Dutch Court grants "right to be forgotten" to doctor formally reprimanded for medical negligence

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In what has been hailed as a landmark decision, and a first of its kind involving Google and the medical profession, the district court in Amsterdam has ruled that the doctor's right to privacy weighed more heavily than the public's interest in knowing about a doctor's past medical malfeasances. This case is being seen as an extension of the principles espoused in the case of Google Spain v Costeja ECJ C-131/12, May 13, 2014, otherwise known as the "right to be forgotten" case.

Background

The case concerned a doctor who had been formally reprimanded for medical negligence regarding her post operative care of a patient, which resulted in a medical disciplinary panel suspending her licence to practise. The doctor then went on to appeal this ruling and was successful in having her suspension turned into a conditional suspension. This would allow her to continue to practise during the period of sanction imposed upon her.

However, despite her appeal, when one googled her name, the first results contained links to an unofficial blacklist of physicians. The information pertaining to the doctor only contained the original suspensions and not that the doctor had been successful in her appeal that her reprimand had been changed to a conditional suspension. The doctor complained that patients could access, and in many instances did access, the blacklist which sullied her reputation and professional standing. The doctor made a formal request of Google to have the links taken down which it refused to do, citing the fact that the doctor was still on probation from the original complaint and that therefore the information contained within the google links remained relevant to the general public. The Dutch Personal Data Authority sided with Google.

The court disagreed and ordered that the offending links should be removed since the doctor had "an interest in not indicating that every time someone enters their full name in Google's search engine, (almost) immediately the mention of her name appears on the 'blacklist of doctors', and this importance adds more weight than the public's interest in finding this information in this way". The court also reasoned that whilst the information on the website was correct regarding the doctor's actions giving rise to the complaint in 2014, the context of the website and the rest of its content suggested that she was unfit to treat patients. Since this was not the findings of the disciplinary panel upon appeal, the website was misleading and so, the court found that the doctor's right to privacy weighed more heavily than the public's interest in knowing about a doctor's past medical negligence.

Google is appealing the decision.

Case comment

This is an interesting decision and clearly expands upon the Google Spain case, where it was held that data controllers (which the court held included search engines such as Google), must remove links to a person, if that individual asks them to do so, and if the information is inaccurate, inadequate, irrelevant and/or excessive. The Google Spain case has proven to be controversial, especially to

freedom of expression activists who fear that the right to be forgotten is another means of legal censorship. Certainly, there will be some who will argue that the decision in the Dutch doctor case will only empower negligent and perhaps, dangerous professionals to bury their past. This would be especially concerning in the medical field where people's lives are at risk. It has been widely reported since the decision that 15 other doctors have applied to have their association with the blacklist in question deleted, with around half of those applications being successful so far.

However, in the age of the General Data Protection Regulation (Regulation (EU) 2016/679 ("GDPR"), such developments should not be unexpected. It is clear that the law is attempting to catch up with the wealth of information contained on the internet and the privacy concerns that go along with that. We should therefore expect to see further decisions from the courts in this area as the boundaries between the individual's freedom of expression and individual's right to be forgotten are further defined. The Dutch doctor case is perhaps one step in that direction.

A little closer to home, the Dutch doctor case raises some interesting questions for regulatory agencies such as the Guernsey Financial Services Commission (GFSC). Publishing information in order to discharge an express statutory function is one thing (and a key difference from the unofficial 'blacklist' at the heart of the Dutch doctor case), but where the publishing of names, events and other details of past misconduct goes beyond what is expressly authorised, more difficult issues may arise. For example, is it really necessary to publish the home address of individuals who receive prohibition orders? Should detailed public statements remain available and 'google-able' many years after the prohibition is spent and the relevant individual is again considered fit to practise? And indeed, is this information accurate, adequate, relevant and/or proportionate?

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