[FR] Tax on Editors and Distributors of Television Services Declared Partially Unconstitutional

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In a decision of 6 February 2014, the Constitutional Council declared the tax payable by editors and distributors of television services partially unconstitutional. In 2012, the tax yielded EUR 295.49 million, which was allocated to the national centre for the cinema and moving images (Centre National du Cinéma et de l'Image Animée - CNC). On 6 November 2013 the Conseil d'Etat referred to the Constitutional Council a priority question on constitutionality (question prioritaire de constitutionnalité - QPC) raised by the company TF1 in respect of a dispute between the company and the tax authorities. The question concerned paragraph 1(c) of Article L. 115-7 of the Cinema and Moving Images Code, which provides that the basis for calculating this tax is to include, in addition to income from advertising, sponsorship and public funding, the "sums paid directly or indirectly by the operators of electronic communications to the taxpayers concerned, or to the parties ensuring their collection, in respect of shared-income telephone calls, connections to telematic services and the sending of text messages in connection with the broadcasting of their programmes, with the exception of programmes serving a major national cause or of general interest".

In support of its QPC, TF1 claimed that the tax failed to take account of the principle of equality in respect of public expenditure, since it was payable by editors of television services in respect of sums of money they did not receive, and that the rules for establishing the basis for the tax resulted in taxation that exceeded the contributory means of the taxpayers concerned and was therefore confiscatory. In accordance with its decision, and in the light of Article 13 of the 1789 Declaration of the Rights of Man and of the Citizen ("A general tax is indispensable ...; it ought to be equally apportioned among all citizens according to their means."), and Article 34 of the Constitution (which prescribes the principle of equality in respect of taxation), the Constitutional Council noted that the disputed provisions did indeed require the editors of television services operating a television service received in mainland France to pay tax on revenue they might not receive. This meant that a taxpayer was being required to pay a tax based on an amount that included revenue it did not have, which was contrary to the Constitution. The Conseil d'Etat therefore deleted from paragraph 1(c) of Article L. 115-7 of the Cinema and Moving Image Code the phrase "or to the parties ensuring their collection", with the result that the editors concerned will now only pay tax on the amounts they actually receive. The declaration of unconstitutionality took effect on the date on which the decision was published,

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but it cannot be invoked in respect of tax already paid but not contested before that date.

Conseil constitutionnel, Décision n° 2013-362 QPC- Société TF1

http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/cc2013362qpc.pdf

Constitutional Council, Decision No. 2013-362 QPC - the company TF1

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