

[FR] Conseil d'Etat Upholds the Formal Notice Served on Eutelsat

IRIS 2005-4:1/13

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In a decision on 10 February 2005, the Conseil supérieur de l'audiovisuel (audiovisual regulatory body - CSA) served formal notice on Eutelsat, the satellite telecom network on which the Iranian channel Sahar 1 is carried, to stop broadcasting the channel within one month. The channel had not concluded an agreement with the CSA and had broadcast programmes that were manifestly anti-Semitic (see IRIS 2005-2: 12). Eutelsat made an urgent application to the Conseil d'Etat for enforcement of the decision to be suspended on the grounds that the Act of 30 September 1986 on freedom of communication, as amended, did not require satellite carriers to check that the channels broadcast using their satellite capacity had honoured their obligation to conclude an agreement with the CSA and were not broadcasting programmes contrary to the principles of French law. The Conseil d'Etat rejected the application on 3 March.

Indeed it noted that since the amendment of the Act of 30 September 1986 by the Act of 9 July 2004, the specific purpose of which was to provide a framework for the broadcasting of non-European channels by satellite operators falling under French jurisdiction, operators were required to ensure that the contracts they concluded with the television services to which, either directly or through other operators, they conceded use of their network included a clause making application conditional on the obligations incumbent on such services under French law. In this respect the Conseil d'Etat recalled the obligation to conclude an agreement with the CSA, in compliance with Article 33-1 of the Act, and the prohibition of any incitement to hatred or violence on the grounds of race, gender, morality, religion or nationality in the programmes shown. Consequently it was for the CSA, to which Article 42 of the Act of 30 September 1986 gave the power to serve formal notice on satellite operators, to use this procedure, which did not constitute a penalty, to prescribe for French satellite operators measures proportionate to the nature and the gravity of their failings and such as would ensure compliance with their obligations. In the present case, in view of the patently anti-Semitic connotation of the programmes broadcast by the channel Sahar 1 and its failure to have concluded an agreement with the CSA, the Conseil d'Etat found that it was not established that the CSA had exceeded its powers by serving formal notice on Eutelsat to stop broadcasting the channel within one month.

Conseil d'Etat (ord. réf.), 3 mars 2005, Société Eutelsat

http://www.conseil-etat.fr/ce/jurispd/index_ac_Id0513.shtml

Conseil d'Etat (order in an urgent matter), 3 March 2005, the company Eutelsat

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