[FR] Conseil d'Etat rules that cinema closures did not constitute a manifestly illegal infringement of the freedom of expression due to the high virus transmission rate

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Several dozen artists, theatres and representatives of the live entertainment and cinema industries asked the Conseil d'État judge responsible for urgent applications on matters concerning fundamental freedoms to suspend the closure of cinemas, theatres and performance venues ordered by the French Government since 29 October 2020 on account of the COVID-19 pandemic. On 10 December 2020, the Prime Minister announced that these venues, as well as museums, would remain closed for at least three weeks after the end of the lockdown, which was set for 15 December 2020.

As the plaintiffs had pointed out in their application, the urgent applications judge held, firstly, that the closure of cinemas, theatres and performance venues to the public represented a serious breach of basic freedoms, in particular freedom of expression, freedom to communicate ideas, freedom of artistic creation, freedom of access to cultural works, freedom to do business, freedom of trade and industry, and freedom to carry out a profession. The fact that some of the activities concerned could continue to be made available to the public through other media or electronically was not sufficient to address this breach.

In order to justify the continued closure of these venues, the administration had noted that they were enclosed spaces occupied by a high density of people, characteristics that it said were associated with a high risk of contamination. However, between May and October 2020, the operators of the establishments concerned had designed and implemented particularly stringent health protocols that were, at least in some cases, likely to reduce the risk. As the COVID-19 scientific council had stated in a report of 26 October 2020, the risk of the virus being transmitted in live performance venues and cinemas was lower than for other indoor public events, provided such protocols were applied in practice.

In view of these circumstances, and with no prospect of the virus disappearing in the near future, the judge noted that keeping cinemas, theatres and performance venues closed to the public would be clearly unlawful if it were only justified on the grounds of a continuing risk of infection to the audience. Keeping them closed, whether throughout the country or on a regional basis, could therefore

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only be considered necessary, appropriate and proportionate to the aim of protecting public health while the spread of the virus remained at a particularly high level in the population, likely to compromise the treatment, and in particular the hospital admission, of infected patients and those suffering from other illnesses in the short term.

With the latest data on the day of the hearing (22 December 2020) showing a "worsening" of the health situation "that could be even more concerning at the beginning of January," and the discovery of a new, more contagious variant of the virus, given the fast-changing nature of the situation and the risk of the epidemic deteriorating in the short term, and since a decision to reopen cinemas, theatres and performance venues generally involved a period of at least two weeks prior to restarting, the judge held that the Prime Minister's decision, on the day the ordinance had been published, did not represent a clearly unlawful breach of the fundamental freedoms mentioned by the applicants.

The *Fédération Nationale des Cinémas Français* (French National Cinema Federation) said it would be "extremely careful to ensure that cinemas reopen as soon as the conditions laid down by the Conseil d'Etat are met." Unfortunately, however, whereas 20 January had been earmarked as the date for reopening, in view of the epidemic's recent resurgence, the Ministry of Culture has decided not to set any further target dates for the reopening of cinemas, museums and entertainment venues. The minister has promised to "extend the economic and financial support" for the sectors that have been shut down since 30 October 2020 "until the COVID crisis is over."

Conseil d'État (ord. réf.), 23 décembre 2020, n° 447698 et suiv., Fédération nationale des cinémas français et autres

https://www.conseil-etat.fr/Media/actualites/documents/2020/12-decembre/447698-et-suivants-salles-de-spectacles.pdf

Conseil d'Etat (urgent applications judge), 23 December 2020, No. 447698 et seq., French national cinema federation et al.

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