[FR] Conseil d’Etat confirms two CSA sanctions against C8

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In three decisions issued on 18 June 2018, the Conseil d’Etat (the Council of State - a body of the French Government that acts both as legal adviser to the executive branch and as the Supreme Court for administrative justice) ruled on appeals lodged by the television channel C8 against three heavy sanctions imposed last year by the French national audiovisual regulatory authority (Conseil supérieur de l’audiovisuel - “the CSA”) following inappropriate behaviour during the programmes “Touche pas à mon poste” and “TPMP! Baba hot line”. The Conseil d’Etat quashed one of the sanctions and upheld the other two.

In the first case, the presenter of a programme broadcast on 7 December 2016 had invited a female commentator to play a game in which she had to touch and identify various parts of his body with her eyes shut. After getting her to touch his chest and arm, the presenter put her hand on his crotch. The commentator reacted by protesting and saying how typical this kind of behaviour was. The CSA considered that, by showing this sequence, C8 had breached its obligations as a broadcaster regarding the image of women, the fight against stereotyping and violence, and general control of its programmes. In a decision of 7 June 2017, it prohibited C8 for two weeks from broadcasting advertisements during and for fifteen minutes before and after the programme. According to the Conseil d’Etat, showing the presenter behaving in such a manner could only have trivialised unacceptable behaviour which, in some cases, could constitute a criminal offence. This type of conduct had put the person concerned in a degrading situation and had portrayed a stereotyped image of the woman that had reduced her to the status of a sex object. In these circumstances, the Conseil d’Etat ruled that the decision to punish C8 for this incident had been justified and did not constitute a disproportionate restriction on the freedom of expression.

In the second case, the presenter of a programme shown on 18 May 2017 had broadcast telephone conversations between himself and respondents to a fake advertisement previously posted on a dating website in which the author had described himself as bisexual. The CSA considered that this sequence had breached the obligations of television broadcasters to promote the values of integration and solidarity upheld by the French Republic, to combat discrimination and to respect personal rights regarding privacy, image, honour and reputation. It therefore imposed a fine of EUR 3 million on C8. Ruling on C8’s appeal, the

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Conseil d'Etat noted that the voices of the people concerned had not been disguised and that the presenter had invited them to reveal personal information about where they lived, their age or their profession, which meant that they might be recognised. Moreover, they had not been told that their words were being broadcast, and the presenter had encouraged them to use excessively coarse language to describe their sexual habits and private life, even though they had had no idea that what they said would be broadcast to the public. The Council of State stressed that the presenter had consistently tried to portray a caricature of homosexual people that could only encourage prejudice and discrimination against them. It therefore decided that the decision to impose a sanction had been justified and did not constitute a disproportionate restriction of the freedom of expression.

However, the Conseil d'Etat overturned the CSA's third sanction against C8 following a hidden camera sequence broadcast in "Touche pas à mon poste" on 3 November 2016. The presenter and a commentator had been shown visiting the house of someone posing as a producer, filmed by a hidden camera. Following an altercation between the presenter and the "producer", the latter had fallen to the ground, apparently unconscious. The presenter and his bodyguard had tried to stop the commentator calling the police and to force him to accept responsibility for the incident. At least initially, the commentator, who it seems was not told that the incident had been staged until the following day, had appeared shaken by the presenter's behaviour. He had calmly telephoned the police even though he had been urged not to.

Considering that this sequence had infringed human dignity, the CSA decided, on 7 June 2017, to prohibit C8 from broadcasting advertisements during and for 15 minutes before and after the programme "Touche pas à mon poste" for one week. The Conseil d'Etat held, contrary to the CSA, that in view of his behaviour throughout the sequence, the presenter had not been shown in a degrading or humiliating light or in a way that violated his dignity. Therefore, in view of the humorous nature of the programme and the need to protect freedom of expression, the Conseil d'Etat ruled that the broadcast of the sequence, to which the commentator had consented and on which he had agreed to comment, had not infringed C8's licence, which required it to respect human dignity in its programming. The CSA's decision was therefore quashed.

Conseil d'État (5e et 6e ch. réunies), 18 juin 2018, Société C8 (n° 412071)

Conseil d'Etat (5th and 6th chambers combined), 18 June 2018, C8 (no. 412071)

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Conseil d'État (5e et 6e ch. réunies), 18 juin 2018, Société C8 (N° 414532)

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