# [FR] Invasion of an executive’s privacy in television reporting legitimated by the right to information

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In 2016, during its “Envoyé Spécial” programme, France Télévisions broadcast a report on the crisis in milk production entitled “Sérieusement?! Lactalis: le beurre et l’argent du beurre” (“Really?! Lactalis – having its cake and eating it”). The CEO of Lactalis claimed that a sequence in the report mentioned the name of his holiday home, giving its exact location and showing aerial views of the property. Invoking invasion of privacy, he brought a claim against France Télévisions on the basis of Article 8 of the European Convention on Human Rights and Article 9 of the French Civil Code, seeking compensation for the harm caused; he also sought banning measures and the publication of the court’s decision. After the court of appeal rejected his claim, he took the matter to the court of cassation.

In support of the cassation appeal, the party concerned submitted that the court of appeal had based its decision on the first three of the six criteria – which he considered to be cumulative – determined by the European Court of Human Rights for balancing interests in cases of conflict between the rights guaranteed by Articles 8 (the right to privacy) and 10 (the right to freedom of expression). He therefore argued that the court had not examined the repercussions of publishing the details regarding the CEO’s country cottage, the circumstances of the images taken, and the sanction merited. He also observed that he felt the court of appeal had merely affirmed that the elements at issue had already been in the public domain (without any protest on the part of the CEO); however, he maintained that the freedom to divulge information concerning a person’s private life that was already in the public domain was not an absolute principle. Lastly, he submitted that the court dealing with the merits of the case had not specifically acknowledged that there was ever any need to invade a person’s privacy that could supposedly be justified by the right to freedom of expression, since he argued that there was a general debate in progress on the “milk crisis”.

The court of cassation reiterated that, in balancing the rights involved in the case, it was necessary to take into consideration (i) the contribution made by the publication at issue to a debate of general interest, (ii) the prominence of the person in question, (iii) the purpose of the report, (iv) the previous behaviour of the person concerned, (v) the content, form and repercussions of publication, and (vi) if appropriate, the circumstances in which the photographs were taken. It was therefore for the court to carry out a specific examination of each of these

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criteria.

In the case at issue, the court of appeal found that the accompanying commentary provided in the disputed footage, which made it possible to locate precisely the home of the person concerned, were characteristic of an invasion of privacy. It noted firstly that the report at issue referred specifically to the mobilisation of milk producers against Lactalis (the world's leading milk group, which they accused of setting prices that were too low) and compared the financial situation of milk producers with that of the group's CEO. The court added that the applicant's property holdings were not set out in detail: the information provided referred only to the property he owned in Mayenne, where the farmers depicted in the report also lived; this meant that the information fell within the debate of general interest initiated by the broadcast. The decision went on to state (citing the reasons set out by the judge of the court of cassation) that the person concerned, in his capacity as CEO of the Lactalis group, was a public figure, and the name and location of his second home had been divulged on several occasions in the printed press, but he had not in the past protested against the divulging of that information. The court also found that it was possible to consult an overall view of his property using the Google Maps on-line map service and that, in producing the report at issue, the journalist concerned had not set foot on the private property in question.

The court of cassation found that the court of appeal had indeed specifically examined each of the criteria to be applied when balancing the right to have one's privacy protected and the right to exercise freedom of expression, and had not been required to carry out any further investigation. The court had justified its decision to uphold that the invasion of the person's privacy had been legitimated by the public's entitlement to be informed.

***Civ. 1re, 10 oct. 2019, n° 18-21.871, M. E. Besnier***

https://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/822_10_43725.html

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