[FR] Refusal of request for Internet access providers to block pornographic websites accessible to minors

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Two child protection organisations filed a motion for a summary hearing in the hope that the courts would order France's largest Internet access providers to take appropriate measures to block access to nine pornographic websites. Their claims were based, firstly, on the provisions of Article 6-I-8 of the Law on Confidence in the Digital Economy (LCEN) of 21 June 2004, and secondly on the provisions of Article 835(1) of the Code of Civil Procedure. They were not, however, based on Article 23 of Law no. 2020-936 of 30 July 2020, which assigns jurisdiction in the dispute to the president of the judicial court, ruling on the merits under the accelerated procedure. Similarly, the document instituting proceedings that was submitted to the urgent applications judge had been notified to the defendants between 2 and 4 August 2021, i.e. before the entry into force of Law no. 2021-1109 of 24 August 2021, under which the president of the judicial court, ruling on the merits under the accelerated procedure, has jurisdiction to deal with applications concerning the prevention or termination of damage caused by the content of an online public communication service pursuant to Article 6-I-8 LCEN.

The Paris judicial court, in a summary judgment, ruled that the organisations' requests based on Article 6-I-8 LCEN were inadmissible. It pointed out that, under the subsidiarity principle enshrined in the article, measures to block illegal sites should primarily be taken against the hosts of the sites concerned, while access providers could only be asked to intervene if the hosts failed to act. In the present case, the companies responsible for each website were identifiable and expressly identified, while postal addresses within the European Union or e-mail addresses via which they could be contacted directly were mentioned in the sites' general conditions and confidentiality policies. The applicants had failed to show that they had attempted to contact them and therefore to prove that they had been unable to take quick, effective action against the host or publisher of the nine sites concerned.

The court accepted that allowing minors to access the sites in question was 'manifestly unlawful', since it infringed Article 227-24 of the Penal Code.

Nevertheless, there was no justification for blaming the alleged infringement on the defendants, who had been sued in their role as Internet access providers.

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They neither published nor monitored pornographic content and did not need to justify the absence of measures taken to prevent minors accessing it. Since the companies that published the content had been neither sued in nor even informed of the proceedings, they had not been given the chance to comment on the measures demanded, which would have infringed their interests or rights, and if appropriate, propose alternative solutions. As a result, the court could not make a judgment on the proportionality of the requested measures in accordance with the adversarial principle. The requests based on Article 835(1) of the Code of Civil Procedure were therefore rejected.

TJ Paris, jugement réf., 8 octobre 2021 n° 21-56149 – Association La Voix de l'enfant et a. c/ Sté Orange et a.

Paris judicial court, summary ruling, 8 October 2021, no. 21-56149 - Association La Voix de l'enfant et al v Sté Orange et al.

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