[FR] ARCOM president's request to block pornographic websites: judicial court stays proceedings pending outcome of *Conseil d'Etat* appeal

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On 3 March 2022, as part of his remit under the Law of 30 July 2020 and the Decree of 7 October 2021 aimed at preventing minors from accessing pornographic websites, the president of the *Autorité de régulation de la communication audiovisuelle et numérique* (French audiovisual regulator – ARCOM) ordered several Internet access providers to appear before the president of the Paris judicial court. He asked the court, ruling on the merits under the accelerated procedure, to order the ISPs to block the websites Pornhub, Tukif, Xhamster, Xnxx and Xvidéo so they could not be accessed by minors on French territory. The companies responsible for the websites concerned said they would voluntarily take part in the proceedings. They also asked the *Conseil d'Etat* (Council of State) to annul the Decree of 7 October 2021.

After mediation between the parties had failed, a request for a constitutionality ruling had been turned down, and the *Conseil d'Etat*, in a decision of 29 November 2022, had said it had no jurisdiction to examine the validity of the formal notice issued by ARCOM, considering it indissociable from the procedure instigated with the judicial court, the case was re-listed for hearing.

The operators of the pornographic websites asked for the proceedings to be stayed, pending the decision of the *Conseil d'Etat* on the legality of the Decree of 7 October 2021 issued under Article 23 of the Law of 30 July 2020.

The judicial court noted that the *Conseil d'Etat* had been asked to examine two actions against the decree, and that it was indisputable that neither the general provision of Article 23, which required the regulator to define "the conditions of application of the present decree" nor the decree of 7 October contained any criteria or guidelines for website operators regarding the technical measures they should take to prevent minors accessing the pornographic content. It appeared that the legal questions raised with both types of court were identical, with those put to the judicial court questioning the validity of Article 23 and those raised with the administrative court claiming that the associated implementing decree was unlawful.

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The court held that a stay of the proceedings was justified to protect the proper administration of justice, since it would enable the court to gain a full understanding of the dispute, once the *Conseil d'Etat* had determined whether the decree was lawful. The issues raised with the two types of court were similar and concerned a subject that was constantly evolving: under a bill currently being drafted to protect and regulate the digital space, ARCOM would be able to issue recommendations concerning the technical requirements that age verification systems should meet, the *Commission Nationale de l'Informatique et des Libertés* (French data protection authority – CNIL) had published several opinions amending its recommendations, a revised decree was being drafted and age verification systems had recently been trialled.

This measure forms part of the necessary dialogue between the courts, in particular in systemic causes, the cooperation required between the two types of court in the face of multiple norms, and the need to take measures, in the case at hand, to ensure both the reliability of age verification mechanisms and respect for users' privacy.

The court stayed the proceedings regarding the other requests, pending the outcome of the actions filed by the website operators with the *Conseil d'Etat* against the Decree of 7 October 2021.

TJ Paris (procéd. accélérée au fond), 7 juillet 2023, n° 22155687, R. O. Maistre c/ Orange, Free, et a.

Paris judicial court (accelerated procedure on the merits), 7 July 2023, no. 22155687, R.O. Maistre v Orange, Free et al.

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