# [NL] Court applies Google Spain: no right to be forgotten for convicted criminal

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On 18 September 2014, the Amsterdam Court handed down the first national application of the EU Court of Justice's Google Spain judgment (see IRIS 2014-6:1/3). The case was initiated by a convicted criminal after Google had not fully granted his online removal requests. The court rejected the claim, but it should be noted that the case strongly depends on its specific circumstances. Although the case concerns a judgment in summary proceedings, it is interesting to assess the court's considerations.

The facts are as follows: in 2012, the plaintiff had been convicted for attempted incitement to assassination. He had been released from custody pending the appeal of this conviction. Via Google, internet users can find links to information on the conviction and the plaintiff had filed an online request with the search engine to remove specified links, a request that Google had only partly complied with. Therefore, the plaintiff brought a suit against Google.

The Dutch court assessed the case on the basis of national data protection law (Wet bescherming persoonsgegevens, Wbp) and the CJEU's Google Spain decision. According to the court, the CJEU's decision does not aim to protect people against negative publicity on the internet, but only against being followed at length by information that is "irrelevant, excessive or unnecessarily defamatory". These criteria seem to differ slightly from those of the CJEU ("inadequate, irrelevant or no longer relevant, or excessive"). Also, contrary to the CJEU, the Dutch court explicitly acknowledged that removal requests, as in the present case, involve not only the plaintiff's fundamental right to privacy (Article 8 of the European Convention on Human Rights), but also the search engine's right to freedom of information (Article 10 ECHR). In addition, the interests of internet users and information providers on the internet should be taken into account.

In applying the criteria, the court noted that committing a serious crime inevitably results in a lot of (negative) publicity, that, together with the criminal conviction itself will remain as relevant information about a person. And only in exceptional circumstances will such information be considered "excessive" or "unnecessarily defamatory". The plaintiff had neither sufficiently substantiated that the search results in question were irrelevant, excessive or unnecessarily defamatory, nor had he shown compelling, legitimate grounds relating to his situation that would

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have required Google to remove the links. Consequently, the court rejected the removal claim.

***Rechtbank Amsterdam, 18 september 2014, ECLI:NL:RBAMS:2014:6118***

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2014:6118

*Amsterdam Court (summary proceedings), 18 September 2014, ECLI:NL: RBAMS: 2014: 6118*

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