[NL] Dutch Supreme Court applies Google Spain and overturns lower court judgments

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Robert van Schaik
Institute for Information Law (IViR), University of Amsterdam

On 24 February 2017, the Dutch Supreme Court handed down its first application of the EU Court of Justice's Google Spain judgment (see IRIS 2014-6:1/3). The Supreme Court overturned lower judgments, holding that rights based on Articles 7 (private life) and 8 (personal data) of the Charter of Fundamental Rights of the European Union in principle outweigh not only the economic rights of search engines, but also the "justified interests" of internet users to access search results.

The judgment follows earlier proceedings in lower courts (see IRIS 2014-10/25 and IRIS 2015-5/25), and concerns the following facts: the plaintiff in question is currently appealing against a conviction for attempted incitement to assassination. When the full name of the plaintiff is entered as a Google search query, the search engine displays many results, some of which link to online shops selling a book; this book is a work of "faction" (fiction mixed with facts) in which a murder is in fact committed and the name of the main character is identical to the plaintiff's name. Furthermore, internet users can also be linked to a newspaper article covering the same book. The plaintiff had requested that Google remove the links, a request with which Google had not complied. Subsequently, the plaintiff commenced proceedings.

At first instance, the Amsterdam District Court applied Google Spain and ruled that the right of the general public to access information about serious criminal acts, and therefore the prosecution and conviction of the plaintiff, outweighed the rights of the plaintiff under Article 7 and 8 of the EU Charter (see IRIS 2014-10:1/25). On appeal, the plaintiff argued to no avail that Google had deliberately infringed his rights through Google Search's autocomplete function. The Amsterdam Court of Appeal accepted Google's claim that suggestions by Google Search's autocomplete function are derived from popular search queries, demonstrating the public's interest in receiving the imparted information (see IRIS 2015-5:1/25).

Finally, the plaintiff appealed to the Supreme Court. The Court commenced its judgment by addressing a conditional appeal raised by Google. After citing paragraphs 80, 81, 88 and 97 of the Court of Justice of the European Union (CJEU) judgment, the Court concluded that in principle, rights under Articles 7 and 8 of

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the EU Charter prevail over the economic rights of search engines and the justified interests of internet users to access search results. According to the Court, an exception to this general rule only exists in specific cases where special reasons justify an infringement of the right to privacy.

Thereafter, the Court discussed three grounds raised by the plaintiff: first of all, it ruled that the Amsterdam Court of Appeal had failed to discuss the interest of the public to receive information about the plaintiff's conviction when searching for the plaintiff's full name; secondly, the Court of Appeal was reprimanded for failing to discuss whether or not the plaintiff played a role in public life, and if so, which role; and thirdly, the lower judgment was rebuked for failing to estimate the nature and extent of the interest of the plaintiff, including the fact that the criminal conviction was not definitive, and for failing to weigh the plaintiff's interests against the other interests in detail. In conclusion, the lower judgments were overturned and referred to a different Court of Appeal for further proceedings.

Hoge Raad, 24.02.2017, ECLI:NL:HR:2017:1116

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2017:316

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