

[FR] Prime Minister's TikTok ban in New Caledonia overturned as disproportionate infringement of freedom of expression

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La Quadrature du net, the Ligue des droits de l'homme, residents of New Caledonia and others asked the *Conseil d'Etat* (Council of State), on the grounds of abuse of power, to annul the French prime minister's decision of 14 May 2024 to interrupt access to the online public communication service TikTok in New Caledonia due to exceptional circumstances. The prime minister lifted this measure on 29 May 2024. At the same time, a decree issued by the Council of Ministers on 15 May 2024 declared a state of emergency in New Caledonia with effect from the same day. This ended 12 days later, in accordance with the provisions of Article 2 of the Law of 3 April 1955 relating to the state of emergency.

The *Conseil d'Etat*, recalling the applicable legal framework, stated that, in view of the infringements of the freedom of communication of thoughts and opinions, freedom of expression and all the other rights and freedoms fostered by an online public communication service, in particular the right to private and family life and freedom of trade and industry, the administrative authority could not decide, other than in cases provided for by law, to interrupt access to such a service. However, it could resort to such a measure in exceptional circumstances if it was essential to meet the needs of the moment. In this context, a complete interruption of the service in question could only be lawfully imposed on a temporary basis, provided that there was no technical means of immediately taking alternative measures that were less intrusive of the rights and freedoms in question, and that the ban was imposed for a period not exceeding that required to seek out and implement such measures.

In the present case, the provisions of Article 11(II) of the Law of 3 April 1955, which allow the Minister of the Interior to take any measure to block any online public communication service that incites or glorifies acts of terrorism, did not in principle prevent the prime minister from implementing, as from 15 May 2024, simultaneously with the state of emergency, the decision taken the previous day to block access to TikTok for reasons other than the fight against terrorism, provided that in view of the exceptional circumstances in New Caledonia, none of the other measures provided for by the Law of 3 April 1955, nor any measures that could be taken under ordinary law, were likely to meet the needs of the

moment.

At a time when New Caledonia was experiencing particularly serious public order disturbances, TikTok was used to disseminate content that incited the use of violence and spread very rapidly thanks to the algorithms it used. The prime minister, having established that the use of this service was likely to aggravate the situation and compromise the restoration of public order, was entitled, in view of the exceptional circumstances prevailing at the time, and in the absence of other technical means immediately available, to suspend the TikTok service for a specified period not exceeding that necessary to find and implement, where appropriate in conjunction with the service provider, alternative measures making it possible to achieve the objective sought and less prejudicial to the rights and freedoms in question, such as, in particular, the blocking of certain network functions. Under the contested decision, however, the service was completely interrupted for an indefinite period, linked solely to the continuation of public disorder, without being conditional on the impossibility of implementing alternative measures. The applicants were found to be justified in arguing that the prime minister had thereby disproportionately infringed freedom of expression, freedom to communicate ideas and opinions and freedom of access to information.

Since the applicants were entitled to request its annulment, the prime minister's decision of 14 May 2024 suspending access to TikTok in New Caledonia was therefore annulled.

Conseil d'Etat, 1er avril 2025, n° n°494511,494583, 495174, La Quadrature du net et a.

<http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2025-04-01/494511>

Conseil d'Etat, 1 April 2025, no. 494511,494583, 495174, La Quadrature du net et al.

