[FR] Obligation to carry local public television services judged compliant with Constitution

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Last December, the Conseil d'Etat made a referral to the Constitutional Council for a preliminary ruling on the constitutionality of the guarantee of the rights and freedoms contained in the second paragraph of Article 34-2 of the Act of 30 September 1986. This provision requires cable operators and Internet access providers (IAPs) using the landline network to carry local public television services (local programmes on general channels, cable channels showing local news, and local channels) for their subscribers. There is a second side to this obligation: the cable operators and IAPs are also required to bear the cost of transport and distribution from the place of editing inherent in this obligation.

In the present case, the municipality of Nice had entrusted the production, co-production, acquisition of rights and broadcasting of programmes directed at local residents to the company Azur TV. As a result, the company had called on the companies Iliad and Free to bear the cost of carrying and broadcasting its programmes, without success. Azur TV referred the matter to the audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA), which enjoined Free to offer to take over and bear the cost of broadcasting and carrying the service from the place of editing. The companies Iliad and Free contested the legality of the CSA's decision before the courts. In support of their application, they requested a preliminary ruling on constitutionality. The companies maintained that by requiring them to carry the programmes without making arrangements or laying down a framework for the obligation, particularly with regard to determining the conditions for sharing the corresponding cost, the contested provisions of Article 34-2 disregarded the freedom to conduct business and the freedom to enter into a contract.

In its decision of 23 March 2016, the Constitutional Council recalled that, under Article L. 1426-1 of the General Code Governing Local Authorities (Code Général des Collectivités Locales), local authorities could edit a television service intended to provide local news, broadcast terrestrially or via a network that did not use frequencies assigned by the CSA. The Council further stated that, in adopting the contested second paragraph of Article 34-2, the legislator's aim had been to ensure that the development of these local public services would be maintained and promoted. These provisions should therefore be understood as imposing on the distributors of audiovisual services an obligation to make the services available, free of charge, which only applied in respect of subscribers located in

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the geographical area of the local authority editing the service. The obligation was, moreover, limited to the transport and broadcasting of the services' programmes, without any requirement to carry out connection or civil engineering work. The legislator also explicitly intended to exclude the responsinilty to bear the cost of digitising programmes from the scope of the obligation. The Constitutional Council concluded that, to a limited degree, the disputed provisions infringed the distributors' freedom to conduct business and the freedom to enter into a contract. It also found that the obligation thus instituted pursued an objective of general interest and did not cause an unequal discharge of public burdens. The complaints claiming disregard of this principle, and those claiming infringement of the right of ownership, were set aside. The second paragraph of Article L. 34-2 of the Act of 30 September 1986 was found to be compliant with the Constitution.

Conseil constitutionnel, Décision QPC n° 2015-529, 23 mars 2016, Sociétés Iliad et a.

Constitutional Council, QPC decision no. 2015-529, 23 March 2016, the company Iliad and others.

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