[FR] Cancellation of a formal order by CSA to the RTL radio station

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On 15 October the highest administrative tribunal in France, the Conseil d'Etat, received a request from the company v France Radio for the cancellation of a formal order imposed on it by the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA). The CSA had reached its decision after the broadcast on 2 February 2017 of a sequence during which the polemist Eric Zemmour made critical comments regarding what he considered to be the US Supreme Court's misapplication of the "principle of non-discrimination", and denounced the influence of this jurisprudence on the European Court of Human Rights, the Constitutional Council, and the Conseil d'Etat, all which he accused of perpetrating a "judicial putsch".

The station was issued a formal order to comply in future with its obligations under Article 2-4 of its broadcasting authorisation agreement, according to which "the license holder shall ensure that its programmes ... promote the values of integration and solidarity, as upheld by the [French] Republic. ... The holder shall contribute to action promoting social cohesion and combating all forms of discrimination".

In response to RTL's request for the decision to be cancelled, the Conseil d'Etat said that the Republic's principles, particularly the principle of equality before the law, prohibited all forms of discrimination and conferred considerable importance on both the values of integration and solidarity and the aim of achieving social cohesion. Moreover, the undertaking ä in Article 2-4 of the above-mentioned agreement with regard to the service provided by RTL should be viewed in conjunction with the principle of freedom of expression of thoughts and opinions. This undertaking could not be interpreted as requiring the editor of a programme to ban all criticism of the French Republic's principles and values on its airwaves.

The Conseil d'Etat noted that, during the sequence at issue, Eric Zemmour expressed in polemic fashion his point of view on the banning of all types of discrimination, as interpreted - broadly, in his opinion - by the courts of both the United States and France, which he claimed made any difference in treatment impossible. He expressed this opinion during a daily three-minute broadcast entitled "On n'est pas forcément d'accord" ("We don't necessarily agree"), during which commentators holding different opinions are invited to speak; the very title

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of the broadcast invites listeners to take its polemical nature into account. The Conseil d'Etat found that in these circumstances the CSA had been wrong in judging itself in a position to consider that the obligations resulting from Article 2-4 of the radio station's broadcasting agreement had been disregarded and accordingly sending a formal notice to the applicant company; the formal notice was therefore cancelled.

On 12 September, the CSA sent formal notice to the television channel Paris had been Première after receiving complaints regarding a sequence broadcast early in the year involving Zemmour and Naulleau, during which the subject of the legislation on asylum and immigration was raised (see Iris 2018-9). The M6 Group has made it known that it "reserves the right to take the matter up with the CSA and the Conseil d'Etat" regarding the formal notice it was served, because it "raises comparable issues".

Conseil d'État (5e et 6e ch. réunies), 15 octobre 2018 - RTL France Radio

https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechExpJuriAdmin&idTexte=CETATEXT000037499785&fastReqId=2018630299&fastPos=1

Conseil d'Etat (5th and 6th chambers combined), 15 October 2018 - RTL France Radio

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