[NL] Court grants a “right to be de-listed” against an online news archive

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On 11 March 2015, the District Court of Amsterdam granted a “right to be de-listed” claim against the owner of online archives. The plaintiff claimed that the defendant should be ordered to ensure that news articles in its online news archives would no longer be listed in Google search results displayed following searches made on the basis of the plaintiff’s name.

The case involved a businessman against Erdee Media, a Dutch Christian media company that publishes a reformational newspaper and two online archives containing articles from several Christian publications. In 2005, the newspaper published an article about business conflicts of the plaintiff. The article cited farmers who accused the plaintiff of playing dirty tricks with money and immovable property and of fraudulent bankruptcy. The following year the newspaper published an article stating that the farmers had dropped their charges. Both articles were contained in Erdee Media’s online archives.

The plaintiff alleged that he had still suffered damage from the 2005 article due to its easy findability via search engines and that he had the right to demand the articles would be untraceable for search engines, in particular for Google. Erdee Media did not contest the allegation, but asserted that the plaintiff should turn to the operator of the search engine. It argued to this effect that the criteria from the EU Court of Justice’s “Google Spain” ruling of 13 May 2014 (see IRIS 2014-6/3) only applied to operators of search engines. Furthermore, the media company argued that journalists can rely on Article 9 of the Data Protection Directive. This article provides for an exception from the data protection rules for the processing of personal data carried out solely for journalistic purposes, in so far as necessary to reconcile the right to privacy with the rules governing freedom of expression.

The Court upheld the plaintiff’s claim. First of all, it considered that it would be relatively easy for the owner of the archives to submit a request to Google not to list the articles at issue in search results displayed following searches made on the basis of the plaintiff’s name. Next, the Court determined that an order to Erdee Media to make such a request could be reconciled with the right to freedom of expression. This determination was based on the following facts. The plaintiff to a significant degree suffered adverse consequences of the 2005 article. In addition, because of the manner in which the search results are displayed, a search query would show the headline of the article - which had a clear negative

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connotation - without showing the headline of the later article next to it - which would make clear that the charges were dropped. Lastly, the disputed article related to the plaintiff's distant past. The Court concluded that Erdee Media could be ordered to request Google not to list the articles in its search results. In effect, the plaintiff successfully invoked his "right to be de-listed" against the owner of the news archives, instead of against Google.

Rechtbank Amsterdam, 11 maart 2015, C/13/563401 / HA ZA 14-413, ECLI:NL:RBAMS:2015:1958

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2015:1958

District Court of Amsterdam, 11 March 2015, C/13/563401 / HA ZA 14-413, ECLI:NL:RBAMS:2015:1958

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