[NL] Judgment on posting violent content on Facebook

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On 2 September 2019, the Court of North Holland found an anti-racism activist guilty of publishing threatening posts on Facebook in the form of altered images targeting a well-known actor during Sinterklaas (Saint Nicholas), an annual Dutch holiday.

The case arose during October 2018, when the activist posted a threat of aggravated assault by means of “sharing” two posts on his Facebook profile. The first photo depicted the accused wearing a hat reading “Sinterklaas Sniper”. The second post was a photo taken of J.F. Kennedy moments before his assassination, photo-shopped to replace the former U.S. president with Sinterklaas. The post was captioned “for all the fragile colonisers, here is a version without children”. The caption was a reference to a post the accused had made on Twitter in October 2017 in which he had suggested “putting a price on the head” of Sinterklaas, and doubling that price if the proposed act were to take place during the national parade in order that “all the children” could bear witness.

The defence cited the right to freedom of expression, arguing that it was the accused’s right to express his opinion on an issue of political controversy. In addition, the defence claimed that the social media posts had had a satirical purpose, which should not have been taken seriously and whose humorous nature could not have posed a reasonable threat to safety. There was no real intention to incite violence against the person performing the role of Sinterklaas. Moreover, the posts had only been intended to be shared among the accused’s private network and had not been meant for wider circulation. The defence argued that right-wing media had been responsible for manipulating the accused’s social media activity in order to enlarge the intended audience and to depict him as a would-be murderer.

The court rejected the argument concerning freedom of expression and found that the posts had in fact constituted, under Article 285 of the Dutch Criminal Code, a considerable threat to the life and safety of the person playing the role of Sinterklaas. The court reasoned that (a) the person playing Sinterklaas had been made aware of the threat (viewable either as direct or indirect), (b) the threat had been formulated in such a way as to invoke justifiable fear in a reasonably-minded person, and (c) there had been the intention of invoking such fear, given that the act of posting it on a popular social media platform expanded its visibility.

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Another important consideration in the reasoning of the court was the fact that the posts had had a significant “polarising effect” and could therefore not be construed as promoting a space for democratic discussion. This impact on democratic society was relied upon as a key reason for rejecting the defence’s invocation of the right to freedom of expression. The court ruled the accused guilty of transgressive behaviour – which in this case meant actions of an aggressive or intimidating nature, regardless of intent – and sentenced him to a one-week suspended prison sentence and a fine of EUR 500.

Rechtbank Noord-Holland, 24 oktober 2019, ECLI:NL:RBNHO:2019:7996

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBNHO:2019:7996

Regional Court of North-Holland, 24 October 2019, ECLI:NL:RBNHO:2019:7996

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