[FR] Ban on Publishing Public Opinion Polls before an Election Does Not Contravene Article 10 of the European Convention on Human Rights

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The week before the European Parliament elections, the Conseil d'État delivered its judgment on the legality of the French law regulating the publication of public opinion polls. Article 11 of the act of 19 July 1977 prohibits the publication, broadcast or reporting of any opinion poll directly or indirectly related to an election during the week preceding voting and during the actual voting period. Last March the CSA (Conseil supérieur de l'audiovisuel - government regulatory body for radio and television) sent a recommendation to all television and radio services, reminding them of the ban. The opinion polls committee had taken the same action with the poll bodies and the press. Backed up by five judgments delivered on 15 December last year by the regional court in Paris, which had declared the provisions of the 1977 act incompatible with Article 10 of the European Convention on Human Rights, an individual had appealed to the Conseil d'État to have the recommendations cancelled.

The administrative judge held that the ban on publishing or broadcasting opinion polls during the week preceding a ballot did indeed constitute interference on the part of the public authorities with the right to freedom of expression, but the restriction was nevertheless based on law. It was justified by the legislator's desire to avoid citizens' choice being influenced during the days immediately preceding a ballot by a result which could be wrong, without it being possible to make any timely rectification. The aim thus came within the ambit of the «protection of the rights of third parties» within the meaning of the provisions of Article 10, paragraph 2, of the European Convention on Human Rights. Thus the Conseil d'État considered that, because of both the justification of the restriction and the period during which it applied, the provisions of Article 11 of the 1977 act were not incompatible with the provisions of Article 10 of the European Convention on Human Rights.

The petitioner also claimed that the prohibition contained in the 1977 act had ceased to be «necessary» within the meaning of Article 10 of the Convention, as foreign television channels and newspapers quite legally reported on the results of polls and posted the results on the Internet, to which many French voters had access. The Conseil d'État considered that this argument was irrelevant to the scope of the regulations and to the obligation incumbent on the administrative authority to ensure its application. On the other hand, it could constitute good

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reason for the legislator to reconsider certain aspects of the act of 19 July 1977, and indeed even the principle it embodies.

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