[FR] Docu-fiction on a court case: no invasion of privacy, abuse of a person's image, or infringement of the main character's right to be forgotten

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On 27 March 2017, the Court of Appeal in Paris delivered an interesting judgment involving the right to control over the use made of a person's image and the right to privacy of a woman involved in a criminal case that was the subject of a 'docu-fiction'. The television programme at issue was based on a case in which, in 2009, a woman was found guilty of complicity in the murder of her husband and sentenced to 20 years in prison. The programme was constructed using interviews of the people involved in the court case and journalists, and was illustrated with photographs and videos. The woman in question contested that the broadcasts of the programme had infringed her right to privacy, her right to control over the use made of her image, and her right to be forgotten. The court of first instance had rejected her applications.

Firstly, the woman contested that the public nature of the debates resulting in her conviction justified repeating the elements relating to her private life brought up in court (her past as an "escort girl", her previous family situation, her address, etc.). The Court of Appeal concurred with the court of first instance, finding that the programme contained no new information about the woman's past in addition to those elements brought up during the proceedings and debated publicly before the criminal court, which the woman did not contest. She also claimed that the programme's subject matter was not a topical news item. The Court nevertheless observed that while the facts seemed relatively distant at the time of the judgment, in October 2010 they were recent, given that the sentence was handed down in February 2009; also, the publicity given to the case - both when the crime was committed and when the sentence was handed down - made it legitimate to recall the case as part of a news programme. The original judgement rejecting any infringement of the woman's privacy was therefore upheld.

Regarding the alleged infringement of the woman's right to control over the use made of her image, she claimed, on the basis of quotations from Parliamentary work and legal doctrine, that Article 41 of the French Prisons Act of 24 November 2009 was intended to protect images of prisoners generally, not only those taken inside prison. The Court did not agree, on the grounds that prisoners did not have any more or less right that anyone else to exercise control over the use made of images of them in respect of photographs taken before or after their

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imprisonment. The Court therefore found that the only limitation on such a right was the right to information, with depended on the status or past of the persons concerned. Furthermore, the observations regarding the alleged infringements of the woman's privacy also applied to her right to control over the use made of images of her, which was a constituent element. It was also noted that the woman was not alleging that the images at issue infringed her dignity.

Lastly, the woman invoked her right to be forgotten. However, the Court held that she did not produce any proof that the disputed broadcast was preventing her rehabilitation in any way, recalling once again that the programme was broadcast in 2010.

The judgment was upheld on all counts.

Cour d'appel de Paris (pôle 2, ch. 7), 29 mars 2017, Mme J. M'. B. c/ Edi TV et Capa Presse

Court of Appeal in Paris (section 2, chamber 7), 29 March 2017, Ms J. M'. B. v. Edi TV and Capa Presse

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