[FR] *Conseil d'État* rejects application for TikTok ban in New Caledonia to be suspended

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On 15 May 2024, following a serious breakdown of law and order two days previously (armed confrontations, attacks on and destruction of public buildings, infrastructure and shops, with many human casualties and paralysed public services and transport networks), the President of the Republic, Emmanuel Macron, declared a state of emergency in New Caledonia. The day before, it had been decided that access to the TikTok social network should be blocked in New Caledonia because it was being used to facilitate the violence. On the basis of Article L. 521-2 of the Administrative Justice Code, various human rights groups and individuals asked the urgent applications judge of the *Conseil d'État* to suspend this decision and order the reinstatement of the social network. They argued that the necessary condition of urgency should be recognised because access to the social network had been blocked in a serious and clearly unlawful breach of freedom of communication.

The urgent applications judge found that the applicants had failed to demonstrate the urgency of the situation on the basis of Article L. 521-2 of the Administrative Justice Code, but had merely claimed that the disputed decision had caused such a serious breach of the freedoms of expression, communication, access to online communication services, the press and pluralist expression of schools of thought and opinions that it constituted an urgent situation in itself. However, a breach of a fundamental freedom was not sufficient to fulfil the condition of urgency. Whereas the applicants had claimed during the hearing that the judge should recognise the presumption of urgency in view of the seriousness and nature of the breach of these fundamental freedoms under the disputed decision, the judge found that the decision only concerned the blocking of one social network in New Caledonia and did not affect any other social networks or means of communication, including the press, television and radio. Moreover, the measure was expected to end very soon since, according to its latest statements, the government had promised to lift the ban as soon as law and order were restored.

Therefore, since (i) the applicants had failed to prove that the condition of urgency had been met, (ii) the measure was limited and temporary, (iii) the restoration of public safety and security was in the public interest, and (iv) the government had stated that the blocking of the social network had helped to quell the trouble, the condition of urgency could not be regarded as fulfilled. The

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application was therefore dismissed.

In a press release, the High Commission of the Republic in New Caledonia stated that: “Following the end of the state of emergency in the territory on Tuesday 28 May 2024, the ban on the TikTok platform has been lifted.”

Conseil d'État, 23 mai 2024, n° 494320, La Quadrature du net et a.

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2024-05-23/494320

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