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Decision

ASSEN DISTRICT COURT

Civil Law Sector

Case number / application number: 90511 / HA RK 11-230

Decision dated 27 June 2012

in the case of

THE PUBLIC PROSECUTION SERVICE,

electing domicile in The Hague,

Applicant,

and which is represented by Ms *mr. dr.* M.E. Meijer, Public Prosecutor at the Public Prosecution Service's Office in Assen,

versus

the association

VERENIGING MARTIJN,

which has its registered office in Hoogeveen,

Respondent,

and which is represented by *mr.* B.C. Swier.

The parties are hereinafter called "the Public Prosecution Service" and "the Vereniging Martijn".

1. The Legal Proceedings

1.1. The course of the legal proceedings is evidenced by:

- the application, received at the registry of the District Court on 16 December 2011;
- the statement of defence, received at the registry of the District Court on 10 May 2012;
- the report "Reported Problems of Victims of Sexual Abuse experienced during Childhood" sent by the Public Prosecution Service;
- the parliamentary documents sent by the Vereniging Martijn;
- the oral hearing on 16 May 2012 and the memoranda of oral arguments submitted at this hearing.

1.2. Finally, the District Court stipulated that the decision would be given this day.

2. The Assessment

2.1. The Public Prosecution Service requests the District Court to ban and dissolve the Vereniging Martijn. The Public Prosecution Service bases this request on Section 2:20 of the Dutch Civil Code. The Public Prosecution Service also requests the District Court to appoint a liquidator, not being one of the board members of the Vereniging Martijn, and to stipulate that any credit balance remaining after liquidation shall be paid out to the State. Finally, the Public Prosecution Service requests the District Court to declare the decision provisionally enforceable.

2.2. In support of its request, the Public Prosecution Service contends, in short, that the Vereniging Martijn threatens the physical, emotional and sexual integrity of children and infringes the rights and freedoms of this vulnerable group. The Public Prosecution Service contends that this is carried out in such a way that it contravenes public order within the meaning of Section 2:20 of the Dutch Civil Code.

2.3. In its statement of defence, the Vereniging Martijn seeks dismissal of all requests. To that end, the Vereniging Martijn disputes certain facts on which the Public Prosecution Service bases its application. The Vereniging Martijn also argues in its defence, in short, that it cannot be banned on the basis of communications or images published on its website, which are not prohibited under the law. For the rest, it appeals to freedom of expression. The Vereniging Martijn requests the District Court to not declare the decision provisionally enforceable in view of the complications that could arise when lodging an appeal and the (in its opinion) declaratory nature of the decision to be rendered.

2.4. With regard to the matters in dispute that have arisen between the parties in this context, the District Court considers as follows.

2.5. Section 2:20 of the Dutch Civil Code implies that the District Court *must* ban the Vereniging Martijn and *must* pronounce it dissolved when the activities of the Vereniging Martijn are shown to be in contravention of public order. It follows from the parliamentary history and the case law that the term “activities” in Section 2:20 of the Dutch Civil Code relates to the acts of the Vereniging Martijn and/or the words spoken or written by the Vereniging Martijn.

2.6. The District Court takes into account in the assessment of the application that, in view of Article 8 of the Constitution and Article 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, the right of association and the right to freedom of expression are basic principles of the Dutch constitutional state. For that reason, the District Court will observe reticence in application of Section 2:20 of the Dutch Civil Code and only assume contravention of public order if the generally accepted foundations of our legal system have been contravened (see the Memorandum of Reply 17 476, p. 3).

2.7. The Public Prosecution Service bases its request on various facts and circumstances. With regard to the determination of the activities of the Vereniging Martijn, the District Court exclusively pays attention to the activities of the Vereniging Martijn that are or can have been known to everyone. For that reason, all contentions and arguments presented by the Public Prosecution Service with regard to individual board members and their criminal past will be disregarded in the

assessment. Nor will the District Court pay attention to postings of third parties on the forum of the website of the Vereniging Martijn.

2.8. In the determination of the activities of the Vereniging Martijn, the District Court will first take into account the information the Vereniging Martijn provides, or provided for a long period of time shortly before the date of submission of the initiatory application, on web pages of its website *www.martijn.org*.

2.9. The District Court secondly pays attention to communications made by the Vereniging Martijn in other media. These communications relate to interviews that board members have given or other means of publicity that they have used, for example placement of video blogs on the website *www.youtube.com*.

2.10. The District Court takes the aforementioned into account in the assessment, because the communications on the web pages of the website *www.martijn.org* and that which board members have publicised on behalf of the Vereniging Martijn, are acts of the Vereniging Martijn or the words written or spoken by it and are therefore activities of the Vereniging Martijn. With regard to the interviews and/or other public communications of board members as have been used as a basis for the application of the Public Prosecution Service, the District Court considers that these communications can be imputed to the Vereniging Martijn as the board members let themselves be interviewed in their capacity as board member and/or express themselves on behalf of the Vereniging Martijn in video blogs, for example.

2.11. In its application, the Public Prosecution Service has classified and categorised the material found on the web pages of the website *www.martijn.org*. The District Court endorses this categorisation. The District Court shares the opinion of the Public Prosecution Service that this categorisation shows that on the web pages of its website the Vereniging Martijn propagates that:

(i) children are sex objects. This is shown in the material offered on the web pages of the website, which can have no other intention than to be sexually stimulating. For that purpose, images of children posed in provocative and sexually-tinted positions are shown on the web pages and texts explicitly describing sexual contact between adults and children are published on web pages;

(ii) there is nothing wrong with sexual contact between adults and children. In this context the position is taken in articles that the prohibition of sexual relationships between adults and children is the very thing that harms children. It is also propounded in articles that children want to have sexual contact with adults, that is why children seek that sexual contact and that children would really like their parents to applaud that sexual contact;

(iii) sexual contact between adults and children should be glorified. To that end, descriptions are given of how fine and beautiful sexual contacts and relationships are, not only for the adult but also for the child;

(iv) criminal convictions for sex crimes with children are absurd;

(v) sexual contact between adults and children is very “natural”, children seek, want and like that sexual contact, sexual contact and manufacture of child pornography is not necessarily harmful for children.

2.12. The Vereniging Martijn does not dispute its communications, to be categorised as aforementioned, on the web pages of its website. It argues against this that its website is a news archive that contains numerous, thousands, of quotations and that by means of these quotations, it paints a specific picture of how differently many people in the eighties of the previous century wrote and thought about sexuality between adults and children, that therefore the various publications are not aimed at sexual stimulation or justification of sex with young people and that views of those times may not be imputed to the Vereniging Martijn.

2.13. The District Court understands from this and also from other arguments presented by the Vereniging Martijn in its defence that the defence partly seeks to nuance the picture painted of the Vereniging Martijn and its activities by the Public Prosecution Service. The subtle distinction that the Vereniging Martijn aims to make is understood by the District Court, partly in the light of public communications of its current chairman, to the effect that the Vereniging Martijn does not wish to propagate more than that a child can enjoy having sexual contact with an adult and that a child can want to have this contact. The District Court also understands that the Vereniging Martijn also wishes to propagate that a child and an adult must be able to have space to build up a relationship that should also be allowed to develop into a sexual relationship, as long as a child has in any case the freedom to withdraw from this relationship and only acts that are in keeping with the child’s development take place.

2.14. The District Court finds that the activities of the Vereniging Martijn, viewed from the perspective of the mutual connection and mutual relationship of the material provided on the web pages of its website and its views as publicised by its board members, show that the Vereniging Martijn, on behalf of its members, *aims* to be able to have sexual contact with children and *to that end*, the Vereniging Martijn glorifies and depicts that sexual contact as something that is or should be normal and acceptable. It is that aim which constitutes a serious contravention of the valid fundamental values of our society and for that reason contravenes our legal order. The Vereniging Martijn thus creates or contributes to the existence of a subculture in which sexual acts between adults and children are normal and acceptable and in doing so the Vereniging Martijn infringes the rights of children. The protection of the physical integrity of children undeniably constitutes one of the most essential principles of our legal order. Moreover, from an international legal perspective, the Dutch legal state should not provide room for this contravention.

2.15. The subtle distinction that the Association evidently wishes to make with regard to its activities does not alter the forgoing. Thus children’s incapacity to express themselves and to determine their will in a way that can be expected of an adult cannot be disregarded. Generally speaking, a child does not have the capacity to withdraw from contact with an adult who reveals sexual desires. Children are not able to stand up for themselves and are not able or are insufficiently able to put up resistance to the sexual desires of an adult. It is not “natural” for a child to have sexual contact with an adult. Moreover, it has not been shown to the District Court in the material produced by the Public Prosecution Service in this context that it is possible

to indicate a child's developmental stage in which it is normal or in which it is appropriate to have sexual contact with an adult, regardless of form or degree. It is (partly) for these reasons that sex crime legislation, which aims to protect the sexual integrity of children, exists.

2.16. Consideration of the forgoing in its mutual connection and mutual relationship leads to the following. The District Court assumes that the propagation of opinions which are unwelcome in the eyes of many does not in itself constitute grounds to ban and dissolve the Vereniging Martijn. The right of association and the right to freedom of expression apply to everyone and thus also to those who have sexual feelings for children. Nonetheless, this does not alter the fact that the activities of the association contravene generally accepted foundations of our legal system and therefore these activities contravene public order. For that reason, the District Court will ban and dissolve the Vereniging Martijn.

2.17. Dissolution implies that the assets of the Vereniging Martijn must be liquidated. In view of the ban and dissolution, the District Court will appoint a liquidator and therefore board members/liquidators are deemed to have resigned by operation of law.

2.18. The District Court will dismiss the request to stipulate that any credit balance will fall to the State. The reason being that without further explanation, which the Public Prosecution Service has not provided, the District Court, partly in view of the provisions of Section 2:23b(1) of the Dutch Civil Code, fails to understand how it can be determined in advance that any credit balance remaining after liquidation should be paid out, in whatever way, to the State.

2.19. The District Court will declare its decision provisionally enforceable. As opposed to the arguments of the Vereniging Martijn, there is no question of a declaratory judgment. In view of the decision to be taken to ban and dissolve the Vereniging Martijn on the grounds of its contravention of public order, the District Court fails to understand why an appeal to be lodged should have suspensive effect. For that reason, the District Court, pursuant to the options of Section 360 of the Dutch Code of Civil Procedure, will declare its decision provisionally enforceable.

2.20. The Public Prosecution Service has not requested that the Vereniging Martijn be ordered to pay the costs of these legal proceedings and therefore a decision on the costs is not required.

3. The Decision

The District Court

declares the Vereniging Martijn banned,

dissolves the Vereniging Martijn,

appoints *mr.* J.J. Reiziger (Trip Advocaten & Notarissen, P.O. Box 300, 9405 PS in Assen) as liquidator and understands that through this appointment the board

members/liquidators of the Vereniging Martijn are deemed to have resigned by operation of law,

appoints as Delegated Judge the member of this District Court, *mr. A.M.A.M. Kager*, before whom the liquidator will render account of his or her administration, to the extent that the Delegated Judge has been involved therein,

declares this decision provisionally enforceable,

dismisses any additional or other request.

This decision has been rendered by *mr. H. Wolthuis*, *mr. B.R. Tromp* and *mr. F. Brekelmans* and pronounced at the public court session on 27 June 2012.

<Signature>

<Seal: Assen District Court>

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ISSUED AS TRUE COPY

Assen dated **27 June 2012**

The Clerk of the Assen District Court

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