[FR] Google ordered to de-reference links to defamatory articles

IRIS 2014-9:1/16

Amélie Blocman
Légipresse

On the basis of the decision delivered by the CJEU on 13 May 2014 (see IRIS 2014-6/3), the Paris courts, in an order delivered on 16 September under the urgent procedure, ordered the company Google France to delete links to articles that had been judged as being defamatory.

The applicant parties claimed that they had been victims of defamatory statements made on-line, for which the perpetrator had been found guilty in March 2014 by the criminal court. Having discovered that entering their surnames in the Google search engine produced a list of links containing the statements that had been the subject of the legal proceedings, they sent Google formal notice, but to no avail. They therefore had the company summoned under the urgent procedure so that the court would order it to delete the referenced links.

The judge began by referring to the document instigating the proceedings. Google argued that the summons was null on the basis of Article 53 of the 1881 Act, under which proceedings are null if the summons fails to state and qualify the incriminating act, indicate the text of the applicable legislation, contain the address for service in the town in which the court referred to sits, or if both the party summoned and the public prosecutor are not notified. The judge found that the applicant parties were not claiming that the fact that Google had made data of a personal nature available to its users, which had been judged to be defamatory, incurred liability in respect of defamation. Thus their application for Google to be ordered to delete the reference links attached to their names in its search engine, on the grounds that the links were to a site and a Facebook page containing statements judged to be defamatory, did not constitute defamation proceedings. The provisions of the Act of 29 July 1881 were, therefore, not applicable.

In its defence, Google also argued a lack of specific elements regarding the actual referencing of the links that the complainants wanted to be deleted. The court nevertheless found that the summons met the requirements of Article 56 of the Code of Civil Proceedings and made it possible to determine the object of the application (the de-referencing of links attached to the names of the applicants in the search engine), the arguments on which the application was based (a judgment having qualified the statements made in the linked documents as being

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defamatory and a formal notice having had no effect), and the legal means (the Act of 6 August 2004 transposing Directive 95/46 EC into national law, and the CJEU judgment delivered on 13 May 2014). The court also rejected Google France's defence that its activity was merely the supply of marketing services for purely advertising purposes and that it was not involved in any editorial or operational activity in respect of the Internet sites or of the search engine, as it is the company Google Inc. that is responsible for processing the data. It did, however, recall that the CJEU, in its judgment delivered on 13 May 2014, had considered that "the activities of the operator of the search engine and those of its establishment situated in the Member State concerned are inextricably linked".

Lastly, the court noted that the application was justified. It was indeed established that the statements the applicants wished to see withdrawn had been definitively judged to be defamatory by the criminal court, that they were reproduced in the Google search engine as being associated with the names of the applicants, with reference being made to a number of links. The application was lawfully formed in accordance with Article 809 of the Code of Civil Proceedings, which empowers a judge sitting under the urgent procedure to put a stop to a disturbance that was manifestly unlawful. The judge, therefore, ordered the company Google France, on pain of payment of 1000 euros per day of delay, to delete the disputed referenced links, without allowing the company's request to limit the injunction to the links provided by Google.fr.

TGI de Paris (ord. réf.), 16 septembre 2014 - MM. X. c. Google France

Regional court of Paris (urgent procedure), 16 September 2014 – Messrs X v. Google France

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