# [FR] Use of age verification systems does not breach the Constitution

**IRIS 2023-2:1/3**

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On 13 and 15 July 2022, alleging that minors could access the pornographic websites Pornhub, Tukif, Xhamster, Xnxx and Xvideos simply by stating that they were aged 18 or over, in violation of Article 227-24 of the Penal Code, the president of ARCOM (the French audiovisual and digital communications regulator) summoned numerous Internet access providers to appear before the president of the *Tribunal Judiciaire de Paris* (Paris judicial court) on the basis of Article 23 of Law no. 2020-936 of 30 July 2020 and asked the court to order them to block access to the sites concerned.

During the proceedings, one of the companies summoned raised the following question regarding constitutionality: “Do the provisions of Article 23 of Law no. 2020-936 of 30 July 2020 and Article 227-24 of the Penal Code conform with the rights and freedoms guaranteed by the Constitution with regard to the principle of offences and penalties being established in law and the freedom of expression and communication, in particular on the grounds that they fail to define in sufficiently clear and precise terms what constitutes a criminal offence and what behaviour might give rise to a sanction, and that they unnecessarily, inappropriately and disproportionately interfere with the legislator’s objective of preventing minors accessing pornographic content on the Internet?”

This question was submitted to the Court of Cassation, which ruled that, although the provisions concerned had not been declared to be in conformity with the Constitution in the grounds and operative provisions of a Constitutional Council decision, this question was not new in the sense that it did not concern the interpretation of a constitutional provision that the Council had not previously had the opportunity to apply.

Secondly, the court considered that the question lacked serious character.

The court held that the terms of Article 227-24 of the Penal Code, which stated that the manufacture, transport or distribution, by whatever means and however supported, of a message bearing a pornographic or violent character, inciting terrorism, seriously violating human dignity, or encouraging children to play games that put them in physical danger, and the trafficking in such a message, were punishable in the event that the message could be seen or perceived by a

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minor, and that these offences were committed if a minor could access the message by simply declaring that they were aged 18 or over, were sufficiently clear and precise to prevent any risk of arbitrary application.

The same was true of the terms of Article 23 of Law no. 2020-936 of 30 July 2020, which stated that, if the ARCOM president found that the provider of an online public communication service was allowing minors to access pornographic content in violation of Article 227-24 of the Penal Code, and if the provider concerned failed to comply with a formal notice within 15 days, the ARCOM president could refer the matter to the president of the Paris judicial court with the request that the provider be ordered to block access to the service.

Finally, the court ruled that the restriction of freedom of expression created by the requirement to verify the age of a person accessing pornographic content using a system other than a simple age declaration was necessary, appropriate and proportionate to the objective of protecting minors. As a result, it considered it unnecessary to refer the question to the Constitutional Council.

### *Civ. 1re, 5 janvier 2023, QPC, n° 22-40017, Freesites Ltd*

https://www.courdecassation.fr/decision/63b7c9ce6b63637c907b7638

*Court of Cassation, 1st civil chamber, 5 January 2023, appeal no. 22-40017, Freesites Ltd*

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