

BELGIUM

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Right to oblivion

(droit à l'oubli/recht op vergetelheid)

- Decision of the Belgian Supreme Court

Cour de cassation/Hof van Cassatie

29 April 2016, C.15.0052.F

- Available on the official website of the Ministry of Justice
(<http://jure.juridat.just.fgov.be/>)
- Case of '**judicial oblivion**'

Facts of the case

- **1994:** Doctor caused a fatal car accident; his name was disclosed in the newspaper *Le Soir*.
- **2000:** Doctor received a criminal conviction.
- **2006:** Doctor was rehabilitated.
- **2008:** The newspaper placed its archives online.
- **2010:** Doctor asked the responsible editor (RE) of the newspaper to delete or to anonymize the article published in 1994. He invoked the right to oblivion. No favourable answer
- **2012:** Doctor sued RE before courts.

Court of Appeal of Liège - 25 Sept 2014 (1)

- Claim was based on **article 1382 of the Civil Code** (civil liability based on **fault**).
- Decision: RE did not act as a prudent and cautious editor
 - by not having responded favourably to the duly justified request;
 - *in doing so* by refusing to comply with the right to oblivion.

Court of Appeal of Liège - 25 Sept 2014 (2)

- Consequences:
 - Obligation to replace doctor's name with letter 'X' in the digital archives;
 - € 1 for moral damage.
- RE did not agree with this decision:
 - Any editor should be allowed to make archives as such.

Supreme Court – 29 April 2016 (1)

- ***Generally speaking:***
 - **Freedom of expression:** fundamental but not absolute right; may be overridden (cf art 10 ECHR).
 - **Right to privacy** (art 8 ECHR): contains the right to (judicial) oblivion.
 - **Digital archiving** is not immune from the interference of right to privacy with the freedom of expression.

Supreme Court – 29 April 2016 (2)

- ***In the present case:***

The decision of the Court of Appeal was justified:

- **Digital archiving = new discovery**

May affect the right to oblivion

- **Conditions** provided for in **art 10 ECHR** are met (lawfulness, legitimacy and proportionality); **fault** is established.

Comments (1)

- Right to privacy contains the **right to oblivion**.
- **Digital archiving** is not immune from the interference.
- Right to oblivion may lead to restrictions to freedom of expression. Cf art 10 ECHR:
 - Restrictions must be **prescribed by law**; = **art 1382 CC**
 - Restrictions must achieve a legitimate goal and be proportionate.

Comments (2)

- 'Prescription by law'. Which law in the present case?
Article 1382 of the Civil Code.
- Right to oblivion had to prevail **in view of the circumstances** (age of facts, claimant does not perform public function, rehabilitation, no other solution less interfering with freedom of expression, doctor's request was reasonable, etc.).
- **Balance of interests** → responsible editor's **fault**.