[FR] Broadcast of sanitary product advertisement did not breach obligation to protect children

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Following the television broadcast of an advertisement for "Nana" sanitary products in September and October 2019, the Pornostop organisation, whose primary goal is to prevent minors being exposed to pornography, asked the *Conseil supérieur de l'audiovisuel* (the French audiovisual regulator – CSA) to issue a formal notice to the television companies concerned, demanding that they respect their obligations to protect children. After the CSA rejected its request, Pornostop requested the annulment of the CSA's initial decision and its subsequent rejection of an informal appeal on the grounds of misuse of powers.

The *Conseil d'État* (Council of State) pointed out that, pursuant to Articles 1 and 14 of the Law of 30 September 1986, the CSA was responsible for ensuring that the protection of children and young people covered not only programmes made available to the public by audiovisual communication services, as expressly stipulated in Articles 3-1 and 15 of the said law, but also advertising shown between or during such programmes, regardless of whether they were specifically aimed at children or young people. Moreover, Article 3 of the Decree of 27 March 1992 implementing Articles 27 and 33 of Law no. 86-1067 of 30 September 1986 and laying down general principles defining the obligations of service providers in relation to advertising, sponsorship and teleshopping, stated that "advertising must be truthful, decent and respectful of human dignity", while Article 7 stated that "advertising must not cause moral or physical harm to minors (...)".

In the case at hand, the evidence showed that the disputed 30-second advertisement was composed of a succession of images of young women and representations, suggested or metaphorical, of the female gender. Considering that the broadcast of the advertisement did not infringe the obligation to protect children, which fell under its supervisory responsibility, and bearing in mind that the images concerned, although they alluded directly to intimate parts of the female body, were linked to the sanitary products promoted by the advertisement and were not indecent or pornographic in any way, the CSA had not misused its powers to issue formal notices as described in Article 42(1) of the Law of 30 September 1986. Since the applicant had no grounds to request the annulment of the disputed decisions, the *Conseil d'Etat* rejected its request.

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