# [FR] Conseil d'Etat dismisses appeal against abolition of advertising during children's programmes on France Télévisions' on-demand audiovisual media services

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Legislation enacted on 20 December 2016 abolished commercial advertising during children's programmes on public-sector television channels. In application of this legislation, a Decree adopted on 22 December 2017 added Article 27-1 to France Televisions' contractual specifications. It is worded as follows: "Advertising spots in programmes primarily intended for viewing by children under the age of 12. The following may not include any advertising other than generic advertisements for goods and services in respect of the health and development of children: 1. Programmes primarily intended for viewing by children under the age of 12 that are made available to the public via the services referred to in Article 3(6); 2. All or part of the services referred to in Article 3(6) that are primarily intended for viewing by children under the age of 12". Article 3(6) of the same contractual specifications provides that "France Télévisions shall, either directly or through subsidiaries, edit on-demand audiovisual media services permitting its television programmes to be made available repeatedly to the public and more generally proposing an offer with additional content. The company shall develop an offer of communication services for the public online which shall extend, supplement or enrich the programmes available on the services listed above."

In respect of the present case, the SNRT-CGT France Télévisions trade union applied to the Conseil d'Etat for the cancellation of Article 3 of the Decree of 22 December 2017, which had added the above-mentioned provisions to France Télévisions' contractual specifications. In support of its demand, it submitted a preliminary question on constitutionality in respect of Article 2 of the aforementioned Act of 20 December 2016.

The Conseil d'Etat reiterated that, under the terms of Article L. 2131-1 of the Employment Code (Code du Travail), "The exclusive purpose of trade unions [was] to study and defend the rights and material and moral interests, both collective and individual, of the persons mentioned in their constitution." To justify its view, the applicant union argued that the ban on showing advertising during programmes primarily intended for viewing by children under 12 years of age was resulting in a loss of income in France Télévisions' budget amounting to EUR 19 million, for which it was not receiving compensation from the State. The Conseil

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d’Etat reiterated, however, that the provisions of the Decree of 22 December 2017 only applied to on-demand audiovisual media services and online services aimed at the public. The income the company received for services showing advertisements during the repeat showing of programmes primarily intended for viewing by children under the age of 12 represented no more than a very small proportion of the total amount of its resources. The Conseil d’Etat found that, under the circumstances, the disputed provisions could therefore not be regarded as affecting the employment or working conditions of the company’s employees.

The Conseil d’Etat also stated that the union’s contesting of the constitutionality of the legislative provisions abolishing advertising directed at children under the age of 12 in all the programmes broadcast by France Télévisions by putting forward a preliminary question on their constitutionality had no effect on the admissibility of its application.

Consequently, since the applicant union had failed to provide any proof of its standing to call for the cancellation of Article 3 of the Decree of 22 December 2017, its application was judged inadmissible and was rejected, without any need to deliberate on the application for the preliminary question on constitutionality to be referred to the Constitutional Council.

### *Conseil d’État (5e ch.), 26 avril 2018 - SNRT-CGT France Télévisions*

http://arianeinternet.conseil-etat.fr/arianeinternet/getdoc.asp?id=212993&fonds=DCE&item=1

*Conseil d’Etat (5th chamber), 26 April 2018 - ‘SNRT-CGT France Télévisions’ trade union*

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