[FR] TV channel sanctioned for broadcasting programme during which guests smoked

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On 20 November 2015 the Court of Appeal in Paris found against the heads of the TV channels M6 and Paris Première for broadcasting a programme during which three guests smoked. The programme 'Rive Droite' brings together, as for a dinner party, a number of well-known figures on the political and cultural scenes for an informal discussion on matters of politics, culture and society. Three of the guests (one musician, one journalist, and one female television presenter) on the programme broadcast on 9 November 2011 and available to view on the channel's replay website for a further eight days thereafter were filmed during the programme while they were smoking. An anti-tobacco association had the person responsible for the website and the chairman of the channel summoned to appear before the criminal court to answer charges of illegal advertising for tobacco. Since the court acquitted the defendants, the association lodged an appeal. In a decision handed down on 20 November 2015, the Court of Appeal overturned the initial judgment, recalling that Article L 3511-3 of the Public Health Code prohibited any type of commercial communication, regardless of the medium used, aimed at or having the effect of promoting tobacco or a tobacco product. In the case at issue, it was noted that the programme, classified by the channel as cultural entertainment, staged a dinner, i.e. an occasion of conviviality and open discussion, attended by guests from differing spheres (a number of journalists, an actress, a number of writers, and a songwriter). The court noted that the format of the disputed programme was neither a television news programme nor a documentary or information programme, and that it was therefore possible during editing to choose shots which did not include the three people while they were smoking without rendering the discussions unintelligible or requiring editing out which inhibited freedom of expression. The judge pointed out that, in the particularly festive context of the dinner, the sequence during which the three relatively well-known people were seen consuming tobacco with pleasure was such as to constitute the broadcasting of images contributing to a promotion of tobacco and hence illegal propaganda. This was true even in the absence of any additional utterance promoting the occurrence. The court found that the television channel ought to have checked the content of the programme regarding the statutory provisions on pro-tobacco propaganda. Furthermore, the company which edits the channel's website on which the programme was broadcast was also a host. It could be held responsible for content put on-line and, in its capacity as editor, it was required to make sure that the programme

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did not contain any images which contravened the legislation. The same applied to the chairman of the company editing the site and to the chairman of the audiovisual group to which the television channels belonged. The defendants were ordered to pay 10,000 euros in damages to the applicant association.

Cour d'appel, Paris, (pôle 4 - ch. 11), 20 novembre 2015, Association « Les droits des non-fumeurs » c/ N. de Tavernost et a.

Court of Appeal, Paris (unit 4 - chamber 11), 20 November 2015, the association 'Les Droits des Non-Fumeurs' (non-smokers' rights) vs. N. de Tavernost and others

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