[FR] Conseil d’Etat Cancels Rating Certificate for Film by Lars von Trier

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In a decision handed down on 29 June 2012, the Conseil d’Etat (France’s highest administrative jurisdiction) has cancelled for a second time the rating certificate for Lars von Trier’s film Antichrist, which prohibited showing it to anyone under 16 years of age.

In France, the showing of films in cinema theatres is subject to obtaining a rating certificate (visa d'exploitation) from the Minister for Culture, on the opinion of the Film Rating Board (Commission de Classification des Oeuvres Cinématographiques). The Board may issue a certificate authorising the showing of a film to any audience, a certificate prohibiting showing to anyone under 12 years old, or a certificate prohibiting showing it to anyone under 16 years of age. The Minister may also decide to ban the showing of the cinematographic work completely. Lastly, a film listed as pornographic or such as to incite violence may not be shown to anyone under 18 years of age. Article L. 211-1, paragraph 2 of France’s Cinema and Animated Image Code states that “the certificate may be refused or its issue made subject to compliance with a number of conditions for reasons based on the protection of children and young people or respect for human dignity”. Additionally, according to Article 2 of the Decree of 23 February 1990, as amended, “any opinion [delivered by the Film Rating Board] in favour of a decision including a restriction of any kind on the showing of a cinematographic work may only be given in plenary session. In this case, the reasons for the opinion must be explained and may be made public by the Minister with responsibility for Culture”.

In the case at issue, the film Antichrist had been referred to the Film Rating Board, which in May 2009 delivered its opinion recommending that the film should not be shown to anyone under 16 years of age because of its violent nature; the opinion was adopted by the Minister for Culture of the time. The certificate was cancelled on 25 November 2009 by the Conseil d’Etat for lack of explanation of the reasons for the rating, then granted once again by the Minister for Culture. The applicant association, Promouvoir, which has as its aim “the promotion of Judeo-Christian values in every area of social life”, requested a further cancellation of the ministerial decision granting the certificate. In its decision of 29 June 2012, the Conseil d’Etat noted that the Film Rating Board had merely referred to the “violent climate” of the film as justification of its opinion in favour

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of banning showing the film to anyone under 16 years of age, without stating how the violence justified the proposed ban. As the Conseil d'Etat had indeed already noted in its decision of 25 November 2009, such an opinion could not be deemed "adequately explained" as required by Article 2 of the Decree of 23 February 1990, as amended.

The Conseil d'Etat found that this irregularity deprived the Minister of a crucial element in determining the choice of the various possible restrictions that could be imposed on showing the work, in the light of the need to protect children and young people, to show respect for human dignity, and to uphold freedom of expression. Moreover, the lack of explanation was also likely to deprive the public of an element of information regarding the circumstances taken into consideration by the Minister in issuing the certificate. Thus the inadequate explanation of the reasons for the Rating Board's opinion was likely to influence the Minister's decision and to deprive the various parties concerned of a guarantee regarding the limitations on the freedom of expression constituted by any measure restricting the showing of a cinematographic work. As a result, the new rating certificate for the film Antichrist, granted in the light of the same inadequately explained opinion, was therefore the conclusion of a flawed irregular procedure, and this justified its cancellation once more.

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