[FR] Presentation on television of satirical drawings showing a politician: Paris court of appeal upholds the right to caricature

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Amélie Blocman
Légipresse

On 2 April 2015, the Paris Court of Appeal overturned a judgment delivered last year which found that the director of the France Televisions publication and the presenter of the programme 'On n'est pas couché' had insulted the leader of the Front National party by presenting a number of satirical drawings of her on television (see IRIS 2014-6/19). The image at issue represented the "family tree of Marine le Pen", and included a photograph of her at the centre of a tree, the four main branches of which formed a swastika. The image was presented to coincide with the publication of a book on the genealogy of a number of public figures, in a supposedly humorous sequence showing the family trees of François Hollande, Nicolas Sarkozy, Christine Boutin, and Dominique Strauss-Kahn, which were represented respectively by a rose bush, a bonsai tree, a cross, and a phallus. Thus each image embodied one particular characteristic which, even if it was not truthful, evoked the politician in question. In its judgment delivered on 22 May 2014, the Paris regional court (tribunal de grande instance - TGI) had found that humour was not a sufficient argument to cancel out the seriousness of the offensiveness or derision being expressed. The connection made between the name and image of Marine Le Pen and the swastika, a Nazi emblem, was manifestly offensive and its excessive nature went beyond the permissible limits of freedom of expression, even in the given context. The appellants called for the judgment to be overturned, claiming that in fact the limits of freedom of expression had not been exceeded.

The court of appeal recalled the principle according to which "the appreciation of offensiveness lay with the court and should take the context into account in an objective manner, i.e. without reference to the personal perception experienced by the victims; the mode of expression used should also be taken into consideration". Regarding the context, the broadcast at issue is an entertainment programme and the disputed sequence was intended to elicit laughter from the studio audience. The court was therefore being called upon to appreciate whether the disputed drawing, which was supposed to express each of the politicians' ideology, had retained any degree of seriousness, as this would mean that Marine Le Pen was being described, through the political party she leads, as having a Nazi ideology. The court therefore looked into whether the way in which her image was presented was tantamount to describing her personally as a Nazi,

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which it would have considered offensive. The court observed, however, that the purpose of the register of satire and buffoonery inherent in the sequence at issue was to elicit laughter, albeit by mocking the personalities presented therein, but without necessarily expressing contempt. Because of the disputed drawing's manifestly outrageous nature and lack of seriousness, it could not be interpreted as portraying Ms Le Pen in a way that reflected her actual political positioning and guiding ideology. The judgment was therefore overturned and the defendants acquitted. As a result, Marine Le Pen's claims for reparation for the prejudice suffered were rejected.

In another decision on the same day, the court of appeal upheld the civil part of the judgment (the criminal part of the acquittal being final) which had rejected the proceedings brought by Marine le Pen on the grounds of insult as a result of the presentation in another edition of the same programme of the various posters for the candidates in the presidential election as devised by 'Charlie Hebdo' and published in that week's issue of the magazine. The programme's presenter had shown the eight satirical posters on the air, including one showing Marine Le Pen in which she was compared to "an enormous steaming turd", with the caption "Le Pen - the candidate who is like you" and said, "it's satirical - it's 'Charlie Hebdo'". The Court of Appeal upheld that the drawing at issue fell within the register of a particularly unrestrained form of humour that was typical of 'Charlie Hebdo', which had no hesitation in using scatological images, and that the humorous aspect was more acceptable and indeed accepted when it referred, as in this case, to a politician. The court also noted that the presenter had been careful to indicate that the drawings were intended to be understood as being satirical. He had therefore clearly shown the intention not to present an insulting or degrading image of the complainant, but to make the audience laugh and to elicit a reaction to the mock election posters from the programme's guest. The court thereby found that the broadcasting of the disputed drawing was within the limits of freedom of expression. The leader of the Front National party [Ms Le Pen] has appealed against both judgments.

Cour d'appel de Paris (pôle 2, ch. 7), 2 avril 2015 - M. Le Pen c/ R. Pfimlin, L. Ruquier et France Télévisions

Paris court of appeal (section 2, chamber 7), 2 April 2015 - M. Le Pen v R. Pflimlin, L. Ruquier and France Télévisions

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