[FR] Broadcasting the image of a person involved in a debate of general interest is lawful

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The Court of Cassation has delivered a judgment which deserves reporting, since it concerns the scope of the transfer to the producer of a documentary of the right to use a person's image by someone who has been interviewed. In the present case, the director of a review had granted a film interview to the producer of a documentary entitled "La vérité est ailleurs ou la véritable histoire des protocoles des sages de Sion" ('the truth is elsewhere, or the true story of the Protocoles des Sages de Sion'), co-produced by and broadcast on the channel Arte. The purpose of the interview was to ascertain the director's position on the work entitled "Protocoles des Sages de Sion", published in the review. The person concerned had signed a "letter authorising use of image" according to which no shots of the interview could be broadcast without his first having viewed the sequences retained when the broadcast was edited. Since the documentary had been broadcast without this having been done, the person concerned had the production companies summoned by the courts and ordered payment of reparation for the prejudice suffered as a result of failure to observe right to control the use of his image, for which he claimed 10 000 euros in damages. The Versailles Court of Appeal had rejected the interviewee's application in 2012, on the grounds that there had been no infringement of his right to control the use of his image since his involvement in the discussion on the ideas covered by the disputed documentary was of general interest. In support of his appeal to the Court of Cassation, the applicant claimed that the Court of Appeal had been wrong in its decision, since it had noted that he had not been able to view the sequences in which he appeared before the documentary was broadcast (the sequences lasted a total of one minute out of the 52 minutes of the broadcast), and that he had therefore not given his consent to his image being broadcast. He called on the Court of Cassation to find that the Court of Appeal erred in its observations and that his right to control the use made of his image, and hence Article 9 of the Civil Code, had been violated. However, the Court of Cassation - the highest court in France - recalled, as the Court of Appeal had noted, that the applicant had not been unaware that he was being filmed, that he had agreed to answer the producer's questions, and that the interview was part of a debate on issues of general interest concerning both the current repercussions of the work at issue and questioning in negationist circles regarding the document's authenticity. The Court found that the Court of Appeal had made the correct decision, i.e. that the applicant's involvement in the debate justified illustrating

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his interview by broadcasting his image, which had not been taken out of its agreed context, without there being any need to obtain his authorisation. As a result it was of no importance whether or not the stipulations of the “letter authorising use of image” had been disregarded, and the appeal was rejected.

Cour de cassation (1re ch. civ.), 9 avril 2015 - M. X c/ Arte France et Doc en Stock

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Court of Cassation (1st chamber, civil matters), 9 April 2015 - Mr X v. Arte France and Doc en Stock

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