[FR] Contentious comments in a news and entertainment programme: honest presentation of controversial issues and respect for the presumption of innocence

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The company C8 asked the *Conseil d'Etat* (Council of State) to annul decision no. 2022-704 of 16 November 2022 in which the *Autorité de régulation de la communication audiovisuelle et numérique* (French audiovisual regulator, ARCOM) issued a formal notice requiring it to comply with the provisions of Article 2-3-8 of its licence agreement of 29 May 2019 and Articles 1 and 3 of decision no. 2018-11 issued by ARCOM's predecessor, the *Conseil supérieur de l'audiovisuel* (CSA), on 18 April 2018 concerning the honesty and independence of information and news programmes, following comments made on 18, 19 and 24 October 2022 by the presenter of the programme '*Touche pas à mon poste*' after the murder of a young girl.

The *Conseil d'Etat* pointed out that the requirements of section 3-1 of the Law of 30 September 1986, under which ARCOM guarantees the honesty, independence and pluralism of information and news programmes, also applied to programmes that were not exclusively dedicated to the presentation of information, but that also contributed to the processing of information. Contrary to the TV channel's claim, it ruled that there was a legal basis to issue a formal notice based on a decision taken in application of these provisions in relation to comments made during a programme that combined news and entertainment.

France's highest court stressed, first of all, that Article 3 of the decision of 18 April 2018 required broadcasters, in programmes dealing with ongoing judicial proceedings, to exercise restraint when dealing with such cases and pay particular attention to respect for the presumption of innocence. It held that ARCOM had correctly applied this provision, considering that the broadcaster had breached this obligation since the presenter had repeatedly and provocatively referred to the person under investigation as the 'alleged perpetrator', a term that had appeared in a banner on the screen, and expressed very strong and clear views on how the person concerned should be tried and the punishment that should be imposed.

The *Conseil d'Etat* also pointed out that the final paragraph of Article 1 of CSA decision no. 2018-11, requiring broadcasters to present controversial issues with

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honesty, did not prevent them from adopting an editorial approach that determined their 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, it did require them 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 in accordance with their legal obligation concerning honesty of information. Whether this final requirement was met depended in particular on the subject-matter, author and content of the comments expressed, as well as the type of programme, its audience and the context in which it was broadcast.

In the case at hand, during two sequences shown on 18 and 19 October 2022, the programme's presenter had decided to discuss the criminal treatment of suspected child murderers just a few days after a tragic case had hit the headlines. On both occasions, he had given his opinion at great length about the need to hold trials quickly in such cases and to automatically issue life sentences, whatever the person's state of mind at the time of the offence. During the sequence of 24 October, the presenter, responding to the controversy that the two previous sequences had caused, had spent about ten minutes firmly reiterating his views, before other guests on the programme spoke to support him following the criticism he had received.

The *Conseil d'Etat* ruled that, under the circumstances, the honesty of information requirement meant that the views expressed by the presenter on this controversial issue should have been contradicted by other participants, which had not been the case. Therefore, since the broadcaster had, during this sequence, breached its obligation under the aforementioned decision no. 2018-11 to present controversial issues with honesty, ARCOM had correctly applied these provisions. C8's application was therefore rejected.

Conseil d'Etat, 21 décembre 2023, n° 470575, C8

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-12-21/470565

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