

Client Alert: European Court murder anonymization - Right to be Forgotten judgment

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Introduction

The recent European Court of Human Rights judgment in the case of M.L & W.W vs Germany (which can be found here, only in French: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-184438"\]}](https://hudoc.echr.coe.int/eng#{)) has highlighted the issue of anonymization and the Right to be Forgotten in the context of the European Human Convention on Human Rights.

What is the background to the case?

The two individuals in question, M.L and W.W, were convicted by a German court of murder in 1993 and sentenced to life imprisonment. As the date for their release approached in 2007 they brought legal proceedings against various media organisations requesting that materials about them accessible on the internet dating from the time of the trial (an article, a file and the transcription of an audio report) be *anonymized*; the individuals were released in 2008. The individuals have always contested their convictions.

This matter eventually went to court ending up before the German Supreme Court who ruled in favour of the media organisations, essentially on the basis that public interest in being able to access the information outweighed the two individuals' privacy rights. The individuals then took the matter to the European Court of Human Rights claiming that Germany had infringed their privacy rights under Article 8 of the European Convention on Human Rights.

What did the court determine?

In a very thorough analysis the court ruled that in refusing to grant the individuals' request Germany had not breached the State's positive obligations to protect the private lives of the individuals.

The court determined that the availability of the materials on the websites of the media organisations in question contributed to a debate of general interest which had not diminished over time. The individuals had also returned to the public eye when they attempted to have their criminal trial reopened and had contacted the press about this. The subject of the materials themselves were also capable of contributing to a debate in a democratic society. As a result of the individuals' conduct with the press the court decided that less weight was to be attached to their interest in no longer being confronted with their convictions through the medium of archived material on media organisations' websites. Therefore, even in the light of their impending release the individuals didn't have a legitimate expectation of having the materials *anonymized* or even of being *forgotten* online. Although the materials contained details about the individuals' lives this was part of the information that the judges had to take into consideration at the trial. The materials were not in any way disparaging about the individuals. Further, the location of the materials in question was unlikely to attract the attention of those internet users who were not trying to get information about the individuals. There was nothing to suggest either that maintaining access to the materials had been intended to disseminate information about the individuals again.

The court concluded that Article 8 of the European Convention on Human Rights had not been infringed.

What are the main takeaways?

The main takeaways are as follows. First, although this case was technically about *anonymization* it falls within the ambit of the Right to be Forgotten (the European Court of Human Rights referred extensively to the European Court of Justice's 2014 Google Right to be Forgotten case in the context of privacy rights and the internet and websites) – the Right to be Forgotten can therefore be grounded in Article 8 of the European Convention of Human Rights (i.e. it is not just confined to Article 17 of the EU General Data Protection Regulation). Second, when balancing privacy rights against the freedom of expression every matter will turn on its own facts and as this case

shows these matters must be looked at with a very fine toothcomb.

For other articles that we have written about data protection and the European Convention on Human Rights, such as the Antovi? and Mirkovi? case which was about the unlawful use of CCTV in the workplace please see here: <http://www.corderycompliance.com/client-alert-european-court-cctv-damages-judgment/>, or the Barbelescu case which was about monitoring employee communications please see here: <http://www.corderycompliance.com/barbelescu-judgment-monitoring-employee-communications-data-protection/>

We report about data protection issues here: <http://www.corderycompliance.com/category/data-protection-privacy/>. For more about GDPR please also see our GDPR FAQs which can be found here: <http://www.corderycompliance.com/eu-data-protection-regulation-faqs-3/> and our EU Data Protection Glossary which can be found here: <http://www.corderycompliance.com/?s=glossary>

Cordery's GDPR Navigator includes resources to help deal with data protection compliance – for more on Navigator please see here: <http://www.corderycompliance.com/solutions/cordery-gdpr-navigator/>

For more information please contact André Bywater or Jonathan Armstrong who are lawyers with Cordery in London where their focus is on compliance issues.

André Bywater

Office: +44 (0)207 075 1785

andre.bywater@corderycompliance.com



[Jonathan Armstrong](#)

Office: +44 (0)207 075 1784

jonathan.armstrong@corderycompliance.com



