[NL] Court rejects application for delisting from search engine results

IRIS 2015-5:1/25

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On 31 March 2015, the Amsterdam Court of Appeal ruled in a case where the plaintiff, a convicted criminal, demanded to have certain search results delisted from Google Search based on search queries limited to his name. The Court of first instance rejected plaintiff's claim to be delisted from Google Search (see IRIS 2014-10/25).

The plaintiff was convicted for the attempted incitement of a contract killing. The conviction was primarily based on audiovisual evidence, which revealed that the plaintiff had discussed a murder with a contract killer, gathered by a Dutch crime reporter by means of hidden film equipment. A Dutch commercial television station aired the audiovisual evidence in advance of the plaintiff's trial. The plaintiff appealed against the conviction and the appeal is still pending.

The plaintiff demanded before the Court of Appeal that Google delist search results that lead to websites covering his conviction and the audiovisual evidence of the commercial broadcaster. Furthermore, the plaintiff claimed that Google deliberately infringed his rights by means of the auto-complete function of Google Search, which proposed certain search queries, disclosing search results leading to websites covering his actions and the reporting of the airing of his conversation with the contract killer.

The Court stated that every data-subject has the right to have their personal data rectified, deleted or suppressed where the processing of their personal data is irreconcilable with the European Data Protection Directive. The Court reasoned that Articles 7 and 8 of the European Charter of Fundamental Rights grant a data-subject the right to opt-out from a search engine which discloses the related information to a public at large. However, following from the Google Spain ruling (see IRIS 2014-6/3), an interference with data-subjects' rights, as in this case, is justified where the data-subject plays an important role in society and/or the public at large has a legitimate interest in receiving the information.

By balancing the rights of the plaintiff and the public's right to receive and impart information, the Court considered that the news reporting on the plaintiff's conviction was a result of his own actions. Furthermore, the Court accepted Google's claim that suggestions by Google Search's autocomplete function are

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derived from popular search queries, demonstrating the public's interest in receiving the imparted information. Therefore, Google could not be deemed to have deliberately infringed the rights of the plaintiff. The Court also held that the public at large has a strong interest in receiving information regarding serious crimes, such as the one perpetrated by the plaintiff.

Notably, the Court also took into consideration that certain websites containing information about the plaintiff's conviction merely disclosed his alias and not his full name. The Court was of the opinion that, due to the fact that the initials of the plaintiff do not necessarily correspond with his full name, it is not evidently clear for third parties that the plaintiff's initials refer to him and his persona. In the case where third parties do link the initials of the plaintiff to his full name the Court deemed that this was the result of his own actions and his public role in society.

Therefore, the Court upheld the decision of the Court of first instance and ruled that the delisting of search results based on search queries limited to the plaintiff's name, supplemented by proposed search queries via Google Search's auto-complete function, which disclose search results leading to websites covering his conviction and the aired audiovisual evidence should be rejected.

Gerechtshof Amsterdam, 31 maart 2015, [eiser] tegen Google Netherlands B.V. en Google Inc., ECLI:NL:GHAMS:2015:1123

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHAMS:2015:1123

Amsterdam Court of Appeals, 31 March 2015, [plaintiff] v Google Netherlands B.V. and Google Inc., ECLI:NL:GHAMS:2015:1123

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