[FR] CNews application to European Court of Human Rights against CSA formal notice ruled inadmissible

IRIS 2024-1:1/3

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On 27 November 2019, the *Conseil Supérieur de l'Audiovisuel* (the French audiovisual regulatory body – CSA) issued a formal warning to the company that operates the CNews television channel following comments made by Eric Zemmour, a journalist and political commentator at the time, during the programme 'Face à l'info' in which he had been debating with a member of the French Senate on issues linked to immigration, the integration of persons of foreign origin, France's peri-urban neighbourhoods and Muslims' place in France. Citing Articles 6(1) and 10 of the European Convention on Human Rights, the channel complained that the reasoning of the CSA's decision, and of the decision of the *Conseil d'Etat* (Council of State) of 16 June 2021 rejecting its request that the formal warning be set aside as *ultra vires*, had been insufficient. It also alleged that its freedom of expression had been infringed.

The European Court of Human Rights emphasised that, having regard to its nature and subject matter, the contested decision had to be viewed as a condition placed on the exercise of the applicant's freedom of expression, amounting to an interference within the meaning of Article 10(2) of the Convention. The formal notice sent by the CSA was a warning, the only consequence of which was to allow for the possibility of a penalty being imposed if, in the future, the applicant company was found liable for another breach of the duty to comply with its legal and contractual obligations, specifically the obligation, as a television service provider, to ensure that the programmes it broadcast did not contain incitement or encouragement to hatred or violence, especially on the grounds of religion or nationality.

The Court saw no reason to depart from the assessment made of the disputed comments by the CSA and the *Conseil d'Etat*. It pointed out that, in its decision of 16 June 2021, the *Conseil d'État* had expressly quoted the contested statements and, placing them in the context in which Eric Zemmour had spoken, i.e. the "current debates on peri-urban neighbourhoods, the integration of persons of foreign origin and the place of Islam and Muslims in France", it held that they "legitimatised, in the context [of this] current-affairs debate, violence committed against population [groups] defined by their religious beliefs, and created confusion between immigration, Islam and Islamisation."

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The *Conseil d'Etat* held that the CSA had acted in accordance with the powers invested in it by section 42 of the Law of 30 September 1986 and Article 4-2-1 of the agreement of 19 July 2005 in so far as these referred to formal notices, and had neither disproportionately interfered with the right to free communication of ideas and opinions, guaranteed in particular by Article 10 of the Convention, nor breached the constitutionally recognised aim of pluralistic expression of ideas and opinions.

The Court concluded that this interference, which was measured in nature, had been proportionate to the legitimate aim pursued, namely the protection of the reputation or rights of others, and dismissed the application as manifestly ill-founded.

Cour européenne des droits de l'homme, 30 novembre 2023, no 60131/21, CNews c/ France

https://hudoc.echr.coe.int/eng?i=001-229482

European Court of Human Rights, 30 November 2023, no. 60131/21, CNews v France

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