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Amendment of the Andalusian Audiovisual Law by Decree-Law 2/2020 and the privatisation of local public media. Impact and constitutionality analysis

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Abstract

The validation by the Parliament of Andalusia of Decree-Law 2/2020 (9/3/20) amending 21 regional laws and six decrees took place in the middle of the COVID-19 state of alarm. Its approval was processed by the Provincial Council, preventing the possibility of an in-depth debate. The alleged urgency is questionable from social, political and legal criteria, and deserves to be subjected to analysis and assessment of possible economic and social impacts. The consequences of the validated regulation entail deregulatory and privatising measures that could go against current general audiovisual legislation. If the unconstitutionality of its precepts is not considered, it could be applied to other Autonomous Communities, which would entail redesigning the audiovisual map.

Key words

Andalusian Audiovisual Law, Decree-Law 2/2020, Spanish General Audiovisual Communication Law, audiovisual regulation, local radio, local television, local media.

Resum

La convalidació pel Parlament d'Andalusia del Decret llei 2/2020, de 9 de març, que ha modificat vint-i-una lleis autonòmiques i sis decrets, s'ha produït enmig de l'estat d'alarma per la COVID-19. L'aprovació ha estat tramitada per la Diputació Permanent, tot impedint la possibilitat d'un debat en profunditat. La urgència al·legada és qüestionable des de criteris socials, polítics i jurídics, i mereix ser sotmesa a una anàlisi i avaluació de possibles impactes econòmics i socials. Les conseqüències de la norma validada suposen mesures desregulatòries i privatitzadores, que podrien anar en contra de la vigent legislació general audiovisual. En cas de no considerar-se la inconstitucionalitat dels seus preceptes podria aplicar-se a altres comunitats autònomes, la qual cosa comportaria el redisseny del mapa audiovisual.

Paraules clau

Llei audiovisual andalusa, Decret llei 2/202, Llei general de la comunicació audiovisual, regulació audiovisual, ràdio local, televisió local, mitjans de proximitat.

1. Introduction

The aim of this paper is to analyse the impact on local public media and the possible unconstitutionality of the reforms to the Andalusian Audiovisual Law brought about by Decree-Law 2/2020, approved by the Andalusian Government at the height of the COVID-19 state of alarm and appealed to the Constitutional Court by the Spanish Government. The article analyses the impact that the amendments will have on radio, already characterised by the concentration in the use of frequencies by three of the large state-owned channels.

The research has arisen from the analysis of media concentration and the tendency to eliminate local media in Andalusia, as concluded from recent research by Chaparro, Gabilondo, El Mohammadiane and García-Castillejo 2019; García-Castillejo and Chaparro 2019; Olmedo, López and Ruíz 2019; Chaparro, Olmedo and Gabilondo 2016; Gabilondo 2014; Gabilondo and Olmedo 2014; Bustamante 2014; García-Castillejo 2014; and Guerrero-Cuadrado 2014.

Amendments to the Andalusian Audiovisual Law (10/2018) proposed in the Decree-Law 2/2020 imply, in its article 28, amendments to precepts of the Andalusian Law that we understand may exceed the limits of basic State legislation in view of the current wording of article 40 of the General Law on Audiovisual Communication, incurring in unconstitutionality. These amendments imply a strong impact on the audiovisual

map, promoting a greater concentration by making possible the privatisation of the local public audiovisual service through private companies by means of indirect management. In this sense, it is essential to analyse the Decree-Law and its consequences, which is the purpose of this research.

2. Background

Decree-Law 2/2020 on improvement and simplification of the regulation for the promotion of the productive activity in Andalusia amends 21 autonomous Andalusian laws and six decrees. The laws it amends are related to territorial planning, historical heritage, tourism, internal commerce and also, as is the case analysed in this article, Law 10/2018, Audiovisual of Andalusia.

The Andalusian government justifies the need and urgency of this legislative measure based on the signs that point "towards a clear deterioration in both macroeconomic and sectoral indicators and in employment beyond what has been observed in 2019, always in line with the foreseeable evolution of the world and Spanish economy" (text derived from the explanatory memorandum of the Decree-Law itself), all of which is aggravated by the crisis caused and the negative economic impact of the COVID-19 pandemic in Spain and Andalusia.

The Decree-Law was validated on 2 April 2020 in the context of the declaration of the state of alarm approved by the Government of Spain due to COVID-19, by way of urgency through the Permanent Commission of the Parliament of Andalusia, the only body operating due to the closure of the Government due to the state of alarm, with the PSOE and Adelante Andalucía political groups voting against it.

This Decree proposes a substantial amendment to the Andalusian Audiovisal Law 10/2018. Among the changes that this initiative entails, worthy of mention is authorising municipalities to be able to agree on indirect management of the local public audiovisual service, which allows granting private entities the use of planned frequencies for the direct operation of the public radio and television service. The Decree-Law also states that individuals or legal entities with commercial licences, as well as privatised public licences, would not need to have a registered office in Andalusia, nor obtain, as they have done up to now, a mandatory report from the Audiovisual Council of Andalusia (CAA by its initials in Spanish). These measures would make it easier for local radio stations to broadcast programmes designed from the stations' headquarters outside Andalusia, from any city outside the FM coverage area, or even from abroad. Furthermore, the amendments to the Decree cease to penalise advertisers who purchase space on stations without a licence or "pirates".

The Spanish Government, understanding that the decision of the Andalusian Government was encroaching on State competences, requested a report from the Council of State in order to appeal to the Constitutional Court on the grounds of unconstitutionality of the Decree-Law amending the Andalusian Audiovisual Law, as well as several provisions affecting competences in the field of heritage. The Permanent Commission of the Council of State issued Opinion No. 264/2020 (dated 16 April), reflecting that it observed unconstitutionality in some of its precepts, both those affecting the Audiovisual Law and those relating to heritage.

Throughout the above process the CAA has been inhibited from commenting on the substance of this reform. The body refused to issue, in its regulatory role, the *ex officio* report that would correspond, in addition to not responding to the questions and doubts raised by associations and entities in the audiovisual field of the Platform for the Defence of Communication and Journalism in Andalusia (PDCPA by its initials in Spanish).

The CAA justified its inhibition by claiming that it was not competent to rule on "already approved regulatory texts", despite having been informed of the content of the Decree one month before the validation of the amendment to Law 10/2018. Subsequently, it published a report from the legal advisor, which merely indicated what the regulatory changes were (15/4/2020) without assessing the impact and legality of the change. It should be remembered that CAA's work is based on observing compliance with the law and that its assessments are in no way binding.

3. Basis for the unconstitutionality of audiovisual provisions of Decree-Law 2/2020

The appeal submitted by the Government to the Constitutional Court, once the mandatory opinion of the Council of State had been issued, which only ruled on the issues raised by the Spanish Government itself in its application, was admitted for processing, with the consequent suspension of the entry into force of the contested provisions. The appeal, however, has not raised and therefore has not entered into an analysis of the unconstitutionality of what is probably one of the most flagrant attacks on plurality and effective competition in the Andalusian audiovisual sector and by application in Spain, by not questioning the amendment of Article 46 of the Andalusian Audiovisual Law. This would make possible, among other things, indirect management of the local public audiovisual communication service, not provided for in the General Audiovisual Law, something that is expressly included in the case of regional public radio and television stations since the reform undertaken in 2012.

Article 28.8 of the Decree-Law of Andalusia, amending Article 46 of the Andalusian Audiovisual Law 10/2018, in addition to introducing the possibility of granting the management of the local public audiovisual communication service to private companies, may lead to the loss of public local communication services, and puts at risk a factor of plurality in the media system and in the effective exercise of constitutional rights, such as the right of access of citizens in their social and political diversity to the media, protected by Article 20 of the Constitution.

This fact is a new step in the "privatising" trend that somehow confronts the original spirit of Law 7/2010, which clearly defined the provision of public audiovisual service to that offered by public entities and not to the indirect management by private entities.

The Spanish Government's negligence in lodging an appeal of unconstitutionality cannot be overlooked, since the Autonomous Communities do not have the power to introduce this specific amendment in the local public audiovisual service's management model, since they lack the constitutional and legal coverage to do so. In view of and after a careful reading of the wording of Article 40 of the current General Audiovisual Communication Law 7/2010, which did assume this possibility expressly and repeatedly through the reform of 2012 operated by the Government of the Partido Popular political party,[1] but exclusively for the service of regional coverage, and not for the case of management in its local mode.

The error of assessment stems from the fact that it seems to be assumed that the change made by which the possibility of "privatising" management of regional radio and television stations was promoted *de facto* by Law 6/2012 also applied to local public media and in particular to those provided by decision of the local authorities. A rigorous reading of this Law and of the new wording of Article 40 of the General Audiovisual Communication Law should leave no doubt about other interpretations. The general audiovisual legislation maintains reserving direct management of the local public audiovisual service to the municipal administration.

The explanatory memorandum of Law 6/2012 dated 1 August, amending the General Audiovisual Communication Law 7/2010 dated 31 March, to "make the management of public audiovisual communication services in the Autonomous Communities more flexible", which opened up the possibility of indirect management or through other public-private partnership instruments, only refers to the autonomous community service, but never to that provided by local entities, (sic):

> "... with the proposed amendment, the Autonomous Communities will be able to decide on provision of the public audiovisual communication service [the regional coverage service, not the local service], and they can opt for directly or indirectly managing it using different formulas including public-private collaboration modalities. (...). In addition, the Autonomous Communities which have been providing the public audiovisual communication service may transfer it to a third party in accordance with their specific legislation...".

The reading of the previous text does not refer to other media that are not strictly the entities or organisms managed directly by the autonomous communities. It is also worth remembering that this amendment was made at the request of communities such as Madrid, Valencia or Murcia (then governed by the Partido Popular policital party) that expressed their desire to privatise the autonomous public radio and television stations. Only the Autonomous Community of the Region of Murcia has outsourced the regional television service under this reform by means of Law 10/2012, dated 5 December, amending Law 9/2004 dated 29 December on the establishment of the public enterprise Radiotelevisión de la Región de Murcia (RTRM - Radiotelevision of the Region of Murcia). Similarly, Article 2 of Law 6/2012 states that "privatisation" may open the door to indirect management of the autonomous public audiovisual service, but at no time does it refer to the local service.

The current wording of Law 7/2010, a law qualified as general and basic to which the autonomous regulations on this same matter must be hierarchically adhered to, as has already been made clear by the Constitutional Court in previous cases, falls[2] within the scope of article 149.1.27, which includes the State's competence to dictate the basic rules relating to the regime of the media. This competence is compatible with the autonomous communities' powers of execution and development, whereby "granting concessions for indirect management of the service due to its close connection with the media", is a shared competence, and consequently the basic normative regulation corresponds to the State and[3] therefore the new Andalusian regional legislation would incur in unconstitutionality by being contrary to what is established in article 40 of the General Audiovisual Communication Law 7/2010.

The current Public Sector Contracts Law of 2017 would also not cover the intention of the Decree-Law of the Andalusian Regional Government, which would modify Article 46 of Law 10/2018 to enable the public audiovisual communication service of a local scope, owned by local entities, to be managed by any of the forms foreseen in Article 85.2 of Law 7/1985, dated 2 April, regulating the Bases of the Local Regime, thus eliminating the exclusivity of direct management from the basic legal coverage.

The wording of the third paragraph of Article 40.2 of the General Law clearly states that the Autonomous Communities (nothing is said about the local entities, nor, incidentally, about the State) that agree to provide the public audiovisual communication service will determine the methods of managing the service, which may consist, among other things, of providing the service directly through their own bodies, media or entities, of attribution to a third party of the indirect management of the service or of production and editing of the various audiovisual programmes, or of provision of the service through other public-private partnership instruments, in accordance with the principles of advertising, transparency and competition, as well as non-discrimination and equal treatment. Likewise, the Autonomous Communities may agree to transform direct management of the service into indirect management, by transferring the ownership of the entity providing the service. This shall be carried out in accordance with the aforementioned principles, but at no time shall reference be made to the local service, which, as is known, is not subsumed under the autonomous community service or the service provided by the

State. Rather it is a differentiated categorisation of the public audiovisual service, as specified in the first paragraph of this same number 2 of Article 40 when it states that:

> "2. The State, the Autonomous Communities and the Local Entities may agree to provide a public audiovisual communication service with the aim of broadcasting in open channels, either generalist or thematic, depending on the circumstances and peculiarities of the geographical areas concerned and on the criteria established in the previous section."

From this premise, there is an invasion of the State's competences. A circumstance that would justify the lodging of the Constitutional Court's appeal of unconstitutionality, more extensive than the one presented by the Spanish Government last April 2020.

On the other hand, only in radio, privatising the management of municipal stations and their relationship with commercial channels as relay stations, as proposed by Decree-Law 2/2020, can arbitrarily alter the precarious balance of the distribution of concessions carried out so far by the regional tenders throughout the State. Concessions dependent on State technical plan planning would now be competing due to making new frequencies for commercial radio available. It should also be remembered that currently there are no analogue frequencies available. This channel would become a gateway to new frequencies completely outside the scope of state and regional public policies, an absolute deregulation that would also destroy a model of participatory and local public radio with 41 years of consolidation.

Under the General Audiovisual Communication Law, but also under the planning of the radio spectrum for provision of these local public services, it[4] is noted that the planned radio spectrum is an exclusive competence of the State, moreover, in the case of radio, it reserves an exclusive, non-commercial frequency band for municipal broadcasters (107.0-107.9 MHz).

The Decree-Law 2/2020, also introduces another series of amendments to the provisions of the Andalusian Audiovisual Law 10/2018, which are also likely to be unconstitutional. It would be convenient for the Constitutional Court to be able to rule on their constitutionality, since otherwise the paradox could arise that unconstitutional precepts, not having been appealed, would remain "legally" in force.

In addition to those mentioned above, the group of provisions of Article 28 of Decree-Law 2/2020 we consider may be unconstitutional are as follows:

a. Number Four, amending Article 37(b), to enable public service providers to make channel broadcasts and to connect to private commercial audiovisual media services.
b. Number Six, which eliminates article 40, which prohibits including or disseminating any type of audiovisual commercial communication in broadcasts by persons providing audiovisual communication services who do not have the required authorisation or who have not fulfilled the duty of prior communication.
c. Number Ten, which eliminates the Article 66(c) by which the obligation to prove the continuous issue during two consecutive years is necessary for concluding the legal transaction.
d. Number Eleven, which amends points 4 and 6 of section (a) by removing the power of the CAA to issue mandatory licensing reports.
e. Number Twelve, deleting Articles 72(e) and 74(b) of Law 10/2018. Articles 72(e) and 74(b) of Law No 10/2018 refer to very serious and minor infringements respectively. Thus, letters e) and b) of the respective articles contain lists of the administrative sanctioning system, specific infringements that may be committed with respect to obligations contained in the Andalusian Audiovisual Law. In Article 72.e) the infringement is linked to amending the regime of enabling titles that the Decree-Law amends, under Law 6/2012 dated 1 August, amending the General Audiovisual Communication Law 7/2010, dated 31 March, to make the modes of management of public audiovisual communication services more flexible, but which is more than debatable in the case of local entities (only article. 2). The amendment of Article 74(b) refers to the infringement provided for "breach of the prohibition on broadcasting or contracting audiovisual commercial communications with audiovisual communication services that do not have the corresponding enabling title or have not fulfilled the duty of prior communication", in accordance with the provisions of Article 40.1 of Law 10/2018.
f. Number thirteen, amending Article 80(1) of Law 10/2018, removes Article 74(b) on *administrative liability for the broadcasting of advertising on stations without a licence.*
g. Number fourteen, which eliminates Article 80(1) of Law 10/2018, as in the previous one, which cancels Article 74(b).
h. Number fifteen, modifies paragraph f) of article 81 of Law 10/2018, on the obligation to collaborate with the Andalusian Regional Government, for advertisers who have *economic, professional, business or financial relations with the providers of audiovisual communication services without a licence to do so, who are popularly known as "pirate" radio stations and* which is now intended to exempt them from this liability.
i. Number seventeen deleting the fourth additional provision creating the Information Statute, in this case it is clear that there is an unjustified use of the decree law in the absence of the necessary budget.

4. Effect of the regulatory change on the local broadcasting map in Andalusia

The precarious balance of distribution of concessions in Andalusia may be definitively broken by the irruption of Decree-Law 2/2020, which involves opening up the possibility of

Table 1. Public and private municipal licences in Andalusia

	Local public radio stations	Outsourced ocal public radio stations	Commercial radio stations
Almeria	8	4	25
Cadiz	18	1	37
Cordoba	17	3	25
Granada	21	4	30
Huelva	11	5	18
Jaen	8	3	34
Malaga	15	8	34
Seville	20	3	33
TOTAL**	**118**	**31**	**236**

***Privatised stations contrary to current legislation (outsourced)**

**Includes Medium Wave stations.

Source: COMandalucía (<www.comandalucia.org>) / In-house document.

privatisation of local public media, which would foreseeably result in the conversion of municipal radio and television stations into signal repeaters for programming designed without any link to the territory.

In Andalusia there are a total of 524 concessions (Table 1), 236 to which are to commercial stations and 288 to local councils for direct management as local public broadcasters. However, of the total 288 licences granted to local councils, only 118 are in operation, a total of 139 frequencies are not in operation and there is a high number of outsourcing: 31 local councils outsource public broadcasters to private entities or individuals. This is a situation which has hitherto been illegal and which the amendments provided for in Decree-Law 2/2020 have legalised.

4.1 Outsourced local public radio stations

The current casuistry of the outsourced stations is varied. In some cases, they are linked to the programming of commercial channels (Cadena SER and COPE) without it being clear or recognizable what the interest of this spurious relationship is. A second case is that of the transfer in public tender or directly to a natural or legal person in the territory or nearby. In most of these cases the local council pays for the radio management service, there are no savings as justified in the measure. A third case is that where the management is transferred to a local non-profit association and there is some kind of subsidy to contribute to the sustainability of the radio.

The map open to public consultation of the research group Communication and Culture Laboratory COMandalucia (<www.com-andalucia.org>) gives a detailed account of this irregular casuistry since 2012. It should be noted that this situation is known both by the regional government and by the Audiovisual Council of Andalusia (CAA) and that surprisingly and in contravention of the regulations they have positively evaluated the renewal of licences.

The CAA always ended up giving the plea on the grounds that the Administration did not provide sufficient information to contrast the situation. The government for its part ignored a situation of legal violation that affects municipalities governed by PP and PSOE. Only in one recent case has there been intervention by the CAA (2015) at the request of the Board in the case of Tomares Local Council, which had linked its emissions to Intereconomia channel. In 1998 the mayor of Cuevas de Almanzora was prosecuted and disqualified for privatising the municipal radio. These have been two isolated cases of intervention; the rest of the local councils have only received letters of warning with no results.

The change may now be more profound and would make any future regulatory intervention more difficult because of the interests generated and the argument about consolidated rights, in a map that may change radically if it ends up allowing local councils to close privatisation agreements with individuals and legal entities represented by the chains. The COPE network has already expressed its interest. In fact, the statement on the reform of the Andalusian Audiovisual Law was strongly questioned by the Spanish Association of Commercial Radio Broadcasting (AERC) with COPE's abstention, which asks for new licences to gain audience and speculates on displacing the Cadena SER from number one in the ranking.

The amendment to the Andalusian Audiovisual Law would lead to the strengthening of absolute deregulation, there would be practically no need for a law for access to a free and deregulated market. This case adds one more serious consequence: the dismissal of workers from local public media that would not be necessary for frequencies converted into mere signal repeater posts.

The complete cession of the municipal radio stations, generally to private companies, is a practice that only benefits the private contractor, while it leaves the municipality without a public medium that informs and contributes to the value of the territory, favouring the right of access for citizen participation and the right to communication.

These changes, if consolidated, would in fact leave spectrum planning up to the municipalities. From the municipalities point of view, it could be argued that this right could be might be legitimate if there were a change in that sense in the basic law. However, taking into account the right of any local council to apply for the enabling title and the volubility of municipal policy it would be easy to foresee the confluence of interests that would facilitate the transfer of a public right to private activity and even the formation of new private channels outside the National Technical Plan. The public audiovisual media must maintain at all costs their essence of public service, especially in territories where the absence of economic profitability for the private sector makes it unfeasible to guarantee the existence of local news agendas and the right of access, one of the great conquests of the local public media.

4.2 The new commercial broadcasting map consolidates channel repeater antennas

The Andalusian commercial broadcasting map, a map which should be eminently local because of the nature of the tenders and the technical coverage of the planned FM, is already in the hands of the large state-owned channels, as Table 2 shows. Activation of the Decree would mean an even greater oligopolisation of the radio frequency pool, whereas it would be necessary to move towards deconcentration.

Of the 236 licences granted to private groups,[5] only three operate as independent stations, with two others not in use. The rest of the frequencies are distributed among the large groups of the state coverage chains: PRISA (125 stations, 47 generalist ones and 78 thematic or musical ones: 53%); COPE (44 stations, 29 generalist ones and 15 musical ones:

Table 2. Generalist and Commercial Thematic Licences by Province[6]

	Atresmedia		COPE		PRISA	
	Onda Cero generalist	Thematic stations	COPE generalist	Thematic stations	SER generalist	Thematic stations
Almeria	5	1	2	1	5	9
Cadiz	4	2	5	1	8	13
Cordoba	3	6	3	1	8	4
Granada	3	0	5	1	6	11
Huelva	1	2	2	2	4	4
Jaen	2	1	1	2	7	15
Malaga	4	2	5	3	6	11
Seville	3	2	6	4	3	11
TOTAL	**25**	**16**	**29**	**15**	**47**	**78**
	41		**44**		**125**	

	Other groups*		Independent stations	
	Generalist programming	Thematic programming	Generalist programming	Thematicpro-gramming
Almeria	0	2	0	0
Cadiz	0	4	0	0
Cordoba	0	3	1	0
Granada	0	1	0	0
Huelva	0	2	1	0
Jaen	0	3	2	0
Malaga	0	2	1	0
Seville	2	2	0	0
TOTAL	**2**	**19**	**5**	**0**
	21		**5**	

*Grupo Planeta, Radio Blanca, Radio María, Unidad Editorial

Source: COMandalucía (www.comandalucia.org).In-house documenta.

18.6%) and Atresmedia (41 stations, 25 generalist ones and 16 musical ones: 17.4%). To a lesser extent, other groups such as Planeta, Radio Blanca, Unidad Editorial and Radio María have stations (Table 2).

The situation created by Decree-Law 2/2020 leads to a depleting plurality and therefore generating a free public opinion. The Andalusian Audiovisual Law has already reduced the requirement for local radio stations to broadcast 15 hours of information per week, not including advertising, when previously the obligation was four hours per day of local content (Decree 174/2002) and Decree-Law 2/2020 reduces this time to 10 hours of information per week, although it could have been reduced to zero, because with the amendment the station is not obliged to have facilities in the locality. At present there are generalist stations such as COPE Nerva and Puente Genil, Cadena SER Lucena, Villanueva de Córdoba and Alhama de Granada, which act as simple relay posts.

In reality, except for those located in provincial capitals, most of the stations planned in smaller population centres and in the hands of the channels do not have their own programming. The only stations that serve the territory exclusively with local content are local public and autonomous community stations; of the latter, there are 30 in Andalusia (map: <www.com-andalucia.org>).

Another problem that has not been sufficiently discussed is related to thematic radio stations, most of them musical, 109 of which are owned by the three main groups (78 by the PRISA group). These stations lack local programming and hired staff. This condition violates the qualification tenders that required local investment, recruitment of staff, domicile in the area of coverage... Why were repeaters not planned directly instead of strictly local stations?

All the anomalies detected are the result of increasingly permissive legislation, poor planning and the absence of controls and sanctions, which is in keeping with a general situation throughout the State.

5. Discussion and conclusions

Spain has an audiovisual media map that in democracy has not been able to solve the need to attend to and procure an ecosystem that maintains the balance between state, autonomous and local coverage in the public and private sectors, not to mention the situation of legal abandonment of the non-profit community media. In fact, on the basis of concessions to private commercial local broadcasters, construction of state coverage channels has been allowed, obviating their obligations to the coverage territory. The logical thing would have been to plan specific tenders for those operators interested in offering a service exclusively of state, autonomic or local coverage. Without these premises, we have witnessed the exclusion and "ghettoization" of local programming both in the thematic music channels and in the generalist ones, where, minus the advertising, it is difficult to exceed 15 hours a week of local broadcasting.

The legitimacy of the broadcast must not exclude the local blackout. Our neighbour France has long since solved this problem by setting up tenders, through its independent audiovisual authority, the Conseil Supérieur de l'Audiovisuel, with up to five different categories of private non-profit and for-profit radio with restrictions on coverage and specificity of generalist and thematic programming. A public policy of attention to the demands of the market, but also designed from the interest of citizens (García-Castillejo and Chaparro 2019).

In most cases, local public radio and television fill a gap in coverage that is usually justified by the low profitability of private commercial media at the strictly local level. It is not that, however, local public media are more profitable economically, it is impossible from an advertising market point of view, but they do have an obligation to provide a public service from which the commercial media are exempted. Local public audiovisual media are essential services for constructing the story at the local level, for debating and dynamising, for generating narratives that allow constructing the territory from the decision making in the management of what is next. It is the search for social profitability that should be demanded of them. Only in the local public radio of Andalusia, in the exercise of the right of access, more than 2000 people and 600 groups representing local civil society participate in the creation of content daily (Chaparro, Olmedo & Gabilondo 2016). This is part of the wealth of a democracy that is now negligently put at risk (Guerrero-Cuadrado 2014).

The Spanish audiovisual system has serious deficits arising from concentration, the weakening of public media, the absence of an Audiovisual Authority with sufficient powers and resources as required by European directives, and of course the absence of frequency planning for the third sector, which is another serious legal breach, in this case by the State. The decision of the Andalusian Regional Government makes the problems raised extremely serious.

The reform of the Andalusian government allows local entities to approve the indirect management by third parties of a local public audiovisual media, without this possibility being included in basic State legislation. It also allows them to broadcast on a channel without attending to local content, without the obligation to have installations in the territory itself (no operator will be obliged, neither commercial nor community), also putting at risk public employment that the private sector could not absorb, because this new regulation simply deals with providing repeater posts, breaking up the broadcasters in their area of coverage. Nor does it seem normal to allow commercial and institutional advertising in media without a licence.

The Andalusian Government has adapted the legislative framework to a reality in which there has been no desire to constructively intervene in depth, correcting the serious deficits in the use of the radio spectrum. This has not been done by the State, nor by the Autonomous Communities. However,

the solution cannot lie in normalising behaviour that was and should be outside the law. Not because there are infractions or crimes and they cannot always be avoided, the solution is to legalise their practice.

Although the main references, by involvement, have been related to radio as they have been identified as the priority objective of the reform of the Decree-Law, it should be borne in mind that the same criteria can be considered for local public television stations, although the greater number of private local channels available, their low economic profitability in many districts and the provisional nature of the call for tenders pending a new tender for awards, the previous ones were appealed against, lead to the interests in accessing the public market presently no being favourable. However, the circumstances are equally high risk for this sector in the event that local corporations with fictitious savings arguments decide to transfer the licences for their administration or operation to a private entity.

Spanish society is in need of agreements, the audiovisual sector is one of them and it must be designed from the interests of civil society and the sector as a whole, as was the Andalusian Audiovisual Law in 2018, this must be the procedure for any reform because only from debate and recognition of dissent can consensus be built. If there is no dialogue to discuss and correct the dangerous reform of the audiovisual framework in Andalusia, which represents a "privatisation" of the local public audiovisual service, there seems to be only one response left from the Constitutional Court.

Notes

1. The title of the law by which the reform of Law 7/2010 is undertaken in 2012 by the Government of the Partido Popular political party, is in itself sufficiently expressive of the scope of the reform, which was limited to the public audiovisual communication services of the Autonomous Communities and either by the will of the legislator or by forgetfulness or ignorance, it was not included in the amendment undertaken, the local public media. Thus, the title of the aforementioned law is: Law 6/2012, dated 1 August, on amendment of General Audiovisual Communication Law 7/2010, dated 31 March, to make the management of the autonomous public audiovisual communication services more flexible. It should be added that the text of this 2012 law falls within this regulatory scope and does not apply to local public media.
2. Judgement of the Constitutional Court dated 22 June 2017, in Appeal of Unconstitutionality 8112-2006 filed by the Spanish President of the Government.
3. The sixth final provision of the General Audiovisual Communication Law 7/2010, regarding the Title of Competence, states that: "This Law is issued under the State's competence to issue basic legislation on the press, radio and television regime set out in Article 149.1.27 of the Constitution, except for Articles 5.3, ninth paragraph, 11, 31 and section 5 of the second transitional provision which are issued under the exclusive State competence in the field of telecommunications, provided for in Article 149.1.21 of the Constitution. The provisions of this Law are applicable to all the Autonomous Communities, observing, in any case, the exclusive and shared competences in matters of media and self-organisation attributed to them by the respective Statutes of Autonomy".
4. In the case of the local public radio of the Technical Plan approved by Royal Decree 462/2015, dated 5 June, approving the National Broadcasting Technical Plan for VHF broadcasting with frequency modulation, and in the case of local public DTT by the current National Technical Plan for Digital Local Television (approved by Royal Decree 439/2004, dated 12 March, amended by the Third Final Provision of Royal Decree 391/2019, dated 21 June, approving the National Technical Plan for Digital Terrestrial Television.
5. The Andalusian Government assumed full powers in the area of concessions in 1984, and has since granted 216 frequencies.
6. More detailed information is available in the Andalusian Local Public Radio in Andalusia Map and the Andalusian Commercial Radio Map, prepared by the COMandalucía research group (University of Málaga) as a result of different research projects the authors of this article have participated in. Both data available in the following link: <https://com-andalucia.org/radio> (Accessed on: 28/05/2020).

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