[FR] Court finds against virtually unaltered take-up of a legal case in a reality law TV programme

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After a court decision under the urgent procedure early last year (see IRIS 2014-4/15), it was the turn of the regional court in Paris to deliberate on the merits of the Intime Conviction case. The dispute arose as a result of the broadcasting by channel “Arte”, in February 2014, of a cross-media programme entitled Intime Conviction. This consisted of three parts: a television film following the course of the investigation into the death of the wife of a forensic doctor, “Dr Villers”; a web series reconstituting the court proceedings against the doctor, including the deliberations, in video format; and an ‘interactive’ part enabling Internet users to consult the fictional contents of the investigation file and, after each hearing, to report online their “firm conviction” (hence the title of the programme) regarding the accused party.

Dr Müller, acquitted in October 2013 of murdering his wife after twelve years of legal proceedings, claimed that the television film was a remake of his life and of the case brought against him. Under the urgent procedure, he had obtained a ban on the broadcasting of the programme, which was found to infringe his privacy (see IRIS 2014-4/15). The production company, which contested the ban ordered under the urgent procedure, brought court proceedings on the merits of the case. In his defence, the doctor claimed damages amounting to EUR 100,000 as compensation for the moral prejudice suffered from the invasion of his privacy and for the civil wrongdoing he felt resulted from the absence of any indication in the programme that the final outcome had been his acquittal.

The court began by recalling the principle according to which facts referred to publicly during public court proceedings, although they are within the protected area of personal privacy, become legitimately public as a result of such proceedings and may, with regard to the requirements of Article 9 of the Civil Code and in the absence of any malevolence or infringement of dignity, be referred to again in public without infringing the rights covered by the Civil Code or by Article 8 of the European Convention on Human Rights. However, when the facts lawfully rendered public are mixed with elements taken from the imagination of the creator of the work, without the reader or viewer being in a position to distinguish between fact and fiction or speculation, these elements infringe the victim’s privacy, since they are presented as being real. In the case at issue, in view of the extensive similarities, it was found that the disputed

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programme, and in particularly the television film, was not a work in which the creator has used elements taken from a number of different cases, but indeed a virtually unaltered take-up of the court case involving Dr Müller, which had served as its sole foundation. The fictional elements which were added to the story (on Dr Müller's ambiguous relations with the female investigator, his desire to kill, his violent nature, elements insinuating his guilt, etc) were perceived by the viewer as belonging to the reality of the court case, such that they infringed the doctor's right to privacy. The same applied, for the same reasons, to the second and third parts of the programme, which belong to the genre of reality TV.

The court also found that the doctor shown in the programme at issue was right in claiming that a civil wrong was committed, resulting from the absence of any indication in the programme or in his mock trial that the final outcome had been his acquittal, since the way it was portrayed made it possible to question his innocence. Such questioning of the final decision of acquittal was deemed to infringe the respect due to the authority of both the judge and the courts, constituting undeniable wrongdoing within the meaning of Article 1382 of the Civil Code. This wrongdoing caused the victim serious prejudice in view of, above all, the fourteen years of criminal proceedings he went through and the short period of time between the outcome of the proceedings and the broadcasting of the programme. The court therefore ordered the production company to pay damages amounting to EUR 50,000 as compensation for the moral prejudice caused by the broadcast. It also ordered the company to include a notice in the credits of the first part of the programme, should it be shown again, and banned the broadcasting on any media whatsoever of the second and third parts of the programme at issue.

TGI de Paris (17e ch.), 5 novembre 2014 - Maha Production c/ J.-L. Muller, Arte France et a.

Regional court of Paris (17th chamber), 5 November 2014 - Maha Production v. J.-L. Muller, Arte France, and others

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