[FR] Audiovisual creation based on actual events

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In a decision delivered on 30 September, the Court of Cassation rejected the appeals brought by the channel Arte and the production companies which produce the programme “Intime Conviction” against the appeal judgment delivered under the urgent procedure ordering them to stop broadcasting the programme on pain of penalty payments (see IRIS 2014-4/15). They had also been ordered to pay a provisional amount towards compensation for the prejudice suffered as a result of the invasion of the privacy of the applicant party, a coroner (medical examiner) who had been taken in for questioning after his wife had been shot dead, before being acquitted in autumn 2013 by a court of assizes, and who had recognised himself in the main character featured in the programme. The “Intime Conviction” programme comprised firstly a TV film shown on 14 February 2014 describing a police investigation carried out following the violent death of a woman and resulting in the arrest of her coroner husband, referred to as “Paul X”. The programme also included a number of videos shown over a period of fifteen days - on an Internet site operated by the company which edited the TV channel - following the case each day in the court of assizes. Internet users could view the file created by the production company and, after each hearing, give their opinion on the innocence or guilt of the accused party; the verdicts of the fictional court of assizes and of Internet users was to be broadcast at the end of the two-week period.

In support of their appeal, the television channel and the production companies claimed the benefit of freedom of audiovisual creation, which they held to include the possibility for authors of works of fiction to draw inspiration from actual facts, and to incorporate fictional elements in their works. They also argued that relating facts that were public knowledge as they had already been divulged could not in itself constitute an invasion of privacy.

The Court of Cassation recalled the principle according to which it was for the judge to seek a balance between the right to privacy and the right to freedom of expression where they were of equal normative value and, as appropriate, to come down in favour of a solution which best protected the most legitimate interest. In the case at issue, the court of appeal had noted that, although the TV film was a work of fiction, it did display many similarities with the case on which the applicant was judged; these similarities were listed in the decision. In its decision, the Court noted that a scene of pure fiction, added to actual events, which were also described in the decision, did indeed constitute an invasion of the

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person’s privacy, even if the work was fictional. The minimal differences between the work of fiction and the applicant’s life were not enough to prevent confusion, particularly as the press had commented at length on the programme’s story line being based on the applicant’s party’s case and the reactions of Internet users showed that they had identified him. The decision went on to state that even though some of the facts connected with the person’s private life had already been divulged, they could not lawfully be reproduced since the programme “Intime Conviction” was a work of fiction, and neither a documentary nor an informative broadcast. Although audiovisual creation could draw inspiration from actual events and represent living persons, it could not, without their agreement, invade their privacy if it did not clearly present such elements as being totally fictional. The Court of Cassation found that the court of appeal had considered the balance of the applicant’s entitlement to privacy and the entitlement to freedom of expression on the part of the channel and the production company, and had decided that this work of fiction based on actual events constituted an infringement of the applicant’s right to privacy. The Court had been able to deduce that the applicant’s privacy had indeed been invaded, justifying a restriction on the right to freedom of expression. Although this overturns the decision of the appeal court delivered under the urgent procedure, the merits of the case are still awaiting judgment.

Cour de cassation (1re ch. civ.), 30 septembre 2015 - Arte et Maha film c/ J.-P. Muller

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Court of Cassation (1st civil chamber), 30 September 2015 - Arte and Maha film vs. J.-P. Muller

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