

[ES] Supreme Court finds that the Catalan PSB failed to comply with principles of news neutrality and pluralism during elections

IRIS 2021-4:1/20

Sandra Torrillas & M^a Trinidad García Leiva
Audiovisual Diversity/ University Carlos III of Madrid

On 22 February 2021, the Spanish Supreme Court had to rule on whether the actions of *Corporació Catalana de Mitjans Audiovisuals* (the Catalan public-service broadcaster - CCMA) infringed the principles of news neutrality and political pluralism during the election period for the general elections called on 28 April 2019. The CCMA appealed to the Supreme Court against two resolutions issued by the *Junta Electoral Central* (Central Electoral Board - JEC), which found an infringement of these two principles in the coverage given by the CCMA to a demonstration and the broadcasting of a documentary, both of which took place during the election period in 2019. This ruling reiterates the position of the Supreme Court already expressed in previous case law (see also IRIS 2018-1/16, IRIS 2019-5/11, IRIS 2019-6/10, and IRIS 2020-4/3).

In its ruling, the Supreme Court placed particular emphasis on the public nature of the broadcaster, which is legally considered to be public administration. Thus, the CCMA "[...] although in the form of a private limited company, is a public entity belonging to the *Generalitat* of Catalonia. It is not, therefore, a private entity that operates freely in a space where the Constitution and the laws do not prohibit it from doing so. On the contrary, as a public entity [...], it must carry out the activity for which it is authorised by law with submission to it and full objectivity in the exclusive service of the general interests of all". This standard must always be maintained, given its public nature, and even more so in the context of an electoral process.

When analysing whether the CCMA's broadcasts infringed the principles of news neutrality and political pluralism or not, the Supreme Court stated that the analysis is based on an indeterminate legal concept: that of the electoral impact that certain information may have on the electorate. In order to approach this concept, it considered that it must be determined on a case-by-case basis, taking into account several factors: the aim of the broadcast, the subjects appearing in it, the time at which it is broadcast, its duration, as well as the format used. Considering the actual broadcasts, and having weighed up the fundamental rights to freedom of information and freedom of expression, on the one hand, and the principles of information neutrality and respect for political pluralism, on the other, the Supreme Court stated that "The freedom to communicate truthful

information does not justify going beyond that and incurring the loss of the required neutrality. It is not an unlimited right, and even less so if it is a public body, which is particularly obliged to maintain its objectivity".

The Supreme Court rejected the appeal submitted by the CCMA, confirming the resolutions previously issued by the JEC which found that the broadcasting of the aforementioned content infringed the principles of news neutrality and political pluralism.

Sentencia del Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección Cuarta, Sentencia núm. 242/2021. Fecha de sentencia: 22/02/2021

<https://www.poderjudicial.es/search/openDocument/ac80c41e59051c89>

Judgment of the Spanish Supreme Court, Contentious-Administrative Chamber, Fourth Section, Ruling no. 242/2021. Date of judgement: 22/02/2021

