

[FR] Rules on audiovisual election propaganda revised

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Emmanuel Macron's success in the presidential election on 7 May 2017 has added further fuel to the challenging of the principles of audiovisual regulation and observance of political diversity in the media. With the prospect of the parliamentary elections on 11 and 18 June 2017, the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) issued a decision on 23 May 2017 laying down the total broadcasting times allocated to each political party or grouping for the upcoming parliamentary elections, and specifying their number and duration.

Contesting the amount of time allocated to him (7 minutes in the first round and 5 minutes in the second, compared with a total of 120 minutes for the Parti Socialiste, 103 for Les Républicains, 22 for the UDI, 15 for the Parti Radical de Gauche, and 7 for the Parti Communiste Français, inter alia) the new French President's 'L'Association En Marche!' entered a request for the Conseil d'État to hold an urgent hearing regarding a fundamental freedom (the 'référé-liberté' procedure) with a view to obtaining a suspension of the CSA's decision. Article L. 167(1) of the Electoral Code, which governs the allocation of airtime to the political parties and groupings for their campaigning for the parliamentary elections, provides that those of them that do not already have a seat in the lower chamber of parliament (which is the case of the new President's party 'L'Association En Marche!') are allowed 7 minutes airtime in the first round and 5 minutes in the second. Those political parties and groupings already represented in the lower house are allowed three hours airtime in the first round and one and a half hours in the second, divided into two equal lots between those parties and groupings belonging to the majority and those that do not.

'L'Association En Marche!', considering that this situation constituted a serious and immediate infringement of a number of fundamental freedoms, including equality before suffrage and the equitable participation of political parties and groupings in the democratic life of the country, also presented the Conseil d'Etat with a prior question of constitutionality, which was duly passed on to the Constitutional Council. Given the election schedule, the Council's members deliberated in less than 48 hours.

In its decision of 29 May 2017, the Constitutional Council found that it appeared that the methods used by the legislator to determine the amount of airtime

allocated to those parties and groupings which no longer had, or had not yet obtained, representation in the lower chamber of parliament did not allow the granting of airtime that was manifestly out of proportion to their representativeness. It also noted that the amount of airtime was the same for all parties not represented in the lower chamber, regardless of the importance of the ideas or opinions they represented. The Council therefore found that the contested provisions of Article L. 167(1) of the Electoral Code could lead to granting airtime on public-service media that was manifestly out of proportion to the participation of those political parties and groupings in the democratic life of the country. These provisions therefore disregarded Article 4(3) of the Constitution and affected equality before suffrage to a disproportionate extent.

The Constitutional Council has however decided to postpone abrogation of the contested provisions until 30 June 2018. It has also given the CSA the possibility of increasing (within limits) the airtime allowed to parties and groupings not represented in the lower chamber of parliament. On 1 June the CSA therefore laid down new times for the official campaign, allowing between one and five blocks of additional time to certain political formations. Two criteria were applied: the number of candidates in the parliamentary election; and the representativeness of the parties, more specifically in the light of the presidential election. As a result, Emmanuel Macron's party 'La République En Marche' will in the end have 42 minutes in the first round and 25 minutes in the second for its campaign clips.

Conseil d'Etat (ord. réf.), 29 mai 2017 (Conseil Constitutionnel, 31 mai 2017, Association en Marche !)

Conseil d'Etat (order under the urgent procedure), 29 May 2017 (Constitutional Council, 31 May 2017, 'Association En Marche!')

