[FR] Docu-fiction versus Privacy, Right to One's Image and Right to Be Forgotten

IRIS 2006-3:1/23

Amélie Blocman
Légipresse

The television channels France 3 and Arte are currently making a six-part docu-fiction covering the criminal case of the murder in 1984 of "little Grégory" that took on an exceptional dimension and earned substantial media coverage at the time.

One of the parties in the case (a witness) has submitted the matter to the Regional Court of Paris under the urgent procedure. On the basis of Articles 809 of the New Code of Civil Procedure (urgent matters) and 9 of the Civil Code (privacy), the party concerned called for a ban on showing the series or, in the alternative and in a more original fashion, for the screenplay of the audiovisual work to be handed over within 48 hours and a copy of the completed film handed over at least four months before broadcasting, to enable her to uphold her rights in respect of her image. In support of her claims, the party concerned said that she feared the worst about what might be said about the events in which she had been involved, feared a biased presentation of the facts, and had no desire, more than twenty years after the events, to have her privacy, image and dignity seriously infringed once more.

The Court rejected her claims, however. The judges pointed out that a ban on divulging a work to the general public was, by its preventive nature, radically contrary to freedom of expression and could only be envisaged in extremely serious cases. Likewise, the measure requested in the alternative, namely for the handing over of the screenplay of a work being produced and a final copy of the film before it was broadcast, constituted interference that, by submitting the work to the judgment of a third party before it was made public, exerted pressure on the authors' freedom of expression. Thus the desire on the part of the applicant party to be able to judge the work in order to be able to preserve the subsequent exercise of her rights could not in itself justify allowing such a measure, unless substantial proof were produced to show that there was a risk of serious infringement of the rights of the person concerned that could not be made good by the award of damages.

The judges felt that the risk of infringing the applicant party's right to her image was inoperative in the present case, since all the roles of the parties involved in the case were to be played by actors. Likewise, given current case-law and precedent, the right to privacy was overridden by the public's right to be informed

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about a criminal case. Thus the recollection of the facts in the form of a docu-fiction did not alter the balance fixed by the courts between freedom of expression on one hand and the legitimate aspiration of the persons concerned to a right to be forgotten which did not actually exist at law. In the circumstances, in the absence of specific elements indicating that the authors, producers or broadcasters had any intention of specifically harming the applicant party, the risk of infringing her right to privacy was not such as to justify the measures she was requesting.

Tribunal de grande instance de Paris, ordonnance de référé, 10 février 2006, M. Bolle c/ France télévision interactive, Arte France, France 3 et autres

Regional Court of Paris, order in an urgent matter, 10 February 2006, M. Bolle v. France Télévision Interactive, Arte France, France 3 et al.

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