[FR] Ban on showing the film “Love” to under-18s - decision by the Conseil d’Etat

IRIS 2015-10:1/13

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After the administrative court this summer (see IRIS 2015-8/15), it has been the turn of the *Conseil d’Etat* to consider the classification licence issued to Gaspar Noé’s film “Love”; and delivered its decision on 30 September 2015. In the case at issue, the Ministry of Culture - which in July had issued a classification licence preventing the film being shown to minors over 16 years of age - and the production companies had called on the *Conseil d'Etat* to cancel the order delivered under the urgent procedure suspending performance of the licence because it did not allow the film to be shown to minors between 16 and 18 years of age. In doing so, the *Conseil d'Etat* has given details of the legal framework for the classification of films presenting “scenes of non-simulated sex”. Thus, “when a film includes such scenes, the only classifications that are legally applicable are those provided for in paragraphs 4 and 5 of Article R. 211-12 of the Cinema and Animated Image Code”, i.e. they may not be shown to anyone under 18 years of age, and if appropriate, the film should also be listed as pornographic (“X-rated”). The *Conseil d’Etat* pointed out that scenes of non-simulated sex were “scenes which, without any dissimulation, presented practices of a sexual nature”, and that in deciding whether or not scenes qualified for this description it was necessary to take into consideration the more or less realistic manner in which they were filmed, and the effect they were intended to have on anyone watching the film. Lastly, if such a classification were adopted, it was necessary to appreciate the way in which the scenes were filmed and how they fitted into the work in question in order to determine which of the two possible restrictions was appropriate.

In the present case, the *Conseil d'Etat* found that, in allowing the application for suspension which the court had received, the judge sitting in urgent matters at the administrative court in Paris had found, by applying his undistorted sovereign appreciation, that the film included numerous scenes of non-simulated sex, and in law, was therefore right to deduce that it was covered by the provisions of paragraph 4 of Article R. 211-12 of the Cinema and Animated Image Code. The merits of the dispute are still to be heard at the administrative court in Paris, which will have to reach a final decision on the legality of the film’s classification licence. Until this judgment is delivered, then, “Love” may only be shown to audiences over 18 years of age (without being X-rated).

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Promptly, on 9 September, Minister Fleur Pellerin announced the start of a rethink of the conditions for banning the showing of feature films to minors. The Minister "wished to question the automatic nature of imposing a ban on showing films to minors which resulted from the current legislation as appreciated in jurisprudence, so that classification could take better account of the individual nature of the works and their impact on the public". The chairman of the film classification board is required to submit proposals by January 2016.

Conseil d'Etat, 30 septembre 2015, ministère de la culture et de la communication et autres c/ association Promouvoir

http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-30-septembre-2015-ministere-de-la-culture-et-de-la-communication-et-autres-c-association-Promouvoir

Conseil d'Etat, 30 September 2015, Ministry of Culture and Communication, and others vs. the association 'Promouvoir'

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