[FR] Constitutional Council Validates Legislation on Remuneration for Copying for Private Use

IRIS 2012-8:1/22

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On 20 July 2012, the Constitutional Council deliberated on the compliance with the French Constitution of Article 6 of the Act of 20 December 2011 on remuneration for making copies for private use. The purpose of this remuneration is to ensure compensation for the holders of copyright or neighbouring rights in return for the reproduction by users, for their private use, of protected works and other objects covered by neighbouring rights. In a judgment delivered on 17 June 2011, the Conseil d'Etat had cancelled a decision made by the "Private Copy Committee", which is responsible for establishing the scale for this remuneration, as it held - in accordance with jurisprudence in the Padawan case before the CJEU (see IRIS 2010-10/7) - that the Committee should have excluded media acquired by corporate persons for professional purposes from the scope of the remuneration. The Conseil d'Etat had postponed the effects of its decision for six months so that new rules on the basis for the remuneration in respect of copying for private use could be adopted before the cancellation took effect (see IRIS 2011-7/20).

Further to this judgment, and in the absence of the new scale for remuneration for the right to make a copy for private use before expiry of the given deadline, Parliament had adopted the Act of 20 December 2011 under the urgent procedure, bringing the French system of remuneration for making copies for private use into line with European requirements (see IRIS 2012-1/26). However, the audiovisual equipment industries syndicate (Syndicat des Industries de Matériels Audiovisuels - SIMAVELEC), in support of an application for the Conseil d'Etat to cancel a decision made by the Private Copy Committee in January 2011, had obtained by a decision of 16 May 2012 a referral to the Constitutional Council for a priority ruling on the constitutionality of Article 6 I of the Act of 20 December 2011. It should be recalled that since 1 March 2010, anyone may claim in proceedings before an administrative or judicial body "that a legislative provision infringes the rights and freedoms guaranteed by the Constitution": this involves a priority ruling on constitutionality. In support of its application, SIMAVELEC held that by prolonging the existence of the rules that had been cancelled by the Conseil d'Etat, Article 6 I validated the rules in disregard of the constitutional principles of the separation of powers and the right to effective legal recourse.

In its decision delivered on 20 July 2012, the Constitutional Council found that the contested provisions had been adopted before the expiry of the deadline laid

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down by the Conseil d'Etat, as the Commission had not been in a position to establish the new remuneration scale in time. By laying down transitional rules pending a new decision by the commission and for a period of time that may not in any event exceed twelve months, the aim of these provisions is to prevent the cancellation pronounced by the Conseil d'Etat producing the effects it had in fact intended to prevent by postponing the effects of such a cancellation. The Constitutional Council therefore found that the contested provisions were of sufficient general interest, strictly defined the scope of the validation, and did not contradict any legal decisions that had the force of res judicata. Article 6 I of the Act of 20 December 2011 was therefore declared compliant with the Constitution. Although the rightsholders expressed their satisfaction, SIMAVELEC has announced its intention to appeal to the European Commission, and to refer the procedures for refunding the private copying levy to professionals to the Conseil d'Etat.

Décision n° 2012-263 QPC du 20 juillet 2012

http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/cc2012263qpc.pdf

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