[FR] Court of Cassation Pronounces on Accusation of False Reporting

IRIS 2012-4:1/23

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On 28 February 2012 the Court of Cassation delivered a judgment that attracted much attention in the legal saga over disputed reporting on France 2. It will be remembered (the images were seen all over the world) that in September 2000 the channel broadcast a report with comments by its permanent correspondent in the Middle East on clashes between Palestinians and Israelis in the Gaza Strip. The report showed a Palestinian trying to protect his child, Mohammed al-Dura, from shooting that, according to commentators, was coming from Israeli positions, and that fatally wounded the child. Four years later, the director of a media rating agency posted on his Internet site and circulated by e-mail an article and a press release accusing the journalist and the channel's head of news of having broadcast a "false report - a fabrication starting with a series of staged scenes". The channel and the journalist brought a complaint, and the originator of the accusation was declared guilty of defamation by the criminal court in Paris. On appeal, the court of appeal ordered further investigation and asked the television channel to supply the rushes of footage filmed by its cameraman on 30 September 2000, as it was evident from the pleadings in court that it was necessary to view the images at issue. Six months later, the court acquitted the defendant and dismissed the applications brought by the channel and the journalist. The court found that the accusation at issue was "undeniably damaging to the honour and reputation of the news professionals", but gave the journalist the benefit of acting in good faith, holding that he had "not exceeded the limits of the freedom of expression". Since the court could not, without exceeding its powers, order further investigation before judgment in order to obtain the rushes of the report at issue, the journalist and the channel appealed to the Court of Cassation against the appeal court's ruling. In its decision of 28 February 2012, the criminal chamber of the Court of Cassation stated the principle according to which "it transpires from Article 29 of the 1881 Act that in matters of defamation, if the accused is able to demonstrate his good faith by the existence of particular circumstances, it falls to him alone to furnish such proof, without the courts having the power to provoke, supplement or complete their establishment". By ordering the channel to hand over film rushes, the court of appeal had therefore disregarded this principle; the Court overturned the appeal judgment and hence ordered the acquittal of the accused, and returned the case to a different composition of the court of appeal in Paris. To be continued!

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Cour de cassation (ch. crim.), 28 février 2012 - A. Enderlin et France 2 c. M. Karsenti

Court of Cassation (criminal chamber), 28 February 2012 - A. Enderlin and France 2 v. Mr Karsenti

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