[NL] Judgment on mayor's Twitter post linking the political party *Forum voor Democratie* with fascism

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Saba K. Sluiter
Institute for Information Law (IViR), University of Amsterdam

On 15 January 2021, the District Court of Rotterdam (*Rechtbank Rotterdam*) delivered an important judgment on the protection of political debate on social media platforms, especially concerning harsh criticism of political parties during election periods (see also IRIS 2020-5/16). Notably, the court ruled that a Twitter post by the mayor of a small town linking the well-known political party *Forum for Democratie* to fascism and Nazism was not unlawful.

The case arose right after the Dutch regional elections in 2019 (*Provinciale verkiezingen*), when the mayor posted a message in response to the speech given by Thierry Baudet, the national leader of the political party *Forum voor Democatie* . In the Twitter post, the mayor draws a parallel between the speech of Thierry Baudet and fascism. The message referred to Baudet's speech alongside pictures of books about fascism and Nazism. The mayor removed the message within two days of it being posted. The plaintiff, who had voted for Thierry Baudet, was offended by the message and asserted that his reputation had been damaged because the Tweet falsely established a connection between *Forum voor Democratie* and fascism. He claimed damages of EUR 1 750.

The court noted that there was a conflict between two rights: the mayor's right to freedom of expression and the right to respect for privacy, specifically the reputation of the plaintiff. The court then proceeded to balance these rights by applying ECHR and corresponding case law. First, the court held that the expression contained a value judgment, which made it less relevant whether the statement was supported by facts, as it could not be regarded as either true or false. The court added that it was not up to the court to decide whether the ideas of a politician or a political party fit within a (reprehensible) political movement or not. Secondly, the case at hand dealt with political speech as part of a public debate. There is little scope for limitations of freedom of speech as part of a public debate. Based on these two factors, the court held that freedom of speech prevailed, and that the Twitter post had not been unlawful. Finally, the court noted that a statement about a political party is, in principle, not unlawful towards the voters of that party, not even if they are deeply affected by the message. This provided an additional reason as to why the claim had to be dismissed.

Rechtbank Rotterdam, ECLI:NL:RBROT:2021:197, 15 januari 2021

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