[FR] Conseil d'Etat powerless to annul ARCOM's formal notice requiring pornographic website to block access to minors

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The provider of the Pornhub website asked the *Conseil d'Etat* (Council of State) to annul the formal notice addressed to it on 13 December 2021 by the president of the *Conseil supérieur de l'audiovisuel* (the previous French audiovisual regulator – CSA), which has since been replaced by ARCOM, on the grounds that the CSA had acted outside its remit. Alleging that the company was allowing minors to access pornographic content, the formal notice ordered it to take all necessary measures to comply with Article 227-24 of the Penal Code. According to Article 23 of the Law of 30 July 2020, "if a provider of an online public communication service is found to be allowing minors to access pornographic content in violation of Article 227-24 of the Penal Code, the ARCOM president will send it – in a manner in which the date of receipt can be proven – a formal notice ordering it to take all possible steps to prevent minors accessing the content concerned. The recipient of the injunction then has 15 days in which to present its observations. If the injunction is breached and the content remains accessible to minors after this deadline, the ARCOM president may refer the matter to the president of the Paris judicial court with the request that, ruling on the merits under the accelerated procedure, it should order the persons mentioned in Article 6(I)(1) of Law no. 2004-575 of 21 June 2004 on confidence in the digital economy to block access to the service. The French public prosecutor is informed of the court president's decision (…)."

The *Conseil d'Etat* ruled that the formal notice provided for in the first paragraph of Article 23 of the Law of 30 July 2020 was indissociable from the procedure that could be instigated by the ARCOM president with the Paris judicial court if the recipient failed to comply. It was therefore not a decision that the *Conseil d'Etat* had jurisdiction to review. The application was therefore rejected on the grounds that it had been submitted to a judicial body without the necessary jurisdiction. There was also no need to rule on the request for a constitutionality ruling to be referred to the *Conseil constitutionnel* (Constitutional Council).

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