

[ES] Appeal against Decree on TV Users' Right to Programme-Planning Information Dismissed

IRIS 2002-2:1/8

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In October 2001, the Tribunal Supremo (Supreme Court) dismissed an appeal against some provisions of Decree 1462/1999, which implements Act 25/1994 on the incorporation into Spanish Law of the EC "Television without Frontiers" Directive. Decree 1462/1999, which only applies to national broadcasters, deals, *inter alia*, with the right of television users to receive accurate information on the programme planning of television channels (see IRIS 1999-10: 10).

The Decree establishes that a broadcaster shall release its programme planning at least eleven days before broadcast. Broadcasters are required to provide information about all programmes lasting more than fifteen minutes. The information must consist of, at least, the name and type of each programme. If the programme is a film, it is also compulsory to indicate the name of the film's director and the year in which the film was made, while in the case of musical programmes, the information must include the names of the main artists participating in the event. Broadcasters cannot change the announced programme planning, except for justifiable reasons beyond their control which could not have been foreseen when the programme planning was released.

These provisions of Decree 1462/1999 were appealed before the Supreme Court by the national private broadcasters, Antena Tres TV and Gestevisión Telecinco, and by the association of national private broadcasters, UTECA.

According to the applicants, these provisions of the Decree should be deemed illegal for several reasons: a) They claimed that these provisions should apply to all Spanish broadcasters, and not only to national ones; otherwise it would imply that Spanish broadcasters would have different obligations on this matter, depending on whether they were considered to be "national broadcasters" or not. b) The applicants considered that it was disproportionate to oblige them to release their programme-planning details so far in advance and to provide such detailed information about the programmes. c) The applicants also claimed that the burden to provide all that information had been unduly imposed upon them in order to benefit magazines specialising in the provision of information on the programme planning of television channels.

The Supreme Court rejected the appeal on several grounds: a) According to the Supreme Court, the fact that Decree 1462/1999 only applied to national broadcasters - and not to regional and local broadcasters

- complied fully with the role recognised by article 149.1.27 of the Spanish Constitution for the regional authorities as regards the regulation of the media. b) The Supreme Court held that the Decree did not impose disproportionate obligations on broadcasters and that it kept a reasonable balance between the rights of broadcasters and the rights of television users. c) The Supreme Court considered that the goal of the Decree was to protect the right of television users to receive accurate information on the programme planning of television channels, as recognised by article 18 of Act 25/1994. The fact that proportionate provisions that were approved with this aim in mind could indirectly benefit others did not affect their legality in any way.

***Sentencia del Tribunal Supremo, Sala 3^a, de 15 de Octubre de 2001
(Ponente: Sr. Trujillo Mamely)***

Judgment of the Supreme Court (Administrative Chamber) of 15 October 2001

