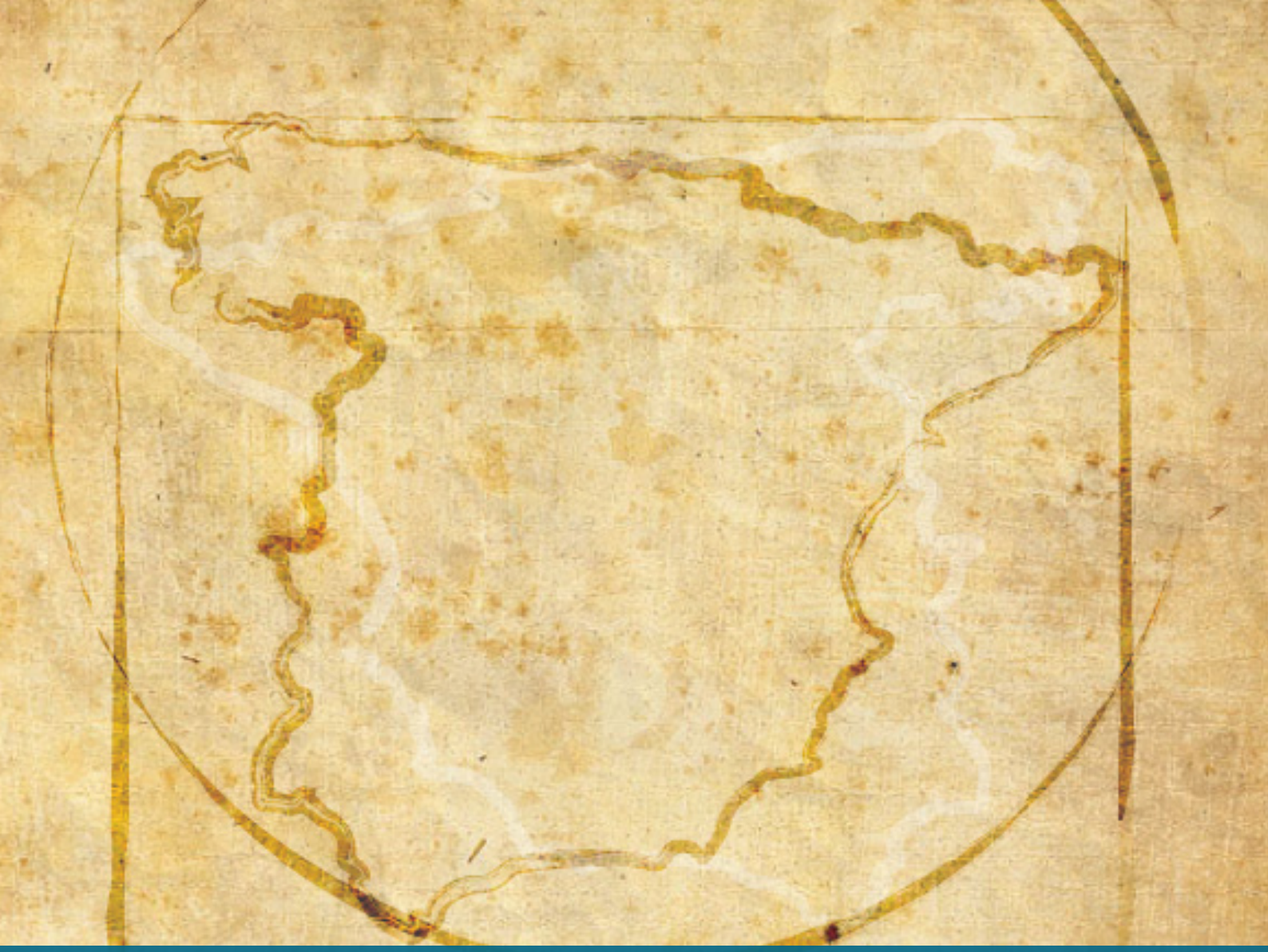

The State of Press Freedom in Spain: 2015

[International Mission Report ■ March 2015]

International Press Institute

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INTERNATIONAL MISSION REPORT
MARCH 2015

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Access Info Europe (AIE)
Commitee to Protect Journalists (CPJ)
European Federation of Journalists (EFJ)
International Press Institute (IPI)
Reporters without Borders (RSF)
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OPEN SOCIETY FOUNDATIONS

The production of this report was supported by a grant from the Foundation Open Society Institute in cooperation with the Program on Independent Journalism of the Open Society Foundations.

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[About this Report]

From Dec. 1-4, 2014, the **International Press Institute (IPI)** led an international fact-finding mission to Spain to become acquainted with current press freedom challenges in Spain. Participating in the mission were representatives of **Access Info Europe** (AIE), the **Committee to Protect Journalists (CPJ)**, the **European Federation of Journalists (EFJ)**, **Reporters without Borders (RSF)**, and the **Open Society Foundation (OSF)**.

The mission was prompted by an interest in understanding the situation of media freedom in Spain at a time of significant political, social, and economic disruption, comparable in recent terms only to the transition to democracy that began 40 years ago.

Amidst a devastating financial crisis that may now be ebbing, Spain in recent years has witnessed the sudden rise of new political parties and social movements – many of which are driven by opposition to budget cuts in key sectors such as education, health, and social services – that have joined more established forces in battling to control the country's overall narrative and political future.

In 2015, no less than five critical elections will take place in Spain: national parliamentary elections in December; regional and municipal elections in May; and separate regional elections in Andalusia (March) and Catalonia (September), Spain's two most populous autonomous communities.

While media freedom in Spain remains robust and certainly comparable to its European neighbours, at such a critical moment for the Spanish public there is a need to ensure maximum access to the free flow of information. In this light, the international mission sought to investigate any hindrances to such access, including, among other things, potentially restrictive legal measures, such as the new public safety law; an alleged lack of independence in public broadcasting; and the possibility of increased economic and political pressure on the media, already dealing with the effects of the financial crisis and the technological revolution.

Over a period of four days, mission delegates held over 35 meetings with media, civil society and government actors in both Madrid and Barcelona. In organising the meetings, the delegation aimed to hear from as diverse a range of voices as possible in order to obtain a balanced understanding of the current situation regarding press freedom and freedom of expression in Spain. A full list of meetings is included in the annex to this report.

The immediate purpose of the present report itself is two-fold. First, it identifies the issues that, taking into account both the conversations that took place during the mission as well as relevant international standards, the delegation believes are among the most urgent in terms of further guaranteeing press freedom and freedom of expression in Spain. Second, the individual chapters contained in this report provide detailed background on those issues, encompassing both opinions and information gained during the mission as well as research conducted by delegation members or their organisations.

Each individual chapter in the report was authored by a different member of the mission delegation. The organisations that joined the mission therefore do not necessarily endorse the content of each chapter.

The annex to this report also contains a feature analysis by IPI's digital media coordinator on new models of journalism that have emerged in Spain.

In the longer term, the report is intended to help guide national- and international-level advocacy efforts in Spain. Indeed, the delegation foresees that the findings of this report will form the basis of a second, high-level mission to Spain in mid-2015, which will encourage the Spanish government and the country's various political parties to give greater attention to press freedom issues, including by adopting the recommendations provided in this report.

From (L), El Mundo Editor Casimiro García-Abadillo, RSF Spain President Malén Aznarez, Victoria Anderica (Access Info Europe), El Mundo Deputy Editor Antonio Rubio, Paco Audije (EFJ), and IPI Interim Executive Director Barbara Trionfi discuss the current state of press freedom in Spain in a meeting at El Mundo's offices in Madrid on Dec. 1, 2014. *Antonio Heredia/El Mundo*

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[1] Introduction

SUMMARY OF FINDINGS

Following its conversations with a diverse range of media, civil society and government actors in Spain, as well as due consideration to international standards on freedom of expression, the international delegation has identified the following specific challenges to freedom of the press in Spain:

1. Challenges to the independence of Spain's public broadcaster.

Spanish legislation manifestly fails to include safeguards to prevent the politicisation of the national public radio and television broadcaster (RTVE). In 2012, the current Spanish government modified the law on public broadcasting to allow for members of the public broadcaster's governing board – including the Boards' president, who in turn nominates key editorial positions – to be elected by absolute majority in the Spanish parliament, rather than the previously required two-thirds majority. In the view of the RTVE journalists who sit on the broadcaster's internal advisory council, this flawed nominating process negatively affects the broadcaster's independence in practice.

2. Insufficient guarantees for independence in broadcast regulation and licensing.

In contrast to the European norm, Spain lacks a dedicated national broadcast regulator, despite the fact that a law passed in 2010 foresees precisely such a body. Presently, broadcast regulation at the national level is primarily the province of the national "superregulator", the Commission for Markets and Competition, whose members are appointed by the government without requiring parliamentary approval. Broadcast licenses are allocated directly by the government.

3. Lack of transparency in the allocation of government advertising.

Concerns about the fairness of the manner in which government advertising is awarded to the media were frequently raised during the delegation's visit. The lack of data on the criteria used for such allocation makes an analysis of the practice challenging. The small amount of data gained from selected regional governments and ministries suggests that, in at least some cases, advertising is not allocated according to circulation figures. In the view of some civil society observers, the government's recent decision to outsource the allocation process to private advertising agencies harbours the threat of further opacity, as such agencies are not subject to the requirements of Spain's new law on transparency and access to information.

4. Transparency legislation that does not meet international standards.

While the recent passage of Spain's first law on transparency and access to information is in itself an important achievement, the measure has been criticised by civil society groups for failing to meet European and international standards. These groups point to, in particular, the law's restrictive scope and a failure to guarantee the independence of the body tasked with overseeing compliance with the law.

Members of the international delegation meet with Catalonian journalists at the offices of the Open Society Initiative for Europe on Dec. 3, 2014. *Photo: IPI.*

5. Potentially restrictive new legal norms, in particular the Public Security Law.

Spain's intended new Public Security Law has been the target of fierce international and national criticism for, among other things, penalising the "unauthorised use of images" relating to public security officers and showing a "lack of respect" toward the latter. At the time of this writing, the respective bill had passed the Chamber of Deputies (Dec. 2014) and the Senate (March 2015, with modifications), and sent back to the Chamber for final approval.

6. The reported trend of government officials of holding "question-less press conferences".

Numerous journalists and editors whom the delegation met voiced their frustration with the trend practiced by government officials and other public figures, including Prime Minister Mariano Rajoy, of holding question-less press conferences.

7. Spanish defamation legislation and its application.

Most actors met by the mission delegation suggested that defamation laws were not a significant threat to press freedom in Spain. Nevertheless, Spain's defamation laws do not meet international standards on freedom of expression. Moreover, the delegation is concerned about the use of such laws against journalists lacking the legal and financial resources of large media outlets as well as instances in which Spanish public officials have used government lawyers to pursue defamation claims.

These issues are each addressed in further detail in the individual chapters of this report.

In general, the mission confirmed that freedom of expression and the press enjoy widespread protection in Spain. Nevertheless, the delegation believes that these freedoms, and the free flow of information that they engender, would be further strengthened by addressing the above issues.

Spain's Media Crisis, in figures

11,875

Number of media jobs cut in Spain between 2008 and 2014.

2,412

Number of cuts in 2014 alone (20% of 6-year total).

25%

Decrease in number of working journalists between 2008 and 2014.

CONTEXT AND BACKGROUND

In addition to the above set of direct press freedom challenges, several other issues related to the practice of journalism in Spain were raised frequently in the delegation's conversations. The delegation believes that it is important to briefly describe these issues so as to properly contextualise the Spanish media landscape, and subsequently, press freedom in Spain.

a. Economic crisis

IPI arrived in Spain at a moment in which the country's media industry continues to suffer the aftermath of what one prominent journalist, called a "tsunami" combined with an "earthquake". The former refers to radical changes in consumer habits brought about by the rise of the Internet that have challenged traditional media models across Western Europe. The latter refers to the global economic crisis, which has had a particularly devastating impact on Spain.

Members of the international delegation, including IPI Interim Executive Director Barbara Trionfi (second from L) meet with representatives of FAPE and APM in Madrid. *Pablo Vazquez/APM.*

These twin crises have wreaked havoc on the journalistic profession in Spain. According to a Dec. 2014 report[1] published by the Madrid Association of Journalists (APM), in partnership with the Federation of Press Associations of Spain (FAPE), the Association of Journalists of Journalists and the Catalonian Union of Journalists, at least 11,875 media positions were cut between 2008 and 2014. 2,412 of those cuts, or 20% of the six-year total, took place in 2014 alone. Furthermore, in a survey of over 2,000 journalists conducted for the report, 85 percent of respondents said they had experienced salary cuts at their media outlet in 2014.

Additionally, Jan. 2015 data from Spain's National Statistics Institute (INE) show that a total of 82,545 persons currently work as journalists in Spain, a staggering 25 percent decrease from 2008, when the economic crisis first broke. The picture appears to have stabilised since Feb. 2014, with a slight increase of approximately 1,000 journalists between then and the end of 2014.

These are sombre figures. In a joint meeting with the IPI-led delegation, representatives of both APM and FAPE were unequivocal in stating that the economic crisis, and

In a joint meeting with the IPI-led delegation, representatives of both the Madrid Press Association (APM) and the Federation of Press Associations of Spain (FAPE) were unequivocal in stating that the economic crisis, and above all the "precarious" employment situation faced by journalists, constituted by far the most significant challenge to exercise of journalism in Spain.

above all the "precarious" employment situation faced by journalists, constituted by far the most significant challenge to exercise of journalism in Spain. This view is supported by the results of the aforementioned survey, in which two-thirds of respondents identified unemployment and job insecurity as the greatest threat to the media profession.

The potential implications of these industry-wide challenges for the media's ability to fulfil their public watchdog role are obvious. "There is no doubt that the economic crisis has made the news media and journalists in general more vulnerable to political power and special interests," Elsa González, the president of FAPE, told Spanish journalist Javier Sierra in a report on free expression in Spain released last year.[2] "Also, the quality of the information has suffered and that has generated a certain deterioration in press freedom."

by journalists during the same period, 93 percent of which are digitally based.

These statistics dovetail with a phenomenon that the delegation observed in person during its visit to Spain in December: the proliferation of new, primarily online-only media outlets that aim to harness the potential of the technological revolution and whose success not only confounds the economic crisis but is also perceived as being inextricably linked to it. In interviews with the delegation, editors of many of these outlets outlined an economic model based on promoting their independence from sources of funding perceived to be associated with certain economic and political interests. Frequently, for instance, this model involves sharply limiting funding from both public and private advertising. As the comment by FAPE's president foreshadowed, the delegation encountered widespread agreement in Spain that pressure on the media from economic interests in particular – banks and both public and private advertisers were

APM's report also noted that between 2008 and 2014 at least 364 media outlets were closed, ostensibly due to the economic crisis. Yet at the same time, the report points out, approximately 450 new media outlets were launched by journalists during the same period, 93 percent of which are digitally based.

Several editors noted that the number of press officers and/or departments belonging to political parties and public bodies appeared to have risen in recent years. This development, occurring as news rooms continue to be cut down, implied, for some, a weakened ability of the press to counter "the weight of official communication", as Gonzalo Boyer, the editor of the satire magazine *Mongolia*, termed it.

b. Media environment: Change and resilience

APM's report also noted that between 2008 and 2014 at least 364 media outlets were closed, ostensibly due to the economic crisis. Yet at the same time, the report points out, approximately 450 new media outlets were launched

frequently cited in this context – had become more pervasive as a result of the economic crisis. The editors of many of the newer media outlets as well as some civil society observers went one step further to suggest that this development had contributed to public demand for new voices in the Spanish media sphere.

At the same time, Spain's more established media outlets themselves have undergone a successful digital transformation and continue to dominate the overall market. Indeed, as a feature report in the annex to this report points out, the websites of *El País, El Mundo* and *ABC* maintain healthy leads in terms of monthly unique visitors over their competitors, according to industry standard figures. Moreover, the Association of Daily Newspaper Publish-

ers of Spain (AEDE) suggested in a Dec. 2014 report that the financial situation of print media had begun to stabilise. In a statement, AEDE's secretary general, José Gabriel González Arias indicated that Spain's printed press "are finding their way out of the crisis and will soon be in the position to generate employment and profit" and that print and digital editions were becoming "increasingly complementary".[3] Finally, the delegation noted that Spain's more established media, despite the challenges recent years have brought to the industry, have continued to investigate and uncover serious instances of corruption and wrongdoing at the highest levels of power.

In general, the delegation interpreted the growth of new media outlets together with the resilience of more established media outlets as an encouraging sign that the Spanish media industry remains robust and capable of reinvention to fulfil its function in democratic society.

c. Overall press freedom landscape

Certainly, it is important to place Spain's press freedom situation in global context. Since beginning its transition to democracy in the late 1970s, Spain has joined its fellow European states in demonstrating a commitment to freedom of expression in word and practice, particularly in comparison to the remainder of the global community. International press freedom rankings generally confirm this. Spain came in 33rd out of 180 countries on RSF's 2015 World Press Freedom Index, behind 17 other EU members but ahead of France, Japan and the United States.[4] The country fared slightly worse in Freedom House's 2014 Global Press Freedom Rankings, classified as "free" but tied with Ghana and the Solomon Islands at 53rd.[5]

Bieito Rubido, editor of the newspaper *ABC*, told the delegation that were "no problems with freedom of expression" in Spain and called the current government "the most liberal in terms of the media". While Rubido expressed the idea is particularly unqualified terms, other editors of both print and digital media with whom the delegation met generally confirmed an absence of what they viewed as serious interferences with their work, albeit without necessarily endorsing the media-related policies of the Rajoy administration.

Nevertheless, in addition to the concrete issues that were identified and that are covered in this report, as well as the ongoing effects of the economic crisis and technological transition, the delegation concludes that two further caveats must be noted.

First, a lack of systematic data and monitoring hinders efforts to obtain a complete picture of the press freedom situation. In some cases, this lack is due to insufficient

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government transparency. For example, absent necessary data on the allocation of government advertising, it is not possible to determine what criteria, if any, are used and consequently whether "soft censorship" practices exist in Spain. In other cases, although there is extensive monitoring of the labour situation and a number of organisations, including FAPE and APM, respond to individual threats to press freedom, there does not appear to be systematic data collection by civil society regarding attacks on freedom of expression, including instances of physical or legal harassment (including the filing of defamation cases) against journalists, bloggers or activists.

Second, some of the mission's findings suggest considerable differences between the situation across regions and across media outlets. At a moment in which the Spanish media landscape has diversified, and in which the number of freelance journalists, bloggers, citizen journalists, and information activists has grown due to social and technological changes, the delegation believes that increased monitoring is necessary to ensure that findings on freedom of expression are representative of Spain as a whole. For example, although many interlocutors insisted that defamation cases were not a problem for journalists, the situation appeared to be distinct for journalists who lack the legal, financial, and institutional resources of larger media outlets or for journalists working outside of traditional media structures.

In this light, the delegation is encouraged by the recent launch of the multi-stakeholder Platform for the Defence of Freedom of Expression (PDLI), which has united a diverse group of journalists, activists, lawyers, academics, activists, and consumer activists to monitor and counter perceived threats to free expression in Spain. In March 2015, the Platform presented its report "Limits and Threats to the Exercise of Freedom of Expression and Information in Spain"[6] and has also launched an online mapping tool to monitor threats to free expression.[7]

Spain's press freedom situation, fortunately, compares favourably to much of the world. However, it does not follow that the press freedom challenges that do exist in Spain are therefore less urgent or undeserving of full attention and scrutiny.

Quite to the contrary. On the one hand, states should seek in principle to ensure that rights are fully respected within their territory, regardless of the actions of their neighbours. On the other hand, as a country with global influence, Spain's policies and practices regarding the media and freedom of expression are apt to serve as a model. The delegation believes that model should be as positive as possible.

Virginia P. Alonso (L), president of the new Platform for the Defence of Free Expression (PDLI) and deputy editor of 20 Minutos, speaks at the Platform's launch event in Madrid on Dec. 2, 2014. She was joined by Sonia Gumpert, dean of the Madrid Bar Association and vice president of the Platform, and Yolanda Quintana (R), secretary general of the Platform. *Photo: IPI.*

[2] Challenges to the Independence of Public Broadcasting and Broadcast Regulation

Paco Audije, European Federation of Journalists

INDEPENDENCE OF PUBLIC BROADCASTING IN SPAIN

Public broadcasting in Spain is principally constituted by two distinct systems: the Spanish Radio and Television Corporation (RTVE, according to its Spanish acronym) and the regional broadcasters of Spain's autonomous communities that operate independently both from one another and from RTVE. The majority of the regional broadcasters maintain a certain level of cooperation with one another through shared membership in the Federation of Autonomous Radio and Television Broadcasters (FORTA). Of the regional broadcasters that belong to FORTA, among the most important is the Catalan Broadcasting Corporation (the parent of TV3, Catalunya Radio, etc.).

Broadly speaking, both RTVE and the FORTA broadcasters suffer from two main ills: excessive proximity to the government, which controls the budget, and insufficient funding.

The IPI mission in Spain visited Madrid shortly after a group of RTVE journalists and employees had launched a protest against several recent internal appointments of new section editors at the public television broadcaster, TVE (Televisión Española).

During a meeting with a designated representative of RTVE's president, the delegation did not obtain answers to its questions. Nor did a minimum level of dialogue occur, perhaps because the numerous public criticisms, from both inside and out, had prompted RTVE's management to adopt a rather defensive posture.

By contrast, representatives of the RTVE News Council (*Consejo de informativos*), an internal body formed by RTVE journalists "tasked with overseeing the broadcaster's independence" and whose members are elected by their fellow journalists, suggested to the delegation that the following problems, among others, prevented RTVE from fulfilling its public function:

- The president of the RTVE Corporation and the remaining eight members of the Administrative Council, RTVE's highest governing body, are currently subject to election by absolute majority in the Spanish parliament,[8] allowing the parliamentary majority of the time to unduly influence the Council's composition. Moreover, the hierarchy of executive and editorial positions within RTVE appointed by the president is perceived by the News Council members as being subject to the same political influence, contrary to the demand for balance required in a European public broadcaster.

- Professional advancement within RTVE does not follow a logical – or legal – pattern. This leads to division and lack of trust between the newsroom and externally contracted persons, that is, journalists who had previously worked at other media outlets.. Both the current president of the RTVE Corporation, as well as his editor-in-chief (who came to RTVE from a newspaper, *La Razón*) are, in the

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view of the members of the News Council, unfamiliar with the demands of a public service broadcaster and direct their loyalty solely to the government that nominated them.

- There is a constant battle between RTVE's journalists and the editors brought in by the management "that leads to daily arguments over every headline" on controversial topics such as unemployment or the rise of new political actors such as the political party Podemos. The News Council representatives noted, for example, that the leader of Podemos, Pablo Iglesias, was not interviewed on TVE for months despite his growing notoriety and presence in other media. (TVE finally interviewed Iglesias in Dec. 2014, shortly after the conclusion of the IPI mission; the interview sparked strong public criticism due to what was perceived by many viewers as a one-sided and aggressive attitude toward Iglesias.)

- Various happenings (the independence movement in Catalonia or social movements protesting the crisis) are, in the News Council's view, systematically reduced in importance or simply ignored by the editorial decisionmakers within RTVE.

Both the News Council as well as numerous Spanish media outlets have also expressed alarm over the Jan. 2015 decision by RTVE ordering a representative, Asunción Gomez, to step down as chair of European Broadcasting Union's (EBU) influential News Committee. Gómez had been elected to the position by her EBU peers in 2011 and re-elected in 2013. The newspaper *El País* reported that RTVE sought to replace her with a representative "closer" to the Corporation's president, José Antonio Sánchez.[9] As *El Mundo* observed, Gomez's successor will have no claim to the elected presidency of the News Committee and RTVE thus "loses a leadership position with the ability to take decisions for the whole continent".[10]

Gómez herself told *El País* that with the decision, "independence is being punished".

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With regards to funding, RTVE's management is mulling whether to once again allow advertising in TVE, where it existed as a partial source of funding until 2006. This change would throw into question the current contribution that private senders are legally obligated to make annually to RTVE (a consequence of private senders' increased revenue from the advertising pie via RTVE's withdrawal).[11] It should be pointed out that there is no tradition in Spain of paying a tax for the use of public broadcast media (in contrast to the British license fee model or the *redevance* in France). For this reason, experts have favoured a system of preferential funding from the state budget, complemented by contributions from private broadcasters (who benefit from the share of the advertising market abandoned by TVE) and private telecommunications providers (only those that distribute broadcast content) as well as possible revenue derived from RTVE's sale of its own products (including programming sponsorship, for example).

In terms of recommendations for improving the Spanish public broadcasting system to better serve the Spanish public, it is clear that:

- A return to **a model under which the appointment of the President of the RTVE Corporation is decided via qualified parliamentary majority** (two-thirds, previously) would improve the possibility of attaining political, social and editorial balance and strengthen pluralism within RTVE. It would also be critical to return to the previous system of having full-time, exclusively dedicated members of the Administrative Council and to respect the conditions of professional qualification and experience for membership in the Council that are required by law but, apparently, ignored in practice.

- **A strengthened relationship between RTVE's managerial and editorial administration**, on the one hand, **and RTVE journalists and their legal representatives (the News Council)**, on the other, would likely lead the Spanish public broadcasting service to be more attentive to providing balanced news coverage and to the needs of the public. A system of professional career development should be institutionalised, as foreseen by the RTVE's own newsroom policy (Estatuto de Informativos).

- Mechanisms, including legal ones, that encourage **greater participation of civil society** should be created.

In general, these same recommendations are applicable to the FORTA broadcasters as well (for which the relevant political majority may be different, but the governance methods are equally inadequate and the level and form of political manipulation very similar, if not identical).

A further problem that impacts freedom of expression and the reduction of pluralism in the broadcasting sector concerns the **growing level of media concentration and control of the advertising market**. There is no space here to address in detail the webs of cross-ownership, not only among the commercial broadcast media, but also among print and digital media, that limit pluralism and the possibilities for the development of new broadcast media. Suffice to say, for example, that international groups such as Mediaset, RTL/Bertelsmann, and Atresmedia, appear in the ownership rosters of diverse and apparently disparate media. Reliable information on concentration in Spanish media ownership can be found in a recent (Oct. 2014) study written by Luis Palacio, editor of the Annual Report on the Journalistic Profession ("Informe Annual de la Profesión Periodística") published by the Madrid Press Association. According to the report, in the television sector specifically, the lax level of regulation provided by the General Broadcasting Act has allowed for the rise of an oligopoly formed by Atresmedia and Mediaset, which together control 60 percent of the broadcast audience and 90% of the advertising market.

BROADCAST REGULATION

In contrast to similar countries in the European Union, Spain lacks a dedicated national broadcasting regulator.

The National Broadcasting Council (CEMA), foreseen by the 2010 General Broadcasting Act, was never constituted. A part of what would have been its functions have been assumed by the National Commission for Markets and Competition (CNMC), which lacks safeguards to guarantee its independence. The CNCM's 10 members are directly appointed by the government without consultation from Parliament.

The National Broadcasting Council (CEMA), foreseen by the 2010 General Broadcasting Act, was never constituted.[12] A part of what would have been its functions have been assumed by the National Commission for Markets and Competition (CNMC), which lacks safeguards to guarantee its independence. The CNCM's 10 members are directly appointed by the government without consultation from Parliament.[13]

Nevertheless, it is necessary to highlight the Broadcasting Council of Andalusia (CAA) and the Broadcasting Council of Catalonia (CAC, according to its Catalan acronym) as two examples of regulatory bodies – operating in two of Spain's largest autonomous regions – that have (partially) managed to avoid such lack of independence.

The international mission met with representatives of both CNMC (in Madrid) and CAC (in Barcelona). The latter has been in operation since 2000, with its functioning having been subsequently modified in 2005 and 2012. CAC representatives told the delegation that the Council, in addition to its core competencies over Catalan public and private broadcast media, also monitors all broadcasts that reach Catalonia from other parts of Spain or from abroad. However, if the Council considers that a non-Catalan-based private broadcaster has violated regulations on, for example, the protection of minors, it must route its complain through CNCM (the national regulator) or the national ministerial authorities.

The experiences of CAC and CAA could serve as useful models for a possible Spanish Broadcasting Council that would be tasked with monitoring compliance with regulations on the protection of minors; advertising; all forms of pluralism, including social, political and religious; the coverage of electoral campaigns; and media coverage of disasters or armed conflicts, etc. CAC representatives also highlighted the importance of overseeing a desirable linguistic balance in public broadcast media.

During the delegation's meeting with CAC in Barcelona, references were also made to internal protests by some TV3 journalists over alleged imbalances in the coverage of current Catalan politics.

A further issue that bears directly on this discussion is the confusion regarding the procedure by which state authorities allocate radio and television frequencies. In recent years, this confusion has led to the cancellation of licenses by courts as well as to the closure of several media that were viewed as unviable.

It is also necessary to point out that, at the national level, frequency allocation is performed directly by the Ministry for Industry, Energy and Tourism, rather than by an independent regulator. (In Spain, national authorities generally handle television licenses, while radio licenses are largely the province of regional authorities.) Moreover, the rationality behind frequency allocation has been viewed by as obscure and not easily explained, except, for some, by the political leanings of the beneficiaries.

The alleged lack of transparency regarding frequency allocation offers one more contribution to the perception of links between political power and broadcast media that undermine the credibility of Spanish broadcasting and reduce the existence of balanced news coverage.

[3] Transparency in the Allocation of Institutional Advertising and Subsidies: An Area for Improvement

EXECUTIVE SUMMARY

- *Spain has existing laws to prevent the use of government advertising and subsidies for political purposes.*
- *However, legislation and practices regarding institutional advertising and subsidies differ at regional and local levels. Together with divergent approaches to transparency among Spain's different regions, this makes analysing the criteria used to allocate public money in the media sector challenging.*
- *The lack of data regarding the amount of advertising individual media outlets obtain from government campaigns at all levels hinders greater knowledge on the fairness of the allocation procedure and an informed assessment of the existence of soft censorship practices.*
- *The allocation breakdown provided by some regions and by selected ministries indicates that, in certain cases, spending is not distributed according to circulation or readership figures, and the criteria used, if any, are unknown.*
- *More transparency on the allocation criteria and on the allocation breakdown would be needed to ensure soft censorship practices are not distorting fair competition and impeding greater press freedom.*
- *Regarding subsidies, while transparency on final recipients does exist, the independence of the allocation bodies themselves, and the fairness of allocations by regional governments, remains to be ensured.*

THE QUESTION OF SOFT CENSORSHIP IN SPAIN

Soft censorship practices related to the allocation of institutional advertising and subsidies were among the alleged threats to press freedom mentioned during the delegation's meetings with some media representatives.

Soft censorship, in this instance, is the practice of influencing news coverage through the allocation or withholding of state media spending (subsidies, advertising and other media assistance). It can also apply to the selective application of licensing, permits or regulations to shape the media landscape and promote or diminish the economic viability of specific media houses or outlets. When such practices exist, they not only represent a threat to media independence, but also undermine free competition in the media industry.

The extent of soft censorship in Spain is difficult to analyse for various reasons. First, public reports on advertising spending, with the exception of some regions such as the Basque Country, do not include a final breakdown of advertising allocation to different media outlets. Additionally, and according to several researchers,[14] freedom of information requests on this issue are frequently not fully answered by the public institutions to which they are addressed. Secondly, regional governments and local administrations have different laws, follow different criteria, and act independently, thus hindering the recognition of general trends in the allocation of public money to the media. In addition, no centralised figures exist that reveal how much of overall Spanish taxpayer money is allocated to the media.

It is also important to highlight that the economic crisis has led to considerable cutbacks in the transfer of public

funds to the media sector in Spain. A recent official report showed that total advertising spending by the central government, ministries and associated public entities had decreased from €313 million in 2006 to €116 million in 2013.[15]

Even if in financial terms the influence of government advertising may not be as relevant as in previous decades, in 2013 the Spanish Association of Periodicals (Asociación Española de Publicaciones Periódicas, AEEPP) declared that the law on institutional advertising was being "systematically breached by ministries, councils or municipalities, governed by different parties".[16] After making an official complaint[17] to the government in March 2013, and creating an observatory[18] to report individual cases, AEEPP requested all parliamentary groups to include institutional advertising in a new transparency law[19] under consideration at the time. The main opposition party, the Socialist Workers' Party (PSOE), tabled an amendment on the issue, but the Popular Party (PP)-controlled Parliament rejected it with the help of votes from the Catalonian Convergence and Union party and the Basque Nationalist Party.[20]

A greater effort in transparency by the central government and by all regional and local administrations would be a positive step to prevent official advertising and subsidies from being used as financial leverage over media outlets.

INSTITUTIONAL ADVERTISING

With regard to institutional advertising, Law 29/2005 on Institutional Advertising and Communication[21] clearly forbids the use of official advertising to promote "administrative achievements". It also prohibits government advertising during election periods. The law expressly aims to promote transparency through "the establishment of methods for disclosing all advertising and communication carried out by the central government and related entities".

While the law is in line with international standards,[22] problems regarding transparency and alleged discretional allocation practices have been reported by scholars, media companies and opposition parties at national, regional and local levels. In addition, an analysis of institutional advertising by municipal councils (*ayuntamientos*) produced by the Court of Auditors (Tribunal de Cuentas), revealed that in some autonomous regions legislation does not clearly distinguish information from propaganda. The analysis noted that, in such cases, institutional advertising is in danger of being used to emphasise governmental successes - clearly in contradiction with the national law, as well as with international standards.[23]

At the national level, the Spanish government publishes its advertising spending in the annual Reports on Advertising and Communication (Informes de Publicidad y Comunicación).[24] These annual reports specify the amount spent by every ministry across every campaign, as well as the type of media (press, radio, TV, Internet, etc.) to which advertising is allocated. However, information on how much individual media outlets or media groups receive from each campaign is not provided.[25] Therefore, it is difficult to evaluate whether a direct relationship between these outlets' readership and geographic distribution and their use as a vehicle for institutional advertising exists.

An answer to a parliamentary question posed in 2013 suggests that circulation and readership criteria are not always used. A campaign against gender violence by the

The chart to the right shows the distribution of an advertising campaign run by the Spanish Health Ministry in 2012. Chart key, from left to right, "Newspaper", "Campaign Investment, "Number of readers", and "Investment per 1,000 readers". The allocation figures do not appear to be coordinated with circulation figures. Compare, for example, the amounts allocated to the newspapers *El País* and *La Razón*. Source: www.eldiario.es.[29]

REPARTO EN PRENSA DE LA CAMPAÑA 'HAY SALIDA'

PERIÓDICO	INVERSIÓN DE LA CAMPAÑA	NÚMERO DE LECTORES*	INVERSIÓN MEDIA POR CADA 1.000 LECTORES
La Razón	73.103,36 €	276.000	**264,87 €**
ABC	57.351,10 €	641.000	**89,47 €**
El Mundo	53.578,80 €	1.219.000	**43,95 €**
La Gaceta	36.543,94 €	177.000	**206,46 €**
El País	33.889,68 €	1.899.000	**17,85 €**
El Periódico de Catalunya	22.361,76 €	608.000	**36,78 €**
La Vanguardia	18.179,04 €	816.000	**22,28 €**
20minutos	11.116,87 €	1.986.000	**5,60 €**

FUENTE: Segunda ola anual móvil del Estudio General de Medios y Congreso de los Diputados.
* Según datos del EGM vigentes en la fecha de adjudicación de la campaña de Sanidad (26 de noviembre de 2012).

Spanish Health Ministry in Dec. 2012 was heavily criticised by opposition MPs for applying criteria not related to circulation or distribution, but to "other goals that are not related to the campaign".[26] An analysis of the campaign noted, for example, that *El País*, Spain's second largest newspaper by readership during that period,[27] received advertisements worth €34,000, while eighth-place *La Razón* received €73,000, Similarly, *La Gaceta* received more advertising (€36,554) than 20 Minutos (€11,116) despite having 18 times fewer readers. Using data from the Encuesta General de Medios (General Media Survey) the analysis revealed that *El País* had received €18 per 1,000 readers, *La Razón* €265 and *La Gaceta* €206.[28]

Circulation criteria were also not used in a campaign for the promotion of the army in 2014.[30] The Defence Ministry decided to put the same amount of advertising in each national paper as can be clearly seen in the allocation contract.[31]

While these facts do not necessarily indicate wrongdoing, the lack of information on the criteria used for allocation makes a thorough assessment impossible.

In 2014, the Spanish government put the allocation of institutional advertising in the hands of a pool of up to five advertising agencies for a period of two years, with the stated aim of being more efficient and reduce costs for the buying of advertising space.[32] While the use of advertising agencies to determine where and why to advertise is standard international practice, some advertising associations criticised this decision by stating that limiting the number of agencies to five ran contrary to the principles of fair competition.[33] In addition, civil society organisations considered that the move added more opacity to the system of institutional advertising, as it would allow key details – such as the identity of media outlets that receive public advertising, as well as details on the campaign objective, overall costs, preferred media, etc. – to be published only "whenever appropriate" (Article 198 of the Public Sector Contracts Act).[34] As an expert in institutional advertising explained,[35] Spain's new law on transparency and access to information obligates public institutions to disclose all advertising contracts, whatever their size. However, when the contracts are arranged through central advertising agencies, information regarding how these agencies allocate the spending does not fall under the new law.

At regional and local levels, several cases have been brought to light through freedom of information requests, or thanks to a greater transparency of some regional governments such as the Basque authorities.

Acting on a freedom of information request, the Catalan government specified the print and online outlets where advertising for a new transparency website had been placed.[36] While the reply did not include what percentage of the €620,849 each outlet had received, the list of recipients alone was enough to determine that the allocation criteria were not related to circulation or readership figures. For example, the newspapers *20 Minutos* and *El País*, despite being Catalonia's third- and fifth-largest titles by circulation, respectively, were not among the 19 print media that received advertising under the campaign.

In Spain, as in many other countries, the lack of data regarding the breakdown of government advertising across different media outlets hinders the analysis of soft censorship practices.

Again, while these facts do not necessarily indicate wrongdoing, the lack of additional information on the criteria used for allocation makes a thorough assessment impossible.

The government of the Basque Country was criticised for allegedly favouring certain media outlets and groups after publishing its annual report on Institutional Advertising and Communication in 2013. The report includes a breakdown of the amount allocated to each media outlet and is therefore a positive example in terms of transparency.[37] By comparing the breakdown with available circulation data, an analysis done by opposition parties found that titles belonging to Grupo Noticias (allegedly close to the local ruling party, PNV) had obtained €2.7 per reader, as compared to those belonging to Vocento at €1.3, *El País* at €1.3, *Gara* at €1.2 and *Berria* at €1.1.[38]

SUBSIDIES

Spain, since the 1990s, is the only European country in which regional governments have been exclusively responsible for direct press subsidy policies. As a result, subsidy-related issues vary considerably from one part of the country to another. In 2012 subsidies continued to be granted in six of Spain's 17 regional autonomous communities, according to the latest research: Andalusia, Asturias, Basque Country, Catalonia, Galicia, and Valencia.[39] Previous research in 2005 found subsidy practices in nine regions.[40]

Five of these current press subsidy schemes are based essentially, but not exclusively, on language-related issues, focusing mainly on promoting newspapers that publish in the respective local languages. The exception is Andalusia, a monolingual region where subsidies are granted mainly to promote readership.

While the existence of subsidies can be positive for the media sector and overall pluralism, international standards require that transparency and fairness in allocation be guaranteed.[41] The Parliamentary Assembly of the Council of Europe has called on states to treat media that receive direct or indirect subsidies "fairly and with neutrality".[42] As such, the criteria by which subsidies are distributed must be unrelated to the content or political persuasion of the newspaper. Additionally, civil society organisations such as Article 19 emphasise that the body responsible for subsidy allocation must be completely independent from the government and that all official bodies dealing with public money should undergo annual audits.[43]

According to researchers familiar with the Catalan case, for example, although the grant criteria are public, the government has a considerable margin of discretion. A high volume of subsidies are reportedly given without any public call for application.[44] A comparative analysis conducted in 2007 reported similar possibilities for discretional allocation as well as a perceived lack of independence in the allocating bodies across the other eight regions in which subsidies existed.

CONCLUSION

In Spain, as in many other countries, the lack of data regarding the breakdown of government advertising across different media outlets hinders the analysis of soft censorship practices. While some regions like the Basque Country specify this data in annual institutional advertising reports, the central government - and most regions and municipalities – does not actively publish advertising spending and fails to properly answer freedom of information requests.

Several cases in which the breakdown among different titles has been brought to light indicate that greater transparency, at all levels, regarding the allocation of public money to the media is needed to ensure press freedom and fair competition among media outlets.

Regarding subsidies, while the granting criteria and the amounts allocated to different outlets are public, the possibilities for discretional allocation and the lack of independence in regional allocating bodies are clear areas for improvement.

The fair allocation of public money to the media sector is beneficial for citizens, media, journalists and the institutions themselves. A 2014 report compiling soft censorship examples from more than 30 countries worldwide concluded that the first step in battle the practice is recognising and exposing its existence.[45] The findings of this report are being transformed into advocacy that demands full transparency and fairness in the allocation of all public funds for advertising and media support, with the aim of promoting the highest ethical and professional standards for media outlets in relations with governments at every level.

[4] A Missed Opportunity: Spain's New Access to Information Law

Access Info Europe

BACKGROUND

In any country, the ability to access to information on government activities is critical to supporting the media's watchdog role and thereby to promoting government accountability. In Spain, ensuring such access continues to be a significant challenge.

Until recently, Spain had been the only EU country, besides Cyprus and Luxembourg, that did not have an access to information law. The Spanish government rectified this situation just over a year ago by passing, with considerable controversy, the Law on Transparency, Access to Information and Good Government.[46] The measure was approved by Parliament in Nov. 2013, but only the provisions related to good governance took effect at that time.

The provisions related to transparency and access to information did not take effect until Dec. 10, 2014. This was also a partial implementation as it only applies to the public bodies at the national level; local and regional government have a further year to adapt to the law's requirements.

Although the enactment of the law is therefore certainly a positive development, it is important to highlight the measure's many deficiencies, in terms of both content and implementation. Both prior to and following its approval by the Spanish Parliament in 2013, the measure has been criticised by both national[47] and international[48] experts for failing to meet international standards and for failing to take into account the Ten Principles of the Coalición Pro Acceso (Coalition for Access), a platform of over 60 Spanish civil society organisations that led the campaign for the adoption of an access to information law in Spain beginning in 2006.

From the moment the government published the initial drafts, experts agreed that the measure was of poor quality and, in particular, that it lacked ambition. In an analysis of 101 national access to information laws conducted by the organisations Access Info Europe and the Centre for Law and Democracy, Spain's version ranked 68th globally, receiving just 73 out of a total of 150 points.

AN "OLD-FASHIONED" LAW

Critics say the measure does not meet modern standards of transparency, with the result being an "old-fashioned law", despite being drafted and approved in 2013.

Access Info counts the following among the measure's main deficiencies:

1. The law fails to recognise that the right of access to information is a fundamental right.

The right of access to information has been recognised as a fundamental human right by the U.N. Human Rights Committee;[49] the special representatives on freedom of expression of the U.N., the Organization of American States, and the Organization for Security and Cooperation in Europe;[50] the European Court of Human Rights;[51] and the Inter-American Court of Human Rights.[52]

In Spain, the General Council of the Judiciary, which oversees the country's court system, also recently recognised the right of access to information.[53]

2. The law does not cover all public institutions.

For one, the measure completely excludes the judicial branch (apart from the General Council of the Judi-

An Old-Fashioned Law from the Year 2013:
*In an analysis of 101 national access to information laws conducted by the organisations Access Info Europe and the Centre for Law and Democracy, Spain's version ranked **68th** globally, receiving just **73 out of a total of 150** points.*

ciary). Secondly, the remaining public institutions are only obliged to be transparent about their administrative information. Moreover, private companies that provide public services are not covered by the same transparency obligations as public institutions and are only obliged to publish a limited set of information proactively.

3. The term "information" is inadequately defined.

The law excludes various classes of information, which runs counter to the Council of Europe Convention on Access to Official Documents.[54] In its current form, this law would not fulfil the terms of the Convention, to which Spain has not yet acceded.

First of all, Art. 18 of the law excludes types of information – in particular, background information in the form of notes, drafts, opinions, summaries, internal communications, and reports from administrative organs or entities – that are essential for understanding how and why decisions are taken.

Access Info has already witnessed examples of this article's application that contradict the goal of achieving transparency in public spending and government decision-making. For example, reports detailing the reasons for overspending in a public construction contract have been denied on the basis that these are internal documents. Reports justifying government decisions not to develop legislation in a particular area have been denied for the same reason.

Secondly, an addendum to the law states that the measure is supplementary (or secondary) to any specific legislation that might establish other provisions for access to information.

Finally, the definition of information fails to establish that all information should be accessible regardless of its format, which, among other things, is of fundamental importance for the active and widespread Spanish Open Data movement.

4. The law establishes a double negative administrative silence.

According to the law, if the public body from whom information is requested does not reply, the request is automatically considered to have been denied. This same privilege of "negative administrative silence" is also extended to the Transparency Council, which oversees compliance with the law.

One of the fundamental principles of the right to access to information is that refusals must be justified on the basis of limited exceptions stipulated by law and that the reasons for the refusal must be communicated to the person who filed the request. Negative administrative silence violates this principle.

This issue is of particular concern in Spain, where over 50 percent of access to information requests in recent years have resulted in administrative silence.[55] This practice represents a barrier to the implementation of an effective transparency regime in Spain.

5. The Transparency Council, tasked with overseeing compliance with the law, is not an independent body.

The president of the Council is appointed by the Ministry of Finance and Public Administration, which means that the Council occupies the position of both judge and jury when it comes to handling administrative appeals regarding access to information requests.

PROBLEMS IN PRACTICE

The weeks following the law's enactment on Dec. 2014 have revealed a number of shortcomings regarding its implementation.

Amongst the issues of concern, three are particularly problematic:

- Practical barriers faced when filing access to information requests;
- A sub-standard transparency portal; and
- As of Feb. 22, 2015, the failure of the Transparency Council to implement the law's corresponding appeals mechanisms.[56]

1. The most serious deficiency in the law's application relates to practical barriers faced when filing an access to information request in practice.

Requests can only be filed either in person or via the online "Transparency Portal"[57] following a complex and lengthy registration process. The law provides three options for filing access to information requests remotely, all of which require access to a computer and the Internet.

These requirements for accessing the Portal (see below) pose obstacles for citizens wishing to exercise the right of access to information quickly and easily. They may also exclude parts of the population from filing requests at all. The registration process for any of these three forms of online identification makes it difficult to use the right of access to information in practice and it discourages people from making requests, particularly if one has to provide their bank account number or install a digital certificate - a complex process which takes days to complete.

In addition, the fact that one has to identify oneself in order to access information runs counter to international standards, as the General Council of the Judiciary has pointed out. Indeed, the General Council has announced that in processing information requests it will respect such standards, affirming that requiring applicants to identify themselves "is unnecessary by virtue of the fact that access to public information is a fundamental human right which has a universal character" and that "the transparency obligations of public institutions should be prioritised over any requirements that might be placed upon citizens when requesting information".

The Council of Europe Convention on Access to Official Documents encourages states to permit anonymous requests. Such a policy may be seen as a logical extension of the principle that citizens should not need to provide reasons for making a request.

Methods of Accessing the Transparency Portal – and their Challenges

- *Using an electronic ID card.* According to the National Statistics Institute,[58] in 2014 47.9 percent of the Spanish population between the ages of 16 and 74 had an electronic ID card, but of these only 8.5 percent had the necessary electronic chip card reader, which must be purchased separately.
- *Using a digital certificate.* According to the digital certification authority CERES[59] as of Feb. 12, 2015 there are 4,169,453 active digital certificates in Spain out of a population of over 46 million.
- *Using the "Cl@ve" system.* This system requires requestors to provide the bank account number with which they use to pay their taxes and to either go to the Spanish tax agency to pick up an online access code, or wait for the code to arrive in the post.

Finally, the Transparency Portal excludes non-Spanish citizens who are not resident in Spain from making requests. Citizens from certain European countries can send requests using the portal, but only if they are signed up with the STORK system, an electronic platform facilitating mutual recognition of European IDs.

2. The Transparency Portal has been criticised by the media, with some commentators describing it as "difficult for citizens to swallow"[60] or "a lot of hot air but little data".[61] Amongst the most prominent criticisms are what is seen as an extremely inefficient search engine; the fact that the majority of the information is published in non-reusable formats (above all in PDF format, which makes the data difficult to use); and the existence of information tables that do not source of some of the data.

3. Despite the fact that the law has been in force for more than two months, there is still no information about the existence of a specific appeals mechanism for presenting complaints to the Transparency Council.

This situation affects citizens who have filed requests beginning on Dec. 10, 2014. For those who have received a negative response to their information request, or who have received no response within the one-month period foreseen by the law, there is no information on what specific mechanisms are available for appealing to the Transparency Council in order to defend their right of access to information. Currently, the only option available is to present an appeal to the government's central registry, as the Transparency Council still does not even appear as a possible recipient of requestors' complaints.

VIEWS FROM THE MISSION

The quality of Spain's access to information law, as well as the law's implementation and its usefulness for Spanish journalists wishing to access government-held information were among the topics discussed during the international delegation's meetings with media houses, journalist associations, and public institutions.

During the visit, the international delegation encountered widespread scepticism toward the law, with several civil society organisations and media representatives criticising the measure for failing to meet European and international standards on the right of access to information. For example, representatives of the EFE news agency said the law "left a lot to be desired". ElConfidencial.com's editor branded the measure a "psuedo law", echoing the verdict of the new Platform for the Defence of Freedom of Expression. Professor Manuel Sánchez de Diego of the Complutense University of Madrid, who also gave a presentation at the IPI/Access Info seminar on defamation laws in Madrid, noted in a recent PDLI report that, despite have been one of the last EU countries to pass a freedom of information law, Spain had passed a "highly improvable" version.

"There is political will to ensure that [this law] works, to put it into practice and to see what we need to improve. This law will change the culture of the government and of [Spanish] society."
- Carmen Martínez Castro, Secretary of State for Communication

In a meeting with the delegation, Spain's Secretary of State for Communication, Carmen Martínez Castro, defended the law by pointing out that no transparency legislation had ever existed in Spain previously and that the text had incorporated the suggestions of the parliamentary working groups. "There is political will to ensure that [this law] works, to put it into practice and to see what we need to improve" she said. "This law will change the culture of the government and of [Spanish] society."

[5] The Phenomenon of Question-less Press Conferences

Reporters without Borders Spain

"What is a journalist supposed to write in a press conference where no questions are allowed?"

So began, all the way back in Feb. 2004, a column by *El País*'s public editor criticising the phenomenon, recently introduced in Spain and spreading rapidly, of holding press conferences without questions. The practice, the column concluded, amounted to a fraud for journalists, for readers and for freedom of the press – a charade in which journalists were relegating to playing extras to the politician of the hour, who, in front of television cameras, pretended to be holding a real press conference.

The new trend apparently caught the fancy not only of the then-prime minister, José María Aznar, but also other government ministers, presidents of autonomous communities such as the Basque Country and Catalonia, and politicians and public figures of all political stripes. After all, it is a way of appearing before the media that, critics say, has proven to be highly effective for many rulers in impeding access to the free flow of official information. A perk of official privilege, question-less press conferences offer a convenient opportunity to deliver propaganda in the party interest.

Since the time of the Aznar administration, the incidence of this phenomenon, closely linked to a lack of transparency and the absence of a democratic exchange of information, has only increased in Spain. Ten years later, the informational opacity of the current prime minister, Mariano Rajoy, like Aznar a member of the People's Party (PP), is widely acknowledged. Since taking office in 2011, Rajoy has held a press conference for journalists with questions only twice a year: once before the summer recess and once at the end of the year. Meanwhile, Spanish reporters are reduced to snatching sporadic responses from the Prime Minister during his official travels abroad, when his appearance in front of international media makes it practically impossible for him to refuse to respond. Otherwise, they must content themselves with the weekly press conferences held by the deputy prime minister following cabinet meetings.

This communications strategy reached what many consider to be its apex in 2013, when Prime Minister Rajoy debuted a novel form of appearing in front of the media: the "plasma press conference", i.e., appearing remotely via a plasma television screen. Without allowing questions, of course.

Repeatedly over the last five years, journalists, professional associations, unions, journalist associations and press freedom organisations such as Reporters without Borders have publicly condemned the phenomenon, which has become so ubiquitous that some media have begun employing the disclaimer "declarations made in a question-less press conference" to accompany respective coverage. Such has been the policy of RTVE, the Spanish

public broadcaster, since June 2010. According to its style guide, RTVE now informs its audience when a broadcast contains statements made during a question-less press conference. But not all media have followed suit, which means that readers and viewers are being misinformed.

The Federation of Press Associations of Spain (FAPE, according to its Spanish acronym), the leading professional organisation for journalists in Spain with more than 20,000 members, has made the rejection of question-less press conferences one of its leading demands since 2010, "concerned that political parties, administrations and other bodies and public figures practice holding press conferences during which journalists are denied the right to ask questions".

The issue of question-less press conferences was brought up by the IPI-led delegation in its Dec. 2014 meetings with representatives of various media in Spain. Nearly all those consulted agreed that the practice was undemocratic and unconducive to transparency of information, although a few pointed out that in other democratic countries governments also make "institutional statements" without questions. The editor of ABC, Bieito Rubido, responded to the delegation's concerns about the practice by suggesting that Prime Minister Rajoy was no different in this respect than his predecessor, José Luis Rodríguez Zapatero of the opposition Socialist Workers' Party.

The editors of *El Pais, El Mundo*, and the EFE news agency indicated to the delegation that they were in favour

"What is a journalist supposed to write in a press conference where no questions are allowed?"

In 2011, FAPE launched a "Manifesto against Question-less Press Conferences", which was signed by more than 5,000 journalists and around 100 newspapers, radio stations, television broadcasters, press agencies, magazines, and digital and local media. The manifesto requested political parties and other entities to cease any attempts to limit the exercise of journalism, including the practice of holding question-less press conferences. That same year, together with the Madrid Press Association (APM), FAPE created a symbol to indicate the incorporation of material from question-less press conferences in printed, audiovisual media, and digital media content and a separate sound signal for radio content.

One year later, in 2012, FAPE went one step further and brought its campaign #sinpreguntasnocobertura ("withoutquestionsnocoverage") to the Council of Europe. The president of the Parliamentary Assembly of the Council of Europe, Jean-Claude Mignon, promised to review the campaign against the question-less press conferences and bring it to the attention of the Council of Europe.

But despite these numerous protests in recent years and the general opposition of the journalistic profession to this harmful practice, which prejudices both the right of citizens to receive the news and right of journalists to report it, the question-less press conferences remain. Inexplicably, politicians have not denounced something so useful for themselves; nor have journalists boycotted the conferences; nor have media owners banded together to put an end to the practice.

of a united media front to put an end to the practice by collectively refusing to cover them (here it should be mentioned that the editors of a few digital media outlets, such as Eldiario.es, told the delegation they had already stopped attending the conferences). The editor of *El Mundo*, Casimiro García-Abadillo, was particularly convinced that such an effort would be very useful. But they also stated that, so far, it had not been easy to put plans into practice, without specifying why.

In the delegation's view, a collective boycott by media owners and/or represents at once the most effective and the most appropriate vehicle for doing away with question-less press conferences. Effective, because despite their numerous declarations in favour of transparency of information, politicians do not appear to be interested in renouncing their version of communication with the mass media anytime soon. Appropriate, because the responsibility of deciding whether or not to attend such conferences should not be allowed to loom over individual journalists already under pressure from an extremely serious economic and technological crisis that has deeply affected the profession through thousands of layoffs and media closures.

The delegation believes that it is critical that the right of Spanish journalists to ask questions at press conferences held by their country's highest elected officials be recognised and immediately reinstated wherever it is being denied. Such questions contribute indispensably to governmental transparency and balanced news coverage.

[6] The Public Security Law, Journalist Safety and Press Freedom

Reporters without Borders Spain

In Dec. 2014, the Spanish Chamber of Deputies, with the sole support of the ruling Popular Party, approved a controversial new Public Security Law (Ley de Seguridad Ciudadana), which has been known as the "gag law" (ley mordaza) from the moment its contents were made public in 2012. The latter epithet is a reference to a bill that former Italian prime minister Silvio Berlusconi attempted to have approved in Italy in order, critics allege, to silence judicial information that directly affected them; in Spain, the term highlights the dangers many believe the law harbours for citizens seeking to exercise their rights and for journalists seeking to freely exercise their profession.

The government's first draft of the bill, unveiled in autumn 2013, was assailed by the public, media, unions, human rights groups and opposition political parties, with some fearing that the measure would drag Spain back to the repressive Franco years in terms of public security legislation. With specific regard to freedom of expression, the draft envisioned fines of between €30,001 and €600,000 for the use of images or personal or professional data related to public security officers that could harm "[officers'] right to honour, privacy and self-image, endanger their personal or family safety or put at risk the success of an operation, without prejudice to the right to freedom of expression".[62]

Following an avalanche of judicial and public criticism, the Spanish Cabinet, in late Nov. 2013, approved a "softened" version of the draft bill under which, for example, the possible fine for the use of images and data related to public security officers was reduced to €100 to €1,000.[63,64] Nevertheless, the revised text was considered to have preserved the essence of the first draft's censorial spirit.

In July 2014, the Cabinet sent a final version of the bill to the legislature for consideration.[65] The text passed by the Chamber of Deputies,[66] in comparison to the Nov. 2013 draft bill, contains altered as well as partially (re)elevated fines related to the use of images and data of public security officers. Specifically, the "unauthorised use of images or personal data … that could endanger the personal or family safety of [public security officers … or that put at risk the success of an operation" is punishable with a fine between €601 and €30,000 ((Art. 36/26), while displaying a "lack of due respect toward members of security forces in the line of duty" is punishable with a fine between €100 and €600 (Art. 37/4).

On March 12, 2015, the Spanish Senate approved the bill with slight modifications. At the time of this writing, the Senate's version awaits final approval in the Chamber of Deputies.

Reporters without Borders (RSF), an organisation that defends freedom of expression around the world, firmly opposed the bill from the beginning. In Oct. 2012, after the Interior Ministry announced its plans[67] regarding the proposed Public Security Law, RSF released a statement urging the Ministry to end "all attempts to undermine the legitimate right of the media or of citizens to cover events that take place in public spaces and that are of public interest".[68] The statement noted that "the European Court of Human Rights protects the right to freedom of expression (Article 10 of the European Convention on Human Rights) and has ruled that freedom of expression prevails over all other interests when the matter at hand consists of attempting to report on questions of public interest". It further called for all journalists to be able to film or photograph protesters and security officers without fear of legal action for violation the rights to privacy or personal image.[69]

Since then, RSF has continued to reiterate its opposition to the Public Security Law, emphasising that the measure not only constitutes an assault on freedom of expression but also may lead to censorship. Following the bill's passage in the Chamber of Deputies, RSF stated: "Photography and video are essential mediums for delivering the news and for ensuring transparency with regards to any abuses that may be committed. They are a fundamental news gathering activity in all democratic societies."[70]

The remaining members of the IPI delegation join RSF in expressing serious concern over the Public Security Law. In particular, the organisations share the belief that the vague wording of Art. 36/26 potentially offers security

forces carte blanche to prevent journalists from carrying out their work.

The bill has also received intense domestic criticism. In Nov. 2013, the Madrid Press Association (APM) declared: "[Photo and video] coverage forms an important part of the news-gathering interest of the media and of the public, for which reason any attempts to punish such coverage would harm the rights of freedom of expression and information." The Federation of Press Associations of Spain (FAPE) also voiced its opposition to the law, and also noted that many of the provisions applicable to journalists are "already covered by the Organic Law on the Right to Honour, Privacy and Personal Image, which also makes clear when the recording of such images does not amount to an illegitimate act".

Unions, such as the National Association of Press and Television Photographers (ANIGP-TV) and the Federation of Journalist Unions (FeSP) have likewise rejected the law. The latter stated that the bill seeks to prevent journalists and photographers from obtaining visual news coverage of police actions and "leaves them to the mercy of arbitrary decisions by public officials and officers".

For its part, FAPE, which represents more than 20,000 members, negotiated an agreement with the Interior Ministry under which reporters, photojournalists, and cameramen may request and receive a jacket bearing the inscription "PRESS" for use while covering demonstrations and street protests so that police and security agents can clearly identify them. The use of the jacket would, according to the thinking behind the agreement, help to avoid detentions or other types of incidents. Not all journalists, however, are in agreement with regards to the inscription and it is not considered obligatory.

Parallel to debate on the bill, RSF has recorded an increase in incidents involving photographers and cameramen, especially freelancers, while covering protests, *escraches*, evictions, or police actions against immigrants near the Melilla and Ceuta border fences. RSF has reported numerous examples of security forces preventing or seeking to prevent journalists from carrying out their work. Reporters have had their cameras or video equipment seized; been harassed or detained by security officials; and, on occasion, subjected to court action.

Both RSF and other members of the IPI-led delegation in Spain are concerned about the possibility that the Public Security Law may result in an increase in similar incidents. The organisations in particular urge both the Senate and the Spanish government to take into account both domestic and international criticism of the law and ensure that the measure, in both wording and application, provides sufficient safeguards to protect the right of journalists to cover events in the public interest.

Concrete reported examples of what many journalists view as a hostile climate include:

In May 2013, photojournalists Raúl Capin and Adolfo Luján were arrested and charged with undermining public authority in connection with their coverage of an *escrache* on Feb. 23 of that year at the residence of Chamber of Deputies president Jesús Posada and later of the event "asedio al Congreso" ("seize the Chamber") on April 25. Prior to their detention, Capin and Luján were not notified of the investigation against them. The pair was released shortly afterward.[71]

Between 2010 and 2011, Edu León, a photographer for the newspaper Diagonal, faced court charges on four occasions after photographing round-ups of immigrants for the project Fronteras invisibles (Invisible Borders).[72]

Freelance reporter Juan Ramón Robles received the 2013 Ortega y Gasset Prize for Digital Journalism for his video recording[73] of a police operation in Madrid's Atocha train station. The video purports to show acts of intimidation and harassment of journalists covering the action. Robles has continued to document similar incidents on his YouTube channel.

In March 2013, FAPE condemned[74] an incident in which bodyguards protecting Spanish Health Minister Ana Mato allegedly assaulted Antena 3 reporter Soledad Arroyo, who reportedly suffered a broken hand.[75]

In Aug. 2011, Gorka Ramos of Lainformacion.com was beaten and detained by police while covering the one of the protests of the 15M movement in front of the Interior Ministry.[76]

In July 2014, RSF issued a statement calling on Spanish forces to respect the rights of journalists to cover events near the Melilla border fence following complaints over the formation of an "arbitrary" 1,000 meter "security perimeter" that apparently inhibited efforts to report on the situation.[77]

In Oct. 2014, a judge threw out charges filed by three photojournalists – Juan Ramón Robles, Gabriel Pecot and Rodrigo García – who claimed to have been assaulted by police while covering an operation at Atocha station despite what was viewed as clear video evidence supporting the journalists' claims. The judge in the case reportedly ruled that the individual officers in the video could not be identified.[78]

[7] Spain's Defamation Laws and their Application

International Press Institute

The current regulation of defamation in Spain falls short of international standards on freedom of expression and the protection of reputation, including those set by the U.N. Human Rights Committee (UNHRCm), the Representative on Freedom of the Media of the Organization for Security and Co-operation (OSCE RFOM) in Europe, and the European Court of Human Rights (ECtHR).[79]

Most prominently, as in the majority of European Union member-states, defamation remains a criminal offence under Arts. 205 (*calumnia*, or "slander") and 208 (*injuria*, or "insult) of the Spanish Criminal Code. While it has never explicitly ruled out the existence of criminal defamation laws, the ECtHR has frequently criticised their use and underscored the latent chilling effect they harbour. Both the UNHRCm and the OSCE RFOM have called on states to decriminalise defamation, as has the Parliamentary Assembly of the Council of Europe. Unfortunately, Spain's criminal defamation laws continue to be applied against the media, albeit with indeterminate frequency.[80]

Insult is punishable with a fine only, but slander can result in up to two years in prison. However, the ECtHR, in line with clear international consensus, has indicated that imprisonment is never a proportionate punishment in defamation cases.[81] The delegation is not aware of any cases in which a Spanish journalist has been sent to prison for defamation in the democratic era, although prosecutors have sought prison time in a limited number of instances.[82]

Several related criminal provisions give cause for concern, including Arts. 496, 504, and 543 of the Criminal Code, which punish defamation of the Spanish Parliament, certain governmental institutions, and the Spanish state and its symbols, respectively. International standards generally reject the notion that public bodies and symbols can be the legitimate subject of a defamation complaint, in part given the ease with which such provisions could be abused. Additionally, the Criminal Code's prohibition on lèse-majesté (offense toward the monarch and/or royal family, Arts. 490 and 491) continues to be applied, including against the press.[83]

Civil defamation claims are brought under the Organic Law on Civil Protection of the Right to Honour, Personal and Family Privacy, and Personal Image. This law, enacted in 1982, lacks key safeguards against abuse, such as a cap on compensation for non-pecuniary harm and clear standard defences (e.g., truth and reasonable publication).

The issue of Spain's defamation laws was addressed during both the mission and a two-day seminar on defamation and press freedom held in Madrid on Nov. 27 and 28, 2014. The seminar was jointly organised by IPI, the London-based Media Legal Defence Initiative (MLDI), and Access Info Europe and hosted by the Madrid Press Association (APM).[84]

The mission delegation encountered a **general openness among all interlocutors to the argument against criminal defamation laws**. Juan Luis Ortega, attorney for *El Mundo* and other publications belonging to the Unidad Editorial group, told seminar participants: "In my view, it is not necessary in a democratic state to have journalistic activity … sanctioned under penal law in the case of slander and insult."

Carmen Martínez Castro, the Spanish government's secretary of state for communication, indicated the government's willingness to hear the delegation's concerns in this respect and suggested broaching the matter with the Ministry of Justice, although the latter was unavailable to meet with the delegation. Representatives of the Defensora del Pueblo (Spain's national ombudsman on

"In my view, it is not necessary in a democratic state to have journalistic activity … sanctioned under penal law in the case of slander and insult."
- Juan Luis Ortega, at IPI/Access Info seminar

civil rights and liberties) invited the delegation to send documentation on Spain's compliance with international standards on the protection of reputation.

At the same time, **the vast majority of media practitioners and legal experts interviewed by the delegation did not view the abuse of defamation laws as a significant threat to freedom of expression in Spain.**

The reason for the lack of concern, however, did not necessarily appear to be linked to a lack of defamation lawsuits against the press. Quite to the contrary: many journalists reported having been the target of defamation or similar claims involving personality rights. Antonio Rubio, deputy director of *El Mundo,* estimated that he had subjected to 40 lawsuits in his career. The problem, he told IPI seminar participants, "is not *having* lawsuits or [criminal] charges or trials – the problem … is *losing* them". And with a proper defence, he suggested, "the court cases can be won".

Rubio's confidence appeared to be shared by many other journalists. In other words, there was a widespread view that political figures did, in fact, seek to abuse defamation laws – they were simply unsuccessful at it, at least in legal terms. For example, in Sept. 2014 the Spanish Supreme Court unceremoniously quashed a €600,000 civil defamation lawsuit filed by Ignacio González, president of the Madrid Autonomous Community, against four former *Público* journalists, including current eldiario.es edi-

Cafè amb llet editor Marta Sibina discussed her paper's experience being targeted in a defamation lawsuit during an IPI/Access Info seminar on defamation laws, Madrid, Nov. 28, 2014. Sibina was joined by her co-editor, Albano Dante (to her left) and El Agitador editor Carlos Meca (to her right). *Photo: IPI.*

tor Ignacio Escolar. The Supreme Court's ruling, which upheld two lower-court decisions, could hardly have been more black-and-white: not only was the "public relevance of the information … obvious", but "the truth of the news content … is also obvious on the basis of facts that have been declared proven".[85]

Speaking to the delegation, Escolar characterised the suit as an act of "intimidation" and said politicians such as González "know they won't win the case, but [use it to] try to defend themselves before their audience". But he added: "€600,000 would close us down."

El País journalist Marta Fabra, a panelist at IPI's seminar, described having remained calm when an influential Spanish politician, Carlos Fabra, filed a defamation suit against her. Fabra said she knew she was "in good hands" with *El País*'s lawyer and enjoyed the support of her paper, one of Spain's largest by circulation.

Albano Dante and Marta Sibina, editors of the free Catalan-language monthly magazine *Cafè amb llet*, faced days of "defenceless and loneliness" after being served with a civil defamation lawsuit in 2011 by a prominent businessman in the Catalan healthcare industry. Dante and Sibina explained to IPI that "it was a question of not only lacking economic resources, but also [not knowing] whom you should go to, who can help you, what you can do." The pair eventually contacted an attorney they had seen on television who agreed to represent them pro bono despite not being an expert in media law. In a decision that drew both national and international criticism, *Cafè amb llet* was sentenced to pay €10,000 in damages – a "serious blow" for the magazine's editors.[86] The Barcelona Appeals Court overturned the verdict in Feb. 2014,[87] ruling that the impugned material, a video alleging a lack of transparency in Catalonia's public hospitals, constituted a legitimate contribution to democratic debate.

The problem, says El Mundo *deputy editor Antonio Rubio, "is not having lawsuits or [criminal] charges or trials – the problem is losing them". And with a proper defence, "the court cases can be won"*

The journalist won the case and, in a symbolic twist, just days after she declared to seminar participants that she had "not stopped publishing anything [as a result of the case]", Carlos Fabra began serving a four-year sentence for tax fraud following years of media investigation into his activities.

Spanish journalists' success in avoiding liability in personality-rights cases, then, appeared due to a combination of Spanish courts' willingness to protect freedom of expression in practice, the frivolous nature of the claims themselves, and strong legal support, both pre- and post-publication. (At the seminar, both Rubio and Ortega strongly recommended participating journalists to include attorneys as part of a journalist's core team – "not to act as censors", Ortega emphasised, but to show that "the same information can be sent out in different forms".)

Nevertheless, given the apparent habit of powerful Spanish figures to turn to lawsuits as a response to unfavourable media coverage, the delegation remains concerned about the **vulnerability of local or alternative media that lack the legal and financial resources of their more established counterparts**.

On the Spanish island of Lanzarote, the satirical blog El Agitador has been sentenced to pay approximately €38,000 in criminal fines, civil damages, and legal costs over vignettes considered to have offended the honour of a former public prosecutor implicated in a municipal corruption affair. Carlos Meca, El Agitador's editor, said that support for the blog had been confined to just "a few disparate media", notably other humorous publications such as the Madrid-based magazine *Mongolia*. El Agitador has also benefitted from pro bono legal representation and has appealed the criminal verdict to the Spanish Constitutional Court.

Another issue brought to the delegation's attention was what Pilar Velasco, another seminar panellist and journalist for Cadena SER, called the **"irregular" practice of political officials utilising publicly funded legal services to bring claims for damage to their personal honour.** Miguel Ángel Gallardo Ortiz, a lawyer and seminar participant who has undertaken monitoring efforts on this point, offered the delegation several examples. In Jan. 2013, María Dolores de Cospedal, president of the autonomous government of Castille-La Mancha, filed a €30,000 defamation lawsuit against Greenpeace Spain for violation of her personal honour – using the services of the autonomous government's lawyer.[88] In March 2014, Cospedal withdrew her claim. Likewise, Ignacio

González's €600,000 suit against *Público* was served by the deputy counsel of the Madrid Autonomous Community.[89]

In Aug. 2014, Gaspar Llamazares, a member of the Spanish House of Deputies for the United Left (IU) party, formally requested the Spanish government to describe what measures it planned to take to prevent political officials "from continuing to utilise … institutional juridical services covered by public funds to defend personal interests".[90] For its part, IPI points out that the lack of personal financial risk for public officials in such instances heightens the potential for the abuse of defamation laws (and, clearly, of taxpayer money).

Finally, despite its conversations with numerous legal experts and journalists familiar with the topic, the delegation encountered a **general lack of monitoring regarding the application of defamation laws in Spain**. No organisation, it appears, has sought to systematically gather statistics on certain critical legal questions, such as the frequency of criminal claims or the amounts of damage claims and awards, or catalogue instances of abusive claims directed at the media. This information gap – and accompanying overreliance on anecdotal evidence – suggests that the question of whether Spanish defamation laws restrict media freedom cannot be answered as completely as it should.

This report makes the following **recommendations related to defamation laws in Spain:**

- **Spanish criminal and civil defamation law should be reformed to meet international standards**, most urgently by the abolition of all criminal offences related to the protection of honour and reputation, whether of individuals or institutions, and the introduction of caps on compensation for non-pecuniary harm;
- **Media and civil-society organisations should undertake monitoring work on the application of defamation laws**, paying particular attention to the situation of local, new, and alternative media; and
- The Spanish government should **respond to MP and civil society concerns regarding the use of public funds to protect the private personality rights of public officials** and install safeguards to prevent abuse of such.

[Annex]

(a) Feature Report: To Innovate, Spain's New Media Look to Roots of Journalism
Javier Luque Martínez, International Press Institute

[b] List of Meetings

[c] Notes to Text

[a] Feature Report: To Innovate, Spain's New Media Look to Roots of Journalism

Javier Luque Martínez, IPI Digital Media Coordinator

Despite the general pessimism it has engendered, traceable to brutal effects on the print industry in particular, the economic crisis that has ravaged Spain over the last eight years has, in fact, had the effect of enriching the country's media landscape. The digital revolution has not only helped to facilitate the birth of new media outlets, but it has also completely changed the way in which media content is distributed. The playing field, previously dominated by the large media outlets, has now become a much more elastic space in which the latter must co-exist with a variety of new media initiatives.

"What is clear is that the barriers of entry to the media market are much lower now than they were before", suggests Pedro J. Ramírez, former editor-in-chief of *El Mundo* and founder of the new digital daily newspaper El Español, due to be launched in autumn 2015.

Since 2008, more than 452 news media channels have been launched in Spain, of which 406 have managed to survive to this day, according to the most recent data published by the Madrid Press Association (APM, according to its Spanish acronym). It is an impressive figure, even if some of those 406 survive more on the will of their journalists rather than their potential for growth in purely economic terms.

In the view of some of the media representatives with whom the IPI-led delegation met in Dec. 2014, the proliferation of new media projects is a sign both of the relative strength of press freedom in Spain and of the Spanish public's demand for media pluralism.

A BREEDING GROUND FOR NEW MEDIA

According to APM's most recent annual report on journalism in Spain, the loss of jobs in the media sector slowed in 2014, with the number of journalists registered as unemployed falling by more than 2,000. Nevertheless, the overall unemployment figure currently stands at 9,451.

Despite the cutbacks that the largest media outlets have been forced to implement in Spain, the more established titles continue to enjoy strong credibility, notes Jordi Pérez, associate professor at the International University of Catalonia. "As an individual, you don't follow one specific piece of news, and so therefore you don't know how other, more specialised, and perhaps smaller media, are dealing with the issue. So you wait for *El País* or *El Mundo* to publish it before you believe it."

Figures compiled by the web analytics service comScore appear to support this thesis. In December 2014, elPais.com led all other news sites with almost seven million unique visits, followed closely by elMundo.es and ABC.es. They are followed by 20minutos.es with 3.3 million unique visitors. ElConfidencial.com, the leader in terms of web traffic among new online news sites, registered nearly 3.2 million unique visitors during the same period.

"The big media outlets, for the moment, are considered in the collective imagination to be credible sources of information," affirms Pérez. But he also hinted at growing public interest in new voices. "People are beginning to cross-check the news with other, smaller, sources, through their friends' recommendations on social networks."

Ramírez went one step further, suggesting there was "a feeling of self-censorship, of a lack of freedom of expression, and a limiting of the fringes that are critical of the political and economic powers, [a feeling as] though there are issues about which it is best not to talk about". As a consequence, he said, "there is an enormous desire to rise up once again, and the perception that digital developments could provide journalism with the opportunity to recover its true meaning is steadily gaining ground".

It is a desire, some say, that echoes throughout a society heavily afflicted by the economic crisis and corruption scandals and described as eager for new sources of information. In this vein, the presenter and director of the online radio programme CarneCruda.es, Javier Gallego, asserts: "It is true that in Spain there was a moment in which it seemed as though parts of society began to realise that there was a monolithic, hegemonic discourse […] and almost as if in response to this need for change, for renewal, for transparency, for freedom of expression and for journalistic freedom that society demanded, many new media channels sprung up."

The breeding ground for this new wave of media channels is made up of three factors that are essential for the development of a new journalistic culture: discontent among citizens and civil society, the cutbacks applied by the large media outlets, and the explosion of new digital tools like social media and mobile devices that foster the distribution of content.

Josep Casulleres, news editor of VilaWeb, one of the deans of digital journalism in Spain, which has added reader subscriptions to its business model. Photo: IPI.

Journalists coming from traditional media houses say they felt the need to undertake the type of journalism they had always wanted to do. "The starting point was when I noticed that there was a gap that needed to be filled with something different," explains Olga Pérez, who spent 10 years at Cadena Cope, a commercial broadcaster linked to the Catholic Church, before founding the Internet-based radio station El Extrarradio. In 2013, El Extrarradio received the prestigious Ondas broadcasting prize. "There is a public out there that feels the need to consume surgically precise journalism."

However, the impetus with which many of these projects are launched is challenged by the lack of an economic model that can guarantee the media outlet's stability in the short term. "The enormous difficulties, particularly economic difficulties, that [these outlets] also face when it comes to developing a media channel are evident," says Virginia Pérez, deputy editorial director of the 20 Minutos Group, one of the doyens of digital journalism in the Iberian peninsula. "Internet advertising continues to be very badly paid and you need to be constantly on the look out for alternative sources of funding."

THE ECONOMIC MODEL: ARMED WITH INDEPENDENCE

To ensure consistency with the freedom and independence on which they base their public outreach strategy, the large majority of new media projects are born with the goal of staying small, and they rely on reader loyalty, social networks and the rise of the Internet in order to compete with the mainstream media.

"A large company wants journalism to be profitable. What does profitable journalism mean? Well, [it means that] that sometimes money is the priority and journalism comes second," explains Gallego. Along those same lines, Manuel Rico, editor of infoLibre.es, adds: "The greatest danger for press freedom in Spain is the influence of large companies and banks."

In general, the media outlets surveyed have prioritised an economic model based on reader subscriptions and that limits the importance of advertising to their bottom line. This model, the outlets say, offers a buffer against the influence of political and economic power.

"The membership model allows for enormous editorial freedom, since nobody is around to influence the journalists' work. That protects the independence of the project."

- Juan Luis Sánchez, deputy editor, Eldiario.es

In this manner, eldiario.es has already gained the support of almost 10,000 members in just over two years of existence. "The membership model allows for enormous editorial freedom, since nobody is around to influence the journalists' work. That protects the independence of the project," says Juan Luis Sánchez, the site's deputy editor.

Crític.cat, a new Catalan-language digital daily specialised in investigative journalism, has taken a similar path. "We are not entirely closed off to advertising but we limit it so that it represents a maximum of 25 percent of our income, and we would like for the other 75 percent to come from subscribers", says Joan Vila, co-founder of the cooperative that established Crític.cat. The site has gained over 800 subscribers in less than four months. "If you have advertising from large brands and you want to criticise those brands", Vila noted, "well, you might censor yourself."

The monthly newspaper *La Marea* has even established a "code of ethical conduct" that prohibits advertising from companies listed on the Spanish stock market. Daniel Ayllón, *La Marea*'s editor, explained that the policy exists not because such companies should be banned from advertising in general, "but because their business practices are not in line with our ethical standards. In other words, no company involved in home repossessions can advertise in *La Marea*".

That said, adopting this model has enormous economic consequences for these media projects. On many occasions, they have had to lower salaries in order to cope with income losses, or have witnessed how initial donations from the journalists themselves, the majority of which were founding members, steadily decreased over time. In some cases, journalists have not received remuneration over several months in an effort to guarantee the media outlet's sustainability – a measure that, obviously, can only be applied for so long.

For example, Pere Rusiñol, editor and founding member of *Alternativas Económicas*, a monthly publication specialised in economic news, recounted facing monthly losses of €17,000 around the end of 2013. In light of that situation, he said, "we decided to lower our salaries". That measure, together with an increase in sales and number of subscribers has improved the publication's monthly losses to €5,000. Rusiñol added: "We will only seek access to credit if we know that we can pay it back. And we have not reached that point yet, we are still at that point at which we have to prove that this is a viable model."

The latter stance is one shared by many of new media projects, amongst them *La Marea*. "So far we have decided against seeking a bank loan or credit from any institution because we wanted to be absolutely sure that the project would be sustainable and we did not want to get the members involved in any sort of problems," says Ayllón.

In the case of InfoLibre – a digital daily launched in March 2013 that is an official Spanish associate of Mediapart, the successful French model of journalism – Manuel Rico predicts that the point of economic equilibrium will be reached towards the end of 2015.

"I think that we are aiming for moderate and sustainable growth. In other words, we cannot move on to the next stage until we are sure that the previous stage is sound", summarises Gallego.

Spain's first digital media outlets have also witnessed the transformation of the online advertising market over the last 20 years. In the beginning, explains Josep Casullers, editor-in-chief of the news site VilaWeb, which boasts a twenty-year history, digital advertising was virgin territory and the relatively small number of outlets meant that there was enough to go around. But eventually, he said, "just like with the large media channels, digital media have also suffered a decline in advertising". In part as a consequence of the challenges in the advertising market, VilaWeb ended up moving toward a readership model.

It is worth noting here that, according to APM's 2014 report, although advertising has been perceived until now as the main source of income for the media industry, those outlets that have managed to achieve a balanced budget are, in fact, those that rely on diverse sources of income. In a survey of 85 media outlets conducted as part of the report, 60 percent generated their income, in addition to advertising, through the sponsorship of content and events, public donations, sales of print copies, or subscribers.

Members of the international delegation meet with Igancio Escolar, editor of Eldiario.es, which views an economic model that includes reader subscriptions as a way to protect against economic and political interests. *Photo: IPI.*

OUT OF SOCIAL NETWORKS, A COMMUNITY

The emergence of social media has changed the way in which Spaniards consume the news. According to a study carried out by the Carat Dentsu Aegis Network and included in the Association of Spanish Daily News Editor's (AEDE) 2014 "White Paper on the Press", two out of three Facebook users and 50 percent of Twitter users regularly use these social networks to receive news.

Furthermore, according to the latest "General Study of the Media" report compiled by the non-profit Association for Media Research (AIMC), 60 percent of Spaniards used the Internet in the period between February and November 2014. Among young people aged 14 to 34, the rate was even higher at close to 90 percent.

This new way of accessing the news has allowed media outlets with fewer resources to access an extraordinary means of dissemination without relying on the same marketing and communications budgets that the large media channels have. "Twitter, and the care with which our colleagues [on this platform] have treated us, have been essential for the survival of El Extrarradio," affirms Olga Pérez, the station's founder.

Special mention should be made of the case of Carne Cruda ("Raw Meat", in Spanish), a radio programme with a "rebellious" spirit, as its own creator Javier Gallego describes it. First aired in 2009 on a public radio channel, Radio 3, the programme ended up being the most downloaded radio show on the Internet. According to Gallego, Carne Cruda was seen as a model on social networks thanks to the space it created for different alternative voices to express themselves - voices that would later be involved in the 15M, or *indignados*, movements, and as well as the *mareas*, the citizen protests against government cutbacks in education and health care. In 2012, the programme's broadcast on Spanish public radio was cancelled and was then later cancelled by the private broadcaster Cadena SER (both the full version of the programme that was posted on the website and the shorter segment broadcast on the station's afternoon programmes).

I think that deep down we are a programme that, once it builds a community, can survive and enjoy total independence and freedom thanks to the fact that it has a community that looks after it, whether it be financially, when that is necessary, or through social support and mobilisation."
- Javier Gallego, founder, Carne Cruda

"At all times, it has been a programme that survived thanks to its impact on social media channels," Gallego explained. "It is true that nobody prevented its cancellation on [Radio 3] but actually, in the end, it was a trampoline towards other channels like [Cadena] SER. And when it was cancelled on [Cadena] SER, it was thanks to the listeners that the programme survived. I think that deep down we are a programme that, once it builds a community, can survive and enjoy total independence and freedom thanks to the fact that it has a community that looks after it, whether it be financially, when that is necessary, or through social support and mobilisation."

The creation of a community through social media or other types of networks has been of fundamental importance for the successful launch of many of the new media channels and for ensuring their survival later on. A community is a group made up of all the followers that feel a sense of ownership over the media channel, with which they often read and interact (on social networks this is usually between 3 or 4 percent).

The importance of having a "community" of loyal listeners was demonstrated when the programme raised more than double its fundraising target during a crowd funding campaign in 2014. "The aim was to start off by making a weekly, two-hour programme," recounts Gallego, "and in the end we managed to raise around €80,000". The money raised through this campaign allowed the station to produce two two-hour programmes a week, now through online radio, which is practically the same amount of airtime as they had had initially. Many of those that donated money have now become subscribers, of which there are now over 1,800 in total.

Crític.cat, *La Marea*, and El Extrarradio have also had similar experiences and have launched crowd funding campaigns that exceeded their fundraising goals.

Joan Vila of Crític.cat said the site already had 800 members after only four months of operation. "We managed to raise €45,000, almost double what we expected," he said, adding that many of the micro-donors had ended up becoming regular subscribers.

It is precisely this rock-bed of loyal readers who habitually interact with the media outlet through comments or online fora that has positioned El Confidencial as one of the most important among the so-called "digital natives" ("medios nativos digitales", i.e., those born in the digital ecosystem) in Spain. Fourteen years after its founding, El Confidencial has managed to build a support-base of readers that is so wide (according to industry standard data from comScore, El Confidencial received almost 3,200,000 unique visits in Dec. 2014) that the majority of its readers reach it through direct traffic - i.e., they actively search for the publication's home page.

"Both Google and social networks are very important channels through which we make ourselves known but we have absolutely no dependence on them", asserts Alejandro Laso, the site's marketing director. El Confidencial's editor-in-chief, Álvaro Rigal, agreed: "The majority of our readers go to our page because they have it saved on their 'favourites'. And that means that we don't have to worry so much about social networks or Search Engine Optimisation (SEO) because we have managed to create an identity over 12 years. We have galvanised a community of loyal readers. If you have to scrape 90 percent of your web traffic from Facebook or make sure you are optimally positioned on Google, then you are 'dead', because you depend entirely on others."

The newsroom of El Confidencial, among the most successful of Spain's "medios nativos". In Feb. 2015, the site partnered with The Guardian and other international media to publish an investigation into HSBC's alleged fiscal irregularities in Switzerland. *Photo: IPI.*

The question is whether, with time, these new projects will have enough impact on political and social life in Spain to guarantee their own stability. El Confidencial could be a paradigmatic case. Notably, it and the television channel La Sexta were the only national Spanish media outlets officially involved in the Feb. 9, 2015 pub-

lication of HSBC's alleged fiscal irregularities in Switzerland, joining the BBC, CBS and *The Guardian* and others at the international level.

A NEW RELATIONSHIP WITH READERS

On the new scene of news media outlets that is slowly developing, the reader plays a much more active role, and not just in terms of financial support. For example, many of the new outlets create fora and organise roundtables at which readers and subscribers can interact with the journalists and find out how the project is evolving.

La Marea has gone a step further and included the reader's voices as part of its governing bodies. Founded as a cooperative of seven journalists, the newspaper has a general assembly at which the readers make up 50 percent of the votes. In the governing council, where the day-to-day decisions that allow for the smooth running of the publication are taken, three of the six members are readers chosen by the general assembly. The votes of employees and readers are given equal weight.

According to *La Marea*'s editor, Daniel Ayllón, the dedication of some of the members of the general assembly is so significant that they independently initiated and voluntarily coordinated the set up almost fifty distribution spots all over Spain to complement the paper's usual distribution outlets of newsstand and libraries.

AMID THE "DIGITAL REVOLUITON", PRINT HOLDS ITS OWN

The notion, raised by some media observers, that print newspapers are condemned to extinction was challenged in the 2014 report "The Sea Change in the Media" (Spanish: "El cambio de era en los medios de comunicación"), published by the Madrid-based think-tank Fundación Alternativas (Alternatives Foundation). Print, the report suggested, far from being existentially threatened by the rise of digital, is actually "complemented by and even feeds off" new technologies. It noted, however, that print newspapers had to "re-adapt to find the meaning of their own existence".

Few question the advantages brought by the digital revolution: the existence of new narrative tools thanks to the interaction of different formats (video, audio or text); the reduction of overhead costs; the change of routine in the news rooms that have followed the Anglo-Saxon "digital first" model; the ability to disseminate content on a global scale, the end of unidirectional messaging, etc. However, despite the gradual decline in recent years in sales, the print format continues to survive in Spain. According to a recent statement by AEDE, mainstream newspapers achieved a combined turnover of over €760 million in print sales, although admittedly this is an 8 percent decline compared to 2013.

The large majority of new news media outlets have opted for the mixed model, using both print and digital formats. A few, though, actually special emphasis on the fibrous version. Such is the case of *Alternativas Económicas*, modelled after the homonymous French magazine, *Alternatives Economiques*, a cooperative with a 30-year history that employs around 50 workers and sells close to 110,000 copies a month. The Spanish edition opted immediately for the print format. One of its founding members, Pere Rusiñol, explained: "I think that print has a bright future, if it accomplishes its function. The consequence of making a mistake on paper has a very important impact on the final result, because once the magazine is printed, you can't delete the mistake." According to Rusiñol, who was also involved in the birth of the satirical magazine *Mongolia*, "this forces you to make sure your work is of a very high quality because you really have to think about, edit and prioritise the content very well".

For Daniel Ayllón of *La Marea*, "the printed version fulfils a very important function, which is the organisation of reality. We live under a constant bombardment of information on social media and in the audiovisual world. People go to sleep at night having seen plenty of headlines but without having looked thoroughly at any of the news stories. So, once a month, [we try to] take a step back and go into greater depth, to really explain the current news items."

"The printed version fulfils a very important function, which is the organisation of reality. We live under a constant bombardment of information on social media and in the audiovisual world. People go to sleep at night having seen plenty of headlines but without having looked thoroughly at any of the news stories."
- Daniel Ayllón, editor, La Marea

Another new media outlet for which print format plays an essential role is *Diari Ara*, a Catalonian newspaper that recently celebrated its fourth anniversary. "Four years ago, they told us we would never succeed because we were launching a print edition when print was about

to die and because we made people pay for content online when nobody else did that", recalls Isaac Salvatierra, editor-in-chief of the paper's web version. *Diari Ara* has figured out how to marry the two formats and the result is that, out of the 30,000 subscribers that the publication has in total, half of them pay for the digital version. With regards to the print format, the week-day papers have fewer pages, which reduces production costs. "We focus heavily on the weekend edition," Salvatierra explained, "which is when our audience has the time to read through it all more calmly."

It is worth adding that many of the new outlets that prioritise digital, such as eldiario.es, infoLibre, or Crític.cat, also publish special print editions.

LOOKING OUT OVER THE HORIZON

The new news media are betting on the preservation of their editorial independence. As a consequence, the majority steer towards a sustainable economic model that depends on reader subscriptions as the main source of income. At the same time, this model also serves as a shield against any potential influence from economic or political powers.

Obviously, they don't all survive in the medium-term. Solid journalistic projects can become weak business projects, points out Jordi Pérez. "People that dare to do new things do them, but there is always a two-or-three-year horizon over which you'd like to know that you will have a salary and a regular source of income, but you don't know if what you are creating will allow for this to happen."

Despite this, what is certainly true is that the cultural foundations are being laid down for a new model of journalism based on values like transparency and independence, values that appear to be demanded by the segment of the population that will soon become the middle class, one of the biggest target audiences of advertising brands. Ironically, such a shift would potentially leave Spain's new media well-positioned to benefit from the advertising market.

In addition, an innovative type of cooperation among the new media outlets, albeit still in an incipient form, is beginning to take root. "This network is crystallising in the shape of different projects," explains Ayllón, of *La Marea*. "Half a year ago, four outlets, namely *Diagonal*, eldiario.es, *Mongolia* and *La Marea*, launched a website called *Fíltrala* ["Filter it"]. It is an inbox for citizens to send us documents that contain important information and hence it provides us with new sources and stories to investigate."

The network is embarking upon new projects, and organises weekly meetings to reinforce the bonds among the participants and to brainstorm about new cooperative ventures. At the moment, the synergies are based on the personal trust among the editors of the media channels, given that most of them coincided at some point whilst working at some of the mainstream media outlets across the country. As a result, this network of cooperation is not yet particularly systematic.

As Pere Rusiñol, of *Alternativas Económicas*, suggested, these types of synergies could also eventually culminate into a system of independent nation-wide distribution. "Instead of using only the pre-existing sales channels with around 25,000 newsstands, an alternative system could be set up with less than 500 sales points in the street, as long as they are perfectly identifiable, and they could gather together all of the new publications that are trying to make their way into the media market," he says.

The idea behind this cooperation is to further the common objective of editorial independence while at the same time ensuring respect for each media outlet's distinct governing body and market niche.

At the end of the day, the great challenge facing journalists working in new media is to achieve more dignified working conditions without sacrificing the core model of limiting financial support from large corporations and public advertising, all while delivering the type of journalism demanded by parts of the Spanish public.

"In the next few years it is clear that not all the new media outlets that are emerging will succeed and that there will be a natural selection of sorts," notes Olga Pérez of El Extrarradio. "But I think that this natural selection will mark out the quality journalism, or at least, that is what I hope will happen".

List of Meetings

During the mission, the delegation met with, in addition to numerous individual journalists, editors, lawyers and civil society activists, representatives of the following institutions:

20 Minutos Group
ABC
Administrative Council of the Spanish Public Radio and Television Corporation (RTVE)
Alternativas Económicas
Association of Journalists of Catalonia (Col•legi de Periodistes de Catalunya)
Broadcasting Council of Catalonia (Consell de l'Audiovisual de Catalunya)
Café amb llet
CarneCruda
EFE News Agency
Europa Press News Agency
Crític.cat
Defensora del Pueblo (National Ombudswoman on Human Rights)
Diari Ara
El Agitador
ElConfidencial.com
eldiario.es
El Extrarradio
El Mundo
El País
El Triangle
FAPE Commission on Arbitration, Complaints, and Journalistic Ethics
Federation of Press Associations of Spain (FAPE)
Federation of Journalist Unions (FeSP)
Jordi Pérez, Universitat Internacional de Catalunya
La Marea
Madrid Press Association (APM)
Mongolia
News Council of Spanish Public Radio and Television Corporation (RTVE)
National Commission for Markets and Competition (CNMC)
InfoLibre
Plataforma en Defensa de la Libertad de Información (Platform for the Defence of Freedom of Expression)
Open Society Initiative for Europe (OSIFE)
Secretary of State for Communication
Teleduca
VilaWeb

[c] Notes to Text

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[5] See Freedom House's Global Press Freedom Rankings 2014 at https://freedomhouse.org/sites/default/files/FOTP_2014.pdf.

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[8] Previously, under the 2006 Law on Public Radio and Television, the Administrative Council of the RTVE Corporation consisted of 12 members possessing "acknowledged qualifications and professional experience", four elected by the Senate and eight by the Congress of Deputies (of which two were proposed by RTVE unions). In both chambers, a two-thirds majority was required. From among the 12 designees, the Congress of Deputies would then select a president, again by two-thirds majority. In April 2012, the government modified the procedure (Royal Decree No. 15/2012) for electing members to the council. The number of members was reduced to nine, four elected by the Senate and five by the Congress of Deputies. Although a two-thirds approval is still initially required for election to the Council, the changes state that if no such qualified majority can be reached within 24 hours after the first vote, members can be elected by absolute majority. The same modified election procedure also applies to the Council President.

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[10] Eduardo Fernández, "RTVE pierde la presidencia europea de Informativos con tal de apartar a una directiva", El Mundo, 30 Jan 2015, available at http://www.elmundo.es/television/2015/01/30/54cbc8ece2704ecd2b8b456f.html,

[11] Chapter II, Art. 6 of the Public Broadcasting Funding Act of 2009 obligates private senders to contribute 3% of their annual gross revenue to RTVE's budget (although the sum total of all such contributions may not exceed 15% of RTVE's funding). This obligation, according to the Act, "is a consequence of [RTVE's] renunciation of offering paid or conditional access content and of the elimination of advertising as a source of paid advertisement as a source of funding for the Corporation and the favourable economic impact that this will generate" for private senders.

[12] In January 2012, the current government announced plans to scrap CEMA and redistribute its proposed responsibilities. This decision was justified as a means to save the estimated €7 million needed to set up the council. CEMA would have been a two-tiered body consisting of an executive board and a consultative board. Notably, membership in the executive board would have required three-fifths approval by Parliament. A consultative board would have included participation from the media industry, advertisers, and consumers.

[13] Parliament can veto the appointment of members only exceptionally upon grave suspicion of lack of independence. However, gathering the absolute majority necessary to do so necessaries implies attracting votes from members of the governing party or parties.

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[81] "[T]he imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence." See, among others, Cumpănă and Mazăre v. Romania, no. 33348/96, ECHR 2004, available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-67816#{%22itemid%22:%5B%22001-67816%22%5D}.

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[86] See, e.g., coverage in the Washington Post: Olga Khazan, "Catalans fight libel fine with YouTube videos", 31 Oct. 2012, available at http://wapo.st/14949rc

[87] Rollo Apelación 162/2013, Sentencia núm. 61/14, available at: http://bit.ly/1BDiKby.

[88] See, e.g. "Greenpeace 1, Cospedal 0: la líder del PP retira la demanda contra los ecologistas", El Plural, 5 Mar. 2013, available at:http://www.elplural.com/2014/03/05/greenpeace-1-cospedal-0-la-lider-del-pp-renuncia-a-su-demanda-contra-los-ecologistas-a-los-que-reclamaba-30-000-euros/. Original affidavit available at: http://bit.ly/1HTx6GI.

[89] Affidavit available at http://bit.ly/1ww4FHJ

[90] Boletín Oficial de las Cortes Generales, Serie D/Núm. 515, No. 184/055487, available at: http://bit.ly/1KoHGHX.

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