[FR] Court of Cassation's view of humour, politics and freedom of expression on TV

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In two decisions delivered on 20 September 2016, the criminal chamber of the Court of Cassation deliberated on two cases between the leader of the Front National political party, Marine Le Pen, and France Télévisions, after the broadcasting of two humorous sequences during the programme 'On n'est pas couché' that she had considered to be insulting. The Court appeared not to share her appreciation of where the limits of the freedom of expression lay.

In the first case, the sequence at issue showed on-screen a number of posters parodying candidates for election as president which had been published three days earlier by the magazine 'Charlie Hebdo'. One of the posters bore the slogan "Le Pen - the candidate who is just like you" above a pile of excrement. Ms Le Pen brought a case against the president of the company France Télévisions and the presenter of the programme on the grounds of insult. The case was thrown out by the court of first instance, and Ms Le Pen lodged an appeal. The court had noted that although the poster at issue was particularly vulgar in its reference to the complainant, it did not constitute a personal attack intended to offend her dignity, but rather a jibe directed at a candidate for election as president, and also that humour ought to be broadly tolerated when - as in the present case - it was directed at a politician. The Court of Appeal had agreed that the presenter had been careful to indicate the satirical context in which the drawings presented were to be understood, thereby clearly manifesting his intention to be humorous and not to present a degrading image of the complainant. Ms Le Pen contested the decision, and appealed to the Court of Cassation. In its decision delivered on 20 September 2016, the Court found that the drawing and the phrase at issue, which offended the dignity of the complainant by associating her with a pile of excrement, even if it was in her capacity as a politician during a satirical sequence during the broadcast, went beyond the bounds of acceptability in terms of freedom of expression. The Court therefore overturned the decision of the Court of Appeal, which had disregarded Article 33 (2) of the Act of 29 July 1881 (insult directed at a private person) and Article 10 of the European Convention on Human Rights, and referred the case to a different composition of the Court of Appeal in Paris.

In the second case, another broadcast of the same programme had presented the family tree of Marine Le Pen in the form of a swastika during a humorous sequence on the genealogy of a number of politicians. Ms Le Pen had lodged a

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complaint of public insult directed at a private person and asked for a civil action to be joined. In clearing the defendants, the Court of Appeal specifically noted the register of satire and buffoonery characteristic of the sequence at issue, the aim of which was to cause laughter by mocking the characters represented in them, without delivering any vindictive, disrespectful message about them. The manifestly outrageous and frivolous nature of the drawing could not be interpreted as creating an image of Ms Le Pen that in any way reflected the reality of her political positioning or her guiding ideology. Ms Le Pen then appealed to the Court of Cassation. Unlike in the first case discussed, however, the Court rejected the appeal. It found that the drawing at issue, although it offended the complainant, presented, in a satirical fashion and in a context of political controversy, the ideology thought to be the inspiration of the leader of a political party and therefore did not exceed the bounds of acceptability in terms of freedom of expression.

Cour de cassation, (ch. crim.), 20 septembre 2016, M. Le Pen c/ L. Ruquier et a.

Court of Cassation, (criminal chamber), 20 September 2016, M. Le Pen v. L. Ruquier and others

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