[FR] Newscast Broadcasting of Images of Out-of-Courtroom Deliberation at a Criminal Court

IRIS 2009-3:1/15

Amélie Blocman
Légipresse

The court of appeal in Amiens has just delivered an interesting order on a delicate point of law. The facts were as follows: after four days of debate before the criminal court of the Somme, when the judge and jury had withdrawn to deliberate, a journalist covering the case for a television channel noticed that the deliberation room was reflected in the glass building opposite. The journalist in question took the initiative of filming this reflection, thereby making it possible to view the deliberation process (which is theoretically secret) and more particularly two members of the jury voting by raising their hands. The images were then shown on the television newscast without distortion. A number of jurors reported the recording and the broadcast to the Public Prosecutor, claiming that this constituted an invasion of their privacy. The journalist, the editor-in-chief of the newscast and the channel's director of publication were then summoned to appear before the criminal court to answer charges of invasion of privacy by fixing or broadcasting the image or a person, and of complicity.

It should be recalled that Article 226-1 of the Penal Code holds the fact of "infringing another's privacy (...) by fixing, recording (...) without that person's consent the image of a person in a private place" to be a crime.

The criminal court acquitted the journalist, as it found that the elements which would constitute a crime were not present. The judge in the first instance proceedings held that a juror's activity as such was not part of his/her private life and that a court was a public place because of the very use to which it is put; furthermore, there had been no intention to infringe privacy. The Public Prosecutor and the complainant jurors appealed against the decision. In a decision delivered on 4 February 2009, the court recalled firstly that the offence referred to in Article 39(3) of the Act of 29 July 1881, which prohibited "reporting on internal deliberations by either a jury or a court of any kind", could only be held against a person who, having been involved in a court deliberation, subsequently reported on it, which was not the case here. Similarly, the ban on photographing debates in court, provided for and sanctioned by Article 38 ter of the Act of 29 July 1881, only concerned the actual hearing and could not be extended to include a court's deliberations outside the courtroom.

© European Audiovisual Observatory (Council of Europe) 2026

The court therefore looked to see if the elements constituting the offence of invasion of privacy were present in this case, recalling firstly that it was held as established jurisprudence that a private place was a place where no-one could enter or gain access without the consent of the occupant. It mattered little, the court added, whether the place was in a building open to the public. In the present case, only the presiding judge of the criminal court was able to authorise entry to anyone belonging to neither the court nor the jury. The deliberations room was therefore temporarily, for the purposes of Article 226-1 of the Penal Code, a private place, according to the court. It also recalled that a jury deliberating on a criminal case did so by secret vote, further emphasising the strictly personal nature of the act, which could not be separated from the sphere of privacy. The court held that the journalist in question could not use good faith as an argument by claiming his desire to denounce a situation he considered to be wrongful and report on a topical item to public opinion. Such a claim could not remove the deliberate nature of the disputed filming and the journalist's knowledge of its unlawful nature, since he had not received any authorisation from the people he was filming. Furthermore, the court added, the journalist had the possibility, in order to observe the right to privacy, of using a blurred image, which he neither did himself nor required of the editors of the channel at the time of delivering his report.

This demonstrated fraudulent intent, and the matter was indeed an offence. The judgment was therefore overruled and the journalist was fined EUR 2,500 for invasion of privacy. The editor-in-chief of the television newscast and the channel's director of publication were also fined EUR 3,000 each. They have all appealed to the court of cassation, and it will be interesting to see what this court thinks about whether a court's deliberations room constitutes a private place within the meaning of Article 226-1 of the Penal Code.

Cour d'appel d'Amiens, chambre correctionnelle, 4 février 2009, Jacquemart, Nezzari et Tessier c. Min. public et Corne

Court of appeal of Amiens, minor offences division, 4 February 2009; Jacquemart, Nezzari and Tessier v. Public Prosecutor and Corne

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026