[FR] Judge under the Urgent Procedure Orders Withdrawal of Extracts from a Dieudonné Video on YouTube

IRIS 2014-3:1/24

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In a judgment delivered on 12 February 2014, the judge sitting in urgent matters at the regional court in Paris ordered the removal of two passages from the video entitled 2014 sera l'année de la quenelle by humourist/polemist Dieudonné M'bala M'bala, shown on YouTube and judged as constituting a crime against humanity and incitement to racial hatred. The video has been duplicated by other users, including other video platforms, and has been viewed more than 3 million times. YouTube refused to remove the video unless the disputed content was declared illegal by the courts, and until the judgment was delivered merely posted a warning message to users: "The following content has been identified by the YouTube community as being potentially offensive or inappropriate. Viewer discretion is advised."

Dieudonné has been in the news for several months because of the numerous anti-Semitic utterances included in his performances and videos. In early January, for example, the Conseil d'Etat, deliberating under the urgent procedure, issued a preventive ban on his show entitled Le Mur, which was scheduled for performance in Orleans, Tours and Nantes, as it contained utterances considered as infringing human dignity. A number of other cases have been brought before the courts on the initiative of associations combating racism. In the case at issue, the union of Jewish students in France (Union des Etudiants Juifs de France - UEJF) and an international justice association (Action Internationale pour la Justice - AIPJ), under the urgent procedure, were calling for the removal of four disputed passages from a video being shown on YouTube, in which Dieudonné says "(…) I was born in '66, so I wasn't born then, you know, and I don't know anything about gas chambers. If you really want, I could arrange a meeting with Robert" (referring to the negationist Robert Faurisson). The judge recalled that denying the existence of crimes against humanity fell within the scope of the provisions of Article 24 bis of the Act of 29 July 1881, even if it was presented in a disguised or dubitative form, or by insinuation. Taking into account "the more general context of their originator's public statements, some of which had resulted in court judgments against him", the judge found that it was clear from the wording, which was in fact unequivocal for the audience, that he contested the reality of facts qualified as crimes against humanity within the meaning of Article 24 bis of the 1881 Act.

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The second excerpt from the disputed video, allegedly constituting incitement to racial hatred, which is covered and sanctioned by Article 24 (8) of the 1881 Act, reproduced the text of the show entitled Le Mur, including the following text: "(…) I was born in 1966 so what happened, who provoked who, who stole from who, and so on … I've got a vague idea, but really (…)". The court recalled that all that was required to constitute an offence was for the utterances, by their meaning or scope, to tend to stir up a feeling of hostility towards or rejection of a group of persons, in addition to an intentional aspect that could be reflected either by the actual words used or by the context in which they were used. The utterances at issue were found to have the effect of inciting a feeling of rejection of and hostility towards Jews. On the other hand, the court found that the term "snivelling associations" used in reference to the applicant parties did not constitute the offence, with the evidence required under the urgent procedure, of an insult justifying the removal of the utterances. Similarly, the fourth disputed passage, concerning criticism of the action of the Minister for the Interior who, according to Dieudonné, was anxious to please the "bankers" so that they would "put a crown on his head", was found not to constitute incitement to hatred or violence, because of the insufficiently explicit nature of the incitement to a feeling of hatred and rejection it might create.

Whereas Dieudonné claimed in his defence that it was a matter of humour, the court was of the opinion that the humour was merely a means of giving public expression to his convictions by "testing the limits of the freedom of expression", which were exceeded in the present case, and not the basis for a provocative comic sketch, for which a degree of excess could be admitted. The judge therefore ordered Dieudonné to remove the first two disputed passages, on pain of payment of EUR 500 per day of delay in doing so.

TGI de Paris (ord. réf.), 12 février 2014 - UEJF et AIPJ c. Dieudonné Mbala Mbala

Regional court of Paris (urgent procedure), 12 February 2014 - UEJF and AIPJ v. Dieudonné M'bala M'bala

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