[FR] Conseil d'Etat Cancels Abolition of Advertising on Public Television before Legislation Is Adopted

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In a decision on 11 February 2010 the *Conseil d'Etat* cancelled the letter from the Minister for Culture and Communication of 15 December 2008 calling on the Chairman of France Télévisions to stop marketing advertising space on the group's channels between 10 p.m. and 6 a.m. "in accordance with both the spirit and the letter of the legislative reform in hand". The letter was issued at a time when the bill on reforming the audiovisual sector, directed mainly at abolishing advertising on public service television, was pending: the Act had only passed through the National Assembly on its first reading, and was awaiting examination by the Senate, scheduled for 19 January 2009. The Government, however, wished to have the advertising abolished immediately, from 5 January 2009, and had therefore sent the disputed letter calling on France Télévisions to abandon advertising from that date. It did so, as approved by the company's board of directors on 16 December 2008, before the Senate's deliberations. About twenty members of the Senate, who held the Minister's letter and the resolution adopted by the board of directors to be against the law, called on the *Conseil d'Etat* to cancel them, even though the arrangements were already being applied. The *Conseil d'Etat* concurred, recalling that under Article 34 of the Constitution, 'The law lays down the rules concerning the civil rights and the fundamental guarantees granted to citizens for the exercise of public freedoms; the freedom, diversity and independence of the media (...)". In the present case, the *Conseil d'Etat* held that the abolition of advertising during a substantial part of airtime was a measure that had the effect of depriving France Télévisions of a significant part of its income and impacting on the guarantee of its resources, which constituted an element of its independence and could therefore only be decided on by the legislative authority. The two contested documents were therefore cancelled.

Although this decision, seen by the opposition as "a slap in the face for the executive authority", is fairly strong symbolically, the CSA feels that it will have "no practical consequences". As the *Conseil d'Etat* notes, the cancellation only concerns the period between 5 January - the date on which the measure was implemented - and 8 March 2009, the date on which the Act reforming the audiovisual sector, and abolishing advertising between 10 p.m. and 6 a.m. on the channels in the France Télévisions group, came into force. This measure, decided on by the legislator and in force for more than a year, is not *a priori* being called into question, except perhaps by the European Commission. The Commission has

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qualified the 0.9% tax on turnover imposed since the adoption of the Act of 5 March 2009 on telecom operators to compensate for the abolition of advertising as “an administrative fee incompatible with European law”, and France therefore has two months to reply. To be continued, then!

Conseil d’Etat, (5eet 4esous-sect.), 11 février 2010, Mme Borvo et autres

http://www.conseil-etat.fr/cde/node.php?articleid=1959

Conseil d’Etat, (5thand 4thsub-sections), 11 February 2010, Ms Borvo et al.

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