[FR] Reporters Without Borders constitutionality application rejected

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The Reporters Without Borders organisation asked the *Conseil d'Etat* (Council of State) to annul a decision of 5 April 2022 in which the *Autorité de régulation de la communication audiovisuelle et numérique* (Regulatory Authority for Audiovisual and Digital Communication – ARCOM) had rejected its request to issue a formal notice to the broadcaster CNews pursuant to Article 42 of the Law of 30 September 1986. Reporters Without Borders requested that the Constitutional Council should verify the constitutionality of Articles 3-1, 13 and 42 of the law. It argued that, by adopting these provisions, the legislator had disregarded the scope of its competence. It had failed to provide the legal guarantees necessary to ensure respect for the free communication of ideas and opinions enshrined in Article 11 of the Declaration of the Rights of Man and of the Citizen and for the constitutional principles of media pluralism and independence, in particular by omitting to take measures to prevent shareholders interfering in broadcasters' editorial decisions.

The *Conseil d'Etat* held that the applicant was, in effect, disputing the constitutionality of the third paragraph of Article 3-1 of the Law of 30 September 1986, according to which ARCOM should guarantee "the integrity, independence and pluralism of information and programmes (...). It shall ensure that the economic interests of the shareholders of audiovisual communication service providers and their advertisers do not infringe these principles."

The *Conseil d'Etat* recalled the provisions of Article 13 of the Law of 30 September 1986: "ARCOM shall ensure respect for the pluralistic expression of schools of thought and opinion in radio and television programmes, in particular political and general news programmes (...)". It also referred to Article 42 of the law, which stated that formal notices could be issued to editors and distributors of audiovisual communication services, requiring them to meet their obligations under legislative and regulatory texts and principles, including the principles set out in Articles 1 and 3-1. It also pointed out that respect for the integrity and pluralism of information and programmes was among the criteria taken into account when broadcasting licences were granted to new free-to-air terrestrial services that were subject to an agreement with ARCOM (Article 28 of the Law of 30 September 1986). Moreover, since 2017, under Article 30-8 of the law, all providers of national mainstream radio and free-to-air television services that

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broadcast political and general news programmes had been required to appoint a committee composed of independent members to monitor the integrity, independence and pluralism of information and programmes.

The *Conseil d'Etat* concluded that, pursuant to these provisions, ARCOM was responsible for ensuring that radio and television services respected freedom of communication and the constitutional principles of media pluralism and independence. In the light of ARCOM's prerogatives under current legislation, in particular its power to issue formal warnings and sanctions, especially at the request of freedom of information organisations that were recognised as serving the public interest or on the basis of information provided by the independent committee established under Article 30-8 of the Law of 30 September 1986, and which it exercised under the authority of the courts, including if it failed to properly exercise these prerogatives, Reporters Without Borders had no grounds to claim that the disputed provisions undermined the legal guarantee of the constitutional requirements of Article 11 of the Declaration of the Rights of Man and of the Citizen and Article 34 of the Constitution. Similarly, the allegation that the law infringed the freedom of communication and expression, as well as the constitutional principles of media pluralism and independence, did not raise a new question and was not to be taken seriously. There was therefore no reason to refer the matter to the Constitutional Court.

Conseil d'État, 1er juillet 2022, n° 463162, Reporter sans frontières

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-07-01/463162

Council of State, 1 July 2022, no. 463162, Reporters Without Borders

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