[FR] Information processing and controversial issues: *Conseil d'Etat* highlights the need to distinguish between presentation of facts and commentary, and to allow expression of different viewpoints on air

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The company responsible for TV channel CNews asked the *Conseil d'Etat* (Council of State) to annul two formal notices issued by the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) on 10 May 2022, ordering it to meet the obligations contained in its licence agreement concerning honesty of information and control of its programmes.

The first formal notice followed the broadcast, during the programme "Les Points sur les i" in November 2021, of a sequence in which a professor of medicine, infectious disease expert and author of two books criticising the management of the COVID-19 pandemic was the only person to give his views. He strongly asserted that the epidemic was "virtually finished in France", even though epidemiological data at the time showed that the number of cases was increasing and the virus was spreading rapidly. He also stated that the effectiveness of COVID-19 treatments based on hydroxychloroquine, antibiotics and an antiparasitic medicine, which he said had prevented all deaths in countries where used, was largely proven, and that messenger RNA vaccines "modify people's cells".

The second formal notice followed the broadcast of comments by a pundit who regularly appeared on the programme "L'heure des pros 2", in February 2022. When asked to respond to comments made the same day on the Internet and broadcast on the channel by an epidemiologist who was often involved in media controversies, comparing the situation of people who had not been vaccinated against COVID-19 to that of Jews facing Nazi persecution, the pundit had suggested it was a historical fact that the Nazis created the Warsaw ghetto in October 1940 largely in response to health concerns. However, all historians agree that such concerns were merely a pretext.

The *Conseil d'Etat* referred to Article 3-1 of the Law of 30 September 1986 and the French audiovisual regulator's decision of 18 April 2018 concerning the honesty of information, which was contained in the channel's licence agreement. These stipulations and the provisions to which they referred did not prevent the

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broadcaster from adopting an editorial approach that might involve giving airtime to individuals with highly controversial views, whose comments should not be regarded as the result of its presentation and processing of information. However, even when a controversial issue was being discussed, including in programmes that were not exclusively dedicated to the presentation of information, but that also contributed to the processing of information, they did require it to tackle such issues in a way that distinguished between the presentation of facts and commentary on those facts, as well as allowing different viewpoints to be expressed.

Regarding the first case, the *Conseil d'Etat* stressed that the programme's contributors, although they had cast doubt on some of the guest's other comments, including his claim that vaccinated people were more likely to die of COVID-19 than unvaccinated people, and had ended the programme by saying that, "of course, your words are only binding on you", had not contradicted the disputed comments, or had not contradicted them strongly enough. Similarly, concerning the second formal notice, it stated that the pundit's comments had been unambiguous and had not been disputed by the presenter or anyone else in the studio.

In conclusion, by issuing the formal notices, ARCOM had acted in accordance with the powers entrusted to it under Article 42 of the Law of 30 September 1986 and the channel's licence agreement, and had not disproportionately infringed freedom of expression. The applications were rejected.

Conseil d'État, 4 août 2023, décision n° 465759, SESI

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-08-04/465759

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