CSA classification of documentary programmes

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The company RMC Découverte, broadcaster of the terrestrial television service of the same name, signed an agreement with the *Conseil supérieur de l'audiovisuel* (French national audiovisual regulatory authority – CSA) on 3 July 2012 which stipulated in Article 3-1-1 that "documentaries shall represent at least 75% of the total airtime each year and shall cover a wide variety of subjects." Having decided that 27 programmes broadcast in 2016 did not qualify as documentaries within the meaning of its agreement, the CSA notified the company in September 2017 that it had rejected the eligibility applications for these 27 programmes. Considering that the company had therefore breached its obligations regarding documentaries in 2016, the CSA issued it with a formal notice requiring it to comply with the obligation laid down in Article 3-1-1 of its agreement. The channel asked the *Conseil d'Etat* to annul these two decisions.

In its decision of 19 December 2019, France's highest administrative court clarified the criteria used to determine whether a programme with the character of an audiovisual work could be classified as a documentary. In this case, the CSA had made a general assessment of all the programmes in question, examining the existence of an author's point of view, as well as various other criteria used to distinguish them from fictional or entertainment programmes, in particular: firstly, whether they were informative for the viewer; secondly, whether they presented facts or situations that had existed before the programme was made; and thirdly, whether they contained any artificially staged scenes (without excluding all reconstructions). Finally, if the programme was eligible, the CSA considered whether it had received support from the *Centre National du Cinéma et de l'Image Animée* (National Centre of Cinematography and the Moving Image – CNC) for documentaries.

In view of these criteria, the *Conseil d'Etat* considered that the CSA had not erred in law. The channel was therefore not entitled to request the annulment of the decisions to deny the programmes' eligibility, nor of the formal notice it had received.

CE, 5e et 6e ch. réunies, 19 décembre 2019, n° 419682, RMC Découverte

https://www.legifrance.gouv.fr/affichJuriAdmin.do;jsessionid=119B8E833A896A9B1E6BA84F185B9353.tplgfr36s_2?oldAction=rechJuriAdmin&idTexte=CETATEXT000039

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Conseil d'Etat, 5th and 6th chambers combined, 19 December 2019, no. 419682, RMC Découverte

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