[FR] Broadcaster must take broadcast times and conditions into account to ensure political pluralism

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The company responsible for TV channel CNews asked the *Conseil d'Etat* (Council of State) to annul the decision taken by the *Conseil supérieur de l'audiovisuel* (French audiovisual regulatory body — CSA) on 3 December 2021, requiring it to comply before 31 December 2021 and in the future with the provisions of Article 1 of its decision no. 2017-62 of 22 November 2017 on the principle of political pluralism in radio and television services. Under this decision, a third of airtime devoted to political speeches must be reserved for speeches by the president of the Republic, government ministers and their colleagues. As regards the remaining two thirds, broadcasters must 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.

In the case at hand, the detailed breakdown of speaking time on the CNews service between 1 October and 15 November 2021 showed that 82% of the speeches by the president of the Republic, government ministers and their colleagues, and 53% of those by representatives of 'La France Insoumise', had been broadcast between midnight and 5.59am. These speakers had received much less coverage than the other parties and political groups in daytime programmes, with 8.6% and 3.7% of total airtime between 6am and midnight respectively.

The *Conseil d'Etat* acknowledged that there was no legislative or regulatory provision or other rule applicable to radio and television services that expressly stated that the assessment of compliance with the obligations concerning the pluralistic expression of opinion enshrined in the decision of 22 November 2017, which was based on Articles 1 and 13 of the Law of 30 September 1986, should take into account the time of day that programmes were broadcast. However, the very purpose of these provisions, which was to ensure that different strands of opinion were given a fair share of airtime in order to assist the shaping of TV viewers' opinions and thus contribute to democratic debate, showed that the obligations concerned should not be considered met unless the time of day and conditions of the broadcasts were taken into account.

The *Conseil d'Etat* ruled that the CSA had not made an error of law by considering that the obligations derived from the Law of 30 September 1986 and its decision

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of 22 November 2017 could not be met if the speeches of the president of the Republic, government ministers and their colleagues on the one hand, and those of representatives of one of the parties and political groups that expressed the main strands of national political opinion on the other, were primarily broadcast during the night, when audiences were very small.

By sending a formal notice to the company concerned, reminding it of its obligations and urging it to comply with them throughout the period during which they applied, the CSA, rather than ignoring its decision of 22 November 2017, had merely applied the aforementioned rule without breaching the principles of non-retroactivity of administrative acts and legal certainty. This formal notice should be regarded as an exact application of the powers conferred on the CSA. The request was rejected.

CE, 13 janv. 2023, n° 462663, Société d'exploitation d'un service d'information (SESI)

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-01-13/462663

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