

[FR] Freedom of information affects documentary classification

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On 5 April 2019, the Conseil d'Etat (Council of State) issued an interesting decision concerning the age rating of a documentary film containing violent images.

Previously, the company that produced the documentary "Salafistes" had asked the administrative court, on the grounds of misuse of power, to annul the Minister of Culture's decision to grant the film an "18" certificate, at the same time ordering that the following warning be given: "This film contains extremely violent and intolerant language and images that viewers may find upsetting". The administrative court had overturned that decision, but the appeal court had quashed the administrative court's ruling and refused the request lodged by the production company, which had then appealed to the Conseil d'Etat.

In its judgment, France's supreme administrative court pointed out that, when a film contains violent scenes, in order to decide whether any of the classification measures listed under Article R. 211-12 of the French Film and Animated Images Code (such as an "18" rating) are justified in order to protect children and respect for human dignity, it is necessary to take into account the way in which the scenes were filmed, whether the violence in question is presented in a positive light or trivialised, and any technique used to create a distance between the viewer and the violence.

In the most telling part of its decision, the court added that the evaluation of documentary films (carried out by the Ministry of Culture, subject to the court's assessment of any possible misuse of power) portraying real-life situations for educational purposes should take into account the need to guarantee respect for the freedom of information, which is protected in particular by Article 10 of the European Convention on Human Rights. Different approaches therefore seem to apply when it comes to the assessment of fictional cinematographic works (as opposed to documentary films).

The Conseil d'Etat observed that, in this case, the film in question contained violent scenes involving numerous instances of abuse, assassinations and acts of torture committed by groups claiming to belong to, in particular, ISIS or Al-Qaïda. It also showed the protagonists justifying their actions, with no counterbalancing

critical commentary condemning the violence. However, the scenes formed a coherent part of the documentary, the purpose of which was to inform the public about the reality of Salafist violence. The Conseil d'Etat also noted that the warning at the start of the film and its dedication to the victims of the attacks of 13 November 2015 were likely to help viewers, including those aged under 18, understand the film's objective of denouncing violence.

As a result, the Conseil d'Etat ruled that, in order to protect freedom of information, the scenes should not be classified as "extremely violent" within the meaning of Article R. 211-12 4° of the French Film and Animated Images Code. Therefore, the appeal court had wrongly assessed the facts of the case by ruling that the Minister of Culture had correctly awarded an "18" rating for the film "Salafistes". The company's request for the decision to be lifted was therefore justified because the film's "18" rating was not necessary to protect young people and human dignity.

Conseil d'Etat (10e et 9e ch. réunies), 5 avril 2019, Sté Margo Cinéma

Council of State (ninth and tenth chambers combined), 5 April 2019, Sté Margo Cinéma

