[NL] Court partially grants request against Google to remove search results concerning an individual with a criminal conviction

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On 24 January 2017, Overijssel District Court partially granted an applicant's request to order Google Inc. to remove four hyperlinks from its search engine results when the applicant's name was entered in Google Search. The search results concerned the applicant, who was convicted of child abuse and given a prison sentence of 12 months and a probationary period of 6 months.

The applicant's request concerned four hyperlinks which were shown when the applicant's name was entered in Google Search: one of the hyperlinks led to a Facebook page containing the applicant's personal information; two other hyperlinks contained videos and photos of the applicant and his former company; and the last hyperlink contained the applicant's name and a photo of him.

The applicant primarily based his request on the grounds of unlawful processing of personal data on criminal offences and on the grounds that none of the exceptions to the prohibition to process personal data on criminal offences apply (Articles 16, 22 and 23 of the Dutch Data Protection Act). Google argued that the assessment of the application should only concern Google.nl and not the international versions of Google. The Court rejected this defence and stated that users in the Netherlands could also access international versions of Google by changing their preferences. The Court refused to limit the scope of the case to Google.nl.

Google also argued that only the search results themselves should be considered, and not the source pages to which they linked. Google's secondary argument was that the mere act of linking to a source page which contains personal data on criminal offences does not entail a processing of that personal data on criminal offences by Google. The Court did not accept Google's argument, and stated that the Facebook page to which Google linked contained information on the applicant, which gave rise to a presumption more serious than a reasonable suspicion of committing a criminal offence. Furthermore, the Court stated that even if only the search results were concerned, the search result which led to the Facebook page contained personal data on criminal offences.

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The Court stated that the processing of personal data on criminal offences is, in principle, not allowed, unless an exception applies. The Court stated that none of the exceptions of Article 22 of the Dutch Data Protection Act applies. The Court therefore ordered Google to remove the search result which led to the Facebook page.

As far as the remaining three URLs are concerned, the applicant claimed that the search results contained photos of him, and that these photos should be considered as personal data on race. The Courts accepted this and stated that Google did not claim to process personal data on race on one of the exceptions of Article 18 of the Data Protection Act.

Google argued that the photos were made public by the applicant himself and that Google could therefore process the photos based on Article 23(1) sub. d of the Dutch Data Protection Act. The Court accepted Google's defence and stated that the applicant clearly intended the photos to be made public, as they were used in the promotion of his former company. The Court refused to grant the order to remove the remaining three search results.

Rechtbank Overijssel, 24 januari 2017, ECLI:NL:RBOVE:2017:278

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBOVE:2017:278

District Court of Overijssel, 24 January 2017, ECLI:NL:RBOVE:2017:278

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