Definition of “insult” with regard to the violation of human dignity and parody

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In a decision delivered on 25 October 2019, the highest formation of the Court of Cassation put an end to a dispute that had been going on for nearly eight years, defining the possible limits of insult (*injure*) with regard to the violation of human dignity on the one hand and the use of parody on the other.

On Saturday, 7 January 2012, during the programme *On n’est pas couché* broadcast by France 2, the presenter, Laurent Ruquier, had displayed several posters parodying candidates in the French presidential election that had been published a few days earlier in the satirical magazine *Charlie Hebdo*. The poster referring to Marine Le Pen had portrayed a steaming piece of excrement, with the caption “Le Pen, la candidate qui vous ressemble” (Le Pen – the candidate who looks like you).

Proceedings had been brought against the presenter on the grounds of public insult (injure publique), but the case had been dismissed by both the first-instance court and the court of appeal. Marine Le Pen had then appealed to the Court of Cassation, which had found that “the drawing and the phrase at issue in the proceedings violated her dignity … by associating her with excrement, even if it was in her capacity as a politician during a satirical sequence of the broadcast [in question], going beyond the acceptable limits of freedom of expression”. Since this ruling had overturned the appeal judgment, the case had been brought before the court of appeal for Paris in 2017, sitting in a different composition, which had again upheld the civil provisions of the appeal judgment. Marine Le Pen had again appealed to the Court of Cassation, and it was the plenary assembly of the Court of Cassation that was called on this time to pronounce on the case.

The presidential candidate claimed firstly that, apart from the insulting nature of the poster at issue, her dignity had also been violated. In its decision delivered on 24 October, the Court stated that the dignity of a human being was not specifically listed in Article 10 (2) of the Human Rights Convention as constituting a reason for restricting freedom of expression. Thus, the protection of a person’s dignity could not be held up specifically as constituting the basis of such a restriction. In determining whether the disputed showing of the poster could be deemed to constitute a criminal offence, it therefore sufficed to decide whether it constituted an abusive exercise of the right to freedom of expression.

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The Court then went on to analyse, with regard to the requirement of proportionality, whether, given the specific circumstances of the case, the disputed publication went beyond the acceptable limits of freedom of speech. It stated that if these limits were not exceeded, then even if all the constitutive elements of insult were present, there could be no civil reparation for the acts cited in the proceedings. The plenary assembly of the Court of Cassation upheld the appeal judgment, which had found that in the case at issue the poster had been published in a magazine that claimed the right to express humour and satire and had contained an assessment of Marine Le Pen's political positioning on the occasion of the presidential election. The poster had been displayed by Laurent Ruquier during the controversial broadcast at the same time as other posters parodying each of the candidates in the presidential election, in a sequence similar in style to a press review. It had been expressly indicated that the posters had been taken from a satirical magazine and were themselves controversial. The Court of Cassation found that the court of appeal had thus been able to find that the disputed showing of the poster had not overstepped the acceptable limits of freedom of expression.

Cour de cassation, Ass. Plén. 25 octobre 2019, 17-86.605, M. Le Pen c/ L. Ruquier

https://www.courdecassation.fr/jurisprudence_2/assemblee_pleniere_22/649_25_43808.html

Plenary, 25 October 2019, 17-86.605, M. Le Pen v. L. Ruquier

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