[FR] Political pluralism on television, European elections and editorial freedom

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The Paris Administrative Court, followed by the Conseil d'État (Council of State), was recently asked to issue urgent decisions by three politicians who wanted to participate in a televised debate involving nine other candidates heading party lists in the European elections, which was broadcast on France 2 at 9 p.m. on 4 April 2019. They were Benoît Hamon, François Asselineau and Florian Philippot, who headed the lists for Génération.s, the UPR and Les Patriotes respectively.

On 1 April 2019, the urgent applications judge of the Paris Administrative Court allowed the politicians' requests. He pointed out that respect for pluralism was part of the conditions of operation of France Télévisions and was enshrined in a recommendation issued by the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) on 22 November 2017, which laid down the general principle of the fair allocation of speaking time between political parties and groups. The decisions not to invite these three candidates to take part in the debate were therefore deemed likely to cause "a serious and clearly illegal violation of the fundamental freedom represented by respect for the principle of pluralist expression of schools of thought and opinion".

France Télévisions appealed against the three interim orders. In a decision issued on the morning of the debate in question, the urgent applications judge of the Conseil d'État stated, firstly, that the specific rules governing audiovisual communication in pre-election periods, which were applicable during the six weeks leading up to election day on 26 May, did not yet apply on the date of the television debate concerned. Neither the law of 30 September 1986 nor the CSA recommendation of 22 November 2017 required France Télévisions to treat all politicians equally outside election periods. Furthermore, the Conseil d'État stated that the public audiovisual group's editorial policy was free and independent. Under the CSA's supervision, the broadcaster was responsible for devising and organising programmes that contributed to the democratic debate and supported the pluralistic expression of schools of thought and opinion. Therefore, the urgent applications judge could not question decisions taken in this regard unless they seriously and clearly violated a fundamental freedom.

In the case at hand, France Télévisions invited to participate in the debate on 4 April 2019 nine politicians who represented movements that expressed the main

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political viewpoints across the whole French political spectrum. They were chosen on the basis of past French and European Parliament election results, opinion polls and their contribution to political debate. These are the criteria mentioned in the CSA recommendation. The Conseil d'État did not consider that France Télévisions had seriously and clearly violated the pluralistic expression of schools of thought and opinion. In particular, the three applicants could, in various ways, express their views to a political audience and, as election candidates, take part in other political debates or programmes. Moreover, the disputed decisions could not be regarded, in themselves, as violating the freedom to vote or freedom of opinion. The ruling of the urgent applications judge of the Paris Administrative Court was quashed and the applications of the three politicians rejected.

France Télévisions welcomed the decision of the Conseil d'État, which it said "confirms and protects its editorial freedom". However, it decided to "maintain the 12-guest format of the programme" by including the three applicants in the debate.

Tribunal administratif de Paris, (ord. réf.), 1er avril 2019, Génération.s, Union populaire républicaine, Les Patriotes (3 décisions) Conseil d'État (ord. réf.), 4 avril 2019 - France Télévisions

http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/Conseil-d-Etat-ordonnance-du-4-avril-2019-France-Televisions

Paris Administrative Court (urgent decision), 1 April 2019, Génération.s, Union populaire républicaine, Les Patriotes (3 decisions) Council of State (urgent decision), 4 April 2019 - France Télévisions

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