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*The Right to Be Forgotten in Criminal Justice: European  
Lessons and Legal Reform in Vietnam*

## Secção

# Investigação Científica / Scientific Research\*

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# The Right to Be Forgotten in Criminal Justice: European Lessons and Legal Reform in Vietnam

## O Direito ao Esquecimento na Justiça Criminal: Lições Europeias e Reforma Jurídica no Vietname

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**Abstract:** The Right to Be Forgotten enables individuals to request deletion, anonymisation, de-indexing, or restricted access to personal information, particularly in digital environments. In criminal justice, this right has a humanitarian function: it supports the reintegration of former offenders, protects acquitted or wrongfully convicted persons from continuing stigma, and prevents secondary victimisation of vulnerable victims, especially children and women. This article examines the European Union's experience, where the Right to Be Forgotten has been developed through the General Data Protection Regulation and judicial decisions balancing privacy, rehabilitation, freedom of expression, and public access to information. It then analyses Vietnam's current legal framework, especially the 2025 Personal Data Protection Law, and identifies gaps arising from the absence of tailored rules for criminal justice data, media archives, judicial records, and press or copyright conflicts. The article proposes reforms based on case-by-case assessment, differentiated remedies, priority protection for vulnerable groups, and clearer institutional mechanisms.

**Keywords:** Right to be forgotten; criminal justice; personal data protection; accused persons; victims

**Resumo:** O Direito ao Esquecimento permite que os indivíduos requeiram a eliminação, a anonimização, a desindexação ou a restrição de acesso a informações pessoais, em particular no contexto digital. No âmbito da justiça penal, este direito desempenha uma função humanitária: favorece a reintegração social de antigos condenados, protege as pessoas absolvidas ou injustamente condenadas contra a perpetuação do estigma e previne a vitimização secundária de vítimas vulneráveis, designadamente crianças e mulheres. O presente artigo examina a experiência da União Europeia, onde o Direito ao Esquecimento tem sido desenvolvido através do Regulamento Geral sobre a Proteção de Dados e de decisões judiciais que ponderam a privacidade, a reabilitação, a liberdade de expressão e o acesso público à informação. Analisa-se, em seguida, o quadro jurídico vigente no Vietname, com especial enfoque na Lei de Proteção de Dados Pessoais de 2025, identificando-se as lacunas decorrentes da ausência de regras específicas para os dados da justiça penal, os arquivos dos meios de comunicação social, os registos judiciais e os conflitos em matéria de imprensa e de direitos de autor. O artigo propõe reformas assentes na apreciação casuística, em soluções jurídicas diferenciadas, na proteção prioritária dos grupos vulneráveis e em mecanismos institucionais mais claros.

**Palavras-chave:** Direito ao esquecimento; justiça criminal; proteção de dados

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peçoais; arguidos; vítimas.

## 1. Introduction

The rapid development of information and communication technologies (ICTs) in the digital era has generated profound challenges for the protection of personal data and privacy in cyberspace<sup>4</sup>. The rise of data-driven business models and social media platforms has facilitated large-scale, often automated, collection, storage, and dissemination of personal information, frequently beyond the control of the data subjects themselves<sup>5</sup>. This reality has heightened concerns over the misuse of personal data, cyber harassment, and the long-term digital persistence of sensitive information, leading to the emergence of new legal mechanisms aimed at safeguarding individual rights. Among these mechanisms, the Right to Be Forgotten (RTBF) has gained significant attention as a cornerstone of modern data protection regimes. Conceptually, the RTBF empowers individuals to determine when, how, and to what extent information relating to them is publicly accessible, including the right to request deletion, delisting, or restriction of outdated, misleading, or harmful personal data<sup>6</sup>. This represents a paradigm shift from a reactive privacy model to one based on proactive control and self-determination over personal data.<sup>7</sup>

The European Union (EU) has been a global pioneer in institutionalizing the RTBF through Article 17 of the General Data Protection Regulation (GDPR)<sup>8</sup>, commonly known as the “right to erasure.” The landmark *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD)*<sup>9</sup> and *Mario Costeja González (2014)*<sup>10</sup> case marked a decisive moment by establishing that search engines qualify as “data controllers” and are thus obligated to remove links to personal data that are

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<sup>4</sup> MARIA TZANOU *The Fundamental Right to Data Protection*. Edtion ed.: Hart Publishing, 2017.

<sup>5</sup> KOSTA, E. *Consent in European Data Protection Law*. Edtion ed.: Brill | Nijhoff, 2013. ISBN 978-90-04-23236-5.

ALLEGRI, M. The Right to be Forgotten in the Digital Age. In., 2022, p. 237-251.

<sup>6</sup> MAYER-SCHÖNBERGER, V. *Delete: The Virtue of Forgetting in the Digital Age*. Edtion ed., 2009. ISBN 0691138613.

MICHAEL J. KELLY AND DAVID SATOLA The Right to Be Forgotten. *University of Illinois Law Review*, 2017, 1.

KULK, S. AND F. Z. BORGESIU *Google Spain v. González: Did the Court Forget about Freedom of Expression?: Case C-131/12 Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos and Mario Costeja González*. *European Journal of Risk Regulation*, 2014, 5(3), 389-398.

<sup>7</sup> RAZMETAEVA, Y. The Right to Be Forgotten in the European Perspective. *TalTech Journal of European Studies*, 2020, 10(1), 58-76.

<sup>8</sup> GDPR. Art. 17 Right to erasure (‘right to be forgotten’). *General Data Protection Regulation*. In., 2016.

<sup>9</sup> KULK, S. AND F. Z. BORGESIU *Google Spain v. González: Did the Court Forget about Freedom of Expression?: Case C-131/12 Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos and Mario Costeja González*. *European Journal of Risk Regulation*, 2014, 5(3), 389-398.

<sup>10</sup> GLORIA GONZÁLEZ FUSTER *The Emergence of Personal Data Protection as a Fundamental Right of the EU*. Edtion ed.: Springer Cham, 2013.

no longer relevant, excessive, or harmful.<sup>11</sup> These developments underscore the EU's efforts to balance privacy with other fundamental rights such as freedom of expression and public access to information.<sup>12</sup>

In the context of criminal justice, the RTBF plays a dual role. First, it protects the privacy and dignity of individuals with past criminal convictions by allowing them to request the deletion of online information about their offenses after fulfilling their legal obligations and demonstrating rehabilitation.<sup>13</sup> This is vital to mitigating social stigma, reducing the risk of recidivism, and promoting reintegration into society. Second, it protects victims particularly women and children in vulnerable circumstances from secondary victimization caused by the prolonged circulation of identifying information. Thus, the RTBF reflects a restorative and humane approach aligned with modern criminal justice policies emphasizing rehabilitation and social reintegration.<sup>14</sup>

Internationally, several jurisdictions have incorporated the RTBF within their human rights frameworks. For instance, Switzerland regards the RTBF as an integral component of privacy rights, protected under national laws and international treaties.<sup>15</sup> However, debates persist about the boundaries of this right, particularly regarding its interaction with freedom of expression and the public's right to know, especially in cases involving public figures, criminal records, or historically significant data.<sup>16</sup> Empirical studies show that persistent online dissemination of criminal records can create barriers to employment, perpetuate discrimination, and inflict long-term psychological harm, undermining rehabilitation goals. In Vietnam, the 2025 Law on Personal Data Protection recognizes the right to request data deletion. However, there is no dedicated legal framework addressing the RTBF in the criminal justice context, and conflicts remain with other sectoral laws such as the Law on Intellectual Property, the Law on the Press, and regulations governing the retention of judicial records. This

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<sup>11</sup> DIMITRA KAMARINOU, CHRISTOPHER MILLARD AND J. SINGH Machine Learning with Personal Data. Queen Mary School of Law Legal Studies Research Paper 2016, 247.

<sup>12</sup> AUSLOOS, J. The 'Right to be Forgotten' – Worth remembering? Computer Law & Security Review, 2012/04/01/ 2012, 28(2), 143-152.

<sup>13</sup> RAUCHEGGER, C. G. González Fuster, The Emergence of Personal Data Protection as a Fundamental Right of the EU, Springer International Publishing, 2014, 274 pp, ISBN 978-3-319-05022-5. International Data Privacy Law, 2014, 5(1), 91-94.

<sup>14</sup> NGO THI MINH HUONG AND P. H. TRUNG 2020. The Right to Be Forgotten in the Digital Age: Challenges for Artificial Intelligence Applications. In *Proceedings of the Workshop Artificial Intelligence: Impacts on Law and Human Rights*, Ha Noi 2020 VNU.

<sup>15</sup> LARRAURI, E. Criminal record disclosure and the right to privacy. Criminal Law Review, 01/01 2014, 2014, 723-737.

<sup>16</sup> AMBROSE, M. L. AND J. AUSLOOS The Right to Be Forgotten Across the Pond. Journal of Information Policy, 2013, 3, 1-23.

<sup>17</sup> FAISAL, K. Right to be Forgotten in Spent Criminal Convictions. 2020, WERRO, F. The Right to Inform v. The Right to be Forgotten: A Transatlantic Clash 05/08 2009.

<sup>18</sup> ALLEGRI, M. The Right to be Forgotten in the Digital Age. In., 2022, p. 237-251.

article, titled “*Protecting the Right to Be Forgotten in Criminal Justice: From European Union Experience to Vietnam’s Practice*,” examines the EU’s legal framework and practical experience, compares it with Vietnam’s current laws, and proposes reforms to harmonize the right to privacy with the public interest in transparency and access to information, ultimately promoting a humane and balanced criminal justice system.

## **2. Literature Review**

The RTBF has been widely examined in European scholarship as a response to the problem of permanent digital memory. Mayer-Schönberger (2009) conceptualized “digital forgetting” as essential to individual autonomy, while González Fuster (2013), Ambrose and Ausloos (2013), and Ausloos (2012) located the RTBF within the broader development of EU data protection law, especially after Google Spain and Article 17 GDPR. More specific to criminal justice, Larrauri (2014) and Faisal (2020, 2021) showed that unrestricted access to spent convictions and criminal records can perpetuate stigma, obstruct reintegration, and conflict with privacy and human dignity. Other studies have emphasized the need for proportionality, contextual assessment, and adaptive regulation as digital platforms and artificial intelligence make personal data easier to retain, reproduce, and disseminate.

In Vietnam, scholarship on the RTBF remains relatively limited. Existing studies, including Nguyen et al. (2022) and Ngo Thi Minh Huong and Phan Hai Trung (2020), mainly discuss the RTBF as a general data protection issue or as a challenge arising from digital technologies. Less attention has been paid to its criminal justice dimension, including criminal record expungement, wrongful conviction data, media archives, victim-related information, and the tension between privacy, press freedom, public access to information, and judicial transparency. This article addresses that gap by using the EU experience to examine how Vietnam can develop a more specific RTBF framework for criminal justice, particularly under the 2025 Personal Data Protection Law and Decree No. 356/2025/ND-CP.

## **3. Research Methodology**

This study employs qualitative legal research, combining doctrinal analysis, comparative legal analysis, and policy-oriented reasoning. The doctrinal method is used to examine primary legal sources, including Article 17 of the GDPR and relevant European case law, as well as Vietnam’s 2025 Personal Data Protection Law, Decree No. 356/2025/ND-CP, the 2015 Penal Code, the 2015 Criminal Procedure Code, the Press Law, the Intellectual Property Law, and the Law on Judicial Records. The

comparative method is used to identify how the EU balances the RTBF with freedom of expression, public access to information, criminal justice transparency, and rehabilitation. The policy-oriented approach then translates these findings into recommendations for Vietnam, with particular attention to criminal records, media archives, victim protection, wrongful conviction data, and the institutional handling of RTBF requests.

## 4. Content

### 4.1 Legal Framework for the Right to Be Forgotten

#### Conceptual Foundations of the RTBF

The RTBF is a modern legal concept that has emerged in response to the challenges of data persistence in the digital age. Traditionally, privacy law emphasized passive protection, focusing on preventing unlawful intrusions into private life. However, with the proliferation of digital platforms and search engines, personal data can be stored, indexed, and disseminated indefinitely, leading to what Mayer-Schönberger (2009) termed the “tyranny of digital memory.”<sup>17</sup> This has shifted the focus toward active control, empowering individuals to determine the lifecycle of their personal information.

The RTBF is closely linked to informational self-determination, a principle first articulated by the German Federal Constitutional Court in the *Census Act Decision* (1983), which recognizes an individual’s right to control the disclosure and use of personal data<sup>18</sup>. It is also grounded in fundamental human rights, particularly Article 8 of the European Convention on Human Rights (ECHR)<sup>19</sup>, which guarantees the right to respect for private and family life, and Article 17 of the International Covenant on Civil and Political Rights (ICCPR)<sup>20</sup>, which prohibits arbitrary interference with privacy. In essence, the RTBF can be defined as the right of individuals to request the deletion, delisting, or restriction of access to personal data that are outdated, irrelevant, misleading, or disproportionately harmful.<sup>21</sup> Importantly, this right does not imply a wholesale erasure of history or censorship but requires a contextual balancing between privacy, freedom of expression, and the public’s right to information.

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<sup>17</sup> MAYER-SCHÖNBERGER, V. *Delete: The Virtue of Forgetting in the Digital Age*. Edition ed., 2009. ISBN 0691138613.

<sup>18</sup> RAUCHEGGER, C. G. González Fuster, *The Emergence of Personal Data Protection as a Fundamental Right of the EU*, Springer International Publishing, 2014, 274 pp, ISBN 978-3-319-05022-5. *International Data Privacy Law*, 2014, 5(1), 91-94.

<sup>19</sup> EUROPE, C. O. *European Convention on Human Rights*,. In., 1950.

<sup>20</sup> UNITED NATIONS. *International Covenant on Civil and Political Rights (ICCPR)*, Article 19. In., 1966.

<sup>21</sup> AMBROSE, M. L. AND J. AUSLOOS *The Right to Be Forgotten Across the Pond*. *Journal of Information Policy*, 2013, 3, 1-23.

### International Human Rights Norms

The RTBF, while not explicitly articulated in any foundational international human rights instruments, derives its normative foundation from long-standing principles relating to privacy, human dignity, and the protection of personal data. These principles have evolved over decades and now form the backbone for addressing modern challenges of digital memory and the permanent availability of personal information online. The earliest universal recognition of privacy as a fundamental right can be traced to Article 12 of the Universal Declaration of Human Rights (UDHR, 1948)<sup>22</sup>, which guarantees that no one shall be subjected to arbitrary interference with their privacy, family, home, or correspondence. This framework was strengthened by Article 17 of the ICCPR, which imposes binding obligations on states to prevent unlawful interference with privacy and to protect individuals against attacks on their honor and reputation. In the context of the digital era, persistent and uncontrolled dissemination of personal data such as outdated criminal records, sensitive information about victims, or juvenile case histories can amount to “arbitrary interference” within the meaning of Article 17 ICCPR, particularly when such data no longer serve a legitimate public purpose<sup>23</sup>. Scholars have conceptualized privacy as a gateway right, meaning its effective protection is essential for the realization of other fundamental rights, including access to justice, rehabilitation, and human dignity.<sup>24</sup> This interpretation aligns with contemporary human rights scholarship, which increasingly recognizes that digital environments require an evolution of classical privacy protections to confront phenomena such as perpetual digital memory and secondary victimization of vulnerable populations<sup>25</sup>.

The United Nations has progressively acknowledged the urgency of protecting privacy in digital contexts. In 2012, the UN Human Rights Council Resolution 20/8 explicitly recognized privacy rights in the context of modern communication technologies. Subsequent reports by the Office of the High Commissioner for Human Rights (OHCHR) have highlighted how perpetual online availability of personal data can erode human dignity and disproportionately harm vulnerable groups, including

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<sup>22</sup> UNITED NATIONS GENERAL ASSEMBLY Universal Declaration of Human Rights. In., 1948.

<sup>23</sup> BARAKZAEI, S. Digital Privacy Violation with a Focus on the Consequences and Supporting Mechanisms in the National and International Documents. *ناج تحقيقي علمي مجله*, 05/26 2024, 01, 131-153.

QUACH, S., P. THAICHON, K. D. MARTIN, S. WEAVER, et al. Digital technologies: tensions in privacy and data. *Journal of the Academy of Marketing Science*, 2022/11/01 2022, 50(6), 1299-1323.

<sup>24</sup> GENERAL ASSEMBLY OF THE UNITED NATIONS. Report of the Special Rapporteur on the Right to Privacy : note / by the Secretariat. In., 2018.

<sup>25</sup> SAVIRIMUTHU, J. The Fundamental Right to Data Protection: Normative Value in the Context of Counter-Terrorism Surveillance. *SCRIPT-ed*, 12/12 2017, 14, 387-393.

CHOROMIDOU, A. EU data protection under the TCA: the UK adequacy decision and the twin GDPRs. *International Data Privacy Law*, 2021, 11(4), 388-401.

children, women, and rehabilitated offenders.<sup>26</sup> The UN Special Rapporteur on the Right to Privacy, Joseph Cannataci, has repeatedly emphasized that states must create effective legal and institutional mechanisms allowing individuals to request deletion or limitation of personal data where its continued availability creates unjust harm and no longer serves a compelling public interest.<sup>27</sup> Such measures are vital for ensuring that digital platforms do not become instruments of perpetual punishment, especially for individuals who have fulfilled their legal obligations or for victims seeking to move beyond traumatic experiences.<sup>28</sup>

Privacy, however, is not an absolute right. International law requires it to be balanced against other competing rights, particularly freedom of expression and the public's right to know, as articulated in Articles 19 and 20 of the ICCPR. Kamrul Faisal (2020) emphasizes that RTBF should be understood as a proportionality mechanism in which courts and regulators carefully assess whether retaining certain information online remains necessary for public interest or whether it imposes a disproportionate burden on the individual.<sup>29</sup> This balancing is especially crucial in criminal justice contexts. While public access to information about serious crimes may support transparency and public safety, the indefinite online availability of minor offenses or outdated convictions risks undermining the rehabilitative purpose of punishment and violating international human rights norms that prioritize reintegration and humane treatment.

The UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, 2015)<sup>30</sup> and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005)<sup>31</sup> reinforce these principles by emphasizing confidentiality and the protection of both offenders and victims from secondary victimization caused by the persistent circulation of sensitive information<sup>32</sup>. Persistent exposure of victims' identities or offenders' past crimes in the digital space can fuel discrimination, hinder rehabilitation, and perpetuate cycles of harm. This dynamic interpretation of established human rights norms demonstrates that while the RTBF is

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<sup>26</sup> OHCHR. The right to privacy in the digital age. United Nations Human Rights Council Report A/HRC/51/17. In., 2022.

<sup>27</sup> CANNATACI, J. A. Right to privacy. 2021.

<sup>28</sup> FAISAL, K. Right to be Forgotten in Spent Criminal Convictions. 2020.

<sup>29</sup> FAISAL, K. Balancing between Right to Be Forgotten and Right to Freedom of Expression in Spent Criminal Convictions. SECURITY AND PRIVACY, 2021, 4(4).

<sup>30</sup> UNODC. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). In., 2015.

<sup>31</sup> 2005/20, E. R. Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. In., 2005.

<sup>32</sup> O'MAHONY, C., E. SPRUIN AND M. JOYCE Secondary Victimization in the Justice System: Facility Dogs to the Rescue. Irish Journal of Social Justice. 2023.

not expressly codified in international instruments, it emerges logically as a derivative right under Article 17 ICCPR, designed to respond to the harms of perpetual digital memory. In this way, international human rights law provides the essential normative foundation for developing and implementing the RTBF, emphasizing a careful balance between protecting individual dignity and ensuring transparency and freedom of expression in the digital age.

#### **4.2. European Union Regulations on the Right to Be Forgotten**

The EU stands as one of the pioneering legal entities in the establishment and codification of the RTBF as an integral component of the right to personal data protection. This right is explicitly enshrined in Article 17 of the GDPR, under the designation “right to erasure.” Pursuant to this provision, data subjects are entitled to request that data controllers erase their personal data under specific circumstances, including: when the data is no longer necessary for the original purpose of processing; when the data subject withdraws consent; or when the data has been processed unlawfully. This regulation reflects a marked shift in the conceptualization of privacy rights from a defensive entitlement to a proactive mechanism for individual control over personal information.

The development of RTBF within the EU was significantly accelerated following the landmark judgment of the Court of Justice of the European Union (CJEU) in *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* (2014). In this case, Mr. Mario Costeja González, a Spanish citizen, petitioned Google to remove links to a newspaper article concerning the auction of his property to settle outstanding debts, arguing that the information had become outdated and no longer relevant. The CJEU ruled that search engines, as data controllers, are obligated to remove links to information that is irrelevant, inaccurate, or harmful even when the original content remains lawfully published on other platforms. This decision set a critical precedent, affirming RTBF as a concrete expression of the right to personal data protection under the framework of the GDPR, particularly within the digital environment.<sup>33</sup> From a theoretical perspective, RTBF may be regarded as a derivative right stemming from the broader right to privacy, concretized in the context of rapid advancements in information and communication technologies. However, this right is not absolute and is subject to limitations grounded in other legal principles and values. Article 17(3) of the GDPR sets forth a series of exceptions under which a request for data erasure may be denied, including where processing is necessary for:

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<sup>33</sup> *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* (Document 62012CJ0131). In.: Judgment of the Court (Grand Chamber), 2014.

(i) the exercise of the right to freedom of expression and information; (ii) compliance with a legal obligation; (iii) the performance of a task carried out in the public interest or in the exercise of official authority; (iv) reasons of public health; (v) archiving purposes in the public interest, scientific or historical research, or statistical purposes; or (vi) the establishment, exercise, or defense of legal claims. These exceptions underscore the EU's effort to strike a balance between RTBF and other legitimate societal rights and interests.

This general balancing framework becomes particularly complex in the field of criminal justice, where personal data may simultaneously serve the purposes of public information, historical record, criminal justice transparency, victim protection, and the reintegration of former offenders. European case law shows that the RTBF is not confined to official criminal records but may also concern archived media reports, search engine results, names, images, and case details that remain accessible long after the criminal process has ended. In *M.L. and W.W. v. Germany*, the European Court of Human Rights examined a request by two convicted individuals to anonymise online media archives concerning their criminal case. The Court acknowledged that continued online accessibility of such information could affect private life and reintegration, but it refused to recognise an automatic right to erase criminal history, particularly where the offence was serious, the information had been lawfully published, and the case remained part of a legitimate public record.<sup>34</sup> By contrast, in *Hurbain v. Belgium*, the Court accepted the anonymisation of an old online newspaper article concerning a criminal conviction, emphasizing that anonymisation did not remove the article or distort the historical record, but merely reduced the continuing identification of the individual after the passage of time.<sup>35</sup> This judgment is especially relevant to criminal justice because it recognises that online media archives may operate in practice as a form of virtual criminal record when they remain searchable by name long after the sentence has been served.

A similar approach appears in *Biancardi v. Italy*, where the Court accepted liability for the failure to de-index an online article concerning criminal proceedings. The case demonstrates that RTBF-related obligations may apply not only to search engines but also to online publishers and managers of digital press archives where continued indexing causes disproportionate harm to private life and reputation.<sup>36</sup> In

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<sup>34</sup> *M.L. AND W.W. V. GERMANY* (Applications nos. 60798/10 and 65599/10). In.: EUROPEAN COURT OF HUMAN RIGHTS,, 28 June 2018.

<sup>35</sup> *Hurbain v. Belgium* (Application no. 57292/16, Grand Chamber). In.: EUROPEAN COURT OF HUMAN RIGHTS, 4 July 2023.

<sup>36</sup> *BIANCARDI V. ITALY* (Application no. 77419/16). In.: EUROPEAN COURT OF HUMAN RIGHTS, 25 November 2021.

GC and Others v. CNIL, the Court of Justice of the EU further clarified that data relating to criminal proceedings, investigations, and convictions requires a strict case-by-case assessment. Relevant factors include the nature and seriousness of the information, its accuracy, whether it remains up to date, the person's public role, the time elapsed, and the continuing public interest in access to that information<sup>37</sup>

Beyond substantive and procedural issues, *Google LLC v. CNIL (2019)*<sup>38</sup> clarified the territorial scope of the RTBF. The CJEU held that EU law does not require search engines to apply delisting globally in all cases, although competent authorities may still assess specific requests in light of proportionality and competing fundamental rights. This ruling shows that the RTBF must be implemented cautiously in a transnational digital environment: a global delisting obligation may conflict with freedom of expression and non-EU legal orders, while a purely territorial approach may weaken practical protection because information can remain accessible through non-EU domains. For Vietnam, the case illustrates the need for a realistic enforcement model that combines domestic legal obligations, platform responsibility, and international cooperation.

#### **4. 3 The Right to Be Forgotten in Vietnam's Criminal Justice System: Legal Foundations and Practical Challenges**

##### **Vietnamese Legal Institutions Reflecting the Spirit of the Right to Be Forgotten**

Although Vietnam's criminal justice system does not explicitly recognize the RTBF as an independent personal right, the underlying spirit of RTBF is indirectly reflected in various legal institutions that embody the principles of human dignity, social reintegration, and the elimination of prejudice against rehabilitated past conduct. These provisions not only contribute to ensuring fairness in criminal justice but also demonstrate the humanitarian orientation of Vietnam's criminal policy. Most notably, the mechanism of criminal record expungement, as provided in Article 70 of the 2015 Penal Code, as amended in 2017, 2024, and 2025, illustrates this rehabilitative orientation.<sup>39</sup> This legal mechanism enables individuals, upon completion of their sentence and fulfillment of the requisite conditions regarding time and conduct, to have their legal status restored as if they had never been convicted. It serves not only as a legal remedy for reinstating the rights of rehabilitated individuals but also as a tool to

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<sup>37</sup> GC, AF, BH and ED V. COMMISSION NATIONALE DE L'INFORMATIQUE ET DES LIBERTÉS (CNIL), Case C-136/17. In.: COURT OF JUSTICE OF THE EUROPEAN UNION, 24 September 2019.

<sup>38</sup> *Google LLC, successor in law to Google Inc. v Commission nationale de l'informatique et des libertés (CNIL)*. In.: Judgment of the Court (Grand Chamber), 2019.

<sup>39</sup> THE NATIONAL ASSEMBLY OF VIETNAM. Penal code. In., 2015.

eliminate the legal and psychological consequences associated with prior convictions aligning with the core objective of the RTBF, which is to provide a genuine opportunity for a fresh start. The same rehabilitative logic is particularly visible in the treatment of juvenile offenders. While Article 91 of the 2015 Penal Code traditionally reflected the principle that the handling of persons under 18 should prioritize education, rehabilitation, and reintegration over punishment, this orientation has been further institutionalized through the 2024 Law on Juvenile Justice. The separate regulation of juvenile justice confirms that information relating to minors in criminal proceedings requires a higher degree of confidentiality and restraint in disclosure. From the perspective of the RTBF, this is especially important because the long-term accessibility of juvenile case information may undermine education, reintegration, and the possibility of a genuine fresh start.

The 2015 Criminal Procedure Code also provides an important procedural basis for connecting criminal justice data with the protection of privacy and dignity. Article 2 affirms that one of the fundamental purposes of criminal procedure is to protect human rights and the lawful rights and interests of individuals<sup>40</sup>. Within this framework, criminal proceedings generate various categories of personal data, including investigation materials, court records, witness statements, victim information, and details concerning the accused or defendants. Article 258, which governs the minutes of court hearings, is relevant in this regard because such records may contain sensitive personal information that, if disclosed or circulated without appropriate limits, can continue to affect an individual's reputation, dignity, and prospects of reintegration. Therefore, from the perspective of the RTBF, the issue is not the deletion of official procedural records themselves, but the need to control unnecessary public access, reproduction, or digital dissemination of personal data contained in those records. This concern is even more pressing in cases where the criminal process does not lead to a conviction or no longer continues on legal grounds. Provisions such as Article 157 on grounds for not instituting criminal proceedings, Article 230 on suspension of investigation, and Article 282 on suspension of a criminal case at the trial-preparation stage show that Vietnamese criminal procedure already recognises situations in which a person should no longer remain under the burden of criminal accusation. In such circumstances, the continued circulation of names, images, accusations, or case details in the digital environment may produce a form of reputational punishment that exceeds the lawful scope of criminal procedure. Notably, the 2009 Law on Judicial Records<sup>41</sup>, as

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<sup>40</sup> NATIONAL ASSEMBLY. Criminal Procedure Code. In., 2015.

<sup>41</sup> NATIONAL ASSEMBLY. Law on Judicial Records In., 2009.

amended by the 2020 Law on Residence and subsequently by Law No. 107/2025/QH15<sup>42</sup>, also contributes to the realization of the spirit of the RTBF by distinguishing between two types of judicial record certificates. Certificate No. 1 generally omits expunged convictions and is issued to individuals and relevant civil organizations, whereas Certificate No. 2 contains more complete criminal record information and is mainly used for procedural and institutional purposes. This distinction limits the ordinary disclosure of criminal history information after expungement and reduces the risk of stigma and discrimination in employment, administrative procedures, and social reintegration.

In summary, although RTBF has not yet been codified as an independent legal right within Vietnam's criminal justice system, existing legal provisions partially reflect its underlying objectives namely, the protection of personal dignity, the restoration of legal status, and the facilitation of social reintegration for individuals previously involved in criminal proceedings. In the context of digital transformation and the unrestricted dissemination of information, the development of a comprehensive legal framework to concretize and modernize RTBF is an urgent necessity. Such reform is essential to ensure humanitarian values, fairness, and alignment with evolving international legal standards.

### **The Legal Status and Implementation Challenges of the Right to Be Forgotten in Vietnam**

Vietnam's current legal framework for personal data protection is primarily based on the 2025 Personal Data Protection Law and its implementing instrument<sup>43</sup>, Decree No. 356/2025/ND-CP. Under this framework, the right to erasure is recognised as part of the broader bundle of data-subject rights<sup>44</sup>. Article 4(1)(d) of the 2025 Personal Data Protection Law provides that data subjects have the right to request the provision, deletion, and restriction of processing of their personal data, as well as the right to object to personal data processing. Article 14 further establishes the legal framework for the deletion, destruction, and de-identification of personal data. It allows personal data to be deleted, destroyed, or de-identified where the data subject so requests, where the processing purpose has been completed, where the statutory retention period has expired, where deletion is required by a competent state authority, where deletion is based on agreement, or where other legal grounds exist. Decree No. 356/2025/ND-CP further details the implementation of this statutory framework,

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<sup>42</sup> NATIONAL ASSEMBLY. Law On Amendments To The Law On Criminal Records. In., 2025.

<sup>43</sup> NATIONAL ASSEMBLY. Law No. 91/2025/QH15 Personal Data Protection. In., 2025.

<sup>44</sup> THE GOVERNMENT OF VIETNAM. Decree Elaborating On Certain Articles And Implementation Measures Of Law On Personal Data Protection. In., 2025.

including organisational responsibilities, compliance procedures, impact assessment requirements, notification of personal data breaches, and the role of the specialised personal data protection authority.

Nevertheless, the right to erasure under Vietnamese law is not absolute. Article 14(2) of the 2025 Personal Data Protection Law expressly provides that a data subject's request for deletion or destruction of personal data shall not be implemented where the case falls within Article 19 of the Law, or where deletion or destruction would violate the principles governing the exercise of data-subject rights under Article 4(3). Article 4(3) requires data subjects, when exercising their rights, not to obstruct the legal rights and obligations of data controllers, data controller-processors, or data processors, and not to infringe the lawful rights and interests of the State, agencies, organisations, or other individuals. In addition, Article 19(1)(b) allows personal data to be processed without the data subject's consent in cases involving emergency situations, threats to national security, prevention and combat of riots or terrorism, and the prevention and combat of crimes and legal violations. Article 19(1)(c) further permits processing without consent where it serves the activities of state agencies or state management in accordance with law. These limitations are especially important in the criminal justice context, where personal data may need to be retained for procedural records, law enforcement, judicial transparency, victim protection, public safety, or the lawful interests of third parties. This set of limitations creates a normative tension. On the one hand, Vietnam has formally recognised the right to erasure as part of the statutory framework on personal data protection. On the other hand, the exercise of this right may be restricted where deletion conflicts with legal obligations, public interests, state management functions, criminal justice needs, or the lawful rights and interests of third parties. This tension is particularly visible when RTBF claims interact with other sectoral legal regimes, including intellectual property law, press law, and rules on the retention of judicial and procedural records. A notable example is the 2005 Intellectual Property Law of Vietnam (as amended in 2009, 2019, and 2022)<sup>45</sup>. Article 14 recognises journalistic works as a category of copyright-protected works. Article 19 protects the moral rights of authors, including the right to protect the integrity of the work and to prevent others from modifying, mutilating, or distorting the work in a manner prejudicial to the author's honour and reputation. Article 28 further identifies acts of infringement of copyright and related rights. As a result, a request to delete, alter, or anonymise personal information contained in a journalistic work may raise

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<sup>45</sup> NATIONAL ASSEMBLY. Law No. 07/2022/QH15. Amendments To Some Articles Of The Law On Intellectual Property. In., 2022.

legal difficulties where such intervention affects the integrity of the work or the rights of the author or copyright holder. This does not mean that privacy and data protection must always yield to copyright, but it shows that Vietnam lacks a clear intersectoral mechanism for balancing RTBF claims against the legal protection of journalistic works.

Consequently, if an individual requests the removal of personal information contained in a journalistic work even if the information is outdated or reputationally harmful such a request may be denied if the deletion alters the content of the work without the approval of the copyright holder. Although Article 25 of the Intellectual Property Law provides certain exceptions (e.g., for news reporting), these exceptions are only lawful if the integrity of the content is maintained and the source is properly cited conditions that data erasure requests often fail to meet.

Moreover, the 2016 Press Law of Vietnam (as amended in 2018)<sup>46</sup>, under Article 13, sets forth principles of accuracy, objectivity, and truthfulness, but does not establish a mechanism for updating, correcting, or deleting information when the legal status of individuals mentioned in published articles changes for instance, when a person has had their criminal record expunged. This legal gap makes it difficult to accommodate requests for the removal of personal information from widely circulated journalistic content in the digital space. This legal conflict becomes particularly serious when considered alongside the criminal record expungement mechanism under Article 70 of the 2015 Penal Code<sup>47</sup>, which affirms the principle of “as if never convicted.” This reflects the humanitarian philosophy of modern criminal law, aimed at enabling rehabilitated individuals to reintegrate into society. However, in practice, this objective is often undermined when prior conviction information remains publicly accessible through press archives or social media, causing psychological harm and diminishing employment and reintegration opportunities.

If even those who have served their sentences struggle to “be forgotten,” the consequences are even more severe for individuals who were never guilty such as those whose investigations were suspended, who were acquitted, or who were wrongfully convicted. In reality, despite receiving compensation and formal restoration of honor, their names continue to circulate widely online, as seen in the cases of Mr. Tran Van Them (Bac Ninh)<sup>48</sup> and Mr. Han Duc Long (Bac Giang).<sup>49</sup>

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<sup>46</sup> NATIONAL ASSEMBLY. Law No.: 103/2016/QH13. Press Law. In., 2016.

<sup>47</sup> THE NATIONAL ASSEMBLY OF VIETNAM. Penal code. In., 2015.

<sup>48</sup> DUC SON. Officially concluded that death row inmate Tran Van Them was wrongfully convicted. In., 2016.

<sup>49</sup> LUONG KET. What makes the case of Han Duc Long distinct from previous wrongful conviction cases? In., 2016.

The negative impact is particularly severe for women in vulnerable circumstances, especially those who are pregnant, raising young children, or are victims of gender-based violence, sexual abuse, or coercion into criminal conduct. The continued circulation of judicial information causes prolonged psychological and social harm, affecting not only the women themselves but also their children. For children who are victims of sexual abuse, the legal shortcomings are even more pronounced. Article 21 of the 2016 Law on Children provides absolute protection of privacy, including identifying information. However, when the media publishes details sufficient to identify the victim, the risk of secondary victimization becomes alarmingly evident as illustrated by the case of H.M.K., a 13-year-old girl in Ca Mau who tragically took her own life after repeated sexual abuse and public exposure.<sup>50</sup> This situation is especially concerning in the digital age, where data is permanently stored and easily accessible, exacerbating the long-term consequences for victims and undermining the protective intent of privacy legislation.

Based on the above analysis, it is evident that although the right to request personal data erasure has been elevated to statutory status under the 2025 Personal Data Protection Law, its practical effectiveness remains limited due to a lack of harmonization and coordination across legal sectors. The prioritization of the Intellectual Property Law and the binding nature of copyright in the field of journalism has significantly weakened the enforceability of the RTBF, especially in cases involving children, individuals with expunged criminal records, women, or those whose proceedings have been terminated. This is a foundational legal issue that calls for reform of intersectoral coordination mechanisms and the establishment of reasonable limitations on copyright, in order to safeguard privacy and personal data protection fundamental human rights in the digital age.

### **5. Lessons Learned from the EU and Policy Recommendations**

The EU is widely recognized as a pioneering jurisdiction in acknowledging and concretizing the RTBF, particularly through the GDPR and a series of landmark rulings by the CJEU. In the context of rapid global digital transformation, Vietnam's initial recognition of the right to personal data erasure in Decree No. 356/2025/ND-CP, followed by its consolidation in the 2025 Personal Data Protection Law, represents not only a timely step toward strengthening privacy protection but also an urgent requirement to ensure compatibility with international legal standards. If this right is not fully codified and effectively implemented, individuals may face real risks of being

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<sup>50</sup> MINH HAI. Case Overview: The Tragic Suicide of a 13-Year-Old Girl Following Sexual Abuse in Ca Mau. In., 2017.

unable to control or request the removal of sensitive, outdated, or harmful information leading to adverse consequences for personal rights and undermining the effectiveness of existing protective mechanisms.

Drawing from the EU's legal experience and Vietnam's judicial practice, five key policy recommendations can be proposed to improve the legal framework:

**First, Vietnam should adopt a case-by-case balancing mechanism for RTBF claims in criminal justice**

The first recommendation is to develop a case-by-case balancing mechanism for RTBF claims in criminal justice. The EU experience shows that the RTBF cannot operate as an automatic right to erase all past criminal justice information. Instead, each request should be assessed in light of several factors, including the nature and seriousness of the offence, the time elapsed since the event, the current legal status of the person concerned, whether the criminal record has been expunged, whether the person was acquitted or wrongfully convicted, the degree of rehabilitation, the vulnerability of the data subject, the public role of the individual, the accuracy and currency of the information, and the continuing public interest in access to that information.

For Vietnam, this balancing mechanism should be incorporated into the implementing guidelines for the 2025 Personal Data Protection Law and Decree No. 356/2025/ND-CP. The guidelines should distinguish between different categories of criminal justice data, including official judicial records, procedural records, court-hearing records, press reports, online archives, social media content, and search engine results. They should also distinguish between different remedies, such as deletion, anonymisation, de-identification, delisting, restricted access, correction, and updating of information. This approach would avoid both extremes: unrestricted public access to outdated criminal justice data on the one hand, and indiscriminate deletion of legally or historically significant information on the other.

**Second, Vietnam should establish a structured procedure for handling RTBF requests**

The second recommendation is to establish a structured procedure for handling RTBF requests. Such a procedure should include at least six steps: receiving the request; verifying the identity and legal interest of the requester; identifying the type of data concerned; assessing the legal basis for continued retention or disclosure; deciding on the appropriate remedy; and providing reasons for approval or refusal. In criminal justice, this procedure should require consultation with relevant authorities where necessary, especially when the requested data are connected to judicial

records, procedural records, ongoing investigations, victim protection, public safety, or media archives.

The available remedies should not be limited to deletion. In many cases, anonymisation, de-identification, delisting, restricted access, or the addition of updated information may be more proportionate. For example, where a person has been acquitted, wrongfully convicted, or has had criminal proceedings terminated, outdated online information should be corrected or updated to reflect the current legal status of the individual. Where a person has served a sentence and later obtained criminal record expungement, public access to identifying information may be restricted if continued disclosure no longer serves a legitimate public interest. However, official procedural and judicial records should not be automatically destroyed, because they may still be necessary for institutional accountability, legal certainty, archival purposes, victim protection, or the lawful interests of third parties.

In designing an RTBF mechanism for criminal justice, Vietnam should distinguish between completion of sentence, criminal record expungement, and data erasure. Completion of sentence means that the offender has fulfilled the punitive obligations imposed by the judgment, while criminal record expungement concerns the legal restoration of status. Data erasure addresses a different issue: whether personal information relating to the criminal case should continue to be processed, indexed, disclosed, or made publicly accessible. This distinction is important because the RTBF does not require the destruction of official judicial or procedural records. Rather, it requires a proportional assessment of continued public accessibility. After completion of sentence, the individual's interest in reintegration becomes stronger; after criminal record expungement, this interest becomes even more compelling.

### **The third, Clearly define priority groups for RTBF application**

International experience and the preceding comparative analysis suggest that the RTBF should be applied with particular attention to vulnerable individuals and those whose legal status has been rehabilitated. Priority groups should include: Individuals whose criminal records have been expunged; Children and juvenile offenders; Persons who were wrongfully convicted or formally acquitted; Individuals whose investigations or criminal proceedings have been terminated; Women in special circumstances, particularly victims of gender-based violence.

These priority groups should not be understood as categories entitled to automatic erasure. Rather, they identify situations in which continued public accessibility of personal information may create disproportionate harm to dignity, privacy, and social reintegration. In cases of wrongful conviction or acquittal, the RTBF

should be applied with particular caution. Information that proves innocence, reveals judicial error, or contributes to public accountability should not be removed merely because it relates to a criminal case. The concern lies instead in outdated, inaccurate, incomplete, sensationalised, or unnecessarily identifying information that continues to associate the person with criminality despite exoneration or termination of proceedings. Such information may include old headlines, images, addresses, family details, or case narratives that are no longer necessary for public understanding. In these circumstances, correction, updating, anonymisation, de-indexing, restricted access, or deletion may be considered depending on the nature of the information and the continuing public interest. This approach allows the RTBF to protect personal dignity and social reintegration without weakening transparency in criminal justice.

#### **The fourth, strengthen the existing specialised personal data protection authority and judicial review mechanism**

The EU maintains independent data protection authorities at both national and supranational levels, with the European Data Protection Supervisor (EDPS) serving as a prominent example. These bodies are empowered to receive, investigate, and adjudicate complaints related to personal data, as stipulated in Articles 51, 52, 57, and 58 of the GDPR.

For the RTBF to operate effectively in criminal justice, Vietnam should assign institutional responsibility through a multi-layered mechanism. At the first level, RTBF requests should be submitted to the data controller or the entity that makes the information publicly accessible, such as a media organisation, digital platform, archive manager, search engine operator, or competent agency holding the relevant data. This entity should be responsible for receiving the request, verifying the requester's legal interest, assessing the nature of the data, and deciding whether correction, updating, anonymisation, de-identification, de-indexing, restricted access, or deletion is appropriate.

At the second level, the existing specialised personal data protection authority should function as the administrative supervisory body. Its role should include issuing technical guidance, receiving complaints, supervising compliance, requesting remedial measures, coordinating with relevant agencies, and handling violations within its statutory competence. This role is consistent with the current legal framework, under which the 2025 Personal Data Protection Law and Decree No. 356/2025/ND-CP already recognise a specialised data protection authority and assign state-management responsibilities in the field of personal data protection.

At the third level, court-based review should be available for complex RTBF

disputes in criminal justice. This is necessary where a request involves criminal records, court records, press archives, freedom of expression, public access to information, victim protection, copyright, public safety, or the lawful interests of third parties. In such cases, the final balancing of competing rights and interests should not rest solely with an administrative authority. Judicial review would provide legal certainty, protect against arbitrary deletion or excessive disclosure, and ensure that the RTBF develops consistently with criminal justice transparency and human rights protection.

### **The fifth, harmonise the RTBF with copyright, press freedom, and criminal justice transparency**

The RTBF in criminal justice should be harmonised with copyright law, press law, and rules on the retention of judicial and procedural records. In Vietnam, many RTBF-related disputes may arise not only from official criminal records, but also from online newspaper archives, images, search results, and social media content concerning criminal cases. Future implementing guidance should clarify when personal information contained in journalistic works may be corrected, updated, anonymised, de-indexed, restricted, or deleted without undermining the integrity of the work, the lawful rights of authors and press agencies, or the public interest in criminal justice information. This guidance should be developed through coordination among the specialised personal data protection authority, the Ministry of Justice, the Ministry of Culture, Sports and Tourism, the Ministry of Science and Technology, competent criminal justice authorities, and courts. It should distinguish between internal retention of official judicial records and public-facing dissemination of identifying information. Such an approach would allow Vietnam to protect privacy, dignity, and reintegration while preserving press freedom, copyright, judicial transparency, and legitimate public access to criminal justice information.

## **6. Conclusion**

Personal data has become a lasting digital trace closely linked to individual identity. In criminal justice, the RTBF is especially important because it supports rehabilitation, protects dignity, and helps individuals escape the long-term stigma of past criminal proceedings, particularly after criminal record expungement. It also reflects a more humane approach to justice, in which punishment is not allowed to become permanent social exclusion through digital memory. However, in Vietnam, the implementation of the RTBF still faces significant obstacles due to the absence of a unified legal framework and conflicts among personal data protection law, press law,

intellectual property law, and rules on judicial records. Therefore, the realization of the RTBF requires a balanced legislative strategy with clear criteria on scope, procedures, oversight, remedies, and limitations, so that privacy and reintegration can be protected without undermining freedom of expression, access to information, intellectual property rights, and legitimate criminal justice transparency.

### **Declaration**

The author declares that Grammarly was used only for language editing, including grammar, spelling, clarity, and readability. It did not replace the author's scholarly judgment, analysis, or conclusions. The author takes full responsibility for the manuscript's accuracy, integrity, and originality. This manuscript is a substantially revised English-language development of the author's previously published Vietnamese article, which is cited and acknowledged. It includes new analysis and is not a direct translation.

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