

Sexually Explicit Political Caricature: Between Satire and Hate Speech

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A caricature of a Montenegrin female minister performing fellatio on a priest appeared on social networks in January 2021. It was an explicit drawing, accompanied with a heading „For the amusement of Serbian people“.

The caricaturist most likely aimed at criticising the politician’s apparently subservient attitude to the Serbian Orthodox Church, which had been a matter of pressing public interest for some time in Montenegro. But, does freedom of expression protect publishing a sexually explicit and degrading cartoon in order to express legitimate criticism?

The publication was met with public outcry from several political parties supportive of the Government, as well as by the mixed Parliamentary Committee for Gender Equality, NGOs and individual commentators, all describing it as sexist, misogynist and not a legitimate exercise of the right to freedom of expression. Face-



The caricature of ex-minister

book took the image down. The state prosecutor in Podgorica formed a case against a non-identified caricaturist for the execution of criminal offence Violation of reputation of Montenegro¹. Still, some political parties remained silent and some commentators on the internet suggested the caricature was a form of political satire and hence protected speech.

The case raises the questions on the limits of satire and the level of criticism politicians need to tolerate, but also of the appropriate response of the state to such a speech.

From the perspective of international human rights law, the case involves several interests. Looking at it purely from the point of view of the caricaturist and the politician, it involves balancing the right to freedom of expression with the rights and interests of the politician to protect her honour and reputation. But there are broader considerations as well, including the prohibition of hate speech based on gender, religion and ethnicity, and the promotion of a culture of tolerance and respect for the human rights and dignity of all.

It must be recognized that in principle the caricature is an exercise in political satire, which is accorded a very high level of protection under the European Convention on Human Rights.

In seemingly similar cases, the European Court of Human Rights has often found in favour of satirists. For example, it found a violation of the right to freedom of expression where Austrian courts banned the display of a painting that showed public figures, in-

¹ The case was formed against an unknown perpetrator for the execution of criminal offence Violation or reputation of Montenegro from article 198 paragraph 1 of the Criminal Code of Montenegro and is still in the pre-investigation phase. Source: Decision of the Basic State Prosecutor's Office in Podgorica TUSPI No. 5/23, Podgorica, March 1, 2023 and an email response from the Basic State Prosecutor's Office in Podgorica dated May 24, 2023.

cluding Mother Teresa, an Austrian cardinal and right-wing politicians, naked and involved in sexual acts. The application had been brought by the association of artists, which was also ordered to pay the fine to one of the politicians shown on the painting, politicians shown, Walter Meischberger.



"Apocalypse" by Otto Mühl (member of Vereinigung Bildender Künstler Wiener Secession)

The Court held that "satire is a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate." It observed that the painting showed 34 public figures, male and female alike, with only photos of their heads displayed, finding that "the painting obviously did not aim to reflect or even to suggest reality", and that the applicant as a politician had to "display a wider tolerance in respect of criticism" (*Vereinigung Bildender Künstler v. Austria*, 2007). The Court also considered several other factors, including that Meischberger was hardly recognizable after someone had thrown red paint all over the painting, as well as the disproportionate nature of the ban.

But even satire on political and other issues of public interest is not unlimited. Although the Court emphasized that every interference with the right of an artist to use satire needs to be considered with particular care, it stated that such expression is also subject to limitations and that everyone invoking freedom of expression needs to bear duties and responsibilities.



Cartoon from the trade union's newsletter

The Court has been particularly critical when satirists - and others - over-

stepped the line between legitimate criticism and what it refers to as 'gratuitous insult'. For example, in *Palomo Sanchez and Others v. Spain* (2011), the Court held that a cartoon in a trade union newsletter which showed workers performing fellatio on a company manager went too far: it stated that "the existence of a public interest] cannot justify the use of offensive cartoons ..." and noted that the criticism could easily have been expressed without recourse to an offensive cartoon. The same goes for degrading descriptions in written language.

In a recent judgment from 2022, in the case *Patricio Monteiro Telo de Abreu v. Portugal*, the Court addressed the issue of the use of stereotypes in the representation of women in politics through satirical caricatures. The caricature depicted a man politician as a donkey in a suit, and a woman politician as a sow with bare breasts wearing lace stockings, a garter belt and high heels. The applicant was sentenced by domestic courts to a fine and to pay damages to the woman politician. The Court found a violation of the caricaturist's rights because the domestic courts had not taken sufficient account of the context in which the applicant had published the cartoons, had failed to properly balance the competing rights, and had not taken into consideration the European Court of Human Rights' case law. However, the Court did ascertain that the cartoons "reproduced certain regrettable stereotypes targeting women in power". Judge Motoc's concurring opinion highlights concerns about the use of stereotypes in the representation of women in politics and agrees with the Portuguese judges' findings that the female politician depicted in the cartoons had thereby been exposed to political violence against women "in its form of symbolic violence", which had been "used to undermine her honor and reputation, and even credibility as someone involved in politics". She warned that violence against women in politics deters many women from entering or continuing in political careers, and that it overall undermines women's human and political rights.

So where does the Montenegrin case fall - is it gratuitous insult, or does it constitute legitimate satire? Unlike the collage painting

in the Austrian case or the series of satirical caricatures in Portugal that did use some sexist, i.e. stereotypical representation of a woman politician, the important factor in the case involving the Montenegrin minister is that the cartoon used explicit imagery of a sexual relation, that was clearly and specifically aimed at degrading the minister as female politician. In that sense, the Montenegrin case clearly leans towards the Spanish case *Palomo Sanchez*, where the Court found that a similar, although less explicit cartoon went beyond the legitimate exercise of freedom of expression. A greater interest than 'just' the individual minister's rights and interests is at stake. It is a sad truth that the use of such language and imagery is rife, particularly on social media, and particularly with regard to female politicians, journalists and human rights activists. It has been reported that female politicians receive disproportionate online abuse compared with their male counterparts, and that although male politicians face violence in other forms, including death threats, the abuse they face is never perpetrated against them simply on account of their gender.² The European Court of Human Rights has also condemned online sexual harassment and smear campaigns against female journalists as "grave and an affront to human dignity" (*Khadija Ismayilova v. Azerbaijan, 2019*).

In Montenegro, there have been other instances of sexist, misogynistic speech against women politicians and across the political spectrum.

After one Montenegrin MP criticised the announced measures of the new Minister of Economic Development giving various amounts of money to babies born in certain Montenegrin municipalities, multiple comments followed on the *Facebook* page of the one portal addressing her as "Scum", "Freak", "Sow", "Goose", "Goat", "Stink" and also offending her as a woman who has not born children. In that case the Ombudsman stated that comments represented sexist and misogynistic speech, which did not contribute to a reasoned

² Violence against Women in politics: Global Perspectives of a Global Issue, Westminster Foundation for Democracy, 2018

discussion based on the topic of public interest and was thereby not protected by freedom of expression. Misdemeanor proceedings against the commentators have been initiated.

Another MP was continuously abused through anonymous as well as public comments, posts and statements also by her fellow politicians that were sexual in nature and with no valid contribution a debate of public interest. Other persons engaged in further comments with sexual connotations. There were several examples of similar speech in relation to this MP, but no legal proceedings were instituted.

The real-world effects of such attacks go far beyond the individual politician, journalist or human rights activist involved: by portraying prominent women as subservient sexual objects, sexual violence and degrading behaviour towards all women is normalized and the position of women in public life undermined. The Council of Europe Gender Equality Strategy 2018-2023 emphasizes that, "violent and degrading online content [and the] normalisation of sexual violence, including rape, reinforce the idea of women's submissive role and contribute to treating women as subordinate members of the family and society. They feed into violence against women, sexist hate speech targeting women, particularly feminists, and contribute to maintaining and reinforcing gender stereotypes and sexism."

The Committee of Ministers of the Council of Europe emphasized that Women in positions of power or authority, such as politicians and other public figures, are "particular targets for sexism as they are perceived to have deviated from social gender norms that exclude women from public spaces or authority" and "online attacks on men are more often based on their professional opinion or competence, while women are more often exposed to sexist and sexualized abuse and insults, the extremes of which can be increased by the anonymity offered by the internet. Online attacks not only affect the dignity of women, but can also prevent women, including in the workplace, from expressing their opinions, pushing them out of the online space, undermining the right to freedom of speech and opinion in a democratic society,

limiting professional opportunities and strengthening the democratic deficit based on gender”.³

Under the Istanbul Council of Europe Convention on preventing and combating violence against women and domestic violence (also known as the ‘Istanbul Convention’), which

Montenegro ratified in 2013, states are required to impose criminal or other legal sanctions on sexual harassment, which includes “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment” (Article 40).

Montenegro is therefore not just permitted, but arguably required, to take appropriate and proportionate action. The remaining question is of what kind? The state prosecutor who qualified the case as a criminal offense should take into account that prison sentences for political speech, even suspended ones, are usually found to violate freedom of expression also in cases of obscene publications. In a relatively recent case from 2019, *Mătășaru v. Moldova*, involving an anti-corruption protest with two wooden sculptures in the form of penis and vulva, one holding a photograph of a public official and another of several state prosecutors, the Court found that criminal prosecution and prison sanction of two years suspended for the next three was a violation of freedom of expression, while it did suggest that some other form of interference ‘may have been justified by the concern to restore the balance between the various competing interests at stake’.



Mătășaru v. the Republic of Moldova

³ Council of Europe, Recommendation CM/Rec(2019)1 of the Committee of Ministers to member states on preventing and combating sexism, p. 12

So what kind of sanction is appropriate? In the above presented Austrian case, the Court found that a ban grounded in copyright law on the basis that the politician's image had been used was not appropriate. In the Spanish trade union cartoon case, the Court agreed that dismissal from the company, following a labour dispute litigation, had been a proportionate sanction (no other proceedings had been initiated against the cartoonists).

In other cases, the Court has often found that a moderate fine is an appropriate sanction.

Going back to Montenegro, it would be a mistake to qualify the case as one involving mainly an attack on the reputation of the government. Such an approach would paint it purely as a matter of political speech, requiring the courts to afford the cartoon a very high degree of protection and invoking classic Strasbourg caselaw cautioning the State to display restraint in resorting to criminal proceedings (*Castells v. Spain*). It would also completely disregard the far greater interest at stake, namely that of eliminating - or at least reducing - online gender-based abuse and sexual harassment of female public figures. That is a far greater societal interest than protecting the so-called 'reputation of the state' (also an interest the protection of which is not recognised under human rights law⁴).

In view of the requirements of the Istanbul Convention, Montenegro should consider criminalising sexual harassment as a particular offence, as proposed by the Ministry of Justice at the initiative of the Center for Women Rights, that would provide for protecting dignity of prominent women in public life, shielding them from degrading attacks aimed at undermining their dignity and their individual worth, and promoting a culture of tolerance and respect for human rights (the cartoon expressed the exact opposite values). In the meantime, the state prosecutors may consider prosecuting such speech in misdemeanor proceedings under small offense Hate speech prescribed under Law on prohibition of discrimination, or under the criminal offense of Racial and other discrimination. In

4 The joint statement of all freedom of expression rapporteurs or what of international organisations, we have cited it before in our proposal to decriminalise that criminal offense.

all cases, the judges should bear in mind to focus on alternative sentences to prison.

People who want to engage in political discussion and criticize the actions of politicians that they disagree with are free to do so and they should be allowed the widest possible freedom to express themselves. But their right to express themselves is not absolute: the publication of misogynistic cartoons that effectively constitute hate speech against women, insulting the dignity of prominent female public figures and undermining their authority by using sexist stereotypes, is harmful to society and simply not a protected form of expression.