# European Court of Human Rights rules on C8 (Canal 8) v. France

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The European Court of Human Rights has recently dealt with two applications concerning two sanctions imposed against the television channel C8 by the *Conseil supérieur de l'audiovisuel* (French audiovisual regulator — CSA) and confirmed by the *Conseil d'État*, following content broadcast in the programme "*Touche pas à mon poste*". In the first of the disputed clips, broadcast on 7 December 2016, the programme's host had been shown playing a game with one of its female pundits in which, with her eyes closed, her hand had been placed on part of his body and she had been asked to identify the part of his anatomy. After placing her hand on his chest and arm, he had placed it on his trousers, over his groin. As a result, the CSA had suspended all advertising during and for the 15 minutes before and after the programme for two weeks.

The second clip, broadcast on 18 May 2017, had shown the same presenter playing a joke in which he had spoken on the telephone to people replying to a fake, sexually suggestive advertisement that he had posted under a false identity on a dating website, and talked to them in a manner that stereotyped homosexual people, using personal and, in some cases, sexually explicit language. The CSA had fined the channel EUR 3 Million for this.

The applicant, French company C8, had complained to the Court about a violation of Article 10 of the European Convention on Human Rights.

In its assessment of the need for interference, the Court noted firstly that the video sequences in question had been purely entertainment-oriented and had not included any message, information, opinions or ideas nor contributed to a debate on a matter of public interest. Broadcast on a commercial television channel, they had been designed to attract the widest possible audience in order to generate advertising income. The respondent state had therefore had a wide margin of appreciation in deciding whether it was necessary to sanction the applicant company in order to protect the rights of others. The applicant company had enjoyed procedural safeguards before both the CSA and the *Conseil d'Etat*. The right to humour did not mean that anything was permitted, and anyone who claimed the benefit of freedom of expression also took on "duties and responsibilities".

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The Court saw no reason to depart from the assessment of the CSA and the *Conseil d'État*, which had been asked to set aside the sanctions, since it had been based on relevant and sufficient grounds.

The Court noted that the CSA's decision to sanction the applicant had been based on the fact that the company, through "*Touche pas à mon poste*", had breached its regulatory obligations on a number of previous occasions and had disregarded subsequent warnings and enforcement notices. In addition, the programme was particularly popular with younger viewers, so much so that a considerable number of minors and young adults had thus been exposed to material which trivialised damaging portrayals of women and homosexual people.

Finally, turning to the severity of the sanctions imposed, the Court noted that they should be seen in the light of the applicant company's annual turnover (the parties disagreed on the size of the losses caused to the applicant by the first sanction. If, as the applicant claimed, it had lost EUR 13 Million, the Court noted that such a sum "only represents around 8.7% of its 2016 turnover" for 2016, while the second sanction represented 2%). In the Court's opinion, the financial nature of the sanctions was particularly apt, in this case, to the strictly commercial purpose of the conduct which they punished, and their severity had to be put into perspective by considering the scale of sanctions in place under the Law of 30 September 1986. Indeed, under these provisions, the CSA could have taken even harsher action by suspending, shortening or revoking the company's broadcasting licence.

In conclusion, since the footage complained of had not contained any information, opinions or ideas within the meaning of Article 10 of the Convention, had not in any way contributed to a debate on a matter of public interest and had been not only detrimental to the image of women but also stigmatising of homosexual people and an invasion of private life, the Court came to the conclusion – having regard also to the impact of the footage (on younger viewers in particular) and to the applicant company's repeated regulatory breaches, the procedural safeguards which it had enjoyed in the domestic order and the wide margin of appreciation to be afforded to the respondent state – that the sanctions imposed on the applicant company on 7 June and 26 July 2017 had not infringed its right to freedom of expression.

On the same day, ARCOM fined the C8 channel EUR 3.5 Million for failing to control the content of its programmes and violating its obligation to respect human rights following comments made by the same presenter during the same programme.

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***CEDH 9 février 2023, no 58951/18, et 1308/19, Affaire C8***

https://hudoc.echr.coe.int/eng?i=001-222892

*ECHR, 9 February 2023, application nos. 58951/18 and 1308/19, C8 case*

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