[FR] The closure of cinemas, theatres and performance venues is (still) not manifestly illegal

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Two months after their previous attempt, various personalities from the cultural sector once again asked the *Conseil d'Etat* (Council of State) judge responsible for urgent applications to suspend, as a matter of urgency, the closure of cinemas, theatres and performance venues ordered on account of the health crisis. In support of their request, the plaintiffs referred not only to the serious breach of freedom of expression and the freedom to communicate ideas, freedom of artistic creation, freedom of access to cultural works, freedom to do business and freedom of trade and industry, but also to the mental health of the population. They argued that the continued closure of all live performance venues was having a worryingly detrimental impact on the psychological well-being of a significant proportion of the French population which, in view of its long-term consequences, now posed the greatest risk to health. They therefore thought the closure of cinemas, theatres and performance venues was disproportionate in terms of its expected benefits for the protection of public health.

As it had previously stated in its ordinance of 23 December 2020, the *Conseil d'Etat* ruled that keeping all cinemas, theatres and performance venues closed to the public could 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.

It added that the impact on mental health of the measures taken to combat the epidemic should nevertheless be taken into account by the administrative authority in order to ensure they were proportionate to their sole objective of protecting public health. It noted that mental health in France had worsened during the health crisis (21% of the population had been suffering from anxiety and depression since the start of November) and that "it is quite possible that the measures taken to combat the epidemic – and not just the epidemic itself – have played their part in this".

However, epidemiological and hospitalisation data published on the date of the judge's decision showed that infection rates and pressure on hospitals remained very high in all regions, justifying more restrictive measures in some areas.

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Furthermore, the exponential spread of the so-called British variant, which was much more contagious, was expected to lead to a rapid increase in cases in the weeks to come.

Finally, the plaintiffs argued that the principle of equality was being ignored, since certain establishments remained open to the public. However, the judge did not think this, in itself, infringed a fundamental freedom.

In conclusion, it was deemed that, in view of the continuing rapid transmission of the virus and the high risk of an increase in infection levels over the next few weeks, and although the measures concerned were likely to have a negative impact on the psychological well-being of the population, the serious breach of fundamental freedoms caused by the closure of cinemas, theatres and performance venues to the public was not manifestly illegal.

Conseil d'État, ord. réf. 26 février 2021, N° 449692

https://www.conseil-etat.fr/Media/actualites/documents/2021/02-fevrier/449692.pdf

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