի իրավական հիմքին, դրա վերաբերյալ տեսական որոշ մեկնաբանությունների, առանձնացվում են միջազգային, եվրոպական և ամերիկյան իրավական համակարգերի մոտեցումները և համեմատությունը ՀՀ-ում գործող օրենսդրական մոտեցումների հետ:

Հետազոտությունը իրականացվել է դոգմատիկ, իրավահամեմատական, համադրության, տրամաբանական վերլուծության և իրավական մոդելավորման մեթոդների կիրառմամբ:

Համապարփակ ուսումնասիրության ենք ենթարկել մոռացված լինելու իրավունքի և այլ իրավունքների փոխհարաբերակցության ու հավասարակշռման հարցերը, վեր ենք հանել էլեկտրոնային տիրույթում անվերահսկելի դարձած խնդիրների լուծման և մարդու իրավունքների հնարավոր զանգվածային խախտումները բացառող կարգավորումների ընդունման անհրաժեշտությունը, քննարկել ենք դրանց բացակայությունը և արդյունքում առաջացած խնդիրները: Սույն աշխատանքի շրջանակներում իրականացված հետազոտության արդյունքների հիման վրա՝ առաջարկվել է ՀՀ օրենսդրության մի շարք ոլորտներում կատարել համապատասխան օրենսդրական փոփոխություններ և լրացնումներ: Առաջարկվող փոփոխությունները և լրացումները իրավական նորմերի մոդելավորման տեսանկյունից կունենան կարևոր և սկզբունքային նշանակություն:

Հիմնաբառեր՝ *մոռացված լինելու իրավունք, եվրոպական դիրեկտիվ, տեղեկատվության ճանաչում, անձնական տվյալների պաշտպանություն, անձնական կյանքի պաշտպանության իրավունք, հանրային շահ, իրավունքների բախում, համաշխարհային մասնավոր տեղեկատվական կազմակերպություններ, տեղեկատվության արդիականություն:*

СУТЬ И РОЛЬ ПРАВА НА ЗАБВЕНИЕ В СИСТЕМЕ ПРАВ ЧЕЛОВЕКА

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Центр права и справедливости
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В данной статье ставится задача раскрыть понятие, сущность и содержание права на забвение, а также его связь с другими правами человека и особенности их взаимоотношений. В рамках статьи рассматривается международное и отечественное законодательство, практика и теоретические подходы, необходимые для понимания сущности права на забвение и проблем, возникающих вокруг обеспечения и защиты этого права в РА, законодательные пробелы, лежащие в их основе и основная цель их восстановления.

Для достижения вышеуказанной цели выделяются и сравниваются с законодательными подходами РА правовые основы права на забвение, некоторые теоретические интерпретации подходы международной, европейской и американской правовых систем.

Исследование выполнялось с применением методов догматического, сравнительно-правового, сопоставительного, логического анализа и правового моделирования.

В работе мы представили как теоретические так и действенные практиктические подходы: действующие правовые регулирования, возникшие пробелы и проблемы, а также всесторонне изучили вопросы взаимосвязи и баланса права на забвение и других прав, выявили необходимость решения проблем, ставших неконтролируемыми в электронной сфере, а также необходимость принятия регулирований, исключающих возможные массовые нарушения прав человека, рассмотрели их отсутствие и возникшие в результате проблемы. По результатам исследования, проведенного в рамках данной работы, было предложено внести соответствующие законодательные изменения и дополнения в ряд областей законодательства РА. Предлагаемые изменения и дополнения будут иметь важное и принципиальное значение с точки зрения моделирования правовых норм.

Ключевые слова: *право быть забытым, европейская директива, признание информации, защита персональных данных, право на защиту частной жизни, общественный интерес, коллизионное право, международные частные организации, актуальность информации.*