[FR] Commercialisation of Broadcasting Rights for Sports Events on Radio Submitted to the Courts as an Urgent Matter

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The commercialisation of broadcasting rights for sports events on radio remains a matter for debate. On 14 March the "Sport Libre" EIG, whose membership includes most French radio stations, and Radio France applied to the Conseil d'État as an urgent matter to have the French national football league prevented from granting exclusivity to any one radio station for the events and competitions it organises, and from making over any rights in this respect, and to maintain the possibility of freely reporting on such events and competitions live on radio. The applicants felt that the matter was urgent since the league had asked the radio stations to reply to its call for applications for the sale of radio exploitation rights in respect of matches in the French championship no later than 22 March. According to Article 18-1 of the Act of 16 July 1984 on the organisation and promotion of physical and sporting activities, "the federations [...] are the sole owners of the right to exploit the sporting events or competitions they organise". Article 18-2 adds that "the transfer of the right to exploit a sporting event or competition to an audiovisual communication service may not prevent the public receiving information from other audiovisual communication services. The vendor or purchaser of such a right cannot oppose the broadcasting by other audiovisual communication services of short extracts taken free of charge from among the images shown on the purchaser's services and freely chosen by the service that is not the purchaser of the exploitation rights broadcasting the images".

The Conseil d'État considers that the solution to the problem is bound up with the question of whether live radio coverage of a sporting competition falls within the scope of the "exploitation rights" referred to in these provisions and whether the rules that arise out of these provisions in respect of television can also be applied to radio. It found, however, that these provisions were ambiguous because of the simultaneous use in the second paragraph of Article 18-2 of the terms "audiovisual communication services" and "images". Because of this ambiguity, the Conseil d'État held that the decision of the national football league was not in fact "manifestly" unlawful. According to the terms of Article L. 521-2 of the Administrative Justice Code, use of the urgent procedure depends on the "manifestly unlawful" nature of the infringement of a fundamental freedom, and the application on the part of the "Sport Libre" EIG and Radio France was therefore rejected. The case itself remains pending and the decision of the Conseil d'État is therefore keenly awaited.

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Conseil d'Etat, ordonnance de référé, 18 mars 2002, GIE Sport Libre et autre

Conseil d'État, order in an urgent matter, 18 March 2002, "Sport Libre" EIG and another

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