THE RIGHT TO BE FORGOTTEN IN THE CZECH REPUBLIC

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Abstract: *The author of this article focused his attention on the new wave in the frame of privacy protection in the EU law: from co called "right to be forgotten" (case Google vs. Gonzáles) to General Data Protection Regulation (GDPR). Author explained especially the impact of the recent European development of the personal data protection on the Czech law including the newly prepared Czech Personal Data Protection Act, the changes of doctrinal thinking and the challenges to the juridical practice in the Czech Republic.*

Keywords: *Personal data protection, privacy protection, GDPR, Google vs. Gonzáles, Czech Civil Code*

I. THE RIGHT TO BE FORGOTTEN UNDER CZECH LAW – GENERAL FRAMEWORK

The Czech law is nowadays built on an essential legislative reform the grounds of which are concentrated in the recodificated Civil Code (Act No 89/2012 Coll.). The main part of recodification, incl. the Civil Code, has been in force since January, 1st, 2014. One part of the Civil Code (Sections 81–117) concerns the protection of human personality. Due to the traditional conception of the Civil Code, the protection of personal data is established in a general framework and in the "traditional" parts of the protection of human personality (protection of life, health, corporal and mental integrity of human beings, face, privacy etc.). A special protection of personal and sensitive data is not expressly incorporated into the text of the Civil Code. Thus, personal data can be protected only indirectly, through the broader concept of privacy protection (Sections 86–90, Civil Code). The framework of protection of human privacy is formulated only in Section 90, Civil Code: *"Legal grounds for interference with the privacy of another or for the use of his/her image, documents of personal nature or audio or video recordings may not be used unreasonably and in conflict with the legitimate interests of individuals*". The term "privacy" is not defined in the text of the Civil Code. Even if privacy seems to be rather an unclear concept in the Czech law and "nobody can articulate what it means",[1] the Czech law apparently inclines to a broader concept of privacy, including (but not being limited to) the right to protection of confidentiality of communication.[2] It generally means that this right also includes privacy on the Internet[3] but for now without a greater support of the Czech courts in their practice. At present, there are no significant legal initiatives the aim of which would be protection of privacy on the Internet. The discussion about the freedom of information on the Internet and its limits has only been developing in the Czech Republic in the past 10 years.[4]

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[1] The citation has been used as the hyperbole. See SOLOVE, D. A. Taxonomy of Privacy. *University of Pennsylvania Law Review*. 2006, Vol. 154, No. 3; see also MELZER, F., TÉGL, P. a kol. *Občanský zákoník - velký komentář, svazek I. § 1–117*. Praha: Leges, 2013, p. 550.

[2] See for example the Decision of the Constitutional Court of Czech Republic from 22 March 2011, Pl. ÚS 24/10.

[3] See also MELZER, F., TÉGL, P. a kol. *Občanský zákoník - velký komentář, svazek I. § 1–117*. Praha: Leges, 2013, p. 555.

[4] See for example POLČÁK, R. *Internet a proměny práva*. Auditorium: Praha, 2012, p. 95 ff.

More specific rules about responsibility for the content of the data on the Internet were introduced into the Czech law by the Act No 480/2004 Coll., on Some Services of Information Society, regulating the activities relating to the use of certain personal data on the Internet. This Act (implementing the Directive of the European Parliament and the Council 2000/31/EC of 8 June 2000 and the Directive of the European Parliament and the Council 2002/58/EC of 12 July 2002) only expressly establishes the responsibility of the provider of services to include the information given by the user (Section 5).

The Section 3 of the Act establishes the responsibility of the provider of services, which are based either on the data transfer or on the searching of the data on the Internet. This kind of responsibility arises only in cases when the provider: (a) initiates the data transfer; (b) chooses the user of the transferred information, or (c) chooses or changes the content of transferred information.

Under Section 5 al 1 of the Act, the operator of a website is responsible for processing the personal data which appear on the website, even if they are published from other sources. If the operator does not react or if he has rejected the applicant's request, the applicant is entitled to take a legal action against the website operator.

A special legal regulation of protection of personal and sensitive data (but without specifically focusing on the data on the Internet) is included in Act No 101/2000 Coll., on Protection of Personal Data. This act is in accordance with the Directive of the European Parliament and Council 95/46/EC of 24 February 1995 and regulates the general framework of collecting and processing of personal and sensitive data. The applicability of this act for the purposes of "the right to be forgotten" on the Internet is limited: This act excludes its own applicability on a haphazard (accidental) collection of personal data unless these data are subsequently processed (Section 3 al. 4). The duty of the administrator or the processor to delete the personal data arises at the moment when the aim of the data collecting or processing disappears, or at the request of the person subject to the data collection (Section 20). (See also the text above relating to the website operator's responsibility for its content.)

II. CZECH LAW AND THE LIMITS TO THE RIGHT TO BE FORGOTTEN

The general limits to protection of human personality are formulated in the Civil Code as follows:

(a) the consent of the person whose privacy has been interfered with. See Section 86, Civil Code: *"Without an individual's consent, it is prohibited in particular to intrude on his/her private premises, to watch or to take audio or video recordings of his/her private life, to use such or other recordings made by a third person about the private life of an individual, or distribute such recordings about his/her private life. Private documents of personal nature are protected to the same extent."* and

(b) the so-called legal reasons (licences) to affect the privacy of persons. The situations in question are as follows: (a) if an image, or an audio or video recording, is made or used to exercise or protect other rights or legally protected interests of others; (b) where an image, or a document of a personal nature, or an audio or video recording, are made or used for official purposes based on the law, or (c) where someone performs a public act in matters of public policy. (d) where something is used for scientific or

artistic purposes and for the press, radio, television or similar coverage (see Sections 88–89, Civil Code).

There are also limits to the extent of the legal reasons for an interference with privacy, based on the defence of right abuse, see Section 90, Civil Code: *"Lawful reasons for an interference with the privacy of another or for the use of his/her image, documents of a personal nature or audio or video recordings shall not be used unreasonably and in conflict with the legitimate interests of individuals."*

In the Czech law, there are also specially formulated limits to the right to be forgotten. They can be found in the text of the Act No 101/2000 Coll., on Protection of Personal Data (see above). Section 20 al. 2 mentions special acts establishing exceptions for the archival purposes and for the purposes of judicial or administrative proceedings.

In accordance with the EU judicial practice, the limits of the extent of the right to be forgotten have to be applied in relation to the official registers where the public interest prevails over the protection of personality.

To sum up: The right to be forgotten is not considered absolute (but only is this sense). It may only be applied under the following conditions: (a) the personal data are no longer needed for the purpose for which they were collected or processed, (b) if the consent has been withdrawn, (c) some other legal reason arises for erasing the personal data, as, for example, in the case of a legal regulation on an archive, the duty to save the data for the exercising one's rights in civil, criminal or administrative proceedings, etc.

III. THE CZECH LEGAL REMEDIES AVAILABLE TO ENFORCE THE RIGHT TO BE FORGOTTEN

The Czech law recognizes a general way to protect "the right to be forgotten" in the form of a remedy which is part of private law. This essential instrument of legal protection is to be used through a civil action. The aggrieved natural person can choose, as the aims of the proceedings while having to formulate it in the action, between *restitutio in integrum* and/or *actio negatoria* (see Section 82 al. 1 Czech Civil Code: *(1) "An individual whose personality rights have been affected has the right to claim that the unlawful interference be refrained from or its consequence remedied".)*. After the death of the aggrieved (natural) person, the protection of his/her personality rights may be sought by any of his/her close persons (see Section 82 al. 2, Civil Code). ("A *close* person" means, under Section 22 al. 1, Civil Code, *"a relative in the direct line, sibling or spouse, or a partner under another statute governing the registered partnership (hereinafter a "partner"); other persons in the familial or similar relationship shall, with regard to each other, be considered to be close persons if the harm suffered by one of them is perceived as his/her own harm by the others. Persons related by affinity and persons permanently living together are also considered to be close persons*".

The specific legal steps, aimed at the protection of the rights of the person subject to data collection, are included in Section 21, the Act 101/2000 Coll., on Personal Data Protection. Any person subject to data collection, who finds out or supposes that the data administrator or processor is dealing with his/her data in contravention to the protection his/her personal or private life, or contrary to the law, is entitled:

a) to demand an explanation from the data administrator or the processor;
b) to demand a rectification of the situation from the data administrator or the processor; he/she is especially entitled to require blocking or correcting the data, filling the missing data, or deleting the data.

If the data administrator or the processor does not meet the demands, the person subject to collection is entitled to turn directly to the national authority on personal data protection – The Bureau for the Personal Data Protection (its legal regulation is contained in Section 28 ff. Act No 101/2000 Coll., on Personal Data Protection). If the applicant is rejected by the Bureau for the Personal Data Protection, he/she is entitled to request an inquiry made by the President of the Bureau (§ 152 Act 500/2004 Coll.). If the inquiry is unsuccessful, the applicant can request a judicial inquiry made by the Administrative Court, and subsequently to file an appeal complaint with the Supreme Administrative Court, and after that a constitutional complaint with the Constitutional Court.

The second option how the affected person may assert his/her right to be forgotten is to make use of the general personality protection, also mentioned above. The affected person can, pursuant to Section 82 al. 1 Czech Civil Code (2012), demand from the website operator/keeper to remove his/her personal data from the website. The liability of the search engine operator has not been established yet in the application of this regulation by the Czech courts (see also below). The current Czech legal practice and the principal juridical opinion draw on the presumption that it is the operator of the website who is responsible for the content of the website (see also Section 5 al. 1 Legal Act No 480/2004 Coll., on Some Services of Information Society). From that follows that legal actions are brought against the website operators.

The development of the responsibility of the website operators for the content of the websites may also be seen in the earlier Czech case law. The decision of the Czech Supreme Court No 23 C 70/2003 declared the primary responsibility of the website operators for the content of their websites.[5]

IV. THE POSSIBILITY TO RECEIVE MATERIAL OR IMMATERIAL DAMAGES: LEGAL REGULATION AND REALITY IN PRACTICE

In case when an injury arises as a consequence of interference with the protection of personal data, the injured person is entitled to a remedy for both material and immaterial injuries. The legal regulation of this instrument has the legal support among the special acts only in Sections 25–26 Act No 101/2000 Coll. (see above). These rules enable to claim compensation for an injury arisen, e.g. due to an infringement of the right to be forgotten, but

[5] *"Responsibility for the content of Internet websites is borne primarily by the person whose expression of will is at issue. This person used to be described in the professional literature as the content provider (also the operator of the websites or the keeper of the websites). The content provider is a specific person who hasn created or have to create the content (for example the websites or another data). The provider located this content (the website or another data) on the storage space of the disk reserved for this purpose by the provider of free space. The legal person has its own expression of will, too, and bears also the responsibility for the content of its websites. The entity providing hyperlinks to its own websites or links to other documents accesible on the Internet is called the hyperlink supplier."* The decision can be found on the website of the Czech Supreme Court (www.nsoud.cz).

these rules refer to a general regulation, i.e. to the rules of the Civil Code. Because of the position of the right to be forgotten as one of the fundamental rights, the compensation for an injury arisen due to its infringement has a special and more favourable position among the various constructions of responsibility for injury. The right to be forgotten is considered an absolute right. The concept of the "absolute" nature of the right means that this right may be asserted against anyone, or that this right belongs only to its holder (compare the absolute nature of this right, which means that this right is not without limits – see in the chapter 2). Consequently, *"(A) tortfeasor who is at fault for breaching a statutory duty, thereby interfering with an absolute right of the victim, shall provide compensation to the victim for the harm caused."* (Section 2909, Civil Code).

In the case of interference with the right to be forgotten, the injured person is entitled to demand compensation for both material damage and immaterial harm (see Sections 2956 – 2957, Civil Code: *"Where a tortfeasor incurs a duty to compensate an individual for harm to his natural right protected by the provisions of the first part of this Act, he shall compensate the individual for the damage as well as for non-pecuniary harm thus caused; the compensation for the non-pecuniary harm shall also include mental suffering. The manner and amount of adequate satisfaction must be determined so as to also compensate for the circumstances deserving special consideration. These circumstances shall mean causing intentional harm, including, without limitation, harm caused by trickery, threat, abuse of the victim's dependence on the tortfeasor, multiplying the effects of the interference by making it publicly known or as a result of discrimination against the victim with regard to the victim's sex, health condition, ethnicity, creed, or other similar serious reasons. The victim's concerns about losing their life or about serious damage to their health are also taken into account if such concerns are caused by a threat or otherwise."*

The application of the rules enabling to demand also non-pecuniary compensation for harm depended in the past on the courts' decisions (of the Czech Supreme Court or the Constitutional Court[6]) whether the right to be forgotten was among "*the natural rights protected by the provisions of the first part of Civil Code*". Actually, this question is dealt with in Art. 1, Regulation of the European Parliament and Council 2016/679 of 27 April 2016, which declares the protection of natural persons when processing personal data to be an essential right.

The manner and extent of the compensation are regulated in Sections 2951-2952, Civil Code, which make distinction, in pecuniary harm, between "restitutio in integrum" and monetary compensation, and in non-pecuniary harm, between non-monetary or monetary satisfaction.[7]

[6] The development of the application of non-pecuniary harm besides the pecuniary harm is aparent, among others, in the decision of the Constitutional Court No Pl. ÚS 16/04 which declared the need of the application of not only pecuniary but also non-pecuniary harm in the case of personality protection. For this, see also the decision of the Supreme Court No 30 Cdo 1315/2008 which sumarized the conditions establishing the duty to cover the non-pecuniary harm.

[7] See the text of Sections 2951-2952, Civil Code: *"Damage is compensated for by the restoration to the original state. If this is not reasonably possible, or if so requested by the victim, damage is payable in money. Non-pecuniary harm is compensated for by an appropriate satisfaction. The satisfaction must be provided in money, unless a real and sufficiently effective satisfaction for the harm incurred can be provided otherwise. The actual damage and what the victim has lost (lost profit) is paid for. If the damage results in a debt, the victim has the right to be released from the debt or provided with compensation by the tortfeasor."*

V. THE EFFECTIVITY AND PRACTICAL USEFULNESS OF THE IMPLEMENTATION OF THE RIGHT TO BE FORGOTTEN IN CZECH LAW

As also mentioned above, the implementation of the right to be forgotten in the Czech law existed in the past, too, before the decision in *Google v. Gonzáles* (based generally on the Civil Code and especially on the special legal regulation of protection of personal and sensitive data which is included in Act No 101/2000 Coll., on Protection of Personal Data. The extent of this kind of protection was, nevertheless, limited: its application was not extended in practice to the responsibility of search engine operators.

But this protection has been significantly influenced and enlarged, in the past 2-3 years, by the decision in *Google v. Gonzáles,* and also by the need to implement the Regulation of the European Parliament and Council 2016/679 of 27 April 2016.

The novelty of the decision in *Google v. Gonzáles* is for the Czech law mainly in the responsibility of the internet search engine operators: *"The Court stated that an internet search engine operator is responsible for processing the personal data which appear on the web pages published by other sources. Operating a search engine is a different activity to that of publishing content on a website, and search results can undermine a person's right to privacy. Thus, the operator acts as a processor of personal data and must comply with legislation that protects individuals in this regard (Directive 95/46/EC).*

The Court ruled that the search engine operator could, in some circumstances, be obliged to remove links to certain web pages from the list of results that appear when a search is conducted for a particular name."

The decision in *Google v. Gonzáles* is not the only which affects the right to be forgotten. This right has also been affected a new European Regulation: Regulation of the European Parliament and Council 2016/679 of 27 April 2016 – General data protection regulation (GDPR).

This Regulation will come in force on 25th May 2018 in all member states of the EU and will change fundamentally the procedure of collecting and using personal data.

In the Czech Republic, the Regulation will bring about a heavy burden for the State and local administration as well as for business corporations.

According to the Union of Industry and Transport of the Czech Republic (hereinafter referred to as UITCR), the majority (approximately 60 %) of all Czech enterprises could get into serious difficulties, which is due to the short deadline to recognize and make preparations for the implementation of the new European Regulation in practice. It concerns not only the mapping and integration of data protection into business operations, but also of the right "to be forgotten". A significant number (60 %) of commercial entities did not know (by February, 2017) anything about the forthcoming rules. The deadline for to putting the new rules into practice (1.5 seemed) seems to be too short in the light of this information. In the opinion of the Union of Industry and Transport of the Czech Republic (UITCR), the new rules will mean a significant burden for the industry and trade of the Czech Republic, in terms of both organization and finances.

Also, the level of the knowledge of some aspects (details) of the GDPR, only one year before it coming into force, was very low. For example, only each 10th business/entrepreneur in the Czech Republic knew about the possible amount of penalties. The amount of all the penalties is estimated at 530 millions of Czech crowns (CZK). The majority of the businesses fear mainly the danger that their employees could cause a loss of

the protected personal data. Some commentators estimate that such a heavy burden of penalties could liquidate a large number of businesses.

The range of big challenges for the Czech businesses, as far as the implementation of GDPR is concerned, seems to be as follows:

1) Lack of control mechanisms in the case of breach of personal data protection;
2) Uncertainty as for identifying the person responsible for a problem arisen;
3) Lack of sufficient protection of the IT and personal data;
4) A limited operation of the existing IT systems;
5) Limited sources to improve the existing practices;
6) Lack of the existing formal processes enabling the identification of the position and ownership of the data;
7) Lack of financial means.

The newly established position of the data protection authority (DPA) is also considered to be a heavy burden because of additional costs bound with the necessity of its embodiment into the structure of the companies or other establishments.[8]

According to the information of the Union of Industry and Transport of the Czech Republic (UITCR) the new European Regulation is bringing both administrative and financial burden to the Czech businesses. Despite of the businesses having the duty for the implementation of the changes, 60% of them do not have the elementary information about the content of the Regulation.

The new European rules on the personal data protection also include and strengthen the right to be forgotten in practical activities of businesses. Not only enterprises but also other persons sharing their personal data with them will have to delete the data of the affected persons.

It is not only the banks or insurance companies that are been forced make changes: they also concern technological and manufacturing companies, if these are able identify the customers, monitor their behaviour or monitor the behaviour of their employees, for example during the manufacturing processes.

The new concept of the right to be forgotten has also affected small businesses, mainly those producing various applications. What is seen as the main problem in the current shortage of labor, mainly in the branch of information technologies, is, according to the Czech business, the lack of professionals who could join the existing staff in companies who are in charge of the data protection.

Despite the difficulties mentioned above, the approach of the Czech government and the state administration to the implementation of the changes concerning data protection, including the right to be forgotten, is appreciated by the UITCR as an example of a good practice. Their steps when implementing the Regulation are carefully consulted with all participants including entrepreneurs under the auspices of the digital necessary. The UITCR takes part in these activities organizing seminars on the forthcoming changes.[9,10]

[8] More details can be found on the website of Ipsos (the leading agency for the market and opinion research in the Czech Republic) at www.ipsos.cz.

[9] More details can be found on the website of Profimedia: www.profimedia.cz.

[10] The EU commissioner from the Czech Republic, Věra Jourová, significantly contributed to the approval of GDPR by the EU member countries.

VI. RIGHT TO BE FORGOTTEN IN THE CZECH JURIDICAL PRACTICE AND COMMENTARIES

As it is apparent from the published articles, not numerous ones, and short commentaries, the first wave of them was focused mostly on the interpretation of the content and the practical effects of the *Google v. Gonzáles* on personal data protection in the Czech Republic. There has been a lack of professional articles or commentaries or books on this subject-matter so far. The reasons seem to be, among others, the still ongoing all-embracing reform of the entire Czech legal order having the following main goals: (a) to complete the Europeanization of the Czech legal order started in 2004; and (b) to overcome the remnants of the pre-1989 Communist era. In their current situation, it is almost impossible for the Czech lawyers to cope fully with the incoming challenges.

The application of the decision in Google v. Gonzáles by the courts is a matter for the future: the period elapsed from May, 25th 2014, was too short for some applicants to reach a court decision. In addition, the author of this text has not found any relevant statistical data about the claims filed.

In the past, the Czech courts dealt with the data protection on the Internet only rarely. Their decisions were based on the legal regulation mentioned in the previous questions (see the explanation to the question 1). Also, these cases only concerned the "traditional" means of information such as the printed mass media.[11]

There are actually no decisions of the Czech Supreme Court, the Czech Supreme Administrative Court and/or of the Czech Constitutional Court, concerning the right to be forgotten in the narrower sense of the term (after the decision in *Google v. Gonzáles)*.[12]

VII. THE ACTUAL SOLUTION OF GOOGLE AND THE CZECH APPROACH

In the Google activities there seems to be a significant development towards improvements, and – according to the decision in *Google v. Gonzáles* – to find a better balance between the two groups of fundamental rights. Thus, the Google addresses in particular the questions of finding a path to the best solution.

Nevertheless, some commentators draw attention to the possible dangerous impact of any legal regulation narrowing the scope for resolving the conflict between general legal principles or fundamental rights.

In the Czech Republic, however, more attention is paid to the new European legal regulation (GDPR) or the new Czech legal regulation (the draft of the new personal data protection act) than to the impact of the decision in *Google v. Gonzáles* on the Czech society.

In the Czech Republic, 4 years after the decision in *Google v. Gonzáles* (by October 2018) more than 40,000 requests have been submitted, concerning about 20,000 web sites. The applicants were successful in 51 % of the total number of the requests (the data comes

[11] See the decisions of the Supreme Court No 28 Cdo 9312/2002 and Cdo 2162/2002 which declared the responsibility of both persons: the owner of the mass-media and the provider of information.

[12] Based on search in the online databases of case law of the Czech Supreme Court (www.nsoud.cz) and the Constitutional Court (www.usoud.cz).

from the Google on-line information). This number of successful requests is above average: the European statistics indicate that in the whole of Europe only 43 % of requests have been successful.

If the operator of a search engine rejects an applicant's request, the applicant is entitled to address the Bureau for the Personal Data Protection (its legal regulation is contained in Sections 28 ff., Act No 101/2000 Coll., on the Personal Data Protection), which is the Czech national authority on the personal data protection. If the applicant's request has been dismissed by the Bureau for the Personal Data Protection, the applicant is entitled to request the President of the Bureau for an inquiry (§ 152 Act 500/2004 Coll.).

The Bureau has, by the end of 2017, announced it monthly examines several tens of questions and requests; only 2 requests turned out to be really relevant: (a) In the first case the applicant was complaining that the Google in its electronic form also required a copy of the applicant's identity card in order to identify him. This request was successful: The requirement of the Google is newly modified so that the applicants' personal data is better protected. (b) In the second case, the applicant demanded the deleting of the link with an article in the Czech tabloid Blesk (both in the electronic and printed forms) magazine Blesk which stated that the applicant had committed a crime many years previously, and that subsequently he had been convicted. The Google dismissed the applicant's request so he turned to the Bureau for the Personal Data Protection. The Bureau asked the Google about its standards used in similar cases. According to the response, these standards include factors such as seriousness of crime, the offender's age at the time when he/she committed the crime, whether the crime was committed long time ago, etc. The Bureau found this answer satisfying and rejected the applicant's request.

The Czech Republic is among the few countries in the world where the Google does not have an overwhelming majority in the field of search engines. It is due to the search engine called Seznam. The operator of the Seznam has received, during the period after the decision in *Google v. Gonzáles*, no more than a few tens of individual requests for the deletion, granting approximately 70% of them. In the practice of the Seznam the sensible information is left on the website, too, but it cannot not to be searched by name (personal data). The Seznam also agreed with the opinion expressed by the Google that the European law obliges only the EU member countries and *"… there is no reason for applying these rules outside the European Union*", as declared by the spokesperson of the Seznam, Irena Zatloukalová.[13]

It seems that the whole process of "erasing the memory" now continues without problems. Nevertheless, a lot of unanswered questions remain, giving rise to a discussion about both the general approach to this right and the specific form of the impact of this right on the real life in the Czech Republic and also in other countries.

[13] See VYHNANOVSKÝ, O. Kdo má na Googlu 'právo být zapomenut'? Češi už podali 25 tisíc žádostí. In: *Lidovky* [online]. 24. 7. 2017 [2017-09-02]. : <http://byznys.lidovky.cz/kdo-ma-na-googlu-pravo-byt-zapomenut-cesi-uz-podali-25-tisic-zadosti-1dc-/firmy-trhy.aspx?c=A170724_105901_firmy-trhy_onv>.

VIII. UPCOMING LEGAL REFORM IN CZECH LAW TO REINFORCE/MODIFY THE RIGHT TO BE FORGOTTEN AND POSSIBLE NEXT STEPS

On the one hand, the ECJ decision itself (*Google vs. Gonzáles*) did not provoke a need for a legal reform in the Czech Republic.

On the other hand, it is certain that the reform of the Czech legal order, mainly concerning the harmonization of the entire Czech legal order with the changes of the European law in the field of personal data protection, was considered necessary.

The government of the Czech Republic found the legal situation in the country incompatible with the EU law, esp. with the Regulation of the European Parliament and Council (EU) 2016/679 of April, 27th 2016 (GDPR) and the Directive of the European Parliament and Council (EU) of April, 27th 2016, and prepared a draft of a completely new act on processing personal data. The draft includes the following: the general provisions (Chapter I); the special provisions on personal data protection, based on the directly applicable legal act of the EU (GDPR); personal data protection during their processing in preventing, investigating and prosecuting crimes, and in securing the execution of punishments and protective treatment measures, an in securing the safety of the Czech Republic, the public order and internal safety (Chapter III); and personal data protection in securing the defence of the Czech Republic.

The draft has been an object of a hot debate because of many additional duties and costs incurred by many natural and legal persons, municipalities, etc. Nevertheless, the passing of the draft by the Parliament of Czech Republic is inevitable due to the duty to harmonize the Czech legal order with the EU law.

The future development of the right to be forgotten (at least in the Czech Republic, in my view) can be foreseen as follows: in part as a prolongation of the development in the past 2-3 years, and in part as a result of the public debate of this topic among lawyers and politicians.

Even though the discussion on this topic is still ongoing and there are many critical voices, the development in the Czech Republic proceeds to the acceptance of the right to be forgotten, many particular and additional questions have arisen and have to be solved.

In accordance with the development in other European countries, the debate is focused mainly on the possible problems with the practical application of the decision in *Google v. Gonzáles*. There is a discussion about the possible enforcement of the new rules by the European Union not only against the "European" domains like Google.cz but also against foreign domains like the American Google.com. There is also another question: with what accuracy the decision in Google v. Gonzáles is capable of being interpreted and applied, especially in hard cases, if the court must gently balance the individual right to privacy on the one hand, and on the other hand, the interest of the public in accessing information, or the right to be informed. In the Czech Republic, this is the case of "hot" data such as the information about the membership of various persons in the former Communist Party of Czechoslovakia or the activities of various persons connected with the former (Communist) secret service. Historically conditioned data, in particular, are related to the question of how long it will take before their potential is exhausted.

In the Czech Republic, the position of the Americans is also take into account as they perceive the right to be forgotten as part of the efforts of some EU politicians to subordi-

nate the American technology companies under the extreme European regulation to prevent their development (see also the statement of European Commissioner for the Digital Economy and Society G. Oettinger. The Czech commentators mean mainly that this endeavour cannot be successful. It seems to be the dangerous tendency to the reciprocal reaction of some countries (as USA, China etc.).

One question arises from the conflict between the development of the technologies and their subsequent legal regulation and control. There is a remarkable succession and reversibility, as the technological development gives rise to the legal regulation in the sense of action-response: also, the new legal regulation often puts pressure on the subsequent technological developments. For example: Are the current technology systems capable of identifying without doubt which data are of a personal nature? The same word can mean both the name of a person and the designation of a certain thing.

One may think that the trouble with the right to be forgotten is the conflict between the nature of the information society technologies on the one hand and the extensive development of fundamental rights on other hand. Even if the European legislature and judiciary react to the technical development and possible ways of using the Internet and regulate possible negative impacts on individuals' personal data, their abuse may still occur. Thus, even if the citizens are entitled to exercise the right to be forgotten against all the operators of the web search engines working on the territory of European Union, it is not possible to have an absolute or prevailing judicial control in that respect. The development of technologies will still be ahead of the development of the legal and judicial protection. What is the implication? Both the legislation and the judiciary in the field of the right to be forgotten will be forced to develop continuously and dynamically in the future.