EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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ECHR 335 (2023)
30.11.2023

The Court has declared inadmissible an application from the audiovisual company CNews, which was served formal notice by the French Broadcasting Authority to ensure that its programmes do not contain incitement or encouragement to hatred or violence

In its decision in the case of Société d'exploitation d'un service d'information CNews v. France (application no. 60131/21) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a formal notice served on the applicant company by France's national broadcasting authority (*Conseil supérieur de l'audiovisuel*, "the CSA") following statements made by a journalist and political commentator during the *Face à l'info* programme, broadcast on a television channel operated by the applicant company.

The Court 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 company'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 broadcast by it 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'État*, to which an application for judicial review of the formal notice had been lodged. They had found that the statements "legitimised … violence against parts of the population which were defined by their religious beliefs and created a confusion between immigration, Islam and Islamisation".

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.

Principal facts

The applicant company, the Société d'Exploitation d'un Service d'Information CNews, is a company incorporated under French law with its registered office in Issy-Les-Moulineaux. A television service provider, it holds a licence to operate a national television channel, namely CNews, issued in 2005 by France's national broadcasting authority (*Conseil supérieur de l'audiovisuel*, the CSA).

Since 14 October 2019 the applicant company has broadcast, between 7 and 8 p.m. on weekday evenings, a programme entitled *Face à l'info*, on which E.Z. – a well-known journalist and commentator, who published several books of political analysis before embarking on a political career in 2021 – was a commentator until September 2021.

On 23 October 2019, while 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

the place of Muslims in France, E.Z. made statements during this programme which gave rise to about two thousand three hundred complaints to the CSA.

In a decision of 27 November 2019, the CSA served formal notice on the applicant company, instructing it to comply in future with the last paragraph of section 15 of the Freedom of Communication Act (Law no. 86-1067 of 30 September 1986), which provides "[the CSA] shall ensure … that programmes made available to the public by television service providers do not contain any incitement to hatred or violence for reasons of race, sex, morals, religion or nationality …", and with points 2-2-1 and 2-3-3 of the agreement that it had concluded with the CSA on 19 July 2005.

The applicant company applied to the *Conseil d'Etat* for judicial review, seeking to have that decision set aside as *ultra vires*.

In a decision of 16 June 2021, the *Conseil d'État* dismissed the applicant company's appeal.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 9 December 2021.

Relying on Articles 6 § 1 (right to a fair hearing) and 10 (freedom of expression), the applicant company complained that the reasoning in the CSA's decision of 27 November 2019 and the *Conseil d'État*'s decision of 16 June 2021 had been insufficient, and alleged that there had been a breach of its right to freedom of expression.

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

Georges **Ravarani** (Luxembourg), *President*,
Lado **Chanturia** (Georgia),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 10

The Court noted that the decision being challenged was the formal notice served on the applicant company by the CSA, instructing it to comply in future with the last paragraph of section 15 of the Freedom of Communication Act (Law no. 86-1067 of 30 September 1986) and with points 2-2-1 and 2-3-3 of the agreement that it had concluded with the CSA on 19 July 2005. This was simply a form of warning, which had had no impact on the exercise of its freedom of expression with regard to dissemination of the statements in question. However, if, in the future, the applicant company failed to comply with this formal notice, "given the seriousness of this failure, and provided that it was based on separate events or covered a separate period from those which had already given rise to a formal notice, the CSA [could] impose" one of the penalties provided for in section 42-1 of the Freedom of Communication Act.

The Court pointed out that, having regard to its nature and subject matter, the impugned decision had not been a "penalty", for the purposes of Article 10 § 2 of the Convention. It considered that the impugned decision had to be viewed as a condition placed on the exercise of the company's

freedom of expression, amounting to an interference within the meaning of Article 10 § 2 of the Convention.

The Court noted that at the time of the events in question, sections 15 and 42 of the Freedom of Communication Act of 30 September 1986 provided that the CSA had the task of "ensur[ing] that programmes made available to the public by audiovisual communication providers [did] not contain any incitement to hatred or violence for reasons of race, sex, morals, religion or nationality" and that "publishers and distributors of audiovisual communication services and operators of satellite networks [could] be placed on formal notice [by the CSA] to comply with their legal and regulatory obligations …". It also noted that points 2-2-1 and 2-3-3 of the agreement concluded on 19 July 2005 between the CSA and the applicant company specified that it was responsible for the content of the programmes broadcast by it and that it had a duty to ensure that its programming contained no encouragement to discriminatory conduct on the grounds of race, sex, religion or nationality. Under the heading "formal notice", point 4-2-1 of this agreement added that the CSA could "serve formal notice on the publisher to comply with the provisions set out in the agreement and possible amendments annexed to it". The Court concluded that the impugned interference had been "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

The Court noted that the legitimate aim of this interference, which was not disputed between the parties, was the protection of the reputation or rights of others.

As to whether the interference had been necessary, the Court referred to the general principles set out in the judgments *NIT S.R.L. v. Republic of Moldova* [GC] (no. 28470/12) and *Zemmour v. France* (no. 63539/19).

The Court first reiterated that, although statements made in the context of a debate on a matter of public interest generally enjoyed a high degree of protection under Article 10 of the Convention, this protection was not without limits. Calls for violence, hatred or intolerance were thus limits that could not be exceeded under any circumstances in exercising freedom of expression.

Secondly, the Court noted that, in its decision of 27 November 2019, the CSA had indicated exactly which of E.Z.'s statements it found problematic with regard to the applicant company's legal and contractual obligations, noting in particular that E.Z. had "concluded his remarks by referring to a particularly violent historical event which had led to the massacre of numerous people, particularly Muslims". The CSA had further noted that the disputed statements, by an individual enjoying wide media exposure, had been made at a broadcasting time likely to attract significant viewing figures, and "[could have been] perceived, given both the context – and especially the failure to place matters in perspective – and the vocabulary used, not only as legitimatising violence committed in the past against persons of the Muslim faith but also as an incitement to hatred or violence towards this same segment of the population, in so far as the commentator [had] stated that 'today' he was on the side of the individual who perpetrated massacres against persons of this same faith". The CSA had added that this passage "express[ed], on account also of the confusion it created between "immigration, Islam and Islamism", and the desire for 'radical measures', a strong rejection of Muslims as a whole, tending to encourage discriminatory conduct on account of religious belief". The CSA had also emphasised that the disputed statements had not given rise to any reaction or even an attempt to restrain E.Z. by the journalist present in the studio, and concluded that this represented a failure to control the broadcast, amounting to a breach of the provisions of point 2-2-1 of that agreement.

In its decision of 16 June 2021, the *Conseil d'État* also expressly quoted the contested statements and, placing them in the context in which E.Z. had spoken, namely 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". 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 point 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 saw no reason to depart from the assessment, which was based on relevant and sufficient reasoning, that the CSA and the *Conseil d'État* had made of the contested statements.

Thirdly, the Court noted that it was clear from the decision of 16 June 2021 that the *Conseil d'État* had duly examined the arguments put forward by the applicant company and had specified the grounds on which it dismissed them. In particular, it had responded to the argument alleging a breach of the right to freedom of expression, holding specifically that, given the discriminatory nature of the impugned statements, which incited to hatred, the formal notice served on the applicant company to comply in future with its obligations had not amounted to a disproportionate infringement of that right.

Fourthly and lastly, the Court pointed out that no penalty had been imposed on the applicant company. 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 its duty to comply with its legal and contractual obligations, specifically the duty, as a television service provider, to ensure that programmes broadcast by it did not contain incitement or encouragement to hatred or violence, especially on the grounds of religion or nationality. The Court concluded that this interference, which was measured in nature, had been proportionate to the legitimate aim pursued.

The Court concluded that the application was manifestly ill-founded and inadmissible, and that it ought therefore to be rejected in accordance with Article 35 § 3 (a) and 4 of the Convention.

The decision is available only in French.

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