[FR] Broadcasting of Legal Reality TV Programme Banned under Urgent Procedure

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On 27 February 2014, the court of appeal of Paris ordered Arte to stop broadcasting the bi-media programme *Intime Conviction*, thereby upholding the decision of the judge deliberating under the urgent procedure the day before. The programme began with a television film, broadcast on 14 February 2014, telling the story of a fictional character, a medical examiner named Paul Villers, who was suspected of having murdered his wife. The Franco-German channel achieved its second-highest audience rating of the year that evening. The second stage of the programme was the scheduled showing, between 10 February and 2 March 2014, on a dedicated website, of a number of videos giving a day-by-day account of the proceedings in the court of assizes. The videos showed not only actors but also legal professionals and nine jurors selected in advance by the producers. Internet viewers could consult the file compiled by the producers and, after each hearing, express their opinions as to the guilt or innocence of the accused, and react on social networks. The assize court “verdict” and that of Internet viewers was to be broadcast on 2 March 2014.

Dr Jean-Louis Muller was acquitted of the murder of his wife in October 2013, after twelve years of legal proceedings. Recognising himself in the character of Paul Villers, he instigated proceedings under the urgent procedure against both the company producing the programme and the channel Arte. He claimed that the programme intruded on his privacy and caused him serious prejudice by questioning the acquittal verdict, and called for broadcasting of the programme to be stopped and for payment of EUR 100, 000 in damages, on the basis of Articles 9 and 1382 of the Civil Code. The judge under the urgent procedure found that intrusion of privacy was sufficiently established, and therefore ordered broadcasting of the programme to stop and EUR 30, 000 to be paid to the applicant in damages as compensation for the prejudice suffered. The companies appealed against the decision. In view of the urgency of the matter (the programme was being broadcast at the time), the court delivered its decision the following day. It recalled the principle according to which audiovisual creation could certainly draw inspiration from actual events or base characters on living persons, but could not, without their agreement, encroach on their privacy unless the work to be produced clearly presented such elements as being totally fictional. In the case at issue, the court noted the “great similarities” between the television film and the case in which the applicant had been judged (the character in the film, like Dr Muller, was a medical examiner, had two sons who were in the

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same place as Dr Muller's sons when the shot was fired, and his wife had been disfigured by a kick from a horse and had suffered from depression as a result, he was said to have threatened his partner with a hunting rifle, similar messages were left by the deceased wives, etc.). It was true that a number of totally fictional scenes had been added, but they were minimal or at any event not sufficient to prevent confusion. The court added that it had been widely reported in the press that the story of Paul Villers was based on that of the applicant. Although a number of facts concerning the applicant's private life had been divulged when he appeared in the court of assizes, they could not lawfully be used since the disputed programme was a work of fiction and not a documentary or an informative item. Nor could the production companies invoke the concept of a need to inform the public, since it was not an informative work and the educational value of the programme did not require it to be based on real, recent events. The court concluded that invasion of the applicant's privacy was sufficiently proven. It was not necessary to seek the liability of the defendant companies on the basis of Article 132 of the Civil Code, as this would be covered by the case of defamation to be brought before the ordinary courts. The court found that in view of the quantity of established facts and the publicity they had been given during the campaign to promote the programme, the measures imposed by the judge under the urgent procedure "were strictly proportionate to the infringement committed", and that such measures alone were sufficient to put a stop to the manifestly unlawful disturbance currently suffered by the applicant. In addition to banning the showing of the programme, the court awarded EUR 30, 000 to the applicant in compensation for the prejudice suffered. A good many commentators have deplored "the disproportionate nature of the court's decision, totally counter to previous jurisprudence", fearing that this decision could lead to a curbing of creative freedom. Proceedings on the merits of the case have also been instigated, with a court hearing scheduled for 18 June 2014. To be continued...

Cour d'appel de Paris (pôle 1; ch. 2), 27 février 2014, Maha Productions et Arte France c/ J.-L. Muller

http://www.scribd.com/doc/209619378/Ordonnance-refere-MULLER-Arte-0-pdf

Court of appeal of Paris (centre 1, chamber 2), 27 February 2014, Maha Productions and Arte France v. J.-L. Muller

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