Right to rectification

De Terwangne, Cecile

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Section 3 Rectification and erasure

Article 16. Right to rectification

CÉCILE DE TERWANGNE

The data subject shall have the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject shall have the right to have incomplete personal data completed, including by means of providing a supplementary statement.

Relevant Recitals

(39) Any processing of personal data should be lawful and fair. It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed. The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used. That principle concerns, in particular, information to the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed. Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing. In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. The personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, ensuring that the period for which the personal data are stored is limited to a strict minimum. Personal data should be processed only if the purpose of the processing could not reasonably be fulfilled by other means. In order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. Personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including for preventing unauthorised access to or use of personal data and the equipment used for the processing.

(65) A data subject should have the right to have personal data concerning him or her rectified and a 'right to be forgotten' where the retention of such data infringes this Regulation or Union or Member State law to which the controller is subject. In particular, a data subject should have the right to have his or her personal data erased and no longer processed where the personal data are no longer necessary in relation to the purposes for which they are collected or otherwise processed, where a data subject has withdrawn his or her consent or objects to the processing of personal data concerning him or her, or where the processing of his or her personal data does not otherwise comply with this Regulation. That right is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child. However, the further retention of the personal data should

be lawful where it is necessary, for exercising the right of freedom of expression and inf... tion, for compliance with a legal obligation, for the performance of a task carried out ... public interest or in the exercise of official authority vested in the controller, on the gro... of public interest in the area of public health, for archiving purposes in the public interes... entific or historical research purposes or statistical purposes, or for the establishment, exe... or defence of legal claims.

Closely Related Provisions

Article 5(d) (Principles relating to processing of personal data—accuracy) (see too recital ...); Article 12 (Transparent information, communication and modalities for the exercise of ... rights of the data subject) (see too recital 59); Article 19 (Notification obligation regardi... rectification or erasure of personal data or restriction of processing); Article 23 (Restrictions) (see too recital 73); Article 89 (Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes) (see too recital 156)

Related Provisions in LED [Directive (EU) 2016/680]

Article 4(1)(d) (Principles relating to processing of personal data) (see too recital 30); Article 13(1)(c) (Information to be made available or given to the data subject) (see too recital 40); Article 16(1) and (4)–(6) (Right to rectification or erasure of personal data and restriction of processing) (see too recital 47); Article 17 (Exercise of rights by the data subject and verification by the supervisory authority) (see too recitals 48–49)

Related Provisions in EUDPR [Regulation (EU) 2018/1725]

Article 18 (right to rectification) (see too recital 34)

Relevant Case Law

CJEU

Case C-553/07, *College van burgemeester en wethouders van Rotterdam v M. E. E. Rijkeboer*, judgment of 7 May 2009 (ECLI:EU:C:2009:293).

Case C-362/14, *Maximilian Schrems v Data Protection Commissioner*, judgment of 6 October 2015 (Grand Chamber) (ECLI:EU:C:2015:650)

Case C-434/16, *Peter Nowak v Data Protection Commissioner*, judgment of 20 December 2017 (ECLI:EU:C:2017:994).

ECtHR

Leander v Sweden, Appl. No. 9248/81, judgment of 26 March 1987.

Rotaru v Romania, Appl. No. 28341/95, judgment of 4 May 2000.

Cemalettin Canli v Turkey, Appl. No. 22427/04, judgment of 18 November 2008.

Dalea v France, Appl. No. 964/07, judgment of 2 February 2010.

Ciubotaru v Moldova, Appl. No. 27138/04, judgment of 27 July 2010.

A. Rationale and Policy Underpinnings

Article 16 GDPR is the expression of the data subjects' power of control of (the quality of) their data. The right to rectification is intrinsically linked to the right of access; once data subjects have accessed their personal information and discovered that it is inaccurate or incomplete with regard to the purpose of the processing, they have the correlated right to have the data rectified or completed.[1] This right to rectification echoes, in terms of data subjects' rights, the principle of accuracy under Article 5(1)(d) GDPR, that requires the controller to take every reasonable step 'to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay'. This right has a very interesting second component, in Article 19, namely the obligation to forward justified rectifications or complements to previous recipients of the data.[2] The importance of this right to have the rectifications forwarded is shown by the fact that it allows the data subject to stop or at least limit the spreading of erroneous or false information.

B. Legal Background

1. EU legislation

Article 12(b) DPD listed three distinct rights that are laid down in three different articles in the GDPR (Articles 16–18). The right to rectification is one of these rights. Article 12(b) DPD provides that 'Member States shall guarantee every data subject the right to obtain from the controller as appropriate the rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data'.

Article 12(c) DPD added a duty to inform recipients downstream about the rectifications or other actions done with the data. It states that every data subject has the right to obtain from the controller 'notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with (b), unless this proves impossible or involves a disproportionate effort'. This duty to inform is maintained in the GDPR, but in a separate article (Article 19) dedicated to the notification obligation linked to the exercise of the three rights: rectification, erasure and blocking.

Article 14 of Regulation 45/2001,[3] applicable to the EU institutions and bodies, laid down the right to rectification. The data subject had the right to obtain from the controller the 'rectification without delay of inaccurate or incomplete personal data'. In 2018 Regulation 45/2001 was updated and replaced by the EUDPR, Article 18 of which provides for the right to rectification. Article 18 is formulated in identical terms to the right to rectification under Article 16 GDPR.

Article 16(1) LED also provides for a right to rectification in parallel to and in the same terms as the GDPR. Recital 47 LED explains that the rectification of inaccurate data should in particular be carried out where these data relate to facts, and that 'the right to rectification should not affect, for example, the content of a witness testimony'. In effect,

[1] See Case C-553/07, *Rijkeboer*, para. 51.
[2] See the commentary on Art. 19 in this volume.
[3] See Table of Legislation.

opinions cannot be considered as accurate or not, whereas the facts on which they are based can be regarded as true, false or incomplete, and can be rectified where appropriate.

Where inaccurate personal data have been rectified, the LED requires the controller to communicate the rectification to the competent authority from which the inaccurate personal data originate[4] and to the recipients of this data.[5]

2. International instruments

The right to have one's data rectified was one of the first rights granted to data subjects in the international instruments related to data protection. Article 8(c) of Convention 108 provides that any person should be enabled to obtain, as the case may be, rectification of personal data relating to him or her if these data have been processed contrary to the basic data protection principles. The Explanatory Report of the Convention specifies that this means rectification of 'erroneous or inappropriate information'.[6]

Article 9(e) of the modernised text of the Convention maintains a similar formulation to the original, although it contains some new elements. Obtaining the rectification of data, if justified, is now expressed as a right instead of as a safeguard (although the Explanatory Report of the original text specified that in domestic legislation implementing the provisions of the Convention, the content of Article 8 should clearly correspond to subjective rights). The modernised text also contains concrete details on the exercise of this right: rectification must be provided on request, free of charge and without excessive delay. In line with the original Explanatory Report (paragraph 54), the Explanatory Report of the Modernised Convention (paragraph 81) provides that 'justified rectifications should, where possible, be brought to the attention of the recipients of the original information, unless this proves to be impossible or involves disproportionate efforts'.[7]

3. National developments

As early as 1978, the French Data Protection Act,[8] in addition to the right of access under Article 34, provided in Article 36 that the person who has the right of access to their own personal data 'can request that the data are rectified, completed, clarified, updated or erased', if they are incomplete, expired or if their collection, use, retention or dissemination are forbidden.

4. Case law

The ECtHR has ruled in several cases that the storage of private information and its release, coupled with a refusal to allow the data subject an opportunity to refute it, amounts to an interference with the right to respect for private life.[9] In the *Ciubotaru* case, the Court held that there is a positive obligation for a State Party to the ECHR to allow natural persons to provide objective evidence in view of having personal data relating to them (*in casu* their official ethnicity) changed.[10] 'For the Court, the State's failure consists in the inability for the applicant to have examined his claim to belong to a certain

[4] Art. 16(5) LED. [5] Ibid., Art. 16(6). See the commentary on Art. 19 in this volume.
[6] Explanatory Report Convention 108 1981. [7] Explanatory Report Convention 108 2018.
[8] French Data Protection Act 1978.
[9] ECtHR, *Leander v Sweden*, para. 48; ECtHR, *Rotaru v* Romania, para. 46.
[10] ECtHR, *Ciubotaru v Moldova*, paras. 58–59.

ethnic group in the light of the objectively verifiable evidence adduced in support of that claim'.[11] The Court has indicated in the *Cemalettin Canli* case[12] that not only the keeping of false, inaccurate information but also the communication of incomplete information (such as the omission of a mention of the applicant's acquittal) amount to interferences with the right to respect for private life.

The CJEU has consistently emphasised the significance of the right to rectification. In *Schrems*, the CJEU considered the validity of the Safe Harbor decision authorising transfers of personal data to the United States. Interestingly, it made an explicit link between data protection rights, including the right to rectification, and the fundamental right to effective legal protection enshrined in Article 47 of the Charter. According to the Court, the essence of the fundamental right to effective judicial protection is not respected if an individual does not have the possibility to 'pursue legal remedies in order to have access to personal data relating to him, or to obtain the rectification or erasure of such data'.[13]

In *Nowak*, the CJEU considered a request for access under the DPD to the written answers submitted by a candidate to an exam and any comments made by an examiner on those scripts, with a view inter alia to possible rectification of this material. The Court found that such information was 'personal data', and that finding otherwise, in reasoning comparable to that in *Schrems*, 'would have the effect of entirely excluding that information from the obligation to comply … with the rights of access, rectification and objection of the data subject'.[14] The Court found that candidates had the right to access their exam scripts 'in so far' as those scripts are liable to be checked for accuracy,[15] after explaining that accuracy could refer to situations such as mixing up exam scripts[16] but does not mean correcting a posteriori answers that are incorrect.[17]

C. Analysis

The right to rectification is a key element of the fundamental right to data protection, one of the elements specifically enshrined in Article 8(2) of the Charter. Its significance has been emphasised in the case law of the CJEU and that of the ECtHR relating to the fundamental right of privacy, as noted above.

Article 16 GDPR affirms and specifies the right to rectify inaccurate personal data, requiring the controller to implement a request for rectification 'without undue delay'.

In addition to the rectification of false or inaccurate data, Article 16 also gives data subjects the right to have incomplete personal data completed. This notion of incompleteness must be assessed with regard to the purposes of the processing. Certain data could be considered as complete in one context of processing, while the same data could be seen as incomplete in another. The right to rectification may then become a right to add missing elements instead of to correct existing data. In this respect, Article 16 specifies that completing the data can be done by providing a supplementary statement (such as the mention of the data subject's acquittal and of the discontinuation of the criminal proceedings, as in the *Cemalettin Canli* case).[18]

It should be noted that Article 12(2) requires controllers to facilitate the exercise of the data subject's rights. Recital 59 explains that modalities should be provided to this

[11] Ibid., para. 59. [12] ECtHR, *Cemalettin Canli*, paras. 41–42.
[13] Case C-362/14, *Schrems*, para. 95 [14] Case C-434/16, *Nowak*, para. 49
[15] Ibid., para. 56. [16] Ibid., para. 54. [17] Ibid., para. 52. [18] Ibid.

effect. The modalities should include mechanisms to request and, if applicable, obtain, free of charge, rectification of personal data. The controller should also provide means for requests to be made electronically. Finally, recital 59 states that the controller should be obliged to respond to requests from the data subject without undue delay and at the latest within one month and to give reasons where the controller does not intend to comply with any such requests. It should be noted however that these requirements are set forth in a recital, not in the text itself.

The obligation for the controller to notify the rectifications carried out to all the recipients of the data concerned (see the discussion of Article 19) should also be born in mind. As stated above, this obligation to forward justified rectifications or complements to previous recipients of the data is valuable, as it avoids multiple separate requests for rectification from the data subject while allowing to stop or at least limit the spreading of erroneous or false information.

Select Bibliography

National legislation

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