[ES] Supreme Court Declares Law Obliging TV Stations to Earmark Revenue for Cinema Industry Unconstitutional

IRIS 2010-2:1/15

Laura Marcos and Enric Enrich
Enrich Advocats, Barcelona

The Spanish Supreme Court has delivered an opinion of unconstitutionality against the law that obliges Spanish television broadcasters to earmark part of their gross revenue for the financing of Spanish and European cinematographic productions.

The *Unión de Televisiones Comerciales Asociadas* (Associated Commercial Televisions Union - UTECA), an entity formed by the six private Spanish television broadcasters, has been claiming the unconstitutionality of this regulation, which, however, has been obeyed by its members for the past ten years. The regulation was introduced in Spain in 1999 and was also included in the proposal for a new Spanish General Audiovisual Law which is currently being discussed in the Senate (see IRIS 2010-1:1/19)

The Supreme Court has now recognised that obliging television broadcasters to dedicate part of their gross revenue (5%) to the financing of Spanish and European cinema is against the right of economic freedom that is guaranteed by Article 38 of the Spanish Constitution - particularly since revenue thus collected is to be invested in the cinema and not the television industry.

The Supreme Court stated that “unless it is on the basis of reasons that involve the general public interest, the legislator cannot impose an obligation to make certain economic investments.” The Supreme Court states that this regulation, that was introduced ten years ago under the Government of the Popular Party, is not a consequence or an implementation of any EU Directive, but is simply a provision of national origin that is not compliant with the general provisions that regulate television in Spain.

In addition to the above, this obligation is not the same for every broadcaster. The law in force only affects TV stations that broadcast movies produced less than seven years ago. The new Spanish General Audiovisual Law introduces several changes, including an obligation that Televisión Española (Spanish nationwide public broadcaster) earmark 6% of its gross revenue for the financing of Spanish and European cinematographic works, while private broadcasters have to assign only a lesser part of their gross revenue (5%) and are able to devote part of these

© European Audiovisual Observatory (Council of Europe) 2026

resources to TV series, documentaries and animation productions.

Nevertheless, the Supreme Court did not reject the possibility of encouraging television broadcasters to contribute to cinematographic productions (e.g., through fiscal incentives), although it did hold that there is no reason to impose an obligation or “sacrifice” on the television sector, thus reducing its economic freedom for the benefit of other parties (cinematographic production companies).

Auto del Tribunal Supremo. Cuestión de inconstitucionalidad. Posibilidad de obligar a las Televisiones a invertir en el sector cinematográfico. Jurisdicción Contencioso-Administrativo, Sala 3ª, Sección 3ª, 09/12/2009, Número de Recurso: 104/2004

Supreme Court Resolution. Question of unconstitutionality. Possible obligation on Spanish Television Broadcasters to assign part of their gross revenue to the cinematographic production sector, Contentious Administrative Division, Room 3, Section 3, 09/12/09, Appeal number: 104/2004

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026