[FR] Application for Suspension of Broadcasting a Programme on the Crash of the Rio/Paris Flight

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On 12 March 2012 the judge sitting in urgent matters at the regional court in Paris had to deal with an application for suspension of the broadcasting of a programme entitled Vol AF 447 Rio/Paris : les raisons d'un crash (Flight 447 from Rio to Paris - the reasons for a crash), scheduled to be shown two evenings later on the public channel France 3, which included a reconstruction of the last four minutes immediately preceding the disaster. On the basis of Article 809 of the Code of Civil Procedure, the fathers of the two pilots and an association defending the victims of the accident were calling for the broadcasting of the programme to be suspended until the investigations and experts' reports currently in hand had been completed. They denounced the deliberately sensation-seeking and emotive nature of the programme, and claimed that two issues were involved, firstly the violation of the secrecy of the investigation and preparation of the case as well as the illegal possession of the plane's black boxes, and secondly the distortion of the truth as the pilots were presented as being solely responsible for the deaths of 228 people in the Air France plane that disappeared in the Atlantic on 1 June 2009.

The judge sitting in urgent matters recalled that the requested measure of suspending even temporarily the broadcasting of an audiovisual work was by its preventive nature one of the measures that were most radically contrary to the freedom of expression. It could therefore only be pronounced in extremely serious cases and if there were substantial elements demonstrating the reality of a manifest likelihood of the infringement of the rights of third parties, with irreparable consequences. Similarly, the judge could only view it in advance, as requested in the alternative, if there were substantial elements of proof that the risk of seriously infringing the rights of the person concerned could not be perfectly made good by the awarding of damages. Regarding the alleged violation of the secrecy of the investigation and preparation of the case, and the illegal possession of the black boxes, the judge noted that no proof was provided. As attested by a number of articles in the press circulated on the Internet, and a book about the crash, produced by the defence, the content of the black boxes was already public knowledge. The journalists could not therefore be accused of violating secrecy or concealment. Nor had the applicants supplied proof of a distortion of the truth or the presentation of the pilots as being solely responsible, the producer of the broadcast having indeed indicated to viewers that the aim was not specifically to incriminate the pilots but rather to reconstruct what had

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happened, on the basis of the BEA reports and the book, with no intention of sensationalism. Thus the applicants had not furnished any proof at all that established the reality of a direct and certain “imminent prejudice”, or a “manifestly illegal disturbance”, other than in terms of a possibility or a subjective judgment, within the meaning of Article 809 of the Code of Civil Procedure. In the absence of proof that broadcasting the programme would cause them irreparable consequences, or that the measures requested constituted necessary restrictions on the freedom of expression, their applications could not be upheld. The disputed programme was therefore broadcast on 14 March 2012 as scheduled.

TGI de Paris (ord. réf.), 14 mars 2012 - G. Robert et a. c. France Télévisions

Regional court of Paris (sitting in urgent matters), 14 March 2012 - G. Robert et al. v. France Télévisions

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