[FR] Broadcast of a report on events covered by proceedings in the criminal courts - Conseil d'État upholds notice served by CSA on France Télévisions

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In its "Envoyé Spécial" ("Special Envoy") programme broadcast on France 2 on 14 December 2017, the national broadcaster, France Télévisions, broadcast a report entitled "Celles qui accusent" ("The Women who Accuse") covering events denounced by two women who had worked at their local municipal offices, which had resulted in the mayor of the municipality, who was also a former government minister, being brought to court on criminal charges of rape. Two days before the broadcast, the events had been examined by the criminal court (cour d'assises) in Bobigny. The report focused on one of the two people who had applied to be allowed to participate as civil parties in the criminal proceedings. In a decision made public on 11 April 2018, the regulatory authority for the audiovisual sector (Conseil Supérieur de l'Audiovisuel - CSA), considering that the content of the report show a lack of restraint by referring to a current criminal court case, and noting that it had been broadcast just hours after the civil party concerned had been heard and before the jury was to deliberate - served official notice on France Télévisions to abide by Article 35 of its contractual requirements in future; this covers "the broadcasting of programmes, images, remarks and documents relating to court proceedings".

The France Télévisions called on the Conseil d'État to cancel the decision on the grounds that the CSA had overstepped its powers. The Conseil d'État observed that the aim of the notice served by the CSA was to make it possible to embark on a sanction procedure in the event that France Télévisions were to act in a similar fashion in the future. It noted that such a measure - which was provided for in the Act of 30 September 1986 on freedom of communication - could be adopted if it was necessary in order to ensure that the reputation and rights of others were protected and that the impartiality of the legal authority in question was guaranteed. In the case at issue, the Conseil d'Etat held that, given the content of the report at issue and the timing of its broadcasting, the CSA's serving of such notice on France Télévisions did not constitute a disproportionate infringement of freedom of expression.

The applicant company wanted to request the European Court of Human Rights to give an advisory opinion (on the basis of Protocol 16 to the Convention, which covers compliance with Article 10 of the Convention) on the administrative authority's interference in the freedom of expression of journalists following the

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broadcasting of a report on current legal proceedings involving a public figure, even though the authority recognised that in this instance there had been no disregard for the presumption of innocence of the person being prosecuted. The Conseil d'Etat found that there was no need to call on the European Court of Human Rights to give its opinion.

Conseil d'État, (5e et 6e ch. réunies), 13 mai 2019, France Télévisions

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2019-05-13/421779

Conseil d'Etat, (5th and 6th chambers together), 13 May 2019, France Télévisions

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