[FR] Clarification on ‘political personalities’ whose speaking time in audiovisual media must be measured

IRIS 2022-9:1/8

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The Canal Plus group and the company C8 asked the *Conseil d’Etat* (Council of State) to annul the decision taken on 3 March 2021 by the *Conseil supérieur de l'audiovisuel* (French audiovisual regulatory body — CSA, replaced by the *Autorité de régulation de la communication audiovisuelle et numérique* on 1 January 2022), asking providers of audiovisual communication services to “measure all the speaking time in audiovisual media” of A... B..., Nicolas Hulot, Laurent Joffrin, Arnaud Montebourg and Manuel Valls.

The *Conseil d’Etat* pointed out that, under Articles 1, 3-1 and 13 of the Law of 30 September 1986, the regulatory body was responsible for ensuring that audiovisual media complied with the constitutional principle of pluralistic expression of schools of thought and opinion, especially political opinion. To this end, the regulator had broad discretionary powers to lay down, subject to the authority of the *Conseil d’Etat*, rules designed to ensure balanced coverage of the national political debate. As part of this, Article 13(2) of the Law of 30 September 1986 required audiovisual communication service providers to measure the speaking time of political personalities in current affairs programmes, news bulletins, magazine shows and other radio and television programmes and to submit the data to the CSA so it could assess whether political pluralism was being respected.

In a decision of 22 November 2017, the CSA set out the criteria under which, without prejudice to the rules applicable during electoral campaigns and the handling of associated news stories enshrined in Article 16 of the Law of 30 September 1986, and subject to a case-by-case examination, it intended to evaluate whether radio and television services were meeting their obligations to protect political pluralism. According to this decision, excluding speeches relevant to the national political debate made by the president of the Republic, ministers and their colleagues, who were entitled to a third of total airtime, audiovisual communication service providers should “ensure that the political parties and groups that represent the main strands of national political opinion are given a fair share of airtime in accordance with their representativeness, especially election results, the number and categories of their elected representatives, the size of their parliamentary groups, opinion polls and their contribution to the national political debate”.

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In the case at hand, the CSA had examined whether A... B..., Nicolas Hulot, Laurent Joffrin, Arnaud Montebourg and Manuel Valls should be regarded as political personalities within the meaning of Article 13(2) of the Law of 30 September 1986 and whether audiovisual communication service providers were therefore required to measure their speaking time and submit the relevant data to the CSA. It had based its assessment firstly on the fact that these people belonged or had recently belonged to political parties, groups or movements and had recently exercised political functions or aspired to exercise such functions, and secondly on their active participation in the national political debate on the date of the contested decision. The *Conseil d'Etat* therefore considered that the regulatory body had not made a clear error of assessment and rejected the application.

Conseil d'État, 28 septembre 2022, N° 452212, Société Groupe Canal Plus et a.

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-09-28/452212

Council of State, 28 September 2022, no. 452212, Groupe Canal Plus et al.

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