[FR] Conseil d’Etat refuses to annul Cinema Code definitions of pornographic and violent films

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Two associations asked the Conseil d’Etat to annul the following provisions of Decree no. 2017-150 of 8 February 2017 on film classification: “II. - The classification measure … is proportionate to the need to protect children and young people, and in keeping with the sensitivities and stages in personality development specific to each age group and with respect for human dignity. If the work or document in question includes scenes of sexual activity or extreme violence which - particularly by their cumulative effect - may be seriously disturbing for minors, or present violence in a favourable manner or render it banal, the licence must be subject to one of the measures described in sections 4 [‘banned for under-18s’] and 5 [‘banned for under-18s and from excluded from receiving aid’] of part I. In cases described in the above paragraph, the aesthetic approach or the narrative process on which the work or document is based may justify the licence being subject only to the measure described in section 4 of part I.”

In the opinion of the Conseil d’Etat, these provisions correctly apply Article L. 311-2 of the Cinema and Animated Film Code by defining works that constitute pornographic films and films that incite violence and which must therefore be included on the list of films falling under either of these categories and are ineligible to receive selective aid. These are defined as works that include scenes of sexual activity or extreme violence which - particularly by virtue of their cumulative effect - may be seriously disturbing for minors, present violence in a favourable manner or render it banal, without any aesthetic approach or narrative process justifying the licence being subject only to a ban in respect of under-18s on the basis of section 4 of part I of Article R. 211-12, which may also be legally determined in order to meet the need to protect children and young people, and to safeguard human dignity.

The associations that submitted the request also claimed that the disputed provisions breached Article 227-24 of the Penal Code, which states that: “The manufacture, transport, [or] distribution by whatever means and however supported, of a message bearing a pornographic or violent character, inciting terrorism, seriously violating human dignity, or encouraging children to play games that put them in physical danger, and the trafficking in such a message, is punished by three years' imprisonment and a fine of EUR 75,000, in the event that the message may be seen or perceived by a minor.” The Conseil d’Etat

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believes that the scope of the violent and pornographic messages referred to in the aforementioned provisions of the Penal Code is broader than that of pornographic films and films that incite violence that must be included in the list referred to in Article L. 311-2 of the Cinema and Animated Film Code, according to the definitions contained in Article R. 211-12 of the latter code. These provisions do not infringe Article 227-24 of the Penal Code, since they at least prevent under-18s from watching films that include scenes of sexual activity or extreme violence that may be seriously disturbing for minors, present violence in a favourable manner or render it banal. The requests were therefore rejected and the decree declared lawful.

Conseil d'Etat (10e et 9e sous-sect.), 28 décembre 2017, Associations Promouvoir et Action pour la dignité humaine

Conseil d'Etat (10th and 9th subdivisions), 28 December 2017, Promouvoir and Action pour la dignité humaine

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