



NEWS REPORT

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| Date: | 14 January 2014 |
| Expert: | Sophie Latraverse |
| Title: | Ban against the show of stand-up comedian Dieudonné |
| Country: | France |
| <u>Context</u> | |
| Issue at stake: | Limitation of hate and racist speech and freedom of expression |
| Ground of discrimination: | Racial/Ethnic origin |
| Source: | High Administrative Court Decision |
| Field: | Other (public speech) |
| Legislative provisions: | Article 2212-2 of the Cities and Towns Code |

Context

Dieudonné M'Bala M'Bala is a popular stand-up comedian of French and African origin, who has in recent years used his shows to affirm anti-Israeli political views. His statements have progressively evolved to an anti-Semitic rhetoric based on the alleged involvement of Jews in the trade of slaves. He has been condemned 9 times for hate speech, has not paid the required fines and is suspected to have organised his insolvency and transferred all his assets to his wife and a corporation.

Moreover, he has invented an inverted Nazi salute in which one holds one's arm along one's body with an open hand, called the "Quenelle", for which his wife has registered a trademark. This gesture, which cannot be detected in public if the observer is not familiar with the signification of this bodily expression, is at the origin of a campaign to take pictures in public places associated with the Shoa, which are exposed on a wall outside his theatre.

In his recent show called "Le Mur" ("the Wall"), parts of which have been secretly taped and showed on public television, he makes a number of jokes which are anti-Semitic, target specific persons of Jewish origin and mock the Shoa. This show has called for massive media attention and, until recently, was programmed in the small theatre which is directly operated by Dieudonné's production corporation. A National tour, in locations holding up to 5 000 persons, was programmed to begin on 9 January, 2014.

On 6 January, 2014, the Minister of Interior issued a Ministerial Instruction addressed to all Prefects of France asking them to invite Mayors of the cities concerned to adopt orders to ban the show in application of their police prerogatives provided by Article 2212-2 of the Cities and Towns Code. This Instruction also invites prefects to adopt such banning orders in the event a Mayor would not, or concurrently with them.

On 7 January, 2014, the prefect of Loire-Atlantique adopted an order banning the show which was programmed to be held on 9 January in Saint-Herblain.

This order was attacked by Dieudonné and his producer before the Administrative Court of Nantes, on the ground of violation of the Freedom of speech protected by Article 10 of the ECHR and the French Constitution. The court quashed the order as being a disproportionate measure as it was not sufficiently established that hate speech was the foundation of the show and as the prefect did not prove that he was denied any other effective means to maintain public order (TA Nantes, 9, January 2014, no 1400110).

The Minister appealed this decision before the Supreme Administrative Court, the Conseil d'Etat, which reversed the Nantes Administrative Court and, in the following days, reiterated this position in proceedings related to banning orders against the same show which was to be performed in Nantes and Orléans.

Decision: The Conseil d'Etat took in consideration the uncontested facts regarding the content of the show, its conclusion being that the show, as it was conceived, contains anti-Semitic statements that intend to provoke racial hatred and that make an apology of discriminations, persecutions and exterminations perpetrated during the second world war in violation of the right to human dignity; that the prefect's banning order is based on the nine (9) penal convictions relating to similar statements made by Mr M'Bala M'Bala and the potential reactions to the show, which could give rise to serious risks of public troubles and violations to public order.

It further considers that the gravity of the risks of troubles mentioned in the Prefect's order are substantiated by the evidence on file, and that Dieudonné's undertaking that the incriminated statements will not be reiterated is not sufficient to substantially modify the fact that the show is in itself seriously susceptible of constituting a violation to public order.

The Conseil d'Etat therefore holds that the competent public authority is justified in taking every necessary measure in order to prevent the reiteration of penal offences attacking human dignity. Therefore, taking in consideration the risks that this show represents in terms of violation of public order and his duty to protect the rights violated, the prefect has not committed a manifest illegality in the execution of his functions by adopting this banning order.

The subsequent decisions follow the same reasoning.

Internet link source and additional information:

Ministerial Instruction of 6 January 2014: <http://www.lefigaro.fr/actualite-france/2014/01/06/01016-20140106ARTFIG00458-dieudonne-ce-que-dit-la-circulaire-de-manuel-valls-envoyee-aux-prefets.php>

Conseil d'Etat Decisions:



9 January, 2014: http://www.conseil-etat.fr/fr/communiqués-de-presse/spectacle_de_dieudonne.html

10 January, 2014: <http://www.conseil-etat.fr/fr/communiqués-de-presse/spectacle-de-dieudonn-kav.html>

11 January, 2014: <http://www.conseil-etat.fr/fr/communiqués-de-presse/spectacle-de-dieudonn.html>