[FR] Hyperlinks to a video containing death threats

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Amélie Blocman
Légipresse

The criminal chamber of the Court of Cassation has issued an important decision concerning the use of hyperlinks to criminally punishable content - in this case, a video. The case was brought after a police officer in charge of a regional département's public security lodged a claim for damages after discovering a video containing death threats against him on the Internet. Under Article 433-3(1) and (4) of the Penal Code, the penalty for making such threats is three years' imprisonment and a fine of EUR 45,000. The defendant, who had created a direct link to the disputed video on his own website, was referred to a criminal court for making death threats against a person holding a public post. The first-instance and appeal courts both found him guilty of the offence and fined him EUR 300.

The court found that, in a blog for which he was fully responsible and the nature of which he described as libertarian, the defendant had posted a hyperlink to a video containing explicit death threats against a named police officer. The video referred to events that had taken place a year and a half previously and in which the defendant himself had been involved. The court held that, by simply publishing the video without any critical comments in order to contribute to a debate involving the exchange of ideas, the defendant had not just supported its message, but had made it his own in an effort to direct it towards its intended recipient and to promote its dissemination. The court added that the video had originally been published on the dailymotion.com website (which was accessible to a huge audience) and then been posted online by the defendant via a hyperlink contained in a blog for which he accepted full responsibility and which was also widely accessible. Therefore, the author of the initial publication, and consequently the defendant, must have been aware that the threats would become known to their intended target.

The defendant lodged an appeal with the Court of Cassation, arguing in particular that the simple act of providing a hyperlink to a video containing death threats made by third parties was not the same as committing the offence. He also claimed that simply posting, in a blog, a hyperlink to a video containing death threats made by third parties that had already been published by someone else on another website, without it being part of any written content, did not constitute "publication". In his opinion, he had merely created an additional means of accessing the video, which did not amount to him making the threats himself.

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However, in a succinct judgment, the Court of Cassation ruled that the appeal court's decision had been justified and that the offence in question had indeed been committed by the defendant in all respects, both factual and intentional. The appeal was therefore dismissed.

Cour de cassation, (ch. crim.), 10 avril 2019

Court of Cassation (criminal chamber), 10 April 2019

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