

Considerations by the Catalonia Broadcasting Council on the Television Treatment of the 11 March Attacks in Madrid and Subsequent Events Through to the Spanish Elections of 14 March

The behaviour of the media in general and the broadcast media in particular during the brief period between the multiple attacks perpetrated in Madrid on the morning of 11 March and the celebration of the Spanish legislative elections of 14 March has been the subject of fierce debate. This debate was particularly lively amongst Spanish politicians, journalists and academics, partly because of the relationships that could be established between the abovementioned news treatment and the electoral results that were produced immediately afterwards. However, the issue was also the subject of international attention and took on a more global projection because the size and brutality of the attacks made them an event with a truly global impact, and because in a very brief period of four days, diverse dimensions of underlying problems with regard to the complex relationship between the political and media systems in democracies were combined.

Between 11 and 14 March, a number of exceptional circumstances arose that conditioned the behaviour of the broadcast media. The attacks in Madrid and their proximity in time to the end of the parliamentary electoral process altered the normal working conditions of the media from at least two perspectives. The first was the news treatment of a tragedy the size of the Madrid bombings of 11 March and the second was the inevitable impact they had on the final stage of the electoral process, in so far as responsibility for the attacks was an element that could have a major impact on public opinion. News relating to this responsibility became the inevitable centre of attention, just when it was necessary to require of the media an increased respect for pluralism and neutrality, particularly in the case of public news organisations.

These circumstances put the media in a situation that this Council considers exceptional, because it had to develop an essential task in compliance with the constitutional rights of

reporting and receiving information and, at the same time, adjust its activity to the special requirements that the law imposes on news and media treatment in general, in order to not unduly interfere in the very dynamics of the electoral process.

However, compliance with these two requisites was not easy when it was clear that the content of the information, while meeting the minimum requisites of objectivity and truth, did not have a neutral effect on shaping public opinion and thus on imminent voting intentions. The way the media acted within the context of the events we are analysing will be the essential reference point in future debates over the dialectic between the right to information and the restrictions involved with an electoral dynamic from the point of view of the pluralism and impartiality of information. The materials that accompany this document will no doubt be an important element that can be used as a basis for the Council to develop new reflections in this area.

However, the Council now considers it necessary to formulate a number of considerations with regard to the diverse elements that merged in this debate and which should be borne in mind when it comes to assessing the behaviour of the broadcast media throughout this time of crisis, particularly the organisations directly subject to the supervision of the Council.

1. A preliminary reflection that the Council considers it necessary to make concerns the role that information develops in the context of a democratic society. The guarantee of free public communication is a consubstantial element of the democratic principle, without which it would be impossible to bring to conclusion the rights of the people and, very particularly, those with an essentially political content and which thus provide legitimacy to the very democratic and institutional system. As the constitutional doctrine has repeatedly stated, the formation and existence

of free public opinion is a prior and necessary condition for exercising the rights inherent to the operation of the democratic system, essential for people to be able to freely form their own opinions and participate responsibly in public affairs. In that regard, it is important to add the requirement that this information should be broad and plural, so that diverse and even opposing opinions may be considered.

2. The role of communication in relation to society is awarded special recognition under the Constitution. Article 20 guarantees freedom of expression and information, and configures the latter in two ways: as the right to report and the right to receive information. This double meaning perfectly complies with the role with which communication has to comply objectively and from it we can understand two tenures of this right, of which it is especially interesting to emphasise the public's right to receive information about events of public importance and interest at all times.

3. The importance and the social role of the rights relating to information means that their exercise is legitimate under any circumstances, without them being restricted beyond the exceptional assumptions referred to in Article 55 of the Constitution (declaration of state of exception or siege), which did not occur in this case. Their effectiveness was thus absolute in the period we are examining here, despite the certainly extraordinary circumstances that were present. This full effectiveness led, in this Council's opinion, to diverse consequences. Firstly, the special consideration that social communication has in the constitutional framework and, thus, the media and the people it serves professionally. Secondly, the dominant value of freedom of information due to the social role it develops and the guarantee it means in shaping free public opinion which is, at the same time, indistinguishable from political pluralism itself.

4. However, having said that, it is important to specify that, because of its possible social influence, exercising freedom of information is subject to a number of intrinsic conditioning factors that cannot go unrecognised, particularly when the social influence may be particularly important because of the fact that the events that were the object of the media's attention coincided with the final stage of the electoral process. In that respect, it is essential to emphasise the requirement of the *truth* of information as entailed in the Constitution and which would therefore not protect the transmission of news that did not respond to

truth and which ostensibly distorted it. Nevertheless, it must be specified that this requirement of truth cannot be understood in the strict sense of absolute certainty about a piece of information, but as a veto on dishonest and false news reports. As the constitutional doctrine has repeatedly said, the constitutional requisite of truthful information protects even erroneous information, when it can be shown that the minimum duty of diligence required from journalists in obtaining and confirming the objective data needed for its preparation and dissemination was employed. On the other hand, information based simply on rumours, maliciousness or generic and imprecise sources would not be constitutionally protected.

It is also important to point out, in relation to the requisite of truth, and in line with the principles of journalistic codes of ethics, that this does not mean that news organisations or journalists must have at their disposal information that is totally complete and conclusive. On the contrary, it is the aim to unjustifiably make it seem that one is in possession of a piece of complete and definitive information that violates the complementary precept of truth, which is that of transparency. The most rigorous complement of the exposed truth of that which the broadcaster knows, is the confirmation that there are elements related to the material being reported that are unknown or uncertain to the broadcaster itself.

5. It is clear, in the case we are dealing with here, that because it met these requisites relating to truth, the right to information could be developed with complete normality, with information that did not necessarily have to agree with the official information. On this issue it is important to remember that the essence of the freedom of information carries with it the right to use one's own sources of information and that they do not necessarily have to match the information from the official authorities. The right to information could be seriously affected if it were conditioned by the obligation to comply with a particular version of events, even if that version comes from government institutions, as it could violate the public's right to receive, without any type of restriction, any information which, so long as it meets the requisite of truth, contributes to a plural debate.

In relation to this point, it is also worth remembering that in a democratic society, independently of the role played by

the media, public institutions are subject to constitutional principles when transmitting information of public interest. The right to receive truthful information, which is the right of the public, can also be considered a fair demand when its dissemination comes from the institutional sphere. This is particularly so when the Government and public administration have the constitutional duty to serve the public interest with objectivity, a duty that involves news transparency in matters of particular public importance, excepting such aspects that must be protected under the law.

In the case that concerns us here, the Spanish Government assumed the function of official news source. It was not the State organisations specifically responsible for investigating and evaluating the evidence of responsibility for the attacks, for example, who called the press conferences and appeared before the media and the public, but rather the Government. In circumstances such as these, the Government assumes complete responsibility because it chooses to act as the leading source of information, as the exclusive official source and, in fact, as a source that inserts itself between the police forces and the media. Obviously, a government that positions itself as the clearly dominant source needs to ensure it uses this position with extreme scrupulousness and care.

6. If the potentiality and even demands of free information is needed at all times, and also during the socially complex period of 11 to 14 March, we should not forget the fact that this news treatment coincided with the final phase of the electoral process and thus demanded particular care in the form and conditions in which information was transmitted to the public. This consideration is valid not just for news programmes, but for all television shows based on opinion rather than information and which are just as or more likely to influence the public. Despite the importance of freedom of expression and information, we should remember that in particular cases, their exercise is subject to limits established by the law in accordance with the matters established in the Constitution and, in the case we are dealing with here, the provisions established under broadcasting and electoral law and which must be taken particularly into account with regard to respect for plural opinions on these types of shows. The Council understands that this requirement is even more important in programmes where, despite existing conditioning factors, it is important to

make a special effort to distinguish between information and opinion.

In that context, the appropriateness of changing programming schedules can never justify (and even less so in public television stations) introducing purposefully propagandistic programmes or resorting to practices that belong to what is known as competitive programming.

7. The broadcasting law establishes that the actions of the public and private media must be based on respect for pluralism as well as the objectivity and impartiality of information. Article 66 of the Organic Law on the General Electoral System (LOREG) emphasises the need to respect political and social pluralism, as well as the neutrality of the public media during an electoral period. These principles become a duty of compliance, the guarantee of which is primarily attributed to their boards of directors, subject to other forms of control as set out under the law. On this point, it is important to remember that the Catalonia Broadcasting Council has been legally attributed the power to safeguard political and social pluralism, as well as neutrality and honesty in relation to the media organisations subject to its control.

8. As mentioned before, the principles of pluralism and neutrality do not affect the media's ability to report news or its freedom to choose programming per se. However, it is clear that in exercising these rights, the media must be bound by the abovementioned principles, because, through these requirements, the law aims to ensure the media is not used to benefit or harm any political party involved in the elections. It is important to add that this guarantee must apply even more strictly on the day of reflection, when the maximum possible neutrality is demanded, in line with the obligations imposed with respect to political and electoral propaganda. On this point, it is worth recalling the doctrine of the central electoral commission and the Supreme Court that requires from the media, and particularly the public media, special care in the news treatment offered on the day of reflection in relation to political pluralism and proportionality between candidates, and to prevent information or broadcasts that could influence, even indirectly, people's voting intentions.

From this doctrine we can deduce, in any case, that information with political content must tend towards maximum objectivity and impartiality and that in its

treatment, special care must be taken to respect pluralism and prevent it from turning, even indirectly, into favourable or unfavourable approaches with respect to particular political choices. In this regard, it is worth recalling that this doctrine is very demanding when it comes to establishing limits on the appearance of politicians in the media once the electoral campaign has ended, because of the risk it could have of including a component of political propaganda, understood as any action that could persuade a voter in favour of or against a particular political option.

In the context of the events that occurred between 11 and 14 March, it is important to emphasise the objective difficulty of differentiating between acts of political propaganda and the exercise of freedom of expression and information after the political forces decided to end the electoral campaign. Although it is true that the electoral law bans the realisation of acts of electoral propaganda, we should not forget that the same law does not stop parties from exercising their freedom of expression and that this point should be taken carefully into consideration when it comes to assessing the appearances and statements of the politicians that appeared on the television under these circumstances. It is true that it would be hard to consider their statements and appearances as neutral from the political point of view, but it is also true that they did not necessarily constitute acts of political propaganda in the sense prohibited under the law, if their main purpose was to express an opinion about the events of 11 March, the group responsible or related information.

9. It is the opinion of this Council that the situation produced in the wake of the attacks of 11 March in Madrid put the media in a particularly difficult situation which was marked on the one hand by the need to report on the dramatic events and the group behind them and, on the other hand, the need to respect the requisites of the electoral law, given that the bombings coincided with the electoral process. It seems clear that in this context, the right to report cannot be cancelled out under the pretext that it could influence public opinion and therefore people's voting behaviour.

However, it also seems clear that, despite the special circumstances, neither could the media disregard the requirements of the pluralism and neutrality or impartiality of information, particularly when its work could have an

important impact on people's voting behaviour, given the nature and characteristics of the events.

Legally, the day of reflection begins when the period established for the electoral campaign ends. However, as a consequence of the 11 March attacks and the unanimous and immediate decision of the political parties participating in the elections to bring the campaign to a close, a singular situation was produced and a period of approximately 72 hours was conditioned, in terms of news, by two factors at the same time. On the one hand, there were the dramatic consequences of the bombings and the public interest in knowing who was behind them. On the other hand, there was the run-up to the elections and their outcome. Under these conditions, the television stations found themselves for three days in the middle of growing and unprecedented tension with regard to information and having to improvise on three main types of issues: the news treatment of a major tragedy, the doubts around the information available on who was behind the bombings, and the need to report during an extended period of reflection marked by political debate over the attacks, who was behind them and the information available.

With regard to the news treatment of the tragedy, the Council would like to say that during the first hour or at the time of the first live crosses it was indeed difficult to properly reconcile the urgency for information and the lack of data with a strict respect for the rights of victims and their relatives. However, when a station takes the decision to remove the scheduled programming from the air and include a special, live programme, it takes on the responsibility for meeting the requirements that this decision entails. That means it has to ensure it has the suitably specialised resources and staff, does not fall victim to gratuitously sensational strategies and that it does not provide unimaginative or superfluous images or information that could violate the privacy of the people directly or indirectly involved. It should not make people feel uncomfortable or embarrassed, show close-ups of people injured or in a situation of suffering, or images of corpses or coffins and must in any case never repeat the transmission of such images. Archival or pre-recorded images, or pictures provided by amateur video enthusiasts or any other source must be properly referenced. Stations should always clearly mention sources and supply confirmed or proved

information, avoiding any type of speculation, conjecture, prejudice or the projection of suspicion or unproved attribution of guilt.

Many of these principles of good journalistic practice in the event of a tragedy, which the Council has identified in previous recommendations, were repeatedly violated.

The programming changes in many of the stations involved upholding the regular structures and formats characteristic to the features of a type of entertainment or frivolous programming that can be established on platforms of mere emotional expansion instead of contributing to reflection and becoming a useful instrument to help viewers overcome the disturbing impact of the bombings, provide specialised information or expert commentary. Most of the stations did not even stop showing advertisements, although there were a number of exceptions, such as TVE and some local stations.

10. In relation to the other factors, i.e., information on the responsibility for the bombings, the action of the government setting itself up as the official source of information and the limits and requirements involved with a day of reflection, the Council considers it necessary to comment on a number of important aspects of the media's behaviour in relation to the principles already mentioned:

a) Although the rule of silence of political leaders should have been the general principle on the day of reflection, except for the government spokespeople who had to report on issues of public interest, in the present case it is difficult to criticise them for intervening in the media given the informational requirements about the responsibility for the bombings, despite the incidence it could have on public opinion and electoral behaviour. Certainly in this case there were various media appearances by government spokespeople, but they were hard to prevent because of the very dynamic of the events and the difficulty in distinguishing in this case between their newsworthiness and their possible propagandistic effects. It is important to differentiate between statements from people with institutional and political responsibilities (including the Spanish Government) for the purposes of the obligations and rights established under the electoral law (particularly Article 53 of the LOREG, which prohibits actions of electoral propaganda, but does not stop parties from exercising their rights of expression) and the dissemination of opinions that

constitute the object of the right to information. The position of the media would in any case be protected by the exercise of this right and by the doctrine of 'neutral' reporting which sees ultimate responsibility, where applicable, fall to the author or original source.

However, the Council believes it is necessary to warn of the obligation in this case of respecting the pluralism and neutrality of information, which meant that the media, particularly on the day of reflection, had to bear in mind all the relevant political positions and consider them in accordance with their political and social implementation.

b) The news treatment of the unexpected event of the day of reflection, i.e., the protest gatherings outside the different Popular Party offices, was more problematic. Leaving aside the causes that led to them and the consideration that these acts could warrant, we cannot object to its news treatment in so far as it was a newsworthy event. However, the content of the news could not be considered indifferent in the existing electoral context, which means that the principles of the neutrality of information required, in the opinion of this Council, making a particularly accurate treatment that should be disproportionate or excessively repetitive. The excessive news treatment of this event involved the risk of exceeding its newsworthiness and entering into the realm of electoral propaganda in the sense mentioned above.

c) In the broader context of programmes that covered the attacks in Madrid, the fact that they coincided with the final phase of the electoral process meant that the media, particularly the public media, had to do its best to exercise caution in order to guarantee pluralism and neutrality beyond what is understood as strictly news programmes. Particular discussion and opinion shows (talk shows, discussion programmes, etc.), with a high potential for influencing the public, particularly under circumstances such as those between 11 and 14 March, are becoming increasingly important in terms of their social impact. The Council considers that, given the circumstances and the risk of such an impact, the stations had to be particularly careful in the configuration of these types of programmes by scrupulously respecting pluralism when it came to choosing the people to take part in them.

d) Finally, the Council would like to say that respect for the pluralism and neutrality of information does not depend only on the content of the information, but also the way in which

it is treated. In this regard, the Council would insist on the need to preserve equal conditions of access and presence of the people involved in the story without any type of discrimination, respecting as far as possible news immediacy and proportionality in how it is treated.

Conclusions

1. The period between 11 and 14 March must be considered exceptional from the point of view of the broadcast media. The very size of the attacks in Madrid and their proximity to the end of the electoral process conditioned media behaviour, especially when it was extremely important for the public to have information on the group responsible for the attacks and, at the same time, required especially objective and impartial behaviour by the media.
2. In the face of this situation, the Council would like to underline the importance of information in a democratic society as an instrument for the existence of free public opinion and a necessary condition for exercising the rights of political participation.
3. The Council would also emphasise the need for information to be broad and plural, so that the public has elements of evaluation and comparison. This also requires that the information supplied meets the requisite of truth, i.e., that it has been obtained and prepared on the basis of objective data and reliable sources.
4. The fact that the news treatment about the events of 11 March coincided with the final stretch of the electoral process should not have prejudiced the right to report and receive information, given its prevailing nature. The function of the media was particularly important in this case from the moment that the Spanish Government assumed the position of the official source of information.
5. Under these special circumstances, the broadcast media, particularly the public media, had to take special care to respect the pluralism and impartiality of information, given the fact that the events coincided with the upcoming elections. This requirement had to apply not only to news programmes, but also opinion-based programmes, particularly when the simultaneous circumstances altered pre-established programming schedules and made it harder

to distinguish information from opinion.

6. A further important aspect to which attention should be drawn was the special care the media had to take, particularly on the day of reflection, to try to prevent the treatment of news and other programmes which, because of their content, presence of political actors, proportionality of transmission or other circumstances, could have predisposed the public in favour of or against a particular political option.
 7. In any case, information in relation to the bombings themselves had to be conditioned by respect for people's rights as determined under the Constitution, particularly those that protect the image, intimacy and privacy of victims and their relatives.
 8. On the basis of these parameters of approximation, the Council would like to make a number of comments on the behaviour of the television stations:
 - a) The news treatment of the 11 March tragedy was not, in general, in keeping with the guidelines required from the point of view of the rights of victims and their relatives, in accordance with the recommendations the Council prepared for situations of this type some time ago.
 - b) The treatment after 11 March and particularly on the day of reflection did not always meet the requisites of objectivity, impartiality and respect for pluralism that should have been guaranteed, given the upcoming elections. The most serious problems were, in the Council's opinion, the fact that the stations did not always guarantee political or social pluralism on their news or opinion programmes, particularly TVE, and did not always give proportionate attention but rather too much or too little to the protest gatherings outside the Popular Party offices as a news story that coincided with the hours in the run-up to the polls opening.
- Despite all that, it is important to bear in mind that, given that the Spanish Government set itself up as the official source of information and the parallel disclosure of information that ran counter to the government's information on possible responsibility for the attacks, there was a very perceptible phenomenon of a concentration of news interest on the question of responsibility followed immediately by a progressive polarisation among the various media outlets. This gradually took the form of one position that largely lent credence to the official version set out in the successive public appearances of the Interior Minister and another

position that was more critical and dissenting from that version and which tended to gather and underline the manifestations of doubt and alternative internal and external sources available. This delimitation and polarisation of the different camps was, inevitably, maintained throughout the day of reflection. The Council believes this polarisation cannot be disregarded when it comes to making a balanced analysis and assessment of the behaviour of the broadcast media under those circumstances.

c) The document entitled *The Television Information on the 11 March Attacks and Subsequent Events Through to the Elections of 14 March* makes it possible to follow in detail the behaviour of the television stations studied and evaluate the quality of their response to the challenges raised in terms of agility in initially covering the story, respectful treatment of the tragic attack and respect for pluralism, diversity of opinion makers and impartiality. In the particular case of TV3, the main public media outlet under the area of supervision of the Council, there was insufficient agility in initially covering the story and the Council would also say that its news treatment of the attacks, and particularly its visual treatment, could have been more thorough. With regard to respect for pluralism, diversity of opinion makers and impartiality, although TV3 could be considered to have done well overall and given the circumstances at the time, the Council considers there was one significant exception, which was the case of the Saturday evening news bulletin, which only featured two political forces (PP and PSOE) and which gave an amount of attention that is unjustifiable purely in news terms, to the protests outside the Popular Party offices. Even though that same Saturday, in a later special news report, it did award speaking time to political forces other than the two mentioned above, it is important to remember that strict compliance with pluralism also involves guaranteeing equal conditions of access.

Barcelona, 31 March 2004