[FR] Urgent Authorisation to Pre-view a Disputed Report

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Article 809 of the New Code of Civil Procedure entitles a judge sitting in urgent matters, called an "emergency" judge, to take any precautionary or reparatory measures that may be necessary, particularly in order to prevent the imminent occurrence of damage. On the basis of this, a number of individuals applied to the judge sitting in urgent matters in Paris to request a pre-viewing of a report that was to be broadcast that evening and which they believed would infringe their personal rights as to their character. The report at issue, concerning arms dealers, showed the police search of their home and the pharmacy they ran. A cameraman from the television channel had followed and filmed the police as they worked, despite the protestations of the persons concerned. The judge sitting in urgent matters that morning upheld their application, so the television channel lodged an appeal against the decision. The matter was therefore taken, on the afternoon the broadcast was to take place, before the 14th chamber of the court of appeal in Paris, which is competent to deal with urgent matters.

The Court began by recalling the fundamental principle according to which “the prior control over information may only be envisaged if the alleged infringement of personal rights as to character is not purely an eventuality and if the danger is sufficiently constituted and manifest as to constitute the beginnings of proof of an abuse of freedom of expression”. In the present case, the persons concerned were not subsequently prosecuted. What is more, their description of the circumstances of the search concurrs with the trailer for the disputed broadcast in various media, namely “A pharmacist has been held for questioning on the illegal possession of war weapons. He is neither a robber nor a terrorist - he's a collector." They were also concerned that the television channel claimed that journalists were not bound by the secrecy of investigation. On the basis of all this, the Court concluded that there were indeed elements of serious proof, and that the broadcast of the images at issue were such as to constitute imminent and definitive damage in respect of the applicants if the necessary steps were not taken to ensure that they could not be identified. It continued that refusing them the possibility of viewing the report before the broadcast although they provided proof of the seriousness and imminence of the damage they claimed they would suffer, and preferring to leave the journalists to ensure themselves the protection of the individual rights of the persons involved, would even be contrary to Article 6-1 of the European Convention on Human Rights.

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The Court then took care to list the guarantees necessary for such an “intervention” - viewing would not infringe the freedom of expression if it took place in the presence of the judge, who would guarantee a balance of the various rights at issue, which were of equal value and deserved equivalent protection, and control would not cover the content of the broadcast but only the way in which the television channel ensured respect for the rights of the parties involved. The Court therefore ordered the television channel to communicate the recording for the purpose of viewing before the Court on the same day, in the presence of the parties and their counsel.

Cour d'appel de Paris (14e ch. B), 2 février 2006, France 2 c/ Consorts Compain

Court of appeal in Paris (14th chamber, section B), 2 February 2006, France 2 v. Compain et al.

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