[NL] Court applies Google Spain again: no right to be forgotten for convicted criminals

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On 1 May 2015, the North Netherlands District Court ruled in a case regarding the request to have certain search results pertaining to the plaintiff's criminal history delisted from Google Search based on search queries limited to his name. This is another judgment in a series of Dutch cases concerning the application of the CJEU's Google Spain judgment (see for a recent example IRIS 2015-5/25).

The plaintiff was convicted for killing his wife, the mother of his children, in 2007. He was sentenced to 12 years in prison and treatment under a hospital order (terbeschikkingstelling - TBS). Among the defendants are three associations that have the aim of representing the interests and position of surviving relatives of victims of violent crimes. The associations have jointly founded a "Federation of Surviving Relatives of Violent Crimes". The main defendant is the victim's father, who has worked closely with the Federation.

In December 2014, the criminal had already been released from prison and the District Court of Rotterdam decided to end the treatment under a hospital order on certain conditions. However, Google search queries of his name still gave search results that pertained to the murder and the subsequent criminal sanctions. The plaintiff filed a request with Google to delist these results in searches for his name, which Google honoured.

The plaintiff's request was published online. The Federation posted the application on its website, along with a letter from the victim's father and the criminal sentence from 2007, rendering the earlier Google Spain request ineffective. The plaintiff thus demanded that the Federation remove the publication from its website and that it refrain from publishing anything that contains personal data relating to the plaintiff in the future. He claimed that the publication hinders his return to society and his search for new employment. The defendants maintained that freedom of speech also covers the right for society to stay informed about violent crimes and the person who committed them and that surviving relatives have the right to remember their victim family members.

The District Court assessed the case on the basis of national data protection law (Wet bescherming persoonsgegevens) and the CJEU's Google Spain decision. A balance had to be struck between the freedom of speech of the defendants on the

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one hand and the privacy and data protection rights of the plaintiff on the other.

In applying the criteria, the court noted that committing a serious crime inevitably results in a lot of (negative) publicity for the convicted criminal and that, together with the criminal conviction itself, will remain relevant information about that person. Relevant circumstances in this case were the following: the crime was committed less than ten years ago, the conditions regarding the treatment under a hospital order still apply and the plaintiff has not shown any remorse or recognition of the fact that he is indebted to society and the surviving relatives specifically. Further, the court considers that freedom of speech may only be restricted in rare circumstances and the public has a right to information regarding violent crimes. The rights of the relatives in this case outweigh the right to protection of the plaintiff's privacy. Consequently, the court rejected the removal claim.

Rechtbank Noord-Nederland, 1 mei 2015, [A] tegen de Vereniging voor Veiligheid, Respect en Solidariteit (VVRS), Vereniging Ouders van een Vermoord Kind, de Stichting 'Aandacht Doet Spreken' e.a., ECLI:NL:RBNNE:2015:2122

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBNNE:2015:2122

North Netherlands District Court, 1 May 2015, [A] v. Vereniging voor Veiligheid, Respect en Solidariteit (VVRS) (Association for Safety, Respect and Solidarity), Vereniging Ouders van een Vermoord Kind (Association for Parents of murdered children) of the Stichting 'Aandacht Doet Spreken' (Foundation for victim support, loosely translated as 'Attention gives a voice'), ECLI:NL:RBNNE:2015:2122

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