[BE] Flemish Media Regulator dismisses complaint against stand-up comedy programme

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On 25 June 2014, the Chamber for impartiality and protection of minors of the Flemish Media Regulator (*Vlaamse Regulator voor de Media*) issued a decision (2014/035) following a complaint related to the programme 'Comedy Kings', in which part of the show 'Interesting Times' by stand-up comedian Alex Agnew was broadcast.

The complaint concerned alleged anti-Semitism and ridiculing of the Holocaust by the comedian, because he referred to the gassing of Jews in relation to a controversial type of fine that can be imposed on citizens, which is referred to by its acronym 'GAS'. The complainant argued that by broadcasting the programme, the broadcaster also carried responsibility for exceeding the boundaries of acceptable humour. During the hearing, the complainant also argued that this responsibility was even more significant because the broadcaster chose this specific fragment to advertise the broadcasting of the comedy show. However, in the first part of the decision, the regulator found that since there was no mention of these trailers in the original written complaint, this particular element was inadmissible.

With regard to the complaint directed against the broadcasting of part of the stand-up comedy show, the Chamber, in its elaborate assessment of potential violations of articles 38 (prohibition on incitement to hatred or violence) and 39 (non-discrimination obligation) of the Flemish Media Decree, took into account the longstanding jurisprudence of the European Court of Human Rights on the protection of expressions that "shock, offend and disturb". In that context it emphasised that satire deserves special protection. The Chamber also considered the parliamentary proceedings of the Flemish Media Decree and the jurisprudence of the Belgian Constitutional Court, which interprets 'incitement' as requiring a conscious and intentional action. Whereas the disputed fragment could be considered offensive in particular to the Jewish Community, it did not contain an active incitement to hatred or acts of violence against Jews. Nor could the incorporation of the Holocaust in a joke be considered as violating article 39 or being discriminatory against Jews.

The Chamber also took into account the particular context of a stand-up comedy show. Exaggeration, provocation, and satire are inherent in this type of humour

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and especially with regard to sensitive, societal issues; humour can contribute to public debate. The protection of this type of expression should not be unlimited, but restrictions should only be possible for very weighty reasons. In addition, viewers are aware of the characteristics of the specific genre and Mr Agnew himself emphasised the necessity of using carefully nuanced expressions. The Chamber acknowledged that the type of humour that was used in casu could be considered crude, direct and unsubtle, but that the possibility cannot be excluded that it was the stand-up comedian's intention to denounce certain societal tendencies related, for instance, to the increasing social control to which the issue of GAS-fines is connected. The last finding concerned the fact that not only Jews and the Holocaust were the subjects of satire in the programme in question, but that other sections of the population were also insulted.

In the end, the Chamber came to the conclusion that taking into account the context and all relevant considerations, it cannot be proven that Mr. Agnew had the intention of consciously and maliciously inciting hatred or violent behaviour towards Jewish people, or discriminating against them. The same conclusion was reached with regard to the broadcaster. Hence, the Chamber found no violation of articles 38 and 39 of the Flemish Media Decree and declared the complaint to be without merit.

J.M.D. t. SBS Belgium, Beslissing 2014/035, 25 juni 2014

http://www.vlaamseregulatormedia.be/media/23864/2014-035.pdf

J.M.D. v. SBS Belgium, Decision 2014/035, 25 June 2014

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