[FR] Under urgent procedure, administrative court suspends classification licence for the film ‘Love’

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In a decision delivered on 31 July 2015, the administrative court in Paris suspended the classification licence allowing the film ‘Love’ to be shown to anyone over 16 years of age which the Minister for Culture had issued in early July. Gaspar Noé’s film, presented at the Cannes Film Festival and released on 15 July 2015, describes ‘a burning passion full of promises, games, excesses and mistakes…’. At the time, it was screened (in 3D) at 33 cinemas throughout France, including seven in Paris. The Minister’s decision was in line with the opinion of the CNC’s classification board, which had tacked a warning onto the licence ‘because of the numerous scenes of non-simulated sex. Nevertheless, the author’s narrative intention in depicting an intense love affair and the strength of the connection created between the two main characters, as well as the humanity of their relationship, leaves the viewer in no doubt’. The association ‘Promouvoir’, whose aim is to promote Judeo-Christian values in every area of social life, applied to the administrative court under the urgent procedure, claiming that the film contained scenes of a pornographic nature and that it should therefore not be allowed to be shown to anyone under 18 years of age. Under the urgent procedure, the association therefore called for the suspension of the disputed licence which allowed the film to be shown to anyone over 16 years of age. In defence, the Minister for Culture held that the provisions at issue should be interpreted by combining objective and subjective criteria, in order to take account of both the intrinsic qualities of the scenes and the work as a whole. Thus the Minister felt that the main purpose of the film was to show an exclusive love affair in a realistic fashion: the narrative treatment and the artistic ambition of the film counterbalanced the sex scenes and, she believed, justified allowing the film to be shown to anyone over 16 years of age.

The judge sitting under the urgent procedure, whose competence was contested, found firstly that, in the light of the particularly raw nature of some of the sex scenes, allowing the film to be shown to anyone over 16 years of age constituted an urgent situation, given the need to ensure the protection of minors. On the merits of the case, he recalled that the provisions of Article L. 211-1 of the Cinema Code detailing the various categories of classification for a film’s licence gave the Minister with responsibility for culture special authority based on the need to both protect children and young people and ensure respect for human dignity. By virtue of this authority, is was more particularly for the Minister to notify the licencing board of any infringement of Article 227-24 of the Criminal

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Code, which prohibited the circulation of messages of a violent nature or seriously infringing human dignity if they were likely to be watched or seen by minors. When judges sitting under the urgent procedure receive an appeal against a classification licence issued for a work with sexually explicit content, they must determine whether there are any scenes involving non-simulated sex, as this may not be shown to anyone under 18 years of age. In the present case, the judge found, after viewing the disputed film, that the main theme of the film was the various stages in an intense love affair between two young adults, and that the recounting of the couple's sex life involved numerous scenes of non-simulated sex, some of which were particularly explicit, throughout the film. Thus while the film's ambition was to offer the raw retelling of a passionate love affair, these scenes - by their repetition, by the way they were made, and by their importance in the scenario - included representations of sexual intercourse. Although the scenes were not specifically pornographic and indeed this was not the director's artistic intention - they could be considered as offensive to the sensitivities of minors, and consequently preventing the film being shown to anyone under 18 years of age was justified. The judge sitting under the urgent procedure therefore found that there was serious doubt as to the legality of the Minister's decision regarding classification. The licence was therefore suspended in that it did not forbid such representation. Minister Fleur Pellerin has announced that she will appeal against the decision.

Tribunal administratif de Paris (ord. réf.), 31 juillet 2015 - Association Promouvoir

Administrative court in Paris (under the urgent procedure), 31 July 2015 - the association 'Promouvoir'

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