

European Court of Human Rights judgments on the right to freedom of expression

Bulletin LVIII: THE 'RIGHT TO BE FORGOTTEN'

24 May 2015

On 13 May 2014, the Court of Justice of the European Union ruled that search engines must consider requests from individuals to remove links to websites that result from a search on their name when the results "appear to be inadequate, irrelevant or no longer relevant or excessive ... having regard to all the circumstances of the case".

The case arose from the situation of a Spanish businessman who was upset that among the top hits for a search on his name was a reference to his bankruptcy, which had occurred more than ten years ago. He won, and the case quickly became known as the "Google Spain" case and the issue came to be referred to as the "right to be forgotten".

The standard set by the European Court of Justice is vague and over the past year, courts in several countries have decided a small number of cases to clarify the circumstances under which an individual can require that certain results are 'de-listed' from a search on their name. This bulletin summarises a small number of these cases as well as a recommendation from the EU "Data Protection Working Party" on how the case should be implemented:

- **Arthur van M. v. Google Netherlands and Google Inc.**, Amsterdam Court of Appeals, 31 March 2015: convicted criminal does not have "right to be forgotten";
- **Marie-France M. v. Google France and Google Inc.**, TGI de Paris (urgent procedure), 24 November and 19 December 2014: reports of eight year old fraud conviction should be removed from search results for individual's name;
- **Franck J. v. Google France and Google Inc.**, TGI de Toulouse (urgent procedure), 21 January 2015: reports of dismissal for harassment in which legal proceedings were still ongoing do not need to be removed from search results;
- **Ewald van Hamersveld v. Google Inc.**, Amsterdam Court, 13 February 2015: news report of recent dispute between accountant and his builders does not need to be removed from search results.

These cases concerned the following issues:

- **Arthur van M. v. Google Netherlands and Google Inc.**, Amsterdam Court of Appeals, 31 March 2015: convicted criminal does not have "right to be forgotten"

This case concerned a convicted criminal, known only as “*Arthur van M.*” who had lodged a request with Google that links to his criminal conviction be deleted from searches on Google for his name. In 2012, the plaintiff had been convicted for attempted incitement to assassination, but he appealed and pending this appeal was released from custody. The record of his conviction was still online and was among the top ‘hits’ in Google for an internet search on the plaintiff’s name. He requested that these links be removed from the Google index, but Google refused. The plaintiff then sued Google. On 18 September 2014, the Amsterdam Court denied his request for removal. Arthur van M. appealed.

On 31 March 2015, the Amsterdam Court of Appeal confirmed that every data-subject has the right to have their personal data rectified, deleted or suppressed when the processing of their data is unlawful under the European Data Protection Directive. However, the Court emphasized that an important consideration in deciding requests was whether the person concerned is a public figure or whether the wider public has a legitimate interest in receiving the information. Looking at the facts of this case, the Court considered that the news reporting on the plaintiff’s conviction was a result of his own actions. The Court also considered that the public has a strong interest in receiving information regarding serious crimes, such as the one perpetrated by the plaintiff. Furthermore, the Court also took into consideration that several websites did not have the plaintiff’s full name but only his initials. For these reasons, the Court upheld the decision of the Amsterdam Court not to require Google to remove news reports of his conviction from results for searches on his name.

- ***Marie-France M. v. Google France and Google Inc.***, TGI de Paris (urgent procedure), 24 November and 19 December 2014: reports of eight year old fraud conviction should be removed from search results for individual's name

This concerned a request to Google by an individual who had been convicted of fraud in 2006 that websites mentioning the fraud conviction be removed from search results for her name. The matter was considered by the Paris Regional Court (the *Tribunal de Grande Instance*) under its 'urgent procedure'.

The Court held that it was required to balance the right to protection of personal information on the one hand with the right to freedom of information on the other hand. The 2006 report of fraud was legitimate, and the plaintiff had not objected to publication at that time. However, the plaintiff argued that in 2014, several years after the conviction, the continued inclusion of news reports on the fraud conviction were harmful to her attempts to find a job. The Court agreed, taking into account in particular the fact that more than eight years had passed since the conviction and the sanction was no longer indicated on the plaintiff's criminal record. This meant that the plaintiff's claim outweighed the public's right to information.

- ***Franck J. v. Google France and Google Inc.***, TGI de Toulouse (urgent procedure), 21 January 2015: reports of dismissal for harassment in which legal proceedings were still ongoing do not need to be removed from search results

This concerned a request by an individual who had been dismissed from his job for reasons of harassment to have reports of this removed from search results for his name. Legal proceedings concerning the dismissal were still pending. The matter was considered by the Toulouse Regional Court (the *Tribunal de Grande Instance*) under its 'urgent procedure'.

The Toulouse Court noted that the news reports in the disputed links referenced complaints by the plaintiff's employer which had resulted in legal proceedings. The judgment in these proceedings, which had resulted in his dismissal, had been handed down in open court, was accessible to the general public and had been reported on in the media. The facts at issue were still relatively recent, dating from 2011, and it could not be claimed that the news reports were inaccurate, inadequate, irrelevant or excessive. While an appeal was still pending, this did not mean that the earlier judgment was wrong and that the harassment never happened. The Court therefore found that the right of the public to be informed about a current legal case outweighed an individual's 'right to be forgotten' and rejected the request for removal.

- ***Ewald van Hamersveld v. Google Inc.***, Amsterdam Court, 13 February 2015: news report of recent dispute between accountant and his builders does not need to be removed from search results

This concerned a request that news reports of the plaintiff's dispute with his builders which resulted in the builders changing the locks on his house and forcing the plaintiff to live in a container on his estate be removed from Google search results for his name. The plaintiff, an accountant with KPMG, had withheld a EUR 200,000 payment because he was unhappy with the quality of some of the work. Following news reports, the accountant requested that Google remove these news reports from searches for his name as well as from searches for certain other words.

The Amsterdam Court ruled that the news reports could not be removed from searches for terms other than the accountant's name, because such searches did not involve 'personal data'. As to the request for results to be removed from searches for the accountant's name, the Court considered first that services like Google have an important societal function and limitations on them required strict scrutiny. While results that were deemed to be inadequate, irrelevant and/or excessive could be removed, this needed to be balanced with the public's right to information. The Court also said that it could not rule on the content of any of the news articles that appeared in the Google search results, and that 'right to be forgotten' requests should not be used as an alternative to defamation actions against the authors of the news articles. The Court went on to hold that the events reported had happened only very recently, and that the request was therefore very different from that in the 'Google Spain' case. For these reasons, the Court held that Google could not be required to remove the results.

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