[FR] Freedom of Documentary Producer to Use Utterances of Interviewees for the Purposes of her Film

IRIS 2014-3:1/25

Amélie Blocman
Légipresse

On 16 January 2014, the court of appeal of Douai overturned the judgment handed down in January 2012 by the regional court of Lille in the high-profile case of the documentary entitled Le Mur (not to be confused with Dieudonné's banned show!), which criticises the treatment of autism by psychoanalysis (see IRIS 2012-3/20). Three psychoanalysts had agreed, under the terms of an authorisation to use their images and their voices, to be filmed and interviewed for the three-part documentary. When the film was released, they had called on the courts to completely ban its showing, on the grounds that their interviews had been edited and used in such a way that they ceased to retain their original meaning. The regional court in Lille had upheld their claim in part, and found that the film was prejudicial to their image and their reputation since their true positions on the subject matter were considerably less clear-cut. The court had therefore ordered the removal of all the extracts from their interviews and the payment to the parties concerned of damages amounting to EUR 7,000 and EUR 5,000. The producer and the production company lodged an appeal, claiming that the utterances of the complainants had not been distorted in any way. In court, they emphasised the vital importance of a general debate on the ways of treating autism, and claimed that the order against them was not "proportionate" within the meaning of Article 10 of the European Convention on Human Rights. The court of appeal of Douai agreed with the court in Lille in refuting the role of the three psychoanalysts interviewed as co-authors of the film and consequently in refuting the assertion that any infringement of their moral rights had occurred. The document they had signed before filming did not give them any rights in respect of the choice of which passages of their interviews were to be used or left out, or of the duration or final content of the documentary.

The court went on to note that viewing the film highlighted the producer's ultimate intention to contest the methods used by the psychoanalysts in the treatment of autism; it was because the interviewees had been unaware of this at the time that they were now calling for the film to be banned. The three psychoanalysts had nevertheless freely agreed to the reproduction of extracts of their images and voices with no control over the final work, and they could not therefore object to the producer's expressing her personal opinion, even if they were not aware of her intention at the outset; such intention may indeed only have developed in the course of producing the documentary. The court emphasised that this involved the fundamental principle of respect for freedom of

© European Audiovisual Observatory (Council of Europe) 2026

expression on the part of producers of cinematographic works and investigative journalists. As a result, only proof of fault, within the meaning of Article 1382 of the Civil Code, could constitute an abuse of this right if proof were furnished of the deliberate intention of the producer to cause damage to the persons being filmed by manifestly distorting their utterances and/or ridiculing them. Examining the utterances of the three applicants in the case, the court observed that as the extracts were short, viewers could not fail to be aware that they were incomplete, extremely simplified, and could not reflect the complete thoughts of the interviewees. Moreover, neither their images nor their voices were distorted or accompanied by derogatory commentaries. On the second point, it was noted that the producer had not distorted the utterances, in as much as she had retained the circumspect expressions used, although they came over more forcefully in the film than in the original interviews. The producer could not therefore be held to be at fault, as she was free to add her own comments to the replies given by the interviewees. On the third point, the court observed that the replies given in the film did not always correspond to the questions that had actually been asked during the interviews, or had been taken out of context. The interviewees' thoughts had not however been distorted sufficiently so as to constitute fault, and the judgment was therefore overturned on this point. Consequently, the court allowed the disputed extracts to remain in the film, and ordered the interviewees jointly and severally to pay the producer and her production company EUR 5, 000 as reparation for the moral prejudice suffered and the discredit brought upon their work as a result of the court proceedings and the censure of certain passages pronounced in the initial proceedings.

Cour d'appel de Douai (3e ch.), 16 janvier 2014, Sophie Robert et SARL Océan Invisible productions

Court of appeal of Douai (3rd chamber), 16 January 2014, Sophie Robert and Océan Invisible Productions SARL

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026