[FR] RMC Découverte fails to meet obligation to broadcast 75% documentaries: *Conseil d'État* confirms CSA sanction

IRIS 2022-6:1/8

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The TV company RMC Découverte signed an agreement with the *Conseil supérieur de l'audiovisuel* (the French audiovisual regulator – CSA) in 2012, Article 3-1-1 of which requires it to ensure that "documentaries make up at least 75% of total airtime each year and cover a wide variety of topics." On several occasions in 2016 and 2017, the CSA found that the channel was not abiding by those provisions and issued a formal notice requiring it to meet its obligations. On 9 December 2020, the CSA fined RMC Découverte EUR 80,000 because documentaries had only made up 59.2% of its total airtime in 2017. The broadcaster referred the case to the *Conseil d'État* (Council of State), asking for the decision to be annulled.

The company argued, firstly, that the CSA had refused, on several occasions, to classify some of its programmes as documentaries, and that it had disputed these decisions with the *Conseil d'État*. However, the *Conseil d'État* noted that it had rejected these appeals on 29 October 2021. This argument was therefore dismissed.

The *Conseil d'État* also noted that, in order to determine whether the various programmes concerned could be classified as documentaries within the meaning of Article 3-1-1 of the agreement of 3 July 2012, the CSA had examined each of them individually, taking into account the existence of an author's viewpoint, the dissemination of knowledge to the viewer, the portrayal of facts or situations that had existed before the programme was made, the absence of artificially staged events and whether they had received documentary film aid from the *Centre national du cinéma et de l'image animée* (National Centre for Cinema and the Moving Image – CNC). Since it had examined all these criteria, the CSA had not made any error of law. Therefore, RMC Découverte, which was merely claiming that the CSA had applied incorrect criteria, had no grounds to argue that documentaries had represented 72.45% rather than 59.2% of its total airtime. Finally, given the extent and repeated nature of the infringements, the company could not claim that the size of the fine, which was not set automatically, was disproportionate. Its requests were therefore rejected.

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Conseil d'État, 22 avril 2022, Sté RMC Découverte

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-04-22/449533

Council of State, 22 April 2022, RMC Découverte

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