[FR] Court of Cassation refuses to penalise use of concealed camera and infiltration by journalists

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On 30 March 2016 the Court of Cassation delivered an interesting decision on the infiltration and use of a concealed camera by journalists for a television magazine programme. In its 'Les Infiltrés' magazine programme, the public-sector channel France 2 had broadcast an item entitled 'À l'extrême droite du père' ('to the extreme right of the father'), produced by a journalist who had concealed his professional status and, using a hidden camera, had entered a number of "traditionalist" Roman Catholic establishments and associations, recording images and speech without the people concerned being aware that he was doing so. A number of complaints had been brought by these people on the grounds of invasion of privacy, production of a montage that violated the individuals' image, and fraudulent methods of obtaining the material. The case was brought against the journalist who had produced the coverage, the chairman of the television channel, and the production company and its manager. The investigating judge had referred the case to the criminal court on the grounds of invasion of privacy, the use of words and images obtained thereby, and collusion, and stated that the other charges should be dismissed. The civil parties joined to the proceedings had appealed against the decision of partial dismissal. Since the Court of Appeal upheld the decision of the investigating judge, the applicant parties appealed to the Court of Cassation.

Article 226-8 of the Penal Code prescribes a punishment of one year's imprisonment and a fine of EUR 15 000 for the publication by any means of any montage that uses the words or the image of a person without his or her consent, unless it is obvious that it is a montage, or this fact is expressly indicated. The Court of Cassation noted that, in upholding the dismissal the Court of Appeal had observed that the provision would penalise the montage in itself only if it deliberately distorted images and speech though the addition or removal of elements which did not serve its purpose. After analysing the various sequences at issue, the Court was able to note that the montage incorporated cuts and selected sequences with the aim of providing television viewers with certain information regarding areas of the extreme right, but that the process had not manipulated the information it contained. The Court also observed that it appeared to be obvious that the segment was in fact a montage, by its presentation, the repeated use of flashbacks to a grid of images during the reportage while the commentator was speaking, and because of the timescale

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made known to the viewer. Viewers were therefore in a position to note that the various situations shown were indeed a concentration of information formatted according to the requirements typical of the type of broadcast at issue. The investigating judge at the Court of Appeal had concluded that the reportage had not used either special effects or manipulation, had not distorted the reality of the images and words filmed and recorded, and had not altered their import or meaning. The Court of Cassation found, noting that the disputed reportage was obviously a montage and did not in any way manipulate the meaning of the recorded images and words, that the investigating judges had come to the right conclusion in their decision.

The Court of Cassation also confirmed the dismissal by the Court of Appeal of the claim of fraudulent obtaining, in which the Court of Appeal had noted that although the journalist had used a false name, this had not been decisive. The fact that he failed to indicate his professional status and told the people he met that he was a militant, an atheist or a volunteer did not constitute the assumption of a fictitious capacity within the meaning of the law: it was merely a lie. Thus, while the infiltration procedure was used to reveal or bring to light the behaviour of these people without their consent, it did so without provoking them and did not constitute a fraudulent manoeuvre that could be qualified as fraudulent obtaining.

Cour de cassation (ch. crim.), 30 mars 2016 - Association cultuelle du Bon Pasteur et a.

Court of Cassation (criminal chamber), 30 March 2016 - Bon Pasteur religious association and others

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