[FR] French Regulations on Publishing Opinion Polls Incompatible with Article 10 of the ECHR

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For the third time this year the Court of Cassation has found provisions of the French regulations on communications law incompatible with Article 10 of the European Convention on Human Rights (ECHR). The present case referred to Articles 1, 11 and 12 of the Act of 19 July 1977 that prohibit publishing, circulating and commenting on opinion polls during the week preceding an election. Between the two ballots in the parliamentary elections in 1977, the newspaper Le Parisien published an analysis and commentary of an opinion poll under the heading "First round of parliamentary elections - what the French people wanted to say". The newspaper's editor was therefore brought before the regional criminal court on the grounds that he had violated the 1977 Act. He was acquitted, however, as the judges accepted his defence, which was based on the incompatibility of the regulations with Articles 10 and 14 of the ECHR. The public prosecutor appealed against the judgment and the court of appeal in Paris overturned it on 29 June 2000, on the grounds that, although they provided citizens with information, opinion polls carried out before a ballot could also influence voting. The Court felt that the effects of the opinion polls were covered by the protection of the rights of third parties within the meaning of Article 10(2) of the ECHR. Moreover, the Court felt that, although modern techniques for circulating information (Minitel and Internet) were not confined by national borders, this did not constitute discrimination within the meaning of Article 14 of the Convention. An appeal was lodged against this decision, and the Court of Cassation has now stated clearly that the right to freedom of expression set out in Article 10 of the Convention, which includes the freedom to receive or communicate information, cannot be limited by conditions, restrictions or sanctions provided for by law unless these constitute measures necessary in a democratic society, in particular for the protection of the reputation or the rights of third parties, to prevent the divulging of confidential information or to guarantee the authority and impartiality of the judiciary. In this respect, the Court of Cassation (the highest court in France) found that the provisions of the 1977 Act introduced a restriction on the freedom to receive and communicate information that was not necessary for the protection of the legitimate interests listed in Article 10(2) of the ECHR. This constitutes a remarkable volte face in the case-law, as both the Court of Cassation and the Conseil d'Etat have until now always held the 1977 regulations on the publication of opinion polls to be compatible with the provisions of the ECHR.

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Cour de cassation (crim.), 4 septembre 2001 - Philippe Amaury

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