[FR] Legal remedy sought by presidential election candidate wishing to take part in TV debate

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On 16 March 2017, the Conseil d'Etat delivered its decision on an application brought by a candidate in the French presidential election to be allowed to participate in a television debate to which he had not been invited. In the case at issue, the television channel TF1 had announced its intention to organise, on 20 March 2017, a television debate between five candidates. Nicolas Dupont-Aignan, a declared candidate, called on the national audiovisual regulatory body (Conseil Supérieur de l'Audiovisuel - CSA) to order the channel to enable him to participate in the debate. In the absence of a favourable reply from the CSA, the candidate referred the matter to the Conseil d'Etat under the urgent procedure mechanism. He felt that TF1's decision constituted a serious and manifestly unlawful infringement of both his right of access to the audiovisual media in the context of a presidential election, and the principle of equity of treatment of candidates provided for in Article 3 I bis of the Act of 6 November 1962, in the version subsequent to the Organic Act of 25 April 2016, and the CSA's recommendation of 7 September 2016.

The Conseil d'Etat recalled that, under the terms of these provisions, the CSA drew up a number of recommendations regarding the 2017 presidential election; these provided that equity of treatment of the candidates should be observed in respect of each of the two following periods: the period from 1 February 2017 to the eve of the publication in the Journal Officiel of the list of candidates drawn up by the Constitutional Council; and the period from the date of publication of the list to the eve of the opening of the election campaign, at which point the requirement of equity becomes stricter. Furthermore, no provision confers on the CSA the power to take the place of audiovisual communication services in defining and implementing their own editorial policy. Not knowing whether the list of candidates would be published in the Journal Officiel before or after the debate, the judge deliberating under the urgent procedure noted that the principle of equity should, in the present case, be observed in respect of both the first or the second period of the campaign. In light of both the representativeness of Mr Dupont-Aignan and his contribution to the electoral debate, the speaking time and broadcasting time he has had since the start of February 2017 did not reflect an imbalance that is incompatible with the principle of equity in respect of the first period. The judge then continued to find that the fact that Mr Dupont-Aignan was not invited to take part in the debate scheduled for 20 March 2017 did not, taken in isolation, represent any failure to recognise the principle of equity. Taking into

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account firstly Mr Dupont-Aignan's representativeness and his contribution to the electoral debate, and secondly the proposal made to him for a ten-minute interview on the channel's main newscast during the week of 13 to 19 March, the judge deliberating under the urgent procedure found that the applicant's absence from the debate did not produce an imbalance that was incompatible with observance of the principle of equity. This was on the condition that the debate took place during the first period, and was not such as to compromise irremediably observance of the principle of so-called "stricter equity" if it took place during the second period. Consequently, Mr Dupont-Aignan's application was rejected. On 4 April, Mr Dupont-Aignan took part in the first televised debate to have brought together all eleven election candidates on one studio platform.

Conseil d'Etat (ord.réf.), 16 mars 2017, M. Dupont-Aignan

http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-ordonnance-du-16-mars-2017-M.-Dupont-Aignan

State Council (judgment delivered under the urgent procedure), 16 March 2017, Mr Dupont-Aignan

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