[FR] Conseil d'État refuses to suspend extension of health pass to cinemas and cultural venues with more than 50 guests from 21 July

IRIS 2021-8:1/15

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On 20 July 2021, the *Conseil d'État* (Council of State) received several suspension requests and applications for the protection of fundamental freedoms from professional cultural organisations in response to the decree of 19 July 2021 in which the Prime Minister had extended the obligation for visitors to cultural and leisure venues accommodating more than 50 guests to present a so-called health pass (negative COVID test, vaccination or recent recovery certificate) from 21 July. While the applicants did not dispute the legitimacy of the reasons for extending the health pass requirement, they criticised the circumstances in which the decree had been implemented, especially the fact that its entry into force came at a different time to that governing cafés and restaurants, which had initially been scheduled for 1 August (it ultimately entered into force on 9 August following the publication of the law of 6 August on the management of the health crisis). They also claimed the decree unlawfully infringed their freedom of expression and freedom to undertake economic activity, and condemned the inevitable drop in cinema ticket sales that would result.

According to the *Conseil d'État* judge responsible for urgent applications, scientific data showed that the health situation had deteriorated again in the short period leading up to 21 July 2021 on account of the increasing transmission of the Delta variant of the COVID-19 virus across the country (sharp rises in infection rates, hospital admissions and critical care admissions). The judge thought this data could become even more worrying in early August, with the vaccination rate deemed insufficient (46.4% of the population had been fully vaccinated by 20 July) to result in a sustained drop in infection rates.

The judge also noted that the law of 31 May 2021 urgently needed amending, especially in order to review the list of venues, establishments, services and events to which access was dependent on presentation of a health pass. Therefore, as the applicants themselves recognised, the measures provided for in the decree would only be applicable for a short time, no longer than 12 days, after the date of the hearing.

In these circumstances, the judge ruled that the disputed decree did not, on the date of his order, constitute a serious and obvious unlawful infringement of the

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applicants' fundamental freedoms. Their applications were therefore rejected.

On 29 July, the *Centre national du cinéma et de l'image animée* (National Centre for Cinema and the Moving Image – CNC) adopted eight new support measures designed to stimulate film exploitation, production and distribution, with a total value of EUR 90 million. Under the law on the management of the health crisis, promulgated on 6 August 2021 following the French president's announcements of 12 July 2021, a pass may be required to participate in any cultural or leisure activity until 15 November 2021, with no visitor number threshold. The law also extended the health pass requirement to bars, restaurants, long-distance trains and aeroplanes, as well as some shopping centres and health institutions.

Conseil d'État (réf.) 26 juillet 2021, n° 454792, 454818, SACD et a.

https://www.conseil-etat.fr/actualites/actualites/le-juge-des-referes-du-conseil-d-etat-ne-suspend-pas-l-extension-du-passe-sanitaire

Conseil d'Etat, 26 July 2021, no. 454792, 454818, SACD et al.

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