Reference for a preliminary ruling from the Audiencia Nacional (Spain) lodged on 9 March 2012 — Google Spain, S.L., Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González

(Case C-131/12)

(2012/C 165/18)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Appellants: Google Spain, S.L., Google Inc.

Respondents: Agencia Española de Protección de Datos, Mario Costeja González

Questions referred

1. With regard to the territorial application of Directive 95/46/EC [1] and, consequently, of the Spanish data-protection legislation:

   1.1. must it be considered that an 'establishment', within the meaning of Article 4(1)(a) of Directive 95/46/EC, exists when any one or more of the following circumstances arise:

   — when the undertaking providing the search engine sets up in a Member State an office or subsidiary for the purpose of promoting and selling advertising space on the search engine, which orientates its activity towards the inhabitants of that State,

   or

   — when the parent company designates a subsidiary located in that Member State as its representative and controller for two specific filing systems which relate to the data of customers who have contracted for advertising with that undertaking,

   or

   — when the office or subsidiary established in a Member State forwards to the parent company, located outside the European Union, requests and requirements addressed to it both by data subjects and by the authorities with responsibility for ensuring observation of the right to data protection, even where such collaboration is engaged in voluntarily?

   1.2. Must Article 4(1)(c) of Directive 95/46/EC be interpreted as meaning that there is 'use of equipment … situated on the territory of that Member State'

   when a search engine uses crawlers or robots to locate and index information contained in web pages located on servers in that Member State

   or

   when it uses a domain name pertaining to a Member State and arranges for searches and the results thereof to be based on the language of that Member State?

   1.3. Is it possible to regard as a use of equipment, in the terms of Article 4(1)(c) of Directive 95/46/EC, the temporary storage of the information indexed by internet search engines? If the answer to that question is affirmative, can it be considered that that connecting factor is present when the undertaking refuses to disclose the place where it stores those indexes, invoking reasons of competition?

   1.4. Regardless of the answers to the foregoing questions and particularly in the event that the Court of Justice of the European Union considers that the connecting factors referred to in Article 4 of the Directive are not present:

   must Directive 95/46/EC on data protection be applied, in the light of Article 8 of the European Charter of Fundamental Rights, in the Member State where the centre of gravity of the conflict is located and more effective protection of the rights of European Union citizens is possible?

2. As regards the activity of search engines as providers of content in relation to Directive 95/46/EC on data protection:

   2.1. in relation to the activity of the search engine of the "Google" undertaking on the internet, as a provider of content, consisting in locating information published or included on the net by third parties, indexing it automatically, storing it temporarily and finally making it available to internet users according to a particular order of preference, when that information contains personal data of third parties,

   must an activity like the one described be interpreted as falling within the concept of "processing of … data" used in Article 2(b) of Directive 95/46/EC?

   2.2. If the answer to the foregoing question is affirmative, and once again in relation to an activity like the one described: must Article 2(d) of Directive 95/46/EC be interpreted as meaning that the undertaking managing the "Google" search engine is to be regarded as the "controller" of the personal data contained in the web pages that it indexes?

2.3. In the event that the answer to the foregoing question is affirmative, may the national data-control authority (in this case the Agencia Española de Protección de Datos — Spanish Data Protection Agency), protecting the rights embodied in Articles 12(b) and 14(a) of Directive 95/46/EC, directly impose on the search engine of the "Google" undertaking a requirement that it withdraw from its indexes an item of information published by third parties, without addressing itself in advance or simultaneously to the owner of the web page on which that information is located?

2.4. In the event that the answer to the foregoing question is affirmative, would the obligation of search engines to protect those rights be excluded when the information that contains the personal data has been lawfully published by third parties and is kept on the web page from which it originates?

3. Regarding the scope of the right of erasure and/or the right to object, in relation to the "derecho al olvido" (the "right to be forgotten"), the following question is asked:

3.1 must it be considered that the rights to erasure and blocking of data, provided for in Article 12(b), and the right to object, provided for by Article 14(a), of Directive 95/46/EC, extend to enabling the data subject to address himself to search engines in order to prevent indexing of the information relating to him personally, published on third parties' web pages, invoking his wish that such information should not be known to internet users when he considers that it might be prejudicial to him or he wishes it to be consigned to oblivion, even though the information in question has been lawfully published by third parties?

([1]) Directive 95/46/EC of the European Parliament and of 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 1995 L 281, p. 31).

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria), lodged on 19 March 2012 — Pensionsversicherungsanstalt v Peter Brey

(Case C-140/12)

(2012/C 165/19)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant on a point of law: Pensionsversicherungsanstalt

Respondent to the appeal on a point of law: Peter Brey

Question referred

Is a compensatory supplement to be regarded as a 'social assistance' benefit within the terms contemplated in Article 7(1)(b) of Directive 2004/38/EC ([1]) of the European Parliament and of the Council of 29 April 2004?

([1]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

Action brought on 23 March 2012 — European Commission v French Republic

(Case C-143/12)

(2012/C 165/20)

Language of the case: French

Parties

Applicant: European Commission (represented by: G. Wilms and S. Petrova, acting as Agents)

Defendant: French Republic

Form of order sought

— declare that, by failing to issue permits in accordance with Articles 6 and 8, to reconsider and, if appropriate, to update the existing permits and to ensure that all the existing installations are operated in accordance with the requirements laid down in Articles 3, 7, 9, 10, 13, 14(a) and 9b) and 15(2) of the IPPC Directive, the French Republic has failed to fulfil its obligations under Article 5(1) of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (IPPC Directive) ([1]);

— order French Republic to pay the costs.

Pleas in law and main arguments

Pursuant to Article 5(1) of the IPPC Directive, Member States are to take the necessary measures to ensure that the competent authorities see to it, by means of permits in accordance with Articles 6 and 8 or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that existing installations operate in accordance with the requirements of Articles 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) not later than 30 October 2007.