

Procedural Protection of The Right to be Forgotten

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Introduction

The right is a legal instrument that aims at achieving a legitimate interest and gives its owner the authority to perform a work or to compel another to do it. When the law gives the right to an individual, it imposes duties in return; therefore, the relationships between individuals require the establishment of certain rules in order to organize it¹.

Although, the substantive rules regulate the rights and duties for each person, such as the civil law and criminal law, but these rules are not sufficient to protect their rights without its real application through procedural rules.

The legislator has set rules to protect the right to privacy against violations that may occur in many ways, especially with the increase in the development in different fields such as the media and communications².

And as a result of the development of social, scientific and technological means which facilitate the intervention in the private life of individuals and the

¹ See Hussein Amer & Abd EL Rehim Amer, AL Ta'asof Fi Est'mal AL Hoqooq Wa Elgha' AL Okoud (التعسف في استعمال الحقوق) (وإلغاء العقود), AL Hay'ah AL Masria AL A'amah Li AL Ketab, Second Edition 1998, p.5.

² See Dr. Mohamed El Shahawi, Wasa'el AL E'lam Wa AL Haq Fi Khososyah (وسائل الاعلام والحق في الخصوصية), Dar AL Nahda AL Arabia, First Edition 2010, p.42.

disclosure of their secrets¹, the need for the acknowledgment of the right of oblivion begin to arise to deal with the increasing opportunity to violate the right of individuals to protect their dignity and reputation², as well as preventing anyone from interfering in their private life³.

In this technology age, the technology is moving very fast and the electronically stored information made it easy to collect information about any person as everything becomes traceable online, and this affects the interactions with these information which might have its impact on the right to privacy of individuals in digital

¹ For more information about the definitions of the right to privacy and which matters that enter into its scope see:

See Dr. Heba Ahmed Ali Hassanein, AL Hemayah AL Gena'ya Li Hormat AL Hayah AL Khasah (الحماية الجنائية لحرمة الحياة الخاصة (حرمة المسكن-حرمة الحديث الخاص-حرمة الصورة)), PhD Thesis, 2007, p.67&ff.

² By referring to the explanatory note of the Egyptian civil code, we can see that the legislator considered the right to protect the dignity and reputation of individuals as a part of the rights related to human personality, though it will be protected under the supervision of article 50 of this law, as it determine Examples of the violation of this right, such as invasion of the person's freedom, the integrity of his body, his moral reputation or the sanctity. See Dr. Mohamed Nagy Yakout, Fekrat AL Haq Fi AL Som'a (فكرة الحق في السمعة), Monsha'at AL Ma'aref Alexandria, First Edition, 1986, p.14.

³ See Jasna Čošabić, Territorial Implications of the "Right to be Forgotten", Psychosociological Issues in Human Resource Management, Vol. 3(2), 2015, P.59; See Dr. Mohamed Abd El Mohsen El Mokatea, Hemayat AL Hayah AL Khasah Lel Afrad Wa Damanatha Fi Mowagahat AL Hasoob AL Aaly (حماية الحياة (الخاصة للأفراد و ضماناتها في مواجهة الحاسوب الالي), 1992, p.43.

world¹. The existence of internet facilitates the collection and the storing of data for a long time and this makes forgetting a struggle, unlike in the past, where the default was to forget, and people had to use their minds only to remember the past events².

In other words, since the Internet makes it easier to breach the privacy of individuals, so many states like France, Hong Kong, South Korea, Canada, Russia, and South Africa begin to establish new rules in their legislation in order to protect the right to be forgotten³.

Accordingly, a call for the establishment of the right to be forgotten begin to raise, while taking into consideration the need to make a balance between the protection of the privacy to individuals and the right of data distribution in order not to affect the correct flow of communication⁴.

The European Union (EU) was one of the first legal systems that pays special attention to the protection of personal data, and one can trace the emergence of the right to be forgotten by the issuance of the European

¹ See Kimberly A. W. Peaslee, Does the United States Need a "Right to Be Forgotten"?, *The computer & Internet Lawyer*, vol.33 no.5, May 2016, p.12.

² See Ravi Antani, The resistance of memory: could the European Union's right to be forgotten exist in the United States?, *Berkeley Technology Law Journal*, vol.30:385, 2015, p.1173.

³ See Julia Kerr, What is a search engine? The simple question the Court of Justice of the European Union forgot to ask and what it means for the future of the right to be forgotten, *Chicago Journal of International Law*, summer 2016, p.233.

⁴ *Id.*, p.223.

Union's Data Protection Directive in 1995, as it stipulates several rules relating to the purpose of processing and collection of personal data in a lawful and legitimate way, and these legal standards apply to any entity or person that handles personal data. Thus, if data collector violates these requirements, the affected individual can request the blocking or erasure of these unlawfully collected data¹.

However, this directive was established in a general and flexible way, so that every European Union member state can integrate it into its domestic legislation in a way that meets its special needs and values². In other words, it determines the general grounds and baselines upon which the EU member states can base their rules of law regarding the protection of the right to privacy and the right to be forgotten.

The need for the establishment of the right to be forgotten begins to spread outside the European's borders to other states, as many states tend to flow the direction in the adoption of this way for the protection of their citizens' online privacy.

Moreover, the EU rules regarding the right to be forgotten is broad, as it should be imposed not only upon search engines, but it should also be applied upon

¹ Ibid.

² Id., p.223,224.

any organization that carry out business in the EU, or control or have access to EU citizens' information¹.

As a result, we shall study the procedural protection of the right to be forgotten in the following Chapters:

Chapter One: Definition and nature of the right to be forgotten.

Chapter Two: The scope of application of the right to be forgotten.

Chapter Three: Proceedings undertaken to protect the right to be forgotten.

¹ See Erik Werfel, J.D., IGP, CIPP-US, CISSP, CEDS, What Organizations Must Know About the 'Right to be Forgotten', Information Management Journal, March/April 2016, p.30; See Jasna Čošabić, 2015, p.60,61.

Chapter One

Definition and nature of the right

To be forgotten

One of the most prevalent legal rights, according to the procedural jurisprudence, is the right of any person to be forgotten, as the denial of such right will prevent him from protecting the sanctity of his private life and his right to forget certain events from his past life.

Section One

Definition and Origin of the right

To be forgotten

Due to the importance of this right and the strong relationship between it and the individual freedom, some legal systems expressly determine the scope of this right in its laws while others left it to the jurisprudence to try to disclose it from different provisions in law.

Therefore, the procedural jurisprudence tried to put a definition for the right to be forgotten as follows:

- Some jurists said that this right can be defined as “any person must have the right that the events of his life can be forgotten, and that no one can raise the cover on these merits, after a certain period of time, except with his

consent, as the unveiling of these events is considered as violation for the prescription period hereof”¹.

- While others defined it as “it is the right which protects the facts that have been forgotten, whether it was related to the public or private life of the individuals, irrespective of whether they are famous or not”².

- It can also be defined as “the right of an individual to delete, limit, or modify past facts that can be misleading, redundant, anachronistic, embarrassing, or contain irrelevant data associated with that person, likely by name, so that those past events do not continue to impede present life of that individual”³.

- Also, professor Franz Werro stated that, under the Swiss law in case of criminal offences, the offender must have the right, after certain period of time, to

¹ See Dr. Hossam AL Ahawany, AL Haq Fi Ehteram AL Hayah AL Khasah – AL Haq Fi AL Khososya (– الحق في احترام الحياة الخاصة – (الحق في الخصوصية دراسة مقارنة), Dar AL Nahda AL Arabia, p.95; See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, AL Hayah AL Khasah Wa Masoulyet AL Sahafy- Derasah Fekhya Qada’ya Mokaranah Fi AL Kanoon AL Masri Wa AL Frensi (الحياة الخاصة (ومسئولية الصحفي – دراسة فقهية قضائية مقارنة في القانونين المصري والفرنسي), Dar AL Fekr AL Arabi, Edition 2000/2001, p.105; See Dr. Hamdy Abd El Rahman & Dr. Mustafa Mohamed El Gammal, AL Madkhal Li Derasat AL Kanoon – AL Goz’ AL Thany Nazaryat AL Haq (المدخل لدراسة القانون- الجزء الثاني نظرية الحق), 1984, p.59.

² See Dr. Rabie Mahmoud Naguib El-Amour, AL Nezam AL Kanooni Li El Haq Fi AL Nesyan (النظام القانوني للحق في النسيان), PhD Thesis, 2017, p.28.

³ See Michael J. Kelly and David Satola, The right to be forgotten, University of Illinois Review, vol.2017 no.1, p.3.

prevent people from recalling his criminal past, as the protection of his dignity, honor, secrecy and his right to the respect his private life are all parts of the fundamental rights of the individual¹.

Therefore, any person who has been convicted and punished for the commission of a crime, must have the right to be forgotten, as no one has the right to talk about it or raise it and identify the personality of the perpetrator after keeping silent for a certain period of time unless with the consent of that person himself or his heirs².

The existence of new equipment and tools in the field of visual and readable media, as well as the wide call for the media freedom and the right of public opinion to know the current events, facilitate the publishing of information especially with the increase in the number of individuals in the society³.

In addition to that, politicians may, due to political considerations, tend to uncover the secrecy on personal information of their opponent's past life in order to gain

¹ See Franz Werro, "The Right to Inform v. the Right to Be Forgotten." In *Haftungsrecht im Dritten Millennium*, edited by Aurelia Colombi Ciacchi, Christine Godt, Peter Rott, and Leslie Jane Smith. Baden-Baden, F.R.G, Nomos, 2009, P 285.

² See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.2.

³ See Dr. Essam Ahmed El Bahgy, *Hemayat AL Haq Fi AL Hayah AL Khasah Fi Doo' Hokook AL Ensan Wa AL Mas'olya AL Madanyah (حماية الحق في الحياة الخاصة في ضوء حقوق الانسان)* (والمسؤولية المدنية), Dar AL Game'a AL Gadeeda Lel Nashr, 2005, p.14,15.

certain benefits and this is considered as a violation for the personal freedom of individuals¹.

In recent years and due to the development of technological means in the field of internet, as well as the increase in the number of individuals using the social media, it is easier for people to search for information and to publish it. Moreover, it can be used as a way for advertising even without the knowledge or the consent of their owners; as a result, the call for a way to protect the individual's information and its privacy begin to arise in order to allow anyone to control the usage of these data as well as his right to delete it and not to recall it after being forgotten when not used for a certain period of time unless with the consent of the competent person².

Moreover, the existence of technology leads to the transformation of the traditional concept of the media library, as the articles and reports related to a person, that were published in the past, whether or not such facts were true or of public interest, can be misused by others as they can reuse it at any time to relive the past whenever there exists a new facts which are related to the concerned persons³.

¹ See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.4,5.

² See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.10.

³ See Marina Santín, The Problem of the Right to be Forgotten from the Perspective of Self-Regulation in Journalism, *El profesional de la información*, vol 26 no. 2, marzo-abril, 2017, P.305.

Accordingly, many conventions and international organizations adopted the right of individuals to be forgotten, such as the Universal Declaration of Human Rights that was issued on 1948, which stated in article 12 that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks”¹. And article 8 of the European convention on human rights in 1950 stated, regarding the right to respect for private and family life, that “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”².

Also, the European Union’s 1995 Data Protection Directive stated in article 1, regarding the objective of the directive, that “1. *In accordance with this Directive,*

¹ See Dr. Mahmoud Sherif Basiouny & Khaled Mohie AL Din, Tagmee’ AL Watha’ek AL Dawlia Wa AL Eklymia AL Ma’nya Bi AL Adalah AL Gena’yah (جميع الوثائق الدولية والإقليمية المعنية بالعدالة الجنائية), First Part AL Watha’ek AL Dawlya Wa AL Eklmya, p.12.

² See Dr. Mahmoud Sherif Basiouny & Khaled Mohie AL Din, First Part, p.489; See Dr. Heba Ahmed Ali Hassanein, 2007, p.17.

Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data. 2. Member States shall neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection afforded under paragraph 1”.

In Addition to that, the Proposal for the regulation of the European parliament and of the council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) 2012, and later on, the regulation (EU) 2016/679 of the European parliament and of the council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC (general data protection regulation) stated that, Individuals shall have the right to request from the controller, without undue delay, the erasure of their personal data and to refrain from further publication of such data, when there is no need for that, or if the purpose of the data which were collected are no longer necessary, or if the consent for the usage of personal information has been withdrawn for certain purposes, or its time limit has

been expired, as well as, if the personal data have been unlawfully processed¹.

- And the European Commission, Memo: Data Protection Day 2014, Full Speed on EU Data Protection Reform defined the right to be forgotten as “*When you no longer want your data to be processed and there are no legitimate grounds for retaining it, the data will be deleted. This is about empowering individuals, not about erasing past events or restricting freedom of the press*”. Any person must have the right to control the access for his private information, and to take decisions regarding its publication, usage or storage, as well as his right to delete it and to prevent anyone from reusing or re-publishing this information, after passing certain period of time, without his consent².

The right to be forgotten began to gain more importance since May 2014, as the Court of Justice of the European Union (CJEU) tends to eliminate the supremacy of the fundamental right to free speech in order to protect the individual’s privacy rights. So it issued a judgment in case number C-131/12 *Google v. Mr. Mario Costeja* which clarified the E.U.’s Data Protection Directive, holding that the Directive applied not only to source websites, but also to search engines, as Mr. Mario Costeja requests from Google Spain to withdraw personal data concerning him from their index

¹ See European Commission, Factsheet on the “Right to be Forgotten” ruling (c-131/12).

² See Dr. Mohamed Abd El Mohsen El Mokatea, 1992, p.111&ff.

and preventing future access to such data. Ending up by granting him the “right to be forgotten” as the court required Google to remove certain links from search results that include information about his past financial troubles that occurred more than 10 years ago, as data controllers such as search engine operators had to respect and honor the European Union citizens’ request to delete results from internet searches relating to their names¹.

This judgment made it clear that the impact of the search engine results is higher than the journalistic media articles upon the right to be forgotten, as the former method facilitates the establishment of a complete profile for the affected individual, accordingly, the search engines like Google have liability to de-index the information related to this person².

The United States, on the other hand, determines that the right to free speech supersedes many other fundamental human rights including privacy³.

- Article 8 of the European Union regarding the Fundamental Rights emphasized on the protection of the personal data, as it stated that “*Everyone has the right to*

¹ See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.9; See Francoise Gilbert, The right of erasure or the right to be forgotten: what the recent laws, cases, and guidelines mean for global companies, Journal of Internet Law, vol.18 no.8, February 2015, p.16,17; See also Michael J. Kelly and David Satola, p.6, See also See Ravi Antani, 2015, p.1174.

² See Marina Santín, 2017, P.304.

³ See Julia Kerr, 2016, p.219; See Kimberly A. W. Peaslee, 2016, p.12.

the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority”.

- On 25 May 2018, The European Data Protection board (EDPB) is established in order to apply the General Data Protection Regulation (GDPR). It helps to ensure that the data protection law is applied consistently across the European Union and works to ensure effective cooperation amongst Data Protection Authorities (DPAs). The Board will not only issue guidelines on the interpretation of core concepts of the GDPR but also is called to rule by binding decisions on disputes regarding cross-border processing, ensuring therefore a uniform application of EU rules to avoid the same case potentially being dealt with differently across various jurisdictions¹.

¹For more information About the emergence of the privacy laws in Netherlands, See A.J. Verheij, The right to be forgotten – a Dutch perspective, International Review of Law, Computers & Technology, Vol. 30, Nos. 1–2, 32–41, 2016, p.33,34. As The Constitution of the Kingdom of the Netherlands 2008 stated in Article 10 that “1) Everyone shall have the right to respect for his privacy, without prejudice to restrictions laid down by or pursuant to Act of Parliament. 2) Rules to protect privacy shall be laid down by Act of Parliament in connection with the recording and

- It should be noted that, The European Union's (EU) rules regarding the right to be forgotten should be applied not only upon search engines like Google, but it affects also any organization that do business in the EU, or control or have access to EU citizens' information. As the EU consumer data can be removed upon the request of the EU Citizens in case the information is inaccurate, inappropriate or excessive¹.
- In **France**, the French law was one of the first legal systems to pay special attention to the protection of personal data, and one can trace the emergence of the right to be forgotten to the French law which recognizes a right known as "the right of oblivion"², it allows a convicted criminal who has served his time and been

dissemination of personal data. 3) Rules concerning the rights of persons to be informed of data recorded concerning them and of the use that is made thereof, and to have such data corrected shall be laid down by Act of Parliament." Furthermore, the legislator issued the Act on the registration of personal data of 1988, which was later replaced by the Act on the protection of personal data 2001.

¹ See Erik Werfel, et al., 2016, p.30; See Jasna Čošabić, 2015, p.60,61.

² See Ruth Redmond-Cooper, The Press and the Law of Privacy, The International and Comparative Law Quarterly, Vol. 34 No. 4, October 1985, Published by Cambridge University Press on behalf of the British Institute of International and Comparative Law, p.770.

rehabilitated to object to the publication of the facts of his conviction and imprisonment¹.

- Furthermore, article 35, regarding actions of defamation, of the Law on Freedom of the Press of 29 July 1881 tended to prevent the unwanted press intrusion in the private life of individuals by stating that publication will not be allowed wherever the statement, even if not defamatory, is related to the individual's private life².

Moreover, the French law includes various provisions which determine in an indirect way the protection of the right to oblivion for individuals, for example article 9 of the French civil law stated that "Everyone has the right to respect for his private life. Without prejudice to the right to recover indemnification for injury suffered, judges may prescribe any measures, such as sequestration, seizure and others, suited to the prevention or the ending of an infringement of the intimate character of private life; in case of emergency those measures may be provided for by summary proceedings".

And in the field of the internet the protection of this right can be determined from the law no. 78-17 of 6 January 1978 on information technology, data files and civil liberties, as it stated in article 1 that every citizen

¹ See W.Gregory Voss, The Right to Be Forgotten in the European Union: Enforcement in the Court of Justice and Amendment to the Proposed General Data Protection Regulation, Journal of Internet Law, July 2014, p.1310.

² See Ruth Redmond-Cooper, 1985, p.770.

should have access to information technology in a way that shall not violate human identity, human rights, privacy, or individual or public liberties, and the international co-operation is necessary for its development. In addition to that, article 40 stated that any individual providing proof of identity should have the right to ask the data controller to rectify, complete, update, block or delete his personal data, if it was inaccurate, incomplete or expired, or if its collection, usage, disclosure or retention is prohibited¹.

However, it should be noted that, no damages could be obtained, in spite of the existence of the violation of the right to be forgotten, if the concerned person did not care to put the veil of oblivion on the alleged facts².

- In **Japan**, the right to be forgotten began to be applied widely since 2014, as the Japanese courts tend to protect this right by rendering judgments in favor of individuals requesting search engines to remove certain links related to them, as in October 2014, the Tokyo District Court issued ruling that force Google to remove search results that were relating to past criminal activity. While before that, the Tokyo High Court issued a judgment in favor of Google, in January 2014, when a man requested from it to delete the link between some criminal activity and his name when typed in search due to Google auto-suggest, and the court feels that this is

¹ See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.56,57.

² See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.105.

against the freedom of expression and will lead to the loss of using this function by other users¹.

- While in the **United States** the case is different, the difference in the historical and cultural experiences between the United States and Europe, plays an important role in the establishment of the right to be forgotten², as it was easier to adopt this right in Europe due to the deep respect for privacy in many European member states, while in the United States the domination of the right to free speech, as one of the highest national principles, makes the climate for the acceptance of the right to be forgotten less appropriate even with extreme forms of speech that would involve certain privacy and dignity concerns in Europe³. This was obvious in *Roberson vs. Rochester* case, as the court refused the claims of the claimant who requests compensation as a result to the breach of her right to privacy due to the usage of her picture by the defendants for propaganda purposes, and this led to the invasion of her privacy and a psychological shock. The refusal of the court in this case was based on the fact that there are no legal precedents that establish the existence of this right, besides that they fear that the recognition of this right will increase the

¹ See Francoise Gilbert, 2015, p.17.

² See Antoon De Baets, A historian's view on the right to be forgotten, *International Review of Law, Computers & Technology*, Vol. 30, Nos. 1-2, 57-66, 2016, p.59.

³ See Ravi Antani, 2015, p.1183.

number of disputes before the courts, and that there are many moral commitments that cannot be compensated¹.

- The American courts have dealt with search engine provider discretion in a very limited way, due to the strong emphasize on the freedom of speech on the first amendment of the US constitution. As according to this amendment the right of privacy faces many difficulties due to its discrepancy with the right of free speech and public information, as the recognition of this right as well as the right to be forgotten, which tends to allow any person to determine the way the internet can define him as a new way for digital privacy and request the removal of a content about him from the internet, is contradicting with the fundamental rules of the first Amendment in US constitution².

- However, under the emerging conception of the right to be forgotten, it should be noted that the American courts tend to protect this right in some cases such as the case of *Melvine v. Reid* as the court issued a judgment in favor of a woman which was a prostitute and was tried for murder, the trial resulting in her acquittal; and after that, she became entirely rehabilitated and abandoned her life of shame, and after a certain period of time a film was produced about her life and used her original name without her consent. Although the publication of these merits in itself do not result on the liability of the publisher as he uses public facts known for everyone, but the use of the original name of the woman is

¹ See Dr. Heba Ahmed Ali Hassanein, 2007, p.46.

² See Ravi Antani, 2015, p.1173.

considered as a breach for her privacy¹. In addition to that, the American legislator issued in 1935 a draft law on the liability of the wrongdoing action that helped in recognizing these rights as it stated in article 867 that anyone who is unjustifiably exposed to the interest of others to withhold his personal affairs or his image from the whole, shall be responsible for that before him².

- In **England**, At first glance, it would seem that the 'right to be forgotten', that stems from the right of privacy does not exist in English law. However, we can find some provisions in different forms from which this right could be derived. For example the Rehabilitation of Offenders Act (1974), stated that in certain cases the individual who has been convicted for a certain act will have the right, after a period of rehabilitation, to be given a second chance that allows him to interact again in the society, by preventing the unveiling or the recalling of his previous conviction. And in the field of bankruptcy laws, individuals have the right to be forgotten by wiping their financial slate after certain period of time³.

The emerging obligations in the field of data protection derives the UK legislator to begin to issue rules in this field, and due to international origins of the

¹ See Dr. Hossam AL Ahawany, op.cit, p.98.

² See Dr. Heba Ahmed Ali Hassanein, 2007, p.54.

³ See Patrick O'Callaghana & Sylvia de Marsb, Narratives about privacy and forgetting in English law, International Review of Law, Computers & Technology, Vol. 30, Nos. 1-2, 42-56, 2016, p.43.

Data protection laws, the case law regarding the domestic data protection are very little in UK; however, the establishment of this law is independent from privacy law and is closely connected with the process of digitization.

Accordingly, the UK legislator has established the first Data Protection Act in 1984 to comply with obligations stated by the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 1981. And in order to cope with the EU Data Protection Directive (95/46/ EC), the legislator issued another Data Protection Act in 1998¹.

- In **Egypt**, although there is no defined separate provision which stipulate the right to be forgotten but we can find it through different provisions in the constitution and laws.

- Due to the importance of this right, the Egyptian Legislator imposed into the Constitution different provisions from which we can figure out the establishment of this right. For example the Egyptian Constitution issued in 2014 stated in article 51 that Dignity is a right for every human being and may not be violated, and the State shall respect and protect it. In addition to that article 57 stated that the right to privacy may not be violated, it shall be protected and may not be infringed upon. And article 59 stipulates that everyone has the right to a safe life, and the State shall provide

¹ Id., p.45.

security and reassurance for its citizens and all those residing in its territory. Accordingly in order to apply these provisions for any person to have a safe life and to respect his dignity, he should have the right that the past events of his life could be forgotten, and that no one can raise the cover on these unpleasant merits, after a certain period of time, except with his acceptance.

The Egyptian civil law determine the basis for this right in article 50 which stated that "*A person whose rights inherent in his personality have been unlawfully infringed, shall have the right to demand the cessation of the infringement and compensation for any damage sustained thereby*".

- In an attempt to emphasize the importance of right to oblivion and the protection of the privacy of individuals, the Egyptian legislator prepare for the issuance of a law that is related to the handling of personal data of individuals and prohibit the circulation of personal data without the consent of the concerned person. Furthermore, the law no. 175 in 2018 regarding Anti-Cyber and Information Technology Crimes has been issued, which states in article 2 that "Firstly: Without prejudice to the provisions of this Law and Telecommunications Regulatory Law No. 10 of 2003, the service providers shall comply with the following: (1) the save and storage of the log of the information system or any means of information technology should be for 180 days. The data to be saved and stored are as follows:

A) Data that enable the identification of the user to the

service.

(B) Data relating to the content of the information system dealt with which has been provided by the service provider.

C) Data relating to the traffic of the telecommunications.

D) Data relating to the telecommunications terminal.

E) Any other data to be determined by a decision of the Board of Directors of the Authority.

(2) Maintain the confidentiality of data saved and stored, and not to disclose it without a warrant issued by one of the competent judicial authorities, including personal data of any users of his or her service or any data or information related to the sites and special accounts to which these users enter.

(3) Secure data and information in a manner that preserves its confidentiality, non-objection, penetration or damage.

Secondly: Without prejudice to the provisions of the Consumer Protection Law promulgated by Law No. 67 of 2006, the service provider shall provide to its users and to any competent governmental authority, in a manner that is accessible, direct and continuous, the data and information relating to the service provider.

Thirdly: Subject to the inviolability of the private life guaranteed by the Constitution, the service providers and their agents shall, in the event of the request of the National Security Authorities and in accordance with their needs, provide all technical possibilities that enable

those authorities to exercise their powers in accordance with the law”.

Section Two

The Nature and arguments

Against and in favor of

The Right to be Forgotten

The right to be forgotten is considered as one of the rights that enter into a range of newly created rights, and since many legal systems do not contain clear provisions that regulate this right, it is left to the jurisprudence to try to disclose it from different provisions in law. The issuance of the ECJ’s judgment regarding this right is considered as a major step in the protection of the individual privacy for the European Union citizens, and many states begin to follow this direction, however the opponents of this right noted certain issues relating to free speech, the public’s right of information, and potential administrative burdens¹.

There are many arguments about the nature of the right to be forgotten; some jurists stated that this right belongs to the right to privacy, while others determined that it is related to the right to data protection or somewhere in between².

Accordingly, there is no clear criteria to determine the nature of right to oblivion, as a result there are many arguments against and in favor of this right have been established, and can be determined as follows:

¹ See Ravi Antani, 2015, p.1179.

² See Jasna Čošabić, 2015, p.53.

Sub-Section One
Arguments in favor of the right
To be forgotten

1-Economic and social developments suggest that whenever there is a need to provide some kind of protection to human beings, a new right should be established that provides such protection. This development requires the recognition of the right of individuals to be forgotten.

2-Since law is in the service of human rights, it is necessary to recognize new rights to face social, economic and political changes.

3-As a result, there are different theories that were established regarding the legal nature of the right to be forgotten, which can be summarized as follows:

A) The right to be forgotten is considered as a part of the rights related to human personality¹:

Some jurists stated that the right to be forgotten is considered as a part of the rights related to human personality, as the latter are the constituent elements of the human personality, and are designed to protect the personality in various manners, whether it is related to intangible matters, such as his right to preserve his reputation and honor and his right to preserve his intellectual production, the right to name, and privacy,

¹ See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.94&ff.

or to tangible matters, such as the right to the integrity of his body¹.

According to this doctrine, the acknowledgment that this right is related to the human personality rights, lead to the following results:

a) The violation of the right of oblivion grants the victim the power to request from the court to stop this offensive act, as soon as it is committed without having to prove the availability of the damage. And this grants him a better opportunity to protect his right, as it provide pre-emptive protection even to minimize damage, rather than protecting it according to the normal civil liability rules, which requires the proof of the existence of fault, damage, and the relation between them in order to have liability for the committed assault, and it only provides subsequent protection of the right².

b) According to this opinion, this right is considered as an absolute right, that is, it is invoked and implemented before everyone, as anyone can request from the others to respect his right to be forgotten, so that no one can raise the cover on certain facts of his past life, after being silent for certain period of time, except with his consent, as the unveiling of these events is considered as violation for the prescription period.

c) As a result of stating that the right to be forgotten is considered as a part of the rights related to human

¹ See Dr. Ahmed Abd EL Kareem Salama, Mabade' Elm AL Kanoon (مبادئ علم القانون), First Edition, Dar AL Nahda AL Arabia, 2016, p.183.

² See Dr. Hossam AL Ahawany, op.cit, p.146.

personality, so this right cannot be terminated when it is not used for a certain period of time or by prescription, and the owner of this right cannot waive it absolutely¹, as no one can waive the rights related to human personality, but he can grant some people the right to recall certain parts of the past events in his life and thus, eliminates the act of forgetfulness².

B) The right to be forgotten is considered as a part of the right of privacy:

The proponents of this theory stated that the right to be forgotten is considered as a part of the right of privacy. Since the latter right is an element of various legal traditions to restrain governmental and private actions that threaten the privacy of individuals, and it protects the private life privacy of the individuals, so it not only protects the recent facts of the individuals' private life, but also it secure the past facts of the private life, as the raising of the cover on facts that have been preserved by silence and forgetfulness, and the disclosure of facts that have been forgotten by time, is a disclosure of privacy³.

- This was also obvious in the judgments of certain courts in USA such as in the case of *Melvine v. Reid* although the publication of the mentioned merits in itself do not result on the liability of the publisher as he uses public facts known for everyone, but the use of the

¹ See Dr. Ahmed Abd EL Kareem Salama, 2016, p.185.

² See Dr. Hamdy Abd El Rahman & Dr. Mustafa Mohamed El Gammal, 1984, p.27,28.

³ See Dr. Hossam AL Ahawany, op.cit, p.96; See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.155.

original name of the woman is considered as a breach for her privacy. However, the violation of privacy can only be achieved if the past from which the person escapes is fleeing unpleasant and humiliating to the reasonable person with reasonable sensitivity¹.

An example of the proponents that say that the right to be forgotten is considered as a part of the right of privacy, is the court of first instance in Belgium which issued a judgment on 30 June 1997 as a case was raised to suspend the broadcasting of a film because the plaintiffs refused to give their permission for that, and the court said that there was no sufficient reason to override the right to oblivion and accept the publishing of the film². So it based its decision on article 8 of the European Convention of the Human Rights and the right to protection of privacy. And this was considered as a precedent allowing the "right to oblivion" to be considered as an integral part of the right to privacy.

While the arguments of the opponents of this theory can be summarized as follows:

- Those who say that the right to be forgotten is independent from the right of privacy based their arguments on the non-clearance of the latter right until recently³.

¹ See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.108.

² See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.156,157.

³ See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.107.

- Besides that, the right of oblivion might deal with facts of the public life of an individual, unlike the right of privacy which is concerned with the private life only. As the facts to be protected may have been announced to the people and brought before the courts, which makes it incompatible with privacy¹.

- In addition to that, if we deal with a historical figure, the public interest might require the publication, whether the right to be forgotten is considered as independent from the right of privacy or enters into its content².

C) The right to be forgotten is considered as a part of the right of ownership:

According to this theory, anyone is expected to own his life and as a result he should have the right of ownership on his body and no one can violate this right; Since private life is legally deemed to be as a private property to the person, so different aspects of the personality, including the right to be forgotten, must be considered as a part of the rights of ownership.

The idea of this theory was originally established in the field of the right of picture, as the latter is considered as a part of the human body, and since the individual has the right of ownership on his own body, so he should take all the necessary measures that prevent the

¹ See Dr. Hossam AL Ahawany, op.cit, p.95; See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.106&ff; See also Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.99&ff.

² See Dr. Ahmed Mohamed Hassan, op.cit, p.159.

infringement on the integrity and inviolability of his physical body and he can act as he pleases in his image¹.

And according to analogy, the right to be forgotten is considered like the right of the picture, as both are parts of the right of ownership which grants its owner the authority of use, exploitation and disposal of what he owns. In other words, One of the characteristics of the right of oblivion, as a right of ownership, is the possibility of the owner to dispose of it by selling, as well as, giving him the right to request the suspension of acts involving infringement to his right. And the violation of this right grants the victim the power to request from the court to stop this offensive act, as soon as it is committed without having to prove the availability of the damage².

Any person should have the right that his own picture is forgotten. As he is free to preserve his past and his actions including the right to the picture, as no one can publish this picture without his prior consent³.

The opponents of this theory said that this idea is not accurate due to several reasons⁴, firstly: we should try to determine the correct legal nature of the right to be

¹ See Dr. Saied Gabr, AL Haq Fi AL Soura (الحق في الصورة), Dar AL Nahda AL Arabia, 1986, P.108; See Dr. Hossam AL Ahawany, op.cit, p.141.

² See Dr. Hossam AL Ahawany, op.cit, p.143.

³ See Dr. Hamdy Abd El Rahman & Dr. Mustafa Mohamed El Gammal, 1984, p.62&ff.

⁴ For more details about the arguments against considering the right of the picture as a part of the right of ownership, see Dr. Saied Gabr, 1986, p.108&ff.

forgotten and to establish new legal divisions instead of referring it to the traditional legal ideas¹. Secondly: there are a great difference in the characteristics of both the right of ownership and the right to be forgotten. As according to judgment issued from a French court human being does not enter into the circle of legal transactions, and this contradicts with the nature of the right to be forgotten².

Sub-Section Two **Arguments against the right** **To be forgotten**

There are many arguments that were established against the existence of the right to be forgotten, which can be determined as follows:

- 1- The idea of the right to privacy and the right to be forgotten is not clear as there is no clear criteria to distinguish them from other rights, and this might lead to the increase in the number of cases before the courts as well as the probability of the issuance of conflict judgments due to the ambiguity of these concepts³.
- 2- This right is against the right of knowledge, as long as the personal information has been published in a legitimate and public manner at the time of its

¹ See Dr. Heba Ahmed Ali Hassanein, 2007, p.133&ff; See Dr. Essam Ahmed El Bahgy, 2005, p.210-217.

² See Dr. Hossam AL Ahawany, op.cit, p.143,144.

³ See Dr. Heba Ahmed Ali Hassanein, 2007, p.34.

occurrence¹, so no one can hold on to the right to be forgotten in order to prevent it from being presented again².

3- The establishment of the right to be forgotten may contradict with the need for the public authorities to process personal data as this is necessary for the exercising of its public tasks for public interest. In addition to that, there might be a legal obligation to store personal information by the public authorities for different periods, ranging from several years until forever. For example the Dutch Act on Archives obliges public authorities to keep information stored³.

4- It is difficult to establish a legal rules to protect these rights, because the rules of decency and rules of courtesy and consideration of the feelings of others in the field of human relations cannot be regulated by legal provisions, especially as this hinders the development of science and technology, which requires that people should bear some price and waive a part of their rights⁴.

5- The historical interest might need in some cases the disclosure of certain facts relating to the private life of some people, such as emotional life, family and health status and financial resources of some public figures, in

¹ See A.M. Klingenberg, Catches to the right to be forgotten, looking from an administrative law perspective to data processing by public authorities, *International Review of Law, Computers & Technology*, Vol. 30, Nos. 1-2, 67-75, 2016, p.72.

² See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.159.

³ See A.M. Klingenberg, 2016, p.67, 69.

⁴ See Dr. Heba Ahmed Ali Hassanein, 2007, p.48.

order to understand history, and thus is considered as a restriction on the right to privacy¹.

Moreover, the acknowledgment of the right to be forgotten by granting the person the right to permanently delete his information will directly affect the human history as there will be no historical memory of humanity at all, besides that, it might allow people to modify the facts that happened and this will have a bad impact on history².

An Example of the importance of the historical interest exists in article 36 of the French law on information technology, data files and civil liberties which stated that data may be preserved beyond the period necessary for the purposes for which they are obtained, only for historical, statistical and scientific purposes.

As a result, there are many internet websites which collect information as an archive for historical research, it exists to collect documents that have accumulated over the time which are related to individuals or organizations, in order understand the social behavior of individuals, and to preserve institutional history and serve the academic community for future historians, researchers, and the public.

6- There is no need to determine a new right as the right of privacy in its broad meaning is sufficient in ensuring

¹ Antoon De Baets, 2016, p.59.

² See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.62&ff.

the security and protecting the tranquility of the personal side of human life.

7- The establishment of this right is against the right to media which means the freedom to publish all events that occur in society¹; otherwise, it will lead to impose some kind of restrictions on press freedom. And on the internet, the permanent deletion of information constitutes a serious violation of the right to information, although some of this information may be of public interest².

8- Even if we accept the existence of this right, there are many difficulties that make the total concealment of the private information on the internet almost impossible, and this is due to its distribution to different countries. There are many practical obstacles which may exist as the technology has provided the internet user with many means to easily copy and re-publish the information, and this makes it difficult to verify the complete deletion of the personal information from all the websites³.

9- It will be difficult for the affected individual to obtain a proof that the company who possesses his information has his personal data stored, unless he has the validity to access the company's data storage system; moreover, he will bear huge expenses if he took

¹ See A.M. Klingenberg, 2016, p.70,71.

² See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.38&ff.

³ T.F.E. Tjong Tjin Tai, The right to be forgotten – private law enforcement, International Review of Law, Computers & Technology, Vol. 30, Nos. 1–2, 76–83, 2016, p.79.

proceedings to get a court order for obtaining such evidence¹.

10- The right to be forgotten contradicts with the principle of the publicity of justice, as article 101 of the Egyptian law of civil and commercial procedures stated that pleading shall be held in public unless the court decides, on its own initiative or at the request of one of the litigants, to conduct it in secret, to preserve the public order or to observe the ethics or the privacy of the family². Accordingly, the latter principle requires the publication of the judicial judgments especially those that establish new legal principles, as this publication leads to the reduction of conflicting provisions on similar issues³.

¹ Id., p.80.

² This right can be applied also on taking pictures for the litigants during the hearing sessions, however there are certain cases where the legislator prohibits the taking of these pictures even if the session is held in public ,as article 189 of the Egyptian penal code stated that, Anyone who publishes in one of the what happened in civil or criminal proceedings that the courts have decided to hear in secret session or in cases relating to the offenses set forth in this law, shall be punished by imprisonment for a period not exceeding one year and a fine not less than five thousand pounds and not more than ten thousand pounds, or one of these penalties. And article 193 stated that, The following shall be punished by imprisonment for a period not exceeding six months and a fine of not less than five thousand pounds and not more than ten thousand pounds or one of the two penalties if he published in one of the determined methods: News on investigations or pleadings in cases of divorce, separation or adultery. See Dr. Saied Gabr, 1986, p.85,86; See Dr. Mohamed El Shahawi, 2010, p.146&ff.

³ See Dr. Wagdy Ragheb Fahmy, Mabade' AL Kadaa' AL Madany "Kanoon AL Morafaat" (مبادئ القضاء المدني "قانون)

Publicity of justice achieves public interests, as it increases the confidence of the individuals in the independence and impartiality of the judicial system and enforces them to respect law, also judges will be enforced to do their work in a better way in order to issue a fair judgment. Moreover, it acts as a public deterrence for anyone who has intentions to commit any illegal act¹.

It should be noted that, this principle is very important in the common law legal system as it is based on what is known as "Legal Precedents" which means that the decisions on future cases are based upon the decisions in previous cases. In this system, Law is created by judges, who will determine the law to be applied by creating legal precedents². So the publication of the judgments aims to know the precedents and principles underlying judicial decisions in similar situations and these help litigants to expect the judgments of the judiciary to build their legal behavior and knowledge upon it.

Sub-Section Three **Arbitration and the Right** **to be Forgotten**

(المرافعات), Dar AL Nahda AL Arabia, 2004, p.382,383; See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.66&ff.

¹ See Dr. Ahmed El Sayed Sawy, AL Waseet Fi Sharh Kanoon AL Morafaat AL Madanya Wa AL Tegarya (الوسيط في شرح قانون) (المرافعات المدنية والتجارية), Dar AL Nahda AL Arabia, 2000, p.81,82.

² See Adel A. Khalil, An Introduction to Anglo-American Law, p.2

At present, Arbitration gains more importance, especially during the settlement of disputes, which may arise out of international commercial transactions, due to its quick and discreet settlement of any controversies, which may occur between individuals.

Arbitration also widens the international economic and commercial relationships between individuals or between private entities across the world, as it can lead to overcome the strict application of some domestic legal rules, as well as avoiding the recourse to unknown judicial systems by agreeing upon the law to be applied and the judge who will adjudicate the subject matter of their disputes.

There are a great difference between arbitration system and judicial system. We can summarize such difference in the following:

- Arbitrators are appointed by the parties themselves, while judges are appointed by the public authorities in the state. Moreover, parties do not pay judges their salaries, unlike arbitrators, but they are remunerated from the state as they are considered as public servants¹.
- Arbitrators enjoy more authorities rather than judges in the field of the applicable law, as they might not bound by the application of legal rules, unless such rules are related to public order, in case they are delegated by the parties to apply rules of justice "known as Amiable

¹ See Dr. Sayed Ahmed Mahmoud, Mafhoom AL Tahkeem Wefkan Li Kanooni AL Tahkeem AL Masry Wa AL Morafaat AL Kwauity (مفهوم التحكيم وفقا لقانوني التحكيم المصري والمرافعات الكويتي), Second Edition, 2006, p,21.

Composition", while judges must apply such legal rules to cases brought before them.

Unlike judges, arbitrators can apply the rules of law, which they deem most closely connected to the dispute unless the parties choose another law to be applied to their dispute¹.

- According to the judicial system, the hearing must be administered in public; as anybody from the public can go to court and attend the hearing, and this ensures the impartiality of the judge. This is contrary to arbitration procedures upon which hearing should be held behind closed doors as the parties may wish not to publicize their dispute.

- Judges have general jurisdiction over any case brought before the court, while arbitrators' jurisdictions are limited only to the dispute brought before them by the parties².

- Recourse against the arbitral award cannot be done by the original means of appeal that could be taken against the judicial judgments. As the result, the only way for the losing party to recourse against the arbitral award is by filling up an action for the annulment of the award³.

¹ See Dr. Sayed Ahmed Mahmoud, *Nezam AL Tahkeem "Derasah Moqaranah Bayn AL Sharee'a AL Eslamyah Wa AL Kanoon AL Wade'y AL Kuwaity Wa AL Masry (دراسة) نظام التحكيم"* (مقارنة بين الشريعة الاسلامية والقانون الوضعي الكويتي والمصري), Dar AL Nahda AL Arabia, 2005, p.294,295.

² Id., p.22.

³ Id., p.377,376.

It may encourage the international commercial trade, as foreigners fear from the domestic judicial system, which they might feel of its bias towards the national citizens. Also, they might not be aware of the language or the legal rules of the domestic judiciary.

Publicity of hearing is considered as one of the most important legal principles for the good administration of justice. Therefore, most of the constitutions and international conventions stated that publicity of hearing must be respected.

Accordingly, article 10 of the universal declaration of human rights stated that, *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."*

Also, the European convention on human rights stated in article 6 that, *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of*

the court in special circumstances where publicity would prejudice the interests of justice."

Also, the Egyptian constitution stated that, "*Sessions of the courts shall be made in public, unless a court decides to hold them in camera, for considerations of public order or morality."*

Therefore, publicity of hearing means that court's sessions must be held in public. Everyone will have the right to go to the court and attend the hearing, even if he does not have any interest in the case, as he has the right to know the court proceedings¹.

This principle achieves both public and private interests, as it enforces the judge to respect the rights of defense of the parties and to be impartial as well as to do all his efforts to issue a fair judgment, due to the supervision of public opinion. In addition to that, it increases the confidence of the individuals in the independence and impartiality of the judicial system and makes them respect law; Moreover, it acts as a public deterrence for anyone who has intentions to commit a crime.

As a general rule, court hearings must be held in public and not behind closed doors, however, it should be noted that, if the general rule is that court hearings must be held in public, there are some exceptions in

¹ See Dr. Mohamed Nour Shehata, AL Waseet Fi Kanoon AL morafaat AL Madanyah Wa AL Tegaryah (الوسيط في قانون المرافعات) (المدنية والتجارية), 2007, p.737.

which the hearing could be held secretly, such as if it is related to public order or morals or family relations¹.

We should distinguish between the publicity of hearing for the public and between the litigants, as in the latter case, hearing must always be held in public, as this is related to their rights of defense, as well as to the principle of confrontation between them. Moreover, we should also distinguish between the hearing sessions and the session of the pronouncement of the judgment, as the latter must always be held in public, otherwise the judgment will be considered as null and void.

Despite of the importance of such principle, some jurists criticize this rule for the following reasons:

- Publicity can affect the independence and impartiality of the judge, as public opinion and media might have some impact upon his decision.
- It can harm the litigant, as it might affect his private interests and transactions with other people.
- People do not have enough experience in legal matters, in order to supervise the good administration of justice.

Chapter Two **The Scope of Application of the** **Right to be Forgotten**

¹ Id., p.738,739.

The scope of application of the right to be forgotten can be classified according to the place, time and persons who have the power to use this right. It is difficult to determine a rigid and defined definition for it, as it is a flexible idea which develop according to the difference between people, and affected by the change of place and time of its application. Since customs differ from one place to another so the extent of what is considered as a violation to the right to be forgotten is affected by these customs. Moreover, the scope of application of this right may differ from time to time according to the change, development and diversity of customs and ethics in the society. In addition to that, there are many questions of whether this right will be granted only to natural persons or could it be exercised by juridical person, and whether family have the right to call for the protection of this right or not. Accordingly, we can classify the scope of application of the right to be forgotten into the following:

Section One
The application of the right to
Be forgotten as to persons

Any person should have the power to use his right to be forgotten, as the denial of such right will prevent him from protecting the sanctity of his private life and his right to forget certain events from his past life. As

anyone should have the right to protect his private life against the intrusion of others and to surround it by a fence of secrecy.

However the extent of the right to private life and to be forgotten differ from one person to another according to the surrounding circumstances, such as the nature of his work, beliefs, views, or lifestyles. In other words, the life of normal persons will be less affected by the means of publishing and advertising rather than famous people, as actors, politicians, and historical persons for example will have more spotlights from media and people regarding their private life as there is a great overlap between their private and public lives which are often subject to publication, criticism and analysis¹.

The more the person becomes famous the more likely he is to reveal his or her private life, and that the past facts of his life as well as all his actions become subject to disclosure from the society. In other words, the extent of the scope of the right to be forgotten varies according to the degree of fame and contact with the public, as the popularity and the contact with the public varies between public figures and as a result affect their privacy and right to be forgotten². In addition to that, the judge has a discretionary power to determine whether the unveiling of the person's life details is considered as

¹ See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.84,85; See Dr. Mohamed El Shahawi, 2010, p.15&ff.

² See Ruth Redmond-Cooper, 1985, p.778; See Antoon De Baets, 2016, p.59,60.

a violation of his private life or not, taking into consideration the person's status and the extent of his or her fame¹.

Regarding people who have the power to use the right to be forgotten, we should determine that according to the European Union, the request of individuals to remove or amend their information is considered as a personal right, so organizations might require from them some sort of documentation of identity before accepting their requests in order to make sure that this request is presented by the person whose rights are implicated, or by a person who have the approval to request that².

In addition to that, the Egyptian law protects this right as well as the right to privacy to any person who exists on the Egyptian territory regardless of his nationality³, and this is obvious, for example, in article 45 of the old Egyptian constitution which stated that the private life of citizens are protected by law. But later after the amendment and the issuance of the Egyptian Constitution in 2014 it removed the word "citizen" and stipulates in article 57 that Private life is inviolable, safeguarded and may not be infringed upon. As this is

¹ For more details see Dr. Hossam AL Ahawany, op.cit, p. 259&ff; See Dr. Heba Ahmed Ali Hassanein, 2007, p.105&ff; See also Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.85,87; See also Dr. Hamdy Abd El Rahman & Dr. Mustafa Mohamed El Gammal, 1984,p.60.

² See Erik Werfel et al., 2016, p.31.

³ See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.117.

done in order to remove any misunderstand that the law protects only the privacy of citizens and not foreigners who exist on the Egyptian territory¹.

In addition to that, the French legislator stipulates in article 9 of the civil code that everyone has the right to respect for his private life, as he uses that term everyone in order to insist on the protection of this right to anyone who exists on the French territory².

We should say that, if there is no problem that the law protects the private life of the natural person, the question raises on whether this right will be granted only to natural persons or could it be exercised by juridical persons?, we can clarify this as follows:

Sub-Section One **The recognition of the right** **to be forgotten to Juridical persons**

There are no clear criteria which determine whether the right to privacy and the right to be forgotten could be granted to the juridical person or not, as a result some

¹ See Dr. Hossam AL Ahawany, op.cit, p. 155.

² Art.9 Code Civil: "*Chacun a droit au respect de sa vie privée. Les juges peuvent, sans préjudice de la réparation du dommage subi, prescrire toutes mesures, telles que séquestre, saisie et autres, propres à empêcher ou faire cesser une atteinte à l'intimité de la vie privée : ces mesures peuvent, s'il y a urgence, être ordonnées en référé*". See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.118.

jurists stated that those rights can be exercised only by natural persons according to the following reasons:

1- Arguments against this rule:

- There are several provisions which stated that the right to privacy and the right to be forgotten exist only to natural person, for example according to the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, article 17 of this regulation, regarding the right to erasure (right to be forgotten), stated that the data subject shall have the right to request from the controller the erasure of personal data relating to him or her without undue delay, and if we refer to article 4 of the same regulation we can find that it defines the "Data Subject" as follows "*'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person*";

In addition to that, article 9 of the French civil code (Act no 70-643 of 17 July 1970) stated that everyone has the right to respect for his private life¹.

¹ See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.75.

Moreover, In the Egyptian law, article 309 bis of the Egyptian penal code stated that “a penalty of detention for a period not exceeding one year shall be inflicted on whoever encroaches upon the inviolability of a citizen’s private life, by committing certain acts determined by this law in other than the cases legally authorized, or without the consent of the victim”. Furthermore, article 59 of the Egyptian constitution stated that every person has the right to a secure life, and the state shall provide security and reassurance for citizens, and all those residing within its territory, so in order for any person to have a safe life and to respect his dignity, he should have the right that the past events of his life could be forgotten, and that no one can raise the cover on these unpleasant merits, after a certain period of time, except with his acceptance. We can say that the term citizens that the legislator use refers only to natural persons, as the juridical person is said to only have an Egyptian nationality and is not called a citizen, so those rights cannot be granted to him¹.

- The right of privacy and the right to be forgotten are considered, according to some jurists, as a part of the rights related to human personality, and the latter rights can only be provided to natural persons. As a result, the protection of the internal life of the juridical persons must be secured, as it cannot be disclosed, not according to the existence of the right to private life, but within the

¹ See Dr. Hossam AL Ahawany, op.cit, p.161; See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.120.

scope of the companies' laws or other laws that regulate its rules¹. In other words, the protection of the privacy of the juridical persons are carried out in accordance with the general rules of civil liability, however it is not incorporated under the right of private life². For example the protection of the privacy of the juridical persons in the United States is performed under the provisions of unfair competition.

2- Arguments in favor of this rule:

In contrast to what have been said, other jurists stated that the right to privacy and the right to be forgotten can be granted not only to natural persons but also to juridical persons as well according to the following reasons:

- There is nothing which can prevent the determination of these rights to juridical persons, as the use of the term citizen in the legal provisions, as stated above by the opponents of this idea, cannot be considered as a constrain in the recognition of these rights to juridical persons, because the legislator in different countries agreed on the possibility of the juridical person to acquire, like natural persons, the nationality of the state according to the conditions stated in the private international law. Accordingly, everyone, whether

¹ See Dr. Mohamed Abd El Mohsen El Mokatea, 1992, p.67.

² See Dr. Hossam AL Ahawany, op.cit, p.161,162; See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.121.

natural or juridical, who enjoys nationality of a state can be considered as a citizen¹.

- Furthermore, if the juridical person can bring a case before the court in his name, and has an independent internal private life than the life of those who represents him, so why not he can have the right to respect his own private life and to recognize to him the right to be forgotten.

- Moreover, with the increase in the number of juridical persons, and due to the scientific and technological progress which lead to the evolution and development of the means of spying, as well as the secrets of this person become more vulnerable to espionage, there is a growing need to increase the means of legal protection to protect the juridical person from the damage that may occur and preserve his reputation.

So the recognition of these rights to that person, protects him from a huge damage which might happen from any speech that may be said, as any person, whether natural or juridical, must have the right that the events of his life can be forgotten, and that no one can raise the cover on these merits, after a certain period of time, except with his consent, as the unveiling of these events is considered as violation for his right to be forgotten, and as a result impose a great damage to him.

- In addition to that, the Belgium draft law regarding the protection of the private life prohibits the violation

¹ See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.75,76.

to the privacy of legal persons; on condition that if the purpose from such violation is to harm that person or to acquire an interest from that assault¹. Moreover, the Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), stated in article 1, regarding its scope and aim, that *"1. This Directive harmonizes the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community. 2. The provisions of this Directive particularize and complement Directive 95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for protection of the legitimate interests of subscribers who are legal persons"*. Accordingly, we can derive from this article that it protects the privacy of the legal person on condition that it plays the role of a subscriber to any electronic communications service, and for the purpose of the protection of its legitimate interest, as the e-Privacy Directive (EPD) provides for the protection of the legitimate interests of subscribers

¹ See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.123.

who are legal persons, however, these legitimate interests are not clarified in the EPD¹.

- Finally, the recognition of the right to privacy and the right to be forgotten to the legal person is established on the idea that this protection is based on the existence of a moral or material interest which needs to be legally protected, and this interest is available to juridical persons, as well as to natural persons.

¹ For more details refer to the data privacy regime for legal persons in the electronic communications sector according to Directive 2002/58/EC, Faculty of Law, University of Oslo.

Sub-Section Two The recognition of the right to be forgotten to Family

The general rule is that the individual, whose right to privacy or right to be forgotten has been breached, can request the legal protection against this violation on his own, as he has the right to be protected by law. However, he can delegate his powers to request this protection to another person to perform it on his behalf.

In other words, although the right to be forgotten is exercised by the principal, an agent for this person can request the protection of this right if he has a proper authorization from the principal to do so¹.

In addition to that, some jurists differentiate between representation according to law and by agreement, as in the latter case, it will be accepted within the scope of what has been agreed upon in the agency contract between the principal and his representative, and as a result, he shall be entitled to carry out, on behalf of the principal, acts and claims relating to the assault on the right to be forgotten, on condition that this representation agreement is done in an explicit way².

Another question has been raised of whether the violation of one's right by raising the cover of secrecy

¹ See Dr. Hossam AL Ahawany, op.cit, p.156.

² For more details see Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.172&ff; See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.119&ff.

on personal information of his past life, after keeping silent for certain period of time, in order to gain certain benefits, is considered as a violation of the right of the family to protect their private life and their right to be forgotten or not?. In other words, is the right to be forgotten is considered as a personal right or can it be extended to family members?

In order to answer this question we should differentiate between two cases as follows:

1- Before the death of the person who has this right:

It should be noted that, the protection of the right to privacy and the right to be forgotten is not only related to the person on whom this violation is imposed, as it related also to his family during his life. Accordingly, family matters enter into the scope of the privacy of any individual, so any violation on the right to be forgotten regarding these family matters is considered as a direct invasion of privacy for this person who can take all the necessary measures to repel this assault. For example, the unveiling or the recalling of certain matters relating to the relationship between a man and his wife, after a certain period of time, is considered as a breach for the right to privacy or the right to be forgotten for each of them.

However, some jurists distinguish between this case and the situation when the violation of these rights is imposed only on one person, and its effect extends to other family members, in this case damage to relatives and the family of the victim is also personal and direct, so they can request the prevention of this assault on the

basis that such damage reflects its effect on them. This means that family members who request this protection perform it as a personal right because it affects also their privacy, not as a family right or as a representative to it¹. And in the latter case there must not be an acceptance for this violation from the person on whom it is imposed; otherwise the affected family member cannot request the removal of this damage or compensation². Accordingly, if a wife accepts the publication of some private acts in her own life so her husband cannot allege the invasion of his privacy in this case, unless these private acts are related to his own private life as well.

In other words, problems may also arise when a person brings an action complaining of an invasion of another person's privacy. The parents or guardian of a minor may clearly bring an action on his behalf. Moreover, Claims can also be admissible if it is related to statements about a child where the action was brought by the parents, not in the name of the child, but in their own name due to an intrusion into the private life of the entire family. For example, the French court decided that taking a photo to a sick child while being in the hospital does not invade his privacy only, as it affects also his mother's private life, and as a result she can

¹ See Dr. Yassin Mohamed Yehia, AL Haq Fi AL Ta'weed Aan AL Darar AL Aadaby, Dar AL Nahda AL Arabia, 1991, p.266&ff; See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.129.

² See Dr. Hossam AL Ahawany, op.cit, p.158.

request in her own name the prevention of the publication of her child's photo in a magazine¹.

Furthermore, the primary court of Marseille decided in its judgment in 13 June 1975 that a lawyer has the right to be compensated due to the publication of a part of the private life of his wife which was married to a police officer who has been dismissed from his work due to his bad behavior, as the lawyer sees that this publication is considered as an invasion for the privacy of his family life, so the court accepted his case and grants him compensation as a result to the damage that is imposed upon him from the violation of the right of the family to private life. Moreover, Paris primary court stated in a case issued in 2 June 1976 that the disclosure of the emotional life of a girl is not only considered as a violation to her private life, but also constitutes an invasion to the privacy of the family life².

As a result, we can say that anyone whose right to privacy or the right to be forgotten is invaded can bring a claim for compensation, whether he is directly affected by this violation or according to repellent damage, as both claims are independent from each other³. So an individual can raise a case requesting damages due to the invasion of the privacy of one of his family members on the basis that family matters fall within the scope of

¹ See Dr. Saied Gabr, 1986, p.116; See Dr. Hossam AL Ahawany, op.cit, p.156.

² See Dr. Hossam AL Ahawany, op.cit, p.157.

³ Id., p.159,160.

his own private life, even if the person who suffered the injury has also filed his claim for compensation¹.

2- After the death of the person who has this right:

The prevalent opinion in jurisprudence stipulates that the right to privacy and the right to be forgotten are considered as a part of the rights related to human personality, and this is clear, unlike the French law, in the Egyptian civil law which determines the basis for these rights in article 50 which stated that "*A person whose rights inherent in his personality have been unlawfully infringed, shall have the right to demand the cessation of the infringement and compensation for any damage sustained thereby*".

In addition to that, the characteristics of the rights related to human personality can be determined in that it is considered as an absolute right, and that it cannot be terminated when it is not used for a certain period of time or by prescription, as well as it cannot be seized or disposed of, as a general rule, because the owner of this right cannot waive it absolutely, as no one can waive the rights related to human personality, since it is not considered as a financial rights so it is out of the scope of transaction. Moreover, as a general rule, this right cannot be transferred to heirs; however there are some exceptions to this rule², for example article 222 of the Egyptian civil code stated that, "*Damages also include*

¹ See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.130,131.

² See Dr. Ahmed Abd EL Kareem Salama, 2016, p.183&ff.

compensation for moral prejudice. The right to compensation for moral prejudice cannot, however, be transmitted to a third party, unless it has been fixed by agreement or unless it has been the subject of legal proceedings. The judge may award compensation for moral prejudice only to spouses and to relatives up to the second degree, by reason of grief caused to them by the death of the victim". Also law No. 82 of 2002 pertaining to the Protection of Intellectual Property Rights stipulates the transfer of the right to request compensation from the author to his heirs¹.

As a result of the determination that the right to privacy and the right to be forgotten are considered as a part of the rights related to human personality, so can it be transferred to the heirs after the death of the person who has these rights? Or do these rights expire by the death of the individual and a new personal right will be established to his relatives². There are arguments against and in favor of this case which can be determined as follows:

- **First opinion:** The termination of the right to be forgotten by the death of the individual:

Since the rights related to human personality are established to any individual for being a human. So it is granted to him from the date of his birth alive and ends with his death without being transferred to his heirs.

¹ See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.132,133.

² See Ruth Redmond-Cooper, 1985, p.775.

And as a result of the determination that the right to privacy and the right to be forgotten are considered as a part of this personal right, so these rights protect only living individuals as dead persons cannot benefit from it and it will be abolished by their death. And this is obvious also in the French judiciary, as there are many judgments that insist on the personal nature of the right to privacy and its expiration by the death of the individuals. In addition to that, the American courts stated that no one can raise an action, regarding these rights, in the name of the deceased person as it will be terminated by his death or the death of the defendant, as actions dealing with personal matters terminate by death¹.

Accordingly, if after the death of a person, his right of oblivion is violated by raising the cover on certain facts of his past life after being silent for certain period of time, or if his right to privacy has been breached by the publication of the private life of the deceased person, his heirs who have been affected by this violation can bring an action in their own name to protect their feelings towards the deceased person and requesting compensation on the basis of protecting his honor and dignity, not according to the protection of his private life, as the latter right is terminated by his death.

Furthermore, the protection of the right to be forgotten and the right to privacy, as well as the determination of

¹ See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.114.

whether any of them has been breached falls under the discretionary power of the injured person not his heirs, as it requires personal and psychological assessment of this person which cannot be done by anyone except him¹. In addition to that, the delivery of these rights to his heirs by death could lead to the misuse of this case for unjust enrichment.

Moreover, some jurists justifies the transfer of the patrimony to the relatives of a deceased person on the idea of the extension of the personality of the dead person to his heirs, but the application of this idea cannot be extended to be applied by analogy in the field of the rights related to human personality, as the right to claim compensation for damage is based upon the degree of emotional attachment between the deceased person and his relative irrespective of whether he has the right to inherit him or not², so this right is determined for relatives whose emotions and feelings have been affected by unveiling the privacy of the life of their deceased person without complying with the rules of inheritance³.

- **Second opinion:** The delivery of the right to be forgotten by the death of the individual to his heirs⁴:

¹ Id., p.113.

² Ibid.

³ See Dr. Hossam AL Ahawany, op.cit, p.168.

⁴ Id., p.170&ff.

If one of the characteristics of the rights related to human personality is that it is terminated by the death of the person and that it cannot be transferred to his heirs; however this rule cannot be absolutely applied without any restrictions, as there are some exceptions to this rule, so there are some rights that stem from the rights related to human personality which can be extended to the inheritors such as the moral right of the author, and the right of the protection of the honor and dignity of the deceased person, also the right to privacy and the right to be forgotten should be transferred to his heirs after his death.

Since death does not transfer the private life of individuals to public life, so no one can expose to it without permission, because if it is left without protection after his death, this will affect his right to privacy and the right to be forgotten at one of the most moments when it needs protection. Otherwise, this might lead to recall the past life of deceased individuals after being forgotten and uncover their secrecy and personal information without any restrictions and this is considered as a violation for their personal freedom.

Moreover, although the scope of the rights of the deceased person differs than that when he was alive, we have duties to protect his memory, reputation and the calmness of his family life, and this requires the delivery of the right to be forgotten by the death of the individual to his heirs¹. In other words, if the right to privacy and

¹ See Antoon De Baets, 2016, p.63.

the right to be forgotten are intended to protect the moral existence of the individual during his lifetime, it must extend to the heirs so that they can protect the moral part of the person's life after his death¹.

Third opinion: according to this opinion, jurists said that there are some restrictions to the delivery of the right to be forgotten by the death of the individual to his heirs, for example in case of bringing an action before the courts requesting the protection of this right as well as the right to privacy, the majority of opinions said that relatives cannot raise this claim in their own name after the death of the deceased person, because this case regarding the assessment of whether there will be an interest from raising this action or not is related to the discretionary power of the injured person not his heirs, as he might chose not to bring this action in order to protect his privacy and not to unveil past events which might negatively affect his right to oblivion.

However, if a person raises an action requesting this protection before his death, his heirs can continue the conduct of the proceedings in this action after the death of their relative on the basis that his behavior reflected his desire to protect his rights².

¹ See Dr. Yassin Mohamed Yehia, 1991, p.103&ff.

² See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.137,138; This concept is also applied on the right of the heirs to refuse the publication of the picture of the deceased person, for more details, see Dr. Saied Gabr, 1986, p.140&ff.

Moreover, the delivery of the right to privacy and the right to be forgotten by the death of the individual to his heirs cannot be transferred from generation to generation with no end, in other words its transition through generations should not be renewed without limit in a way that affects history¹.

Finally, there are some restrictions that can be imposed by a person upon those who can exercise his rights after his death, as he can prevent them from raising the cover from all or part of his private life or determine what can be published after his death. Moreover, he can define those who have the power to request this protection regardless of whether they have the right to inherit him or not.

Section Two

The application of the right to be forgotten as to time

The definition of the right to be forgotten differs from one time to another; it changes and develops over time, as the scope of the application of this right and the determination of what enters into it is related to traditions, customs and ethics prevailing in the society which are not constant due to the development in the field of technology, norms and many other fields that

¹ See Dr. Hossam AL Ahawany, op.cit, p.168; See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.114.

transfer some life facts from being private and that its recalling after being silent for a certain period is considered as a violation to this right, to the circle of public actions, where there is no need to apply this right as no one is negatively affect by publishing it¹.

Moreover, the nature of the regime of the state as well as the feel of freedom from social pressure that increases nowadays, allow some people to feel that it is normal for a part of their own private life to be a place for social or psychological study, and this also affects the way the society sees the right to be forgotten should be applied².

According to what have been said, custom and usage play an important role in the determination of the scope of application of the right to be forgotten as to time.

Custom appears before the existence of legislation as it is considered as a reflection to the will of the community. Accordingly, in civil law legal system, custom is considered as the first subsidiary source of law after legislation, as judge could refer to it if he did not find the solution of his case in the legislation. And in common law system like in England and USA custom and legal precedents are still the first sources of law³. It is established when people used to undertake certain type of behavior in habitual way with the belief in its obligation, and that the violation of this behavior will

¹ See Dr. Heba Ahmed Ali Hassanein, 2007, p.108.

² Id., p.36.

³ See Adel A. Khalil, An Introduction to Anglo-American Law, p.21,22.

impose a sanction on the violator¹. However, we can distinguish between custom and usage, in that the latter exists when people carry out certain behavior and repeat it, without the feeling that they are bound to do that, as they undertake such behavior with the express or implied agreement between them. However, if they believe that they must perform such behavior, otherwise, a sanction should be imposed upon the violator; this will be considered as custom. In other words, the moral element does not exist in usage, unlike custom as it exists beside the material element².

Furthermore, judges should apply custom even if without the agreement of the litigants, as it is considered as a source of law, so no one can claim the lack of knowledge to the rules of law. However in case of usage, judge should comply with the will of the parties as he cannot apply it if they allege that they do not know of its existence.

Section Three **The application of the right to** **Be forgotten as to place**

The scope of the application of the right to privacy and the right to be forgotten as to place is not rigid; it is not the same in all countries as it differs from one state to another according to the surrounding circumstances such as traditions, customs, ethics and differences between

¹ See Dr. Ahmed Abd EL Kareem Salama, 2016, p.87.

² Id., p.89&ff.

them in many fields. In other words, what is considered as violation for these rights in one state might not be the same in others, even though in the same state custom may vary from one place to another as the behavior of people living in the city differs from those who exist in the village¹, because the margin for the application of the aforementioned rights is bigger in the city than in village due to the lack of acquaintance between people where relationship links are reduced between them, and this affects the respect of their duties and lead to the increase in the intervention in the secrets and privacy of each other. On the other hand, in village people are cautious in their behavior and are reluctant to act in ways that will discredit modesty; however the latter acts might be considered in the city as normal where no one can criticize or pay attention to it².

Since custom requires the continuation of people to undertake certain behavior in the same manner, and according to certain conditions, as they used to apply the same solution in similar cases until people believes that this is binding upon them. It should be noted that, custom is general and this means that it should be applied by nearly whole people in a district or all over the state, but if it is applied by a small number of people in the state this will not be considered as custom. However, it should be noted that, if this behavior is

¹ See Dr. Heba Ahmed Ali Hassanein, 2007, p.109.

² See Dr. Essam Ahmed El Bahgy, 2005, p.126,127; See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.78,79.

applied by a group of people having similar characteristics, such as practicing similar profession or belonging to certain denomination, this is considered as a custom.

Section Four
The application of the right to
Be forgotten as to the nature
of the subject-matter

The nature of the acts undertaken by individuals and the types of information related to them play an important role in the determination of the scope of the application of the right to be forgotten. As in order to apply this right correctly we should know whether the actions carried out by individuals violate law or not, and if it breaches law, do all the types of crimes are treated equally or not, and the degree of its importance to public, as well as how long do these information disappear from sight and whether its recalling after this period is done by the individual himself taking into consideration his fame or by a third party while paying attention to the nature of his intention. Some jurists try to explain the extent of application of the right to be forgotten in case of personal information and legal forgiveness; as a result we will discuss this as follows:

1- Personal information:

There are several types of personal information such as data, photos, news articles, posts and comments

especially on social media, and much more, on which the right to be forgotten should be applied according to the seriousness of these information as well as the degree of damage which might affect the individual¹.

In the United States, there is a great assertion on the freedom of speech and public information and this is obvious from what has been stipulated in the First Amendment. Accordingly, both the right of privacy and the right to be forgotten face many difficulties due to its discrepancy with the right of free speech, as the recognition of these rights, which tends to allow any person to determine the way the internet can define him as a new way for digital privacy and request the removal of a content about him from the internet, is contradicting with the fundamental rules of the first Amendment in US constitution.

However some jurists said that, there may be a need to apply the aforementioned rights even with the existence of the previous rule if the personal information is related to a minor or if it is accompanied with cyberbullying, sexual content or violence as well as if it contains sensitive information, embarrassing photos or documents including individual's unpopular political view. That is why Argentina allows public figures to delete their embarrassing photos in certain cases.

As without the existence of the right to be forgotten, this might negatively affect their right of freedom if it is

¹ For more details about the scope of the protection as to the nature of the subject-matter, see See Dr. Mohamed Abd El Mohsen El Mokatea, 1992, p.73&ff.

applied without limitations as they will fear to express their opinion explicitly because it can be used against them at any time and this might hurt their future career taking into consideration that employers, schools and any other entity can use internet nowadays to know the background of individuals¹.

As a result, some jurists determine some examples of cases which require the application of the right to oblivion, for example Jeffrey Toobin insists on the necessity of this right, for example a lawyer of one of the families requests the erasure of a photo taken by police to a decapitated girl, as due to its spread over internet people can find this photo by searching her name or just decapitated girl and this negatively affect the feeling of her family. Moreover, Google's Transparency Report says that with the existence of this right, a victim of a serious crime or anyone of his family can request to de-link details relating to this crime from search results².

2- Legal Forgiveness:

Legal forgiveness exists in order to help people with criminal past to re-assimilate and rehabilitate into society³. However with the existence of the internet and the ability of saving these information so that anyone can recourse to it at anytime by Google search, this undo the benefits of the rules that exist to affirm legal

¹ See Ravi Antani, 2015, p.1200; See Dr. Mohamed Abd El Mohsen El Mokatea, 1992, p.44.

² See Ravi Antani, 2015, p.1200,1201.

³ See Antoon De Baets, 2016, p.61; A.J. Verheij, 2016, p.35.

forgiveness. Accordingly, a call for the adoption of the right to be forgotten is made by jurists especially in USA so that to restore the effectiveness of these rules and that people can better their lives. But do all crimes are treated equally or not? In order to answer this question, some jurists classify crimes into serious crimes and minor crimes as follows¹:

Jurists say that community should have the right to know about serious committed crimes such as those involving sexual offences or significant violent behavior, as the freedom of expression and the public's right to information supersede the right to be forgotten in this case, because public interest here outweighs any other interest of the offender², as a result, laws in the United States require sex offenders to register in federal databases and report their crimes to neighbors. In addition to that, no one can request the removal of these types of crimes from the internet as this will be against the right of the public to access the information regarding these behaviors; Accordingly, Google refuses the requests for removing such links³.

While in minor crimes such as drug possession and shoplifting, legal forgiveness plays an important role as a way that erases the obstacles which hinder a person's opportunities to be rehabilitated in the society.

¹ See Ravi Antani, 2015, p.1196.

² See Dr. Hossam AL Ahawany, op.cit, p.277&ff.

³ See Ravi Antani, 2015, p.1196, 1197.

Furthermore, the need for the application of the right to be forgotten increases in the field of internet, as searching the name on Google of the offender who has committed any of these minor crimes, such as a teenager who stole food to feed his family, obstruct the legal forgiveness laws, So this right exists to control the aforementioned cases¹.

Similarly, in Egypt there are several provisions in the law that ensure legal forgiveness, and this allows the good application of the right to be forgotten as it tends to cover the acts committed by a person in the past. For example article 76 of the Egyptian penal code stated that comprehensive remission prevents or suspends the conduct of the proceedings in the lawsuit or erases the sentence of conviction. The rights of third parties shall not be prejudiced unless otherwise provided by the law. And this means that comprehensive remission is a legislative procedure that tends to retroactively erase the criminal description from the committed acts and as a result it ends the existing criminal case or erases the sentence of conviction and its effects².

In addition to that, article 552 of the Egyptian criminal procedures code stated that rehabilitation shall entail an elimination of the convicting judgment with respect to the future and an obliteration of all consequential loss of legal capacity, deprivation of rights and all criminal impacts. So, rehabilitation results in facilitating the

¹ Id., p.1197.

² See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.30.

return of the individual to reintegrate into society, following the fulfillment of certain conditions aimed at ascertaining that the sentenced person had become eligible for such rehabilitation¹.

Moreover, the clearance of the criminal sheet of individuals draws a way for the application of the right to be forgotten, as this sheet includes the sentences of conviction issued against persons to know the crimes they have already committed. However, it should be eliminated in accordance with certain conditions in order to regain confidence and hope in their right to return to normal life².

¹ Id., p.31.

² Id., p.32.

Chapter Three

Proceedings Undertaken to

Protect The Right to be Forgotten

There are several proceedings that are determined by law and judiciary to prevent the invasion of privacy and to protect the right to be forgotten. The law stipulates certain precautionary proceedings that could be undertaken to avoid the occurrence of the violation to these rights. However, if these precautionary measures failed to prevent this invasion, or if it stopped such violation after its commencement, the legislator establishes another rules that grant the wronged party the right to obtain compensation if the violation has already happened¹.

This is obvious in article 50 of the Egyptian civil code as it stated that “*A person, whose rights inherent in his personality have been unlawfully infringed, shall have the right to demand the cessation of the infringement and compensation for any damage sustained thereby*”. In addition to that, article 9 of the French Civil Code stated that, “*Everyone has the right to respect for his private life. Without prejudice to the right to recover indemnification for injury suffered, judges may prescribe any measures, such as sequestration, seizure and others, suited to the prevention or the ending of an infringement of the intimate character of private life; in*

¹ See Dr. Ahmed El Sayed Sawy, 2000, p.385,286.

case of emergency those measures may be provided for by summary proceedings". As a result we can divide these sanctions into precautionary measures on one side and compensation in the other side, as follows:

Section One
Precautionary Measures to
Protect the right to be forgotten

The precautionary proceedings fulfill the effective protection for the right to be forgotten rather than granting the affected individual a compensation, since it prevents violation before its occurrence, as any person must have the right that the events of his life can be forgotten, and that no one can raise the cover on these merits, after a certain period of time, except with his consent, as the unveiling of these events is considered as violation for the determined prescription period.

In other words, the real protection lies in the prevention of the disclosure of the facts that have been forgotten, however, it should be noted that this protection still exists even if this right has been violated by granting the wronged party compensation but its effectiveness is weaker than the aforementioned measures, as raising an action to claim compensation after violation might lead to increase the disclosure of privacy as it allows other individuals, especially with the existence of the principle of publicity of hearings, to

reach to their knowledge things that they would not have known if this action had not been brought to the courts¹.

Some jurists said that one of the preliminary measures that could be taken to prevent the violation to the right to be forgotten is the prohibition of the publication of certain events in press or the suspension of its distribution when it entail a violation to the right to oblivion. However, we should take into consideration the importance to make a balance between the prohibition of publication and the freedom of press in order not to affect the latter right².

As according to The European Union's Data Protection Directive a balance must be done between the individual's right to privacy and right to be forgotten from one side, and the publisher's right to free expression and the community's right to know from the other side³.

In France: Before the issuance of the civil code in 17 July 1970, a great debate has been established of whether the Interim relief judge can order to take the necessary preliminary measures to prohibit or suspend the publication in journals as an accelerated way to prevent the invasion of privacy and the right to be forgotten or does this matter enter into the jurisdiction of the judge dealing with the original subject-matter?

¹ See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.252.

² See Ruth Redmond-Cooper, 1985, p.782.

³ See Erik Werfel et al., 2016, p.31; See Jasna Čošabić, 2015, p.56.

Some jurists stated that such prohibition cannot be undertaken by the interim relief judge as this judgment is related to the core of the subject-matter of the disputed right so it can only be issued by the judge adjudicating this substantive matter. In other words, the prevention or the suspension of publication is considered as a sanction to the damage that affects the person whose right to be forgotten has been breached, as a result if we agree that this matter enters into the jurisdiction of the interim relief judge, it can lead to consequences that cannot be fixed after that if the judge dealing with the original subject-matter sees that there was no reason to take such action¹.

Moreover, according to this point of view, the issuance of the judgment prohibiting or suspending the publication contravene with the freedom of press and media as well as the freedom of expression, as by analogy to the case of defamation, article 51 of the French law of press issued in 1881 stated that²

¹ See Dr. Hossam AL Ahawany, op.cit, p.387.

² Loi du 29 juillet 1881 sur la liberté de la presse art.51 *"Immédiatement après le réquisitoire, le juge d'instruction pourra ordonner la saisie de quatre exemplaires de l'écrit, du journal ou du dessin incriminé .*

Toutefois, dans les cas prévus aux premier à troisième et cinquième alinéas de l'article 24 et à l'article 37, la saisie des écrits ou imprimés, des placards ou affiches, a lieu conformément aux règles édictées par le code de procédure pénale. Il en est de même pour la saisie des tracts ou des affiches dans les cas prévus aux septième et huitième alinéas de l'article 24, aux deuxième et troisième alinéas de l'article 32 et aux troisième et quatrième alinéas de l'article 33".

immediately after the indictment, the investigating judge may order the seizure of four copies of the writing, newspaper or drawing in question; so if the judge in case of defamation and insult through press cannot seize more than four copies of it as an evidence in order to respect the freedom of press, Such a limitation shall also be applied in case of infringement of the right to privacy and the right to be forgotten as saying otherwise makes the protection of these rights in a position better than to protect a person in case of his exposure to defamation¹.

On the other hand, other jurists replied to these arguments stating that the accelerated court may be subject to a superficial examination of the subject matter of the dispute. If the right of the litigant is apparent, there is nothing to prevent the judge from issuing this ruling, but if the subject of the right raises a serious dispute, it is not permissible for him to deal with it in detail; as a result the interim relief judge may issue this decision when the breach is apparent².

In addition to that, the French jurisdiction grants the interim relief judge in several cases the right to issue a judgment prohibiting or suspending the publication of matters that consist violation to the right of privacy, and by analogy it can be applied also in case of breach of the right to oblivion, if such infringement lead to impose serious damage to the individual that cannot be fixed if

¹ See Dr. Hossam AL Ahawany, op.cit, p.389,390.

² Id., p.387,388.

we wait until the judge adjudicating the original subject-matter render his judgment¹.

However, after the issuance of the French civil code in 17 July 1970 we can say that article 9 of this law determines that the right to privacy and the right to be forgotten supersede the freedom of press as the judge can take all the necessary precautionary measures to stop or end any infringement to the intimate character of private life, without being bound by the restrictions stated in article 51 of the press law².

Moreover, article 809 of the French code of civil procedure stated that *"The judge may always, even where confronted with a serious challenge, order in a summary procedure such protective measures or measures to restore the parties to their previous state as required, either to avoid an imminent damage or to abate a manifestly illegal nuisance. In cases where the existence of the obligation is not seriously challenged, he may award an interim payment to the creditor or order the mandatory performance of the obligation even where it is an obligation to do a particular thing"*.

so, we can understand from the previous articles that the interim relief judge can undertake such actions in order to prevent or suspend such invasion to these rights from its root not to prevent only protection in case of the occurrence of damage as the latter case requires the

¹ Id., 391&ff. For more details.

² See Dr. Yassin Mohamed Yehia, 1991, p.95,96; See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.211,212.

existence of the violation to the rights, and it is better to prevent it even before it takes place.

Moreover, not every breach for these rights grants the judge the ability to apply these measures as it should include an invasion to the intimate character of private life. This means that judge should not issue decision by applying the aforementioned measures in every case of violation to these rights, but he must make a precise balance between the conflicting interests, and focuses only on matters that are ranked as most dangerous¹. As the leniency in these cases might affect and violate other rights such as the freedom of expression and press².

In Egypt: There are several provisions in the Egyptian law that reflect the intention of the legislator to grant the judge the authority to take all the necessary precautionary measures in order to prevent the invasion of the right to privacy as well as the right to be forgotten³.

For example, by referring to the words and the meaning of article 50 of the civil code, we can say that any person who faces an unlawful attack on any of the rights inherent in his personality can request that such an attack be stopped with compensation for any damage caused, as this means that he can request such action

¹ See Ruth Redmond-Cooper, 1985, p.781

² See Dr. Hossam AL Ahawany, op.cit, p.395,396.

³ For more details about the jurisdiction of the interim relief judge see: See Dr. Ahmed Hendi, Kanoon AL Morafa'at AL Madanyah Wa AL Tegaryah (قانون المرافعات المدنية والتجارية), Dar AL Game'ah AL Gadida, Edition 2003, p.164&ff.

either after or before the occurrence of the violation to these rights in order to avoid it.

In addition to that, another law that supports the direction of the Egyptian legislator in his intention to grant the interim relief judge the ability to order the necessary preliminary measures in order to prevent the invasion of the right to privacy as well as the right to oblivion, is article 179 of the Law No. 82 of 2002 on the Protection of Intellectual Property Rights¹, as it grants the president of the competent court dealing with the merits of the case the right to order by petition, upon the request of the interested party, the application of certain measures as well as the implementation of some precautionary measures in case of the breach of any of the rights of the author. For example, the judge can order the discontinuance of publication, exhibition, reproduction or manufacturing of the work, the performance, the sound recording or the broadcasting program; and as a conservatory measure he may order the seizure of the original copy, or copies, of the work, audio recording or broadcasting program and seizure of the material used for the re-publication or reproduction

¹ Furthermore this article stated that *"In all cases, the president of the court may designate one or more experts to assist the bailiff in charge of the execution of such measures. The president shall require from the requesting party to submit an appropriate security. The requesting party shall be required to submit the merits of the case to the court within 15 days following the grant of the order; otherwise such order shall cease to have effect"*.

of such work, provided that such material could be used only for such rep-publication.

We should take into consideration that seizure here is intended to prevent publication from the beginning and not merely to stop its circulation.

Moreover, Article 198 of the Egyptian penal code stated that crimes related to publications allow the law officers to seize all inscriptions and writings, drawings, pictures, photos, symbols and other methods of representation which might have been prepared for sale, distribution, or display, or which might have been sold, distributed, or actually exhibited, as well as the master copies, printing plates and stones, and other printing and transfer tools¹. This means that crimes of publications

¹ Article 198 of the Egyptian penal code stated the proceedings that should be undertaken in this case as it stated that *"The law officer responsible for impounding shall notify the Public Prosecution on the spot, and if the Prosecution approves it, it shall submit the matter to the President of the Court of First Instance, or the acting president of the court within two hours from the time of seizure, if the seized object is a daily or weekly newspaper. If it is a morning paper, and the seizure takes place before 6 a.m., the matter shall be raised to the President of the Court at 8 a.m. In the rest of cases, submitting the matter shall take place within three days, and the President of the Court shall issue his decision immediately supporting the warrant of seizure or canceling it and releasing the seized objects, after hearing the statements of the convict which shall be announced to all present members. An interested person shall raise the issue to the President of the Court by virtue of a petition, on these same dates. The ruling imposing the penalty shall - if necessary - order removing the objects that were seized or those that might be impounded later, or destroy them wholly or partially. The court may also order publishing the ruling that inflicts the penalty in*

can include the publication of matters dealing with the privacy of individuals without their permissions as this violates their right to privacy as well as any person should have the right to a safe life and to respect his dignity, and that the past events of his life could be forgotten, as no one can raise the cover on these unpleasant merits, after a certain period of time, except with his acceptance, and in case of the breach of the aforementioned rights the law officers can take all the required proceedings to prevent the publication of the document containing the violation either before its sale, distribution, or display, or after its occurrence.

In addition to the aforementioned preliminary measure, jurists said that sequestration could be taken to prevent the violation to the right to be forgotten and the right to privacy¹. As article 9 of the French civil code considered it as a temporary measure that could be undertaken by the interim relief judge to prevent the invasion of these rights, where he leaves the entire

one or more daily newspapers, or pasting it on the walls, or both orders together at the expense of the convict. If the crime is committed by means of a newspaper, the chief editor or the person in charge of publishing must publish on the front page of his paper, the ruling issued with the penalty for this crime within the month following the day of issuing the ruling, unless the court defines a shorter date, otherwise a fine penalty not exceeding one hundred pounds, together with abolishing the paper itself".

See also See Dr. Hossam AL Ahawany, op.cit, p.409&ff.

¹ See Ruth Redmond-Cooper, 1985, p.782

subject for consideration by the judge who adjudicating the substantive subject-matter¹.

Moreover, the Egyptian legislator grants the affected person the right to request the cessation of the infringement, which comprises the limitation of the publishing of the documents that include the violation by putting it under the supervision of the court, and request compensation for any damage happened to him.

Section Two **Compensation as a way to** **Protect the right to be forgotten**

For any individual in order to obtain compensation in case of the breach to any of his rights there must be causality between the committed act and the injury to this person or property. As article 163 of the Egyptian civil code stated that *“Every fault which causes injury to another, imposes an obligation to make reparation upon the person by whom it is committed”*.

Therefore, the legislator stipulates that in addition to the precautionary measures that could be undertaken to prevent the commencement of the invasion to the right to be forgotten, the wronged party will have the right to obtain compensation, besides these preliminary measures, if the violation has already happened or if these measures failed to prevent this invasion after its

¹ See Dr. Hossam AL Ahawany, op.cit, p.424.

commencement¹, as this is obvious in article 50 of the Egyptian civil code, moreover article 256 of Jordan civil law insists on the same meaning as it stated that every fault committed by a person which causes injury to another imposes an obligation upon the person by whom it is committed to compensate the injured one. So the recalling or the publication of the facts of the private life of an individual after being forgotten for a certain period of time without his permission is considered as a violation to the right of oblivion, which establishes the liability of the person who committed it².

In addition to that, an important question has been raised of whether the liability for the invasion of the right to be forgotten must be based upon an intentional fault or whether this liability exists irrespective to the intention of the violator? Some legal systems like France protects the right to privacy and the right to be forgotten in itself without paying attention to the intention of the violator and whether he committed the faulty act intentionally or in a negligent way, as the violation of these rights establishes his liability regardless his intention while performing these actions. While in some other legal systems like Canada it is necessary to establish responsibility for the breach of these rights the existence of an intentional fault, for example the violator is aware of the consequences of his behavior or has a

¹ See Dr. Hossam AL Ahawany, op.cit, p.432; See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.201.

² See Dr. Rabie Mahmoud Naguib El-Amour, 2017, p.235.

bad faith. However, if he does not intend to violate these rights, as a result of negligence and lack of reserve, he shall not be liable even if the wronged party has been affected¹.

Furthermore, for any person to request compensation there must be a damage imposed upon him, and this is clear in article 9 of the Egyptian civil code as well as article 50 of the French civil code as a person shall have the right to demand indemnification for any injury suffered. And in case of the breach of the right to be forgotten, the damage just exist from shedding light on the facts of the life of an individual without his permission when it entered into oblivion for a period of time from the date of its occurrence, and this means depriving him of his right to determine the way of his life as he pleases. In addition to that, the violation of this right might happen in case of misusing the freedom of expression such as by exceeding the limits of this freedom or the use of publication in a way contrary to the freedom of press².

Moreover, compensation could be for tangible or intangible damages, accordingly the damage will be tangible if it leads to material or monetary loss or loss of profit, while it will be intangible if it affects the feelings of the individual, as this injury is related to his reputation, honor or emotions. However, if the methods of the determination of the moral damage are very

¹ Id., p.235,256.

² Id., p.238.

flexible¹, this will have its impact upon the calculation of the amount of compensation awarded; so although the moral damage is invaluable, the judge gives compensation to fix some of its effect².

Besides that, the judge should take into consideration, while determining the amount of the damages, the surrounding circumstances of the acts of the litigants, such as the behavior of the injured party and his professional status, as it might affect his decision while adjudicating the case³. In addition to that, the spread range of the means of publication used to violate the right to privacy and the right to be forgotten might have impact upon the judge's judgment⁴.

For example a person is not liable to pay compensation, if he proves that the injury resulted from a cause beyond his control, such as unforeseen circumstances, force majeure, the fault of the victim or of a third party (Article 165), as the behavior of the injured person might affect the determination of the amount of damages if he contributes in this injury⁵.

¹ See Ruth Redmond-Cooper, 1985, p.780; See Dr. Yassin Mohamed Yehia, 1991, p.6,7.

² For more details about different types for the invasion of the right to reputation, See Dr. Mohamed Nagy Yakout, 1985, p.30&ff; See Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.256&ff.

³ See Ruth Redmond-Cooper, 1985, p.776.

⁴ See Dr. Hossam AL Ahawany, op.cit, p. 445; See Dr. Essam Ahmed El Bahgy, 2005, p.542&ff.

⁵ See Adel A. Khalil, An Introduction to Anglo-American Law, p.95.

Moreover, according to article 168, “A person, who causes injury to another person, in order to avoid greater injury that threatens him or a third party, is only responsible for such damages as the judge deems equitable”.

When the fault is committed by several persons, they are jointly and severally responsible to make reparation for this injury and their liability will be shared between them in an equal amount, unless the judge determines their individual share in the damage due (Article 169).

Section Three **Procedures of the Lawsuit** **before the Court**

Studying the proceedings that could be undertaken to prevent the invasion of the right to privacy and to protect the right to be forgotten, as there are certain precautionary measures that could be applied to prevent the occurrence of the violation to these rights, as well as the legislator determine another rules to obtain compensation in case of violation of these rights, requires us to determine the competent court before which that case should be raised¹, as well as the proceedings of filling up this action, as follows:

1- The Competent Court:

The subject-matter jurisdiction when raising this lawsuit will be determined according to the general rules

¹ See Dr. Mohamed Abd El Mohsen El Mokatea, 1992, p.137.

that have been stipulated in the law of Civil and Commercial Procedures. Accordingly, the case will be brought before the summery tribunals if its amount does not exceed 40,000 L.E, Its decision will be final if it does not exceed 5,000 L.E; Otherwise, it can be appealed before the primary courts acting as a court of appeal¹. However, if the amount of the case exceeds 40.000 L.E or if the case is considered as one of those whose amount cannot be determined so it will be raised before the primary courts, and its decisions can be appealed before the court of appeal².

Regarding the territorial jurisdiction, the nature of the right plays an important role in determining the place where the case should be brought. As according to article 49 of the law of the Egyptian Civil and Commercial Procedures, the general rule is that the jurisdiction will be granted to the court which exists within the circle where the domicile of the respondent is located. And in real estate lawsuits and claims dealing with possession, the jurisdiction is determined to the court within which the property or one of its parts is located, and in personal real estate cases, the jurisdiction will be to the court within which the real estate or the domicile of the defendant is located (Article 50)³.

¹ See Dr. Ahmed Hendi, 2003, p.148,149.

² See Dr. Wagdy Ragheb Fahmy, 2004, p.285; See Dr. Ahmed Hendi, 2003, p.138.

³ See Dr. Ahmed El Sayed Sawy, 2000, p.430,435; See Dr. Mohamed Nour Shehata, 2007, p.551,555.

It should be noted that the previous rules will be applied in case of financial rights, and since the right to privacy and the right to be forgotten do not enter into the scope of these financial rights as the subject-matter of the case will be the protection of these rights against any violation, therefore, we should refer to the general rules in this case which state that the jurisdiction will be to the court where the domicile of the defendant is located¹.

2- Proceedings of Raising the Lawsuit:

Although the Egyptian Legislator does not specify special procedures to be followed in raising this action, so, it should be raised according to the normal procedures laid down in the Code of Civil and Commercial Procedure, for bringing any action before the courts of law². Moreover, no one can misuse his rights in raising this action, otherwise he will be liable for paying compensation for the other litigant, as article 188 of the Egyptian law of civil and commercial procedures stated that, the Court may award compensation for expenses arising out of a claim or defense presented with bad intentions. And without prejudice to the provisions of the preceding paragraph, the court may issue a fine of not less than forty pounds and not exceeding four hundred pounds on the opponent

¹ See Dr. Hossam AL Ahawany, op.cit, p.373.

² For more details about who has the right to request the compensation and who should bear such payment, see Dr. Mustafa Ahmed Abd EL Gawad Hegazy, 2000/2001, p.271&ff.

who takes action or present a request or a defense with bad intention¹.

Section Four **The Procedures for the Electronic** **Protection of the Right to be Forgotten**

Since the European Union has issued a clear European regulation for the protection of personal data, a global trend currently exists to develop strong frameworks for such protections, which have become necessary in light of the great spread of digital development.

In Egypt there are several attempts to protect the right to privacy and the right to be forgotten on the electronic field, Since the Egyptian legislation lacks any legal framework regulating the issue of the protection of electronic data processed electronically during collection, storage or processing, the legislator begins to enact laws regulating this field such as the issuance of the law no. 175 in 2018 regarding Anti-Cyber and Information Technology Crimes and the preparation for the issuance of a law that is related to the handling of personal data of individuals and prohibit the circulation of personal data without the consent of the concerned person, as a reflection to what has been stated in the Egyptian constitution, as article 31 insists on the

¹ See Hussein Amer & Abd EL Rehim Amer, 1998, p.125; See Dr. Essam Ahmed El Bahgy, 2005, p.393&ff.

protection of the security of cyberspace which is considered as an integral part of the economic system and national security. The State shall take all the necessary measures to preserve it as regulated by Law. Moreover, Dignity is a right for every human being and may not be violated. The State shall respect and protect human dignity (Article 51). In addition to that, the legislator emphasizes on the protection of the right to privacy as it may not be violated, shall be protected and may not be infringed upon. And that Postal, telegraphic and electronic correspondences, telephone calls, and other means of communication are inviolable, and their confidentiality is guaranteed. They may not be confiscated, revealed or monitored except by virtue of a reasoned judicial order, for a definite period, and only in the cases defined by Law (Article 57).

The aforementioned attempts will contribute in the protection of the privacy and the right to oblivion by ensuring the protection of personal data from the attack by electronic means such as by social networking platforms without the consent of individuals. As well as, it helps in raising the level of data security in Egypt to comply with international laws and conventions in this regard and to develop mechanisms to address the risks of using personal data of citizens and combating the violation of their privacy. As a result, these laws will encourage attracting investments in different sectors of the state, which is reflected in increasing the opportunity of the creation of new investment opportunities,

especially in the fields of the giant data center industry, as well as in the field of outsourcing industry.

Regarding the proceedings undertaken in these laws to protect the right to privacy and the right to be forgotten, the legislator stated in the draft law of Personal Data Protection, that personal data may not be collected, processed, or disclosed by any means except with the consent of the concerned person or in cases authorized by law, as he shall have the right to access and obtain his personal data that exists under the authority of any holder or Controller or processor, as well as he has the right to revoke the prior consent to the processing of his personal data, and also the right to correct, modify, delete, add or update personal data.

A Center for the Protection of Personal Data shall be established. Its employees shall be determined by a decision of the Minister of Justice upon the proposal of the competent minister as they should have the judicial control in their field of work. The Center shall formulate and develop the policies, strategic plans and programs necessary for the protection personal data and the application of measures, procedures and standards for the protection of such data.

And regarding Anti-Cyber and Information Technology Crimes, article (25) dealing with crimes related to invasion of privacy and unlawful information content stated that, Any person who violates any of the principles or values of the family in Egyptian society, or violates the sanctity of the private life of any individual,

or sends a large number of electronic messages to him without his consent, or provide data to an electronic system or website for the promotion of goods or service without his consent or to disseminate through the Internet or any means of information technology, information, news, images or the like, that violate the privacy of any person without his or her consent whether the information published was correct or incorrect, shall be punished by imprisonment for a period of not less than six months and a fine not less than fifty thousand pounds and not exceeding one hundred thousand pounds. Furthermore, article (26) stated that, A penalty of imprisonment for a period of not less than two years and not exceeding five years and a fine of not less than one hundred thousand pounds and not exceeding 300 thousand pounds or by one of the two penalties, shall be imposed upon anyone who intentionally uses an information or information technology program in the treatment of personal information for others to link to content contrary to public morals or to show them in a way that would affect his or her honor.

Conclusion

From our study to the procedural protection of the right to be forgotten, we can say that due to the development of the relationships between individuals in different fields in the society, as well as the emergence of new methods that facilitate the invasion of their privacy and the disclosure of their secrets, there was a growing need to find a way to protect the rights of individuals against such violation. As a result jurisprudence begins to acknowledge the right to be forgotten as a mean to protect their private life; in other words, any person, in order to have privacy and to respect his dignity by preventing anyone from interfering in his private life, should have the right that the past events of his life could be forgotten, and that no one can raise the cover on these unpleasant merits, after a certain period of time, except with his acceptance.

For these reasons, we studied the definition and the origin of the right to be forgotten, in an attempt to emphasize the importance of this right, as many states and legal systems begin to issue laws that are related to the handling of personal data of individuals and prohibit the circulation of these data without the consent of the concerned person.

Furthermore, we determined the nature and the arguments against and in favor of the right to be forgotten. Since the law is in the service of human rights, it is necessary to recognize new rights to face social, economic and political changes; accordingly,

there are different theories that were established regarding the legal nature of the right to be forgotten, as some jurists stated that this right is considered as a part of the rights related to human personality, while others said that this right is considered as a part of the right of privacy. And a third opinion determined that the right to be forgotten is considered as a part of the right of ownership.

On the other hand some jurists clarified the arguments against the adoption of this right on the basis that the idea of the right to privacy and the right to be forgotten is not clear, and that it is against the right of knowledge and media as well as it contradicts with the freedom of press and expression, and with the need for the public authorities to process personal data, besides that, historical interest might also be affected.

After that, we determined the scope of the application of the right to be forgotten, which can be classified according to the place, time and persons who have the power to use this right. Regarding the application of this right as to persons, we explained that there are no clear criteria which determine whether the right to privacy and the right to be forgotten could be granted to the juridical person or not, as a result some jurists stated that those rights can be exercised only by natural persons, while others determined that there are no reason to prevent juridical person from having this right, on the basis that if he can bring a case before the court in his name, and has an independent internal private life than

the life of those who represents him, so why not we can recognize to him the right to be forgotten. Especially with the growing need to increase the means of legal protection to protect the legal person from the damage that may occur due to the scientific and technological progress which lead to the evolution and development of different means that facilitate the invasion of privacy, and the preservation of data for unlimited period of time. Moreover, we explained of whether this is considered as a personal right or can it be extended to family members, and we differentiated here between the case before the death of the person who has this right and after his death.

In addition to that, regarding the application of this right as to time and place, the scope of its enforcement is not rigid, as it differs from one time to another, as well as it is not the same in all countries as it differs from one state to another according to the surrounding circumstances such as traditions, customs, ethics and differences between them in many fields. Furthermore, we stated the scope of the application of this right as to the nature of the subject-matter.

After that, we studied, besides the clarification of the competent court and the proceedings of raising the lawsuit before the court, the proceedings that could be undertaken to protect the right to be forgotten, as the legislator stipulates certain precautionary proceedings that could be undertaken to avoid the occurrence of the violation to these rights, moreover, the wronged party

will have the right to obtain compensation, if the violation has already happened or if these measures failed to prevent this invasion after its commencement.

Finally, we determined the procedures that could be applied for the electronic protection of the right to be forgotten.

Recommendations

- If the purpose of any legal system is to protect the rights of individuals and to regulate relationships between them, the protection of rights established by law will not be effective unless the law ensures the good administration of justice and equality among individuals by granting them the opportunity to protect their rights or legal positions against any violation, through resorting to the courts and justice. And from here the great importance of the laws of procedures begin to appear, because these laws are the actual ways to achieve the required protection.

- Due to the importance of the right of everyone to be forgotten, the Egyptian Legislator should clearly stipulate and recognize it as an independent right within its national laws, as many conventions and international organizations adopted this right, and the one which has the most influence in the appearance of this right is the European Union's 1995 Data Protection Directive, Which was later amended by the Proposal for the regulation of the European parliament and of the council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) 2012, and later on, the regulation (EU) 2016/679 of the European parliament and of the council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of

such data, and repealing directive 95/46/EC (general data protection regulation).

- There is a need for the establishment of modern technical and technological means in the courts, in order to protect this right in a way that achieves the good administration of justice, and to be able to perform electronic protection of the right to be forgotten.

- The need to perform training courses for journalists and critics to explain the laws and international conventions related to the right to be forgotten, so that they can be able to make a balance between respecting this right and not to violate it on one hand, and the freedom of press and expression on the other hand.

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