[ES] Supreme Court Rejects Appeal Against National Technical Plan on DTTV

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On 30 April 2001, the Tribunal Supremo (Supreme Court) rejected an appeal by the broadcaster Sogecable against Decree 2169/1998 on the National Technical Plan on Digital Terrestrial TV (DTTV).

According to the applicant, the Decree should be deemed illegal for several reasons: a) The Decree regulates analog switch-off, which is supposed to take place before 2012. The applicant said that this matter should have been regulated by an Act of Parliament. Besides, Sogecable argued that it was disproportionate to impose the abandonment of analog TV in order to introduce DTTV. b) The applicant claimed that the Decree was in breach of both its right to impart information by any means (as Sogecable will be obliged to abandon analog TV against its will) and the right of consumers to receive information by any means (as their analog TV sets would not be fit to receive digital TV and this implies that if they want to continue receiving public service terrestrial TV channels, they will be forced to acquire digital equipment, even if they have no desire to do so). c) The National Technical Plan on DTTV provides for several national single frequency multiplexes (channels 66 to 69), which are not fit to provide regional programming. According to Sogecable, the National Technical Plan would, therefore, be in breach of Article 13 of the Statute of Radio and TV (Act 4/1980) and Articles 4 and 14 of the Private TV Act (Act 10/1988), as these provisions oblige national public and private broadcasters to provide regional programming. d) In June 1999, the Government awarded a DTTV licence which allows a concessionaire to operate fourteen national DTTV programme services. Sogecable claimed that this provision was in breach of the Forty-Fourth Additional Provision of Act 66/1997, which provides that the public authorities must award as many concessions as are technically possible.

The Supreme Court rejected the appeal on several grounds: a) the transition from analog to digital TV is a technical matter, which can be better dealt with by a Decree, rather than by an Act, as Sogecable had submitted.

Furthermore, the Supreme Court was of the opinion that this transition from analog to digital terrestrial TV is legitimate, as it will allow for a more efficient use of the radio spectrum and it would make it possible to provide new services (e.g., interactive TV). b) the introduction of more efficient transmission technologies

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does not amount to a violation of the rights to impart and receive information by any means. c) According to the Supreme Court, the national private broadcasters are obliged by Article 4 of the Private TV Act to provide regional programming in the terms established by the National Technical Plan, so it is within the discretionary powers of the Government to decide, by means of the National Technical Plan, which regional services, if any, must be provided by these broadcasters. d) Lastly, the Supreme Court stated that the Forty-Fourth Additional Provision of Act 66/1997 obliges the public authorities to award as many concessions as are technically possible "taking into account the availability of radio spectrum and following the criteria set out by the National Technical Plan approved by the Government."

The National Technical Plan on DTTV allows the Government to award one or several national DTTV concessions, so the Supreme Court held that it is legal to award one licence allowing a concessionaire to operate several DTTV programme services. Moreover, Article 9 of the Private TV Act, 1998, states that the Government, when awarding the concessions, must take into account the "technical and economic viability" of the project. The Supreme Court stated that the Government had taken these legitimate concerns into account when it decided to call a tender in order to award a DTTV concession allowing the concessionaire to operate fourteen DTTV programme services.

The Supreme Court had already rejected an appeal in February 2000 by the local Government of Viladecans against the National Technical Plan on DTTV.

Sentencia del Tribunal Supremo, Sala 3ª, de 30.04.2001, recurso núm. 610/1998 (Ponente: D. O. González González)

Judgment of the Administrative Chamber of the Supreme Court of 30 April 2001

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