



TV channel C8's freedom of expression not violated by sanctions imposed by French broadcasting regulator for content shown on *Touche pas à mon poste*

In today's **Chamber judgment**¹ in the case of [C8 \(Canal 8\) v. France](#) (applications nos. 58951/18 and 1308/19) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The two applications concerned a pair of decisions by France's national broadcasting authority to impose sanctions on the television channel C8 for content shown on the programme *Touche pas à mon poste*.

The Court noted, first, that the content had been shown as part of a strictly entertainment-oriented television programme whose sole ambition was to attract the widest possible audience for purposes of commercial gain. The Court therefore concluded that the respondent State had had a wide margin of appreciation in deciding whether it was necessary to sanction the applicant company to protect the rights of others.

The Court went on to state that it saw no reason to depart from the assessment arrived at by the national broadcasting authority – and by the *Conseil d'État* on applications to set aside the sanctions – which had been based on relevant and sufficient grounds. Regarding the first piece of footage, the Court took the view that the depiction of the lewd game played by the host and star of the show and one of its female pundits, and the coarse comments which it had prompted, had perpetuated a negative and stigmatising stereotype of women. Regarding the second piece of footage, the Court took the view that the telephone hoax had, by virtue of its primary purpose as well as the attitude of the host and star of the show and the position in which he had deliberately placed his victims, perpetuated a negative and stigmatising stereotype of homosexual people.

Lastly, regarding the harshness of the sanctions imposed, the Court noted that the financial nature of the sanctions had been particularly apt, in this case, to the strictly commercial purpose of the conduct which they punished, and that their severity had to be put into perspective by considering the sanctions scale in place under the Freedom of Communication Act of 30 September 1986.

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 history of 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.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts

The applicant, C8 (Canal 8), is a television broadcasting company incorporated under French law and based in Issy-les-Moulineaux.

Touche pas à mon poste (“Don’t Touch My TV Set”) is an entertainment television show devoted to coverage of current events in the world of television and media. Hosted by C.H. and featuring a regular line-up of pundits, it consists of discussions of the latest TV news interspersed with games and comedy segments. The show has sparked controversy on a number of occasions and has been the subject of many viewer complaints to France’s national broadcasting authority (*Conseil supérieur de l’audiovisuel* – CSA).

At 8.45 p.m. on 7 December 2016, as part of a recurring segment aimed at showing viewers what takes place “off the air”, the applicant company aired a clip that had been recorded during an advertising break in which the host, C.H., purporting to be playing a game, had caused one of the show’s female pundits, with her eyes closed, to place her hand on his trousers, over his genitals, without visibly being warned or giving consent.

The clip resulted in more than 1,350 complaints to the CSA, which also received a request from several women’s rights groups to serve the company with an enforcement notice (*mise en demeure*).

By a decision of 7 June 2017 the CSA sanctioned the applicant company by suspending all advertising during and for the 15 minutes before and after all live or repeat episodes of *Touche pas à mon poste* for two weeks.

Relying in part on Article 10 of the Convention, the applicant company applied to the *Conseil d’État* to have that decision set aside. On 18 June 2018 the *Conseil d’État* dismissed the application.

In a *Touche pas à mon poste* episode of 18 May 2017, C.H. spoke live on-air, starting at 11.25 p.m., to seven telephone callers replying to a classified advertisement he had posted on a dating website. In the advertisement, which had been entitled “Man seeks taboo-free connections” and featured a photograph of a muscular torso, C.H. had pretended to be a bisexual person. He had provided an address and an age (26) and had written “... looking for [a] short or long-term relationship depending on feeling; bisexual; I’ll take you to lunch ... and who knows, maybe I’ll have you for dessert ... Reachable at ... from 10 p.m. PS I like to be insulted!” According to the Government, the voices of the on-air callers “[were] apparently left unaltered”.

The episode prompted a wave of reactions beginning the day after it was broadcast.

On 23 May 2017 the CSA published a press release stating that it had received more than 25,000 complaints relating to the segment in question. By a decision of 26 July 2017 the CSA imposed on the applicant company a sanction consisting of a financial penalty of 3,000,000 euros (EUR).

Relying in part on Article 10 of the Convention, the applicant company applied to the *Conseil d’État* to have that decision set aside. On 18 June 2018 the *Conseil d’État* dismissed the application.

The applicant company applied to the CSA to rescind the penalty, arguing that it had been based on errors of fact and was therefore unjustified. The CSA refused, reasoning that its decision had not contained any particulars relating to the complainants or the victims and that nor, for that matter, had the *Conseil d’État* decision of 18 June 2018. On 28 September 2020, the *Conseil d’État* dismissed the applicant company’s challenge to that refusal.

Given the similar subject-matter of the applications, the Court decided to examine them jointly.

Complaints, procedure and composition of the Court

The applicant company complained of a violation Article 10 (freedom of expression).

The applications were lodged with the European Court of Human Rights on 12 December 2018 and 11 December 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,
Carlo **Ranzoni** (Liechtenstein),
Lado **Chanturia** (Georgia),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),

and also Martina **Keller**, *Deputy Section Registrar*.

Decision of the Court

Article 10

The Court noted that the applicant company did not dispute that for the purposes of Article 10(2) the sanctions in issue had been prescribed by law and had been in pursuance of a legitimate aim.

The Court began by pointing out that, as far as the two interferences complained of were concerned, the applicant company had enjoyed procedural safeguards. Specifically, the sanctions proceedings had been preceded by an enforcement notice, and the decision to commence them had been taken by an independent rapporteur who had been an administrative court judge appointed by the Vice-President of the *Conseil d'État*. The applicant company had had the opportunity to challenge the sanctions before a judicial body vested with full jurisdiction to deal with every aspect of the case, in that it had been able to bring applications to set them aside in the *Conseil d'État*, both of which had been dismissed by reasoned decisions after proceedings in which it had been duly heard and whose fairness it had not impugned.

Secondly the Court made the point that the video sequences in question had not included any information, opinions or ideas within the meaning of Article 10 of the Convention. None of what was expressed by the language, behaviour or images they contained had been in any way connected to a matter of public interest. They had been part of a strictly entertainment-oriented television show whose sole ambition was to attract the widest possible viewership for purposes of commercial gain. The Court therefore concluded that the respondent State had had a wide margin of appreciation in deciding whether it was necessary to sanction the applicant company for the content of the footage in order to protect the rights of others.

Thirdly, regarding the fact that the footage complained of had been intended to be humorous and had been part of a strictly entertainment-oriented television show, the Court reiterated that, although forms of expression that used humour were protected by Article 10 of the Convention, they were subject to the qualifications laid down in Article 10(2). The right to humour did not mean that all was permitted, and anyone who claimed the benefit of freedom of expression also took on "duties and responsibilities".

Regarding the sanction of 7 June 2017, the Court saw no reason to depart from the assessment arrived at by the CSA and the *Conseil d'État*, which had rested on relevant and sufficient grounds. Considering the footage in question, it took the view that the depiction of the lewd game played by

the show's host and one of its female pundits, and the coarse comments which had followed it, had perpetuated a negative and stigmatising stereotype of women.

Regarding the sanction of 26 July 2017, as in the case of the footage broadcast on 7 December 2016, the Court saw no reason to depart from the assessment arrived at by the CSA and the *Conseil d'État*, which had rested on relevant and sufficient grounds. Considering the footage in question, the Court took the view that the telephone hoax had, by virtue of its main object as well as the attitude of the host and star of the show and the position in which he had deliberately placed his victims, perpetuated a negative and stigmatising stereotype of homosexual people.

Likewise, it was clear that to broadcast a person's statements about his or her sexual preferences and practices or sexual anatomy on television, without obtaining his or her prior consent and without making arrangements to conceal his or her identity, was an invasion of his or her private life. The freedom of expression relied on by the applicant company under Article 10 therefore had to be weighed against the right to respect for private life recognised by Article 8 of the Convention.

Having regard to the wide margin of appreciation afforded to the respondent State in this case under Article 10 of the Convention and the fact that intimate details of the hoax victims' private lives had been exposed to public view, the Court agreed with the solution adopted by the CSA and the *Conseil d'État*, which, on finding that the footage had perpetuated stereotypes that stigmatised homosexual people, had given precedence to the telephone hoax victims' right to respect for their private lives over the applicant company's freedom of expression.

Furthermore the Court noted that the CSA's decision to sanction the applicant company for the broadcasts complained of had also been based on consideration of the conduct of the company, which, through *Touche pas à mon poste* in particular, had breached its regulatory obligations on a number of previous occasions and had disregarded subsequent warnings and enforcement notices. On top of that there was the fact that, as pointed out by the CSA and underlined by the Government, the show 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.

Regarding the severity of the sanctions complained of, the Court noted that it was undeniable that the sanctions imposed on the applicant company had been severe. The harshness of the sanctions – the financial nature of which had been particularly apt, in the present case, to the strictly commercial purpose of the conduct they served to punish – also had to be put into perspective by considering the sanctions scale in place under section 42-1 of the Freedom of Communication Act of 30 September 1986. Those provisions meant that the CSA could have taken even harsher action by suspending the company's broadcasting licence or part of its programming for up to one month, shortening its licence by up to one year, imposing a financial penalty together with a suspension or revoking its licence altogether.

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.

There had been no violation of Article 10 of the Convention.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.