[FR] New Methods and Constitutional Details for CSA Sanctions Procedure

IRIS 2014-2:1/19

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The Decree of 19 December 2013 on the sanctions procedure implemented by the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory authority - CSA) in application of Article 42-7 of the Act of 30 September 1986, has been officially published. This text follows on from the adoption of the Act of 15 November 2013 on the independence of the public-sector audiovisual scene, and reducing the sanctioning powers of the CSA by separating the stages of prosecution and investigation of cases (see IRIS 2013-10/23). Under the new legislation, the CSA remains competent to pronounce sanctions, but it will now only be able to do so in response to a referral by a rapporteur whose independence from the CSA college and the audiovisual sector is guaranteed by his/her status and the arrangements laid down for his/her appointment. The Decree lays down the conditions for implementing each stage in the procedure: notification of complaints by the rapporteur; timeframe for the parties to produce documentary evidence; hearing reports, possibility of protecting the procedure by applying business confidentiality; how to hold hearings; and how the CSA is to reach its decision.

This new procedure has been introduced at the same time as the Constitutional Council pronounced on the constitutionality of Article 42 of the Act of 30 September 1986, in its version resulting from the Act of 9 July 2010, which sets the limits on the CSA's power to serve notice. According to this text, the CSA has the power to serve notice on editors and distributors of audiovisual communication services and the operators of satellite networks requiring them to comply with the obligations imposed on them by legislation and the regulations. In the case at issue, notice had been served on an audiovisual service editor because of discriminatory statements made on the air; in its defence, it claimed that Article 42 of the 1986 Act did not guarantee within the CSA the separation of the powers of prosecution and investigation on the one hand and the powers of sanction on the other, thereby contravening the principles of independence and impartiality required by Article 16 of the 1789 Declaration of the Rights of Man. In a decision delivered on 13 December 2013, the Constitutional Council deemed the argument incorrect. It noted that a notice served by the CSA could not be regarded as the commencement of the sanction procedure provided for in Article 42-1, but only as a preliminary. It was only subsequently, if it failed to comply with a notice served in application of Article 42, that an editor could be subjected to one of the sanctions pronounced by the CSA (suspension of editing, broadcasting or distributing the service(s) in a programme category, part of a

programme, etc), under Article 42-1 of the Act of 30 September 1986. In the case at issue, it had not been this provision that was referred to the Constitutional Council. The “Wise Men” found that the service of notice did not constitute a sanction in the nature of a punishment, and therefore declared the disputed Article 42 in compliance with the Constitution.

Décret n° 2013-1196 du 19 décembre 2013 relatif à la procédure de sanction mise en œuvre par le Conseil supérieur de l'audiovisuel en application de l'article 42-7 de la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication

http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028352737&categorieLien=id

Conseil constitutionnel (n° 2013-359 QPC), 13 décembre 2013 - Sté Sud Radio Services et a.

http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2013-359-qpc/decision-n-2013-359-qpc-du-13-decembre-2013.138946.html