

The reform of the audiovisual legislation and electoral coverage in Spain

La reforma de la legislación audiovisual y de la cobertura electoral en España

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ABSTRACT

Introduction: The purpose of this article is to propose the reform of the regulation in force in Spain on the coverage and treatment of information in the audiovisual media during electoral campaigns, in relation to the mandatory transposition into Spanish legislation, before the end of 2020, of Directive 1808/2018 of audiovisual communication. **Methodology:** For this, a review of the most relevant legislation in the field is carried out, including the Organic Law of Electoral Regime (LOREG by its acronym in Spanish) of 1985, the different laws of creation of public and private media, General 7/2010 Law of Audiovisual (LGA by its acronym in Spanish), the European Audiovisual Services Directive approved in 2018 and the regulation in other European countries on the organization of electoral debates and disinformation campaigns. **Results:** Although the 35 years of validity of the LOREG and its jurisprudence condition the legal framework of the audiovisual coverage of the electoral campaigns, it is possible to include in the transposition and reform of the LGA 7/2010 the regulation of the debates and new measures on the protection of pluralism, independence, and verification against fake news, issues that a group of Spanish academics raised during the public consultation of the Secretary of State for Digital Advancement (SEAD by its acronym in Spanish) of the Ministry of Economy and Business (MEE by its acronym in Spanish) on the transposition of Directive 1808/2018.

KEYWORDS: Audiovisual Media Services Directive; LOREG; electoral information coverage; electoral debates; disinformation.

RESUMEN

Introducción: El objeto de este artículo es plantear la reforma de la regulación vigente en España sobre la cobertura y tratamiento de la información en los medios audiovisuales durante las campañas electorales, en relación con la obligada transposición a la legislación española, antes de finales de 2020, de la Directiva 1808/2018 de comunicación audiovisual. **Metodología:** Para ello, se realiza una revisión de la legislación más relevante en el campo, incluyendo la Ley Orgánica de Régimen Electoral (LOREG) de 1985, las distintas leyes de creación de los medios públicos y privados, la Ley 7/2010 General del Audiovisual (LGA), la Directiva europea de servicios audiovisuales aprobada en 2018 y la regulación en otros países europeos sobre la organización de debates electorales y campañas de desinformación. **Resultados:** Pese a que los 35 años de vigencia de la LOREG y su jurisprudencia condicionan el marco legal de la cobertura audiovisual de las campañas electorales, es posible incluir en la transposición y reforma de la LGA 7/2010 la regulación de los debates y nuevas medidas sobre protección del pluralismo, independencia y verificación frente a las *fake news*, cuestiones que un grupo de académicos españoles plantearon con motivo de la consulta pública de la Secretaría de Estado para el Avance Digital (SEAD) del Ministerio de Economía y Empresa (MEE) sobre la transposición de la Directiva 1808/2018.

PALABRAS CLAVE: Directiva europea de servicios audiovisuales; LOREG; cobertura de la información electoral; debates electorales; desinformación.

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Translation by **Paula González** (Universidad Católica Andrés Bello, Venezuela).

1. Introduction

In November 2018, the new European Directive 1808/2018 for the provision of audiovisual communication services was approved, which revises the previous regulations of the same range of 2010 and which obliges States to adapt their legislation on audiovisual communication. In the case of Spain, it affects the basic legislation established by General 7/2010 Law of Audiovisual (LGA) and the laws of the Autonomous Communities with competence in the matter. The deadline for the transposition of the 2018 Directive into Spanish legislation ends in the last trimester of 2020.

The 2018 Directive has as its main objective the regulation of digital platforms, new operators of the media ecosystem that until now were only under the legal regulations of electronic commerce, causing asymmetric commercial competition and great impact on the traditional media business models (Campos-Freire, De Aguilera, and Rodríguez-Castro, 2018). However, this new Directive also contemplates other aspects related to the reinforcement of the independence of communication regulators, the platforms' contribution to the broadcast and production of European audiovisuals, self-regulation and user protection, and prevention of fake news and disinformation campaigns.

General 7/2010 Law of Audiovisual, approved in the legislature of the socialist president José Luis Rodríguez Zapatero, is the basic regulations that emerged in the context of the prelude to a major economic crisis in Spain and the strong influence of two commercial operators (Atresmedia and

Mediaset) that are consolidated as a stable duopoly of the sector (Mani Redondo, 2017). In terms of audiovisual electoral coverage, especially regarding public media, the basic Spanish audiovisual legislation of 2010 is limited to the enactment of the Organic Law on Electoral Regime (LOREG by its acronym in Spanish). In this regard, the laws of the public media (Law 17/2006 of June 5th of the State-owned Radio and Television, RTVE) of the State and the Autonomous Communities follow the same line.

The electoral regulation framework in Spain, in its various general aspects and those related to communication, in particular, is developed through Organic Law 5/1985, of June 19th, on Electoral Regime (LOREG), which has experienced in the last 35 years about twenty specific modifications, but not a thorough reform, in line with what has changed society and, especially, the structure and operation of the media. Nor have the audiovisual communication laws developed or adapted the basic principles of the LOREG to technological, production, and consumption of information changes.

The provisions of the LOREG especially articles 53 to 69, refer to all audiovisual legislation produced and modified in the last four decades, from the first laws of public (state and regional) and private television to the collection and update of all this regulation in the General 7/2010 Law of Audiovisual Communication. The scope of communication in electoral regulation also affects advertising legislation, particularly institutional advertising, and the Organic Law on Protection of Personal Data and Guarantee of Digital Rights (LOPD by its acronym in Spanish).

Several of these issues have changed over the last decades as a result of the profound metamorphosis that the media ecosystem has suffered, the impact of global digital platforms (Miguel de Bustos and Izquierdo Castillo, 2019) and the new forms of consumption or use of communication. The nature and importance of these changes is found in the new European Directive 2018/1808 amending Directive 2010/13 / EU on the coordination of certain legal, regulatory, and administrative provisions of the Member States regarding the providing of audiovisual communication services, which was approved on November 14th of last year and published in the Official Journal of the European Union on the 28th of the same month.

The preamble of the 2018 Directive recognizes that since 1989

The audiovisual communication services market has evolved significantly and rapidly, due to the current convergence between television and internet services. Technical advances have made possible new types of services and user experiences. Viewing habits, particularly those of the younger generations, have changed significantly. Although the television screen remains an important device for sharing audiovisual experiences, many viewers have opted for other portable devices to watch audiovisual content. (DOUE, 2018)

Therefore, the focus of this review has been these new forms of consumption and, above all, the new audiovisual service providers- the so-called platforms and digital networks- to seek a more balanced regulation in comparison with traditional operators, as well as regarding the responsibility of the contents they spread a good part of them produced by users.

In line with this European provision, the States have initiated the reform processes of their respective audiovisual legislation. The Spanish government, through the Secretary of State for Digital

Advancement of the Ministry of Economy and Business (MEE, 2019), held in early 2019 a prior public consultation on the modification of the General 7/2010, of March 31st, Law of Audiovisual Communication, which closed on February 22nd and which asked several questions and issues about the aspects to be included in the reform of the Spanish audiovisual legislation; not only those that could derive from the new European Directive but also others that should fit into the update of said regulation.

Several organizations, institutions, and teachers of Spanish Universities participated in this public consultation. Following the specific invocation of the public consultation, a group of professors from several Universities raised the need to take advantage of the transposition of the European regulation to carry out a thorough revision of the General 7/2010 Law of Audiovisual Communication and also of some aspects related to the current problem of electoral campaigns coverage by audiovisual media, in particular those of public service. This specific aspect of the coverage of electoral campaigns and the updating of the legislation is what motivates this research.

In this regard, the following questions are posed: 1. Does the validity and inaccuracy of LOREG in certain media aspects require its reform and/or extension of its regulation through other derived laws? 2. Should electoral debates be regulated by law and be included, in any case, among the obligatory benefits that public audiovisual media must organize? 3. Is there a European regulatory model for the regulation of electoral debates in the audiovisual media? 4. Is there legal margin in the transposition of a European audiovisual communication directive for the extension of regulatory aspects of electoral coverage legislation? 5. Does the problem of misinformation and other issues of the current information society justify the establishment of special measures of verification, respect for pluralism, and protection of democratic quality in the coverage of electoral campaigns?

2. Legislation and electoral coverage

The consolidated text of the LOREG approved in 1985 includes 16 articles that address issues related to communication, propaganda, and acts of election campaign coverage. This consolidated text includes the original legislation of 1985 and the successive modifications introduced until 2019, which are discussed below. Next, the specific articles of the LOREG that deal with the propaganda, organization, coverage, and broadcast of the communication on the electoral acts are enunciated and commented.

Article 53 establishes the prohibition and limits of propaganda before and after election campaigns, except regarding activities of parties, coalitions, and federations. Article 54 attributes the regulation of the public acts of the electoral campaigns to the Provincial Electoral Boards, reserving the powers of public order to the governmental authorities. Articles 55, 56, and 57 determine the obligations and provisions that correspond to city councils to provide places and means to parties, associations, coalitions, or federations and candidates to carry out electoral propaganda activities.

The writing of these articles points to the traditional use of static fixed spaces (murals) for the placement of typical electoral posters, but it does not specify, however, if in these places they could be installed- for example- electronic interactive screens or media that allowed to carry out and geolocate interactions with citizens. Technology allows it, but the legislation does not contemplate it, although it does not expressly prohibit it either. In this case, we would be faced with a situation of regulatory or legal vacuum as an activity of a new media.

Article 58 establishes the right to contract advertising insertions in the periodic press, radio, "and in any other means of private broadcasting", but without giving rise to discrimination in its admission.

Commercial television communication of a political nature is prohibited, as established by the General 7/2010 Law of Audiovisual (LGA). The wording of the corresponding articles of the LOREG and the LGA of 2010, respectively, are ambiguous nowadays concerning the concepts of advertising, commercial communication, and differentiation of the media, and do not contemplate, in regards to electoral communication and broadcasting, two new realities of the media ecosystem: convergence and the new media derived from the Internet.

A new wording and codification of the electoral regulation would require, regarding the activity of communication, to contemplate the new structure and specificities of the media in the Internet society, as well as the convergent social aspects of the Directives, current legislation or debates that contemplate issues of human dignity, equality, non-discrimination based on sex, race, ethnicity, nationality, religion, disability, sexual orientation, digital rights, fake news, etc.; traditional and new values that should be protected from communication in electoral campaigns, without implying collision with freedom of expression and opinion.

The sixth section of the LOREG, through articles 59 to 67, establishes the conditions for the use of publicly owned media in electoral campaigns. These articles refer to the special rates for postal mailings of electoral propaganda, to the right to free propaganda spaces on publicly owned television and radio stations, the manner of distribution of said free spaces, the proportionality rates set, and the Radio and Television Commissions of the Electoral Boards responsible for distributing the assignments of the established times.

Article 62 states that

If the territorial scope of the media or that of its programming were more limited than that of the summoned election, the distribution of spaces is made according to the total number of votes that each party, federation or coalition obtained in the constituencies included in the corresponding scope of diffusion or, where appropriate, of programming. (LOREG, 1985)

In the case of general elections (Article 63), the results of the previous elections to the Congress of Deputies are taken as a reference, a criterion that prevails in the case of coinciding with autonomous and municipal votes: if they coincide with regional and local elections, the first of these prevails and regional programs of the national media, and if elections are held only for the renewal of municipalities, the previous results of that area are the frame of reference.

Article 64, the object of the majority of the claims before the Electoral Boards by the new candidates, marks the distribution of time of free spaces in the public media. The scale established by the LOREG is as follows:

a) Ten minutes for parties, federations, and coalitions that did not attend or did not obtain representation in the previous equivalent elections or for those who, having obtained it, had not reached 5 percent of the total valid votes cast in the national territory or where appropriate, in the constituencies referred to in article 62.

b) Twenty minutes for parties, federations, and coalitions that, having obtained representation in the previous equivalent elections, would have reached between 5 and 20 percent of the total votes referred to in paragraph a).

c) Thirty minutes for parties, federations, and coalitions that, having obtained representation in the previous equivalent elections, would have reached at least 20 percent of the total votes referred to in section a). (LOREG, 1985)

Said article 64 adds that

The right to the free broadcasting times listed in the previous section only corresponds to those parties, federations or coalitions that present nominations in more than 75 percent of the districts included in the field of broadcasting or programming of the corresponding media. For municipal elections, the provisions of the special provisions of this Law will be applied. Parties, associations, federations or coalitions that do not meet the requirement for submission of candidacies established in the previous section are, however, entitled to ten minutes of broadcasting in the general programming of national media if they had obtained in the previous equivalent elections the 20 percent of the votes cast within the scope of an Autonomous Community under similar time conditions as those agreed for the broadcasts of the parties, federations, and coalitions. (LOREG, 1985)

Articles 65 to 67 mark the competences, among which is the distribution of free spaces in state media, and the organization of the Central Electoral Board through its Radio and Television Commission, composed of eight judges and five representatives proposed by the political parties within six months after the constitution of the Congress of Deputies. If the political parties do not agree for the election of their representatives before the respective Electoral Board, as happened in Catalonia in the last electoral processes, said body cannot be constituted and in that case, the central body acts. The Central Electoral Board may delegate powers to the regional and/or provincial Boards, for the elections of the respective fields. In any case, the Central Electoral Board is the body to which decisions of the regional or provincial boards can be appealed.

In the composition of the Radio and Television Commission of the Central Electoral Board until 2019, the absence of representatives with a profile of communication specialists, whether in the journalistic, audiovisual or advertising field, is striking. In addition to the judges that are part of it, the representatives proposed by the political parties are professors of Law or Political Science. The logical thing would be that the regulation required at least an expert representative in the fields of communication on which the commission has to act.

Without questioning the personality or knowledge of the academics represented, it is not easy for their training to master aspects of programming bands, audience evolution, broadcasts of all types of channels, streaming broadcasts, digital broadcasts, websites, platforms, and aspects of social networks. Although, in reality, not many of these aspects are contemplated, as they should, in the current electoral regulation. It is featured, however, in Article 67, the requirement and guarantee of neutrality, which is conditioned by those and other issues in the reality of the current media ecosystem.

Articles 68 and 69, corresponding to the respective seventh and eighth sections, refer to the rights of rectification and the diffusion of electoral surveys. The requirements of accompanying the technical data of the surveys are obvious and pertinent, although the legislation should be more guaranteed to require- in case of flagrant manipulations- ex officio opinions of the regulatory bodies of communication to highlight inappropriate treatments of the data. The impediment of publishing polls five days before the vote loses meaning in the face of the global dimension of the Internet, which transcends the state's territorial space of the ban, as is currently the case.

Between 1987 and 2019, 23 amendments were made to the Organic Law on Electoral Regime, but in the field of electoral coverage carried out by the media, a new codification and reform are necessary to adapt to the current media reality. The use of digital identity data and its instrumentalization from the profiles of digital platforms and networks, which caused the scandal of the Cambridge Analytica company- created by Robert Mercer and Steve Bannon, President Trump's controversial adviser- for its use in the North American elections and the Brexit campaign of the United Kingdom (Zunger, 2018; Schneble, Elger, and Shaw, 2018; Common, 2018), is a new aspect that, along with that of the fake news, worries states and has been the reason for the creation of high-level expert groups for the preparation of reports for the European Commission (HLEG, 2018).

Spain approved in 2018 an Organic Law on Protection of Personal Data and Guarantees of Digital Rights (LOPD by its acronym in Spanish), which introduces a controversial modification of article 58.bis of the LOREG that regulates the use of technological means and personal identities in electoral activities. Organizations such as ISACA (2018) question the wording of that LOREG article and maintain that it does not protect the use of personal data, "leaving an open path to voter manipulation". They believe that, since electoral propaganda was not considered a commercial purpose, citizens could not avoid being included in the Robinson list because of the harassment of such messages. For its part, the Spanish Agency for Data Protection (AEPD by its acronym in Spanish) defends that it will not allow political parties to make profiles of ideological, sexual, religious or any other type of information that can be obtained from citizens through social networks or other services.

3. Electoral information coverage

The informative programming of the coverage of the electoral campaigns is established through the plans elaborated by the direction of the public media, submitted to the report and approval of their corresponding administrative councils, which are held accountable to the respective electoral boards that only intervene on them if the obligatory neutrality that the LOREG determines in its article 66 is violated. This program includes the programs for opening and closing campaigns, monitoring spaces in the daily or weekly news, interviews, and debates. The wording of the aforementioned article also refers, in its second point, to private television stations.

Article 66 determines:

- 1) Respect for political and social pluralism, as well as for equality, proportionality, and information neutrality in the programming of publicly owned media during the electoral period shall be guaranteed by the organization of said media and their control provided for by laws. The decisions of the administrative bodies of the aforementioned media in the indicated electoral period are appealable to the competent Electoral Board following the provisions of the previous article and according to the procedure that the Central Electoral Board provides.
- 2) During the election period, privately-owned broadcasters must respect the principles of pluralism and equality. Likewise, during this period, private televisions must also respect the principles of proportionality and neutrality of information in electoral debates and interviews, as well as in the information related to the electoral campaign according to the Instructions that the competent Electoral Board prepares for this purpose. (LOREG, 1985)

Therefore, when programming and assigning information coverage, public audiovisual media follow the time-sharing criteria, in line with what is established by the LOREG for free electoral propaganda spaces. It is not about electoral propaganda, but about information, but the risk of being denounced by parties, coalitions or federations for lack of proportionality and neutrality conditions the journalistic standards of public media. This causes complaints from journalists and their professional organizations, although the dilemma is not easy to solve because the legal and jurisprudence doctrine of the resolutions of the Central Electoral Board is completely conservative in the interpretation of Article 66 of the LOREG (Castro, 2008; VV AA, 2012; Marqués-Pascual, Fondevila-Gascón, De Uribe-Gil, Perelló-Sobrepere, 2016).

4. Organization and regulation of debates

Although debates could be presented as an instrument of democratic quality and contrast essential for the formation of a well-informed political opinion, the organization and regulation of television debates in European parliamentary democracies is a more recent issue than in the States United of America, where they open with the historic 1960 dialectical confrontation between Nixon and Kennedy. Nor has its continuity been consolidated in Europe as much as in the United States, because there are several democratic elections in most European countries in which televised debates are not held.

In the United Kingdom, the country that creates the first broadcasting company (the BBC, established in 1922), the first television debate is organized in 2010 among the three candidates of the conservative, labour, and liberal parties (Anstead, 2015). The first debate, of a total of three, was on commercial television (ITV) and won, according to polls, the rookie third-party candidate, Nick Clegg, against Labor Gordon Gordon and conservative David Cameron. The British

controversy was provoked in 2015 by the number of candidates- seven participated in the first debate and five in the second, but not the *premier* Cameron in the latter- and by regulation guidelines, which studied a commission of House of Lords (2014).

Following the historic Nixon-Kennedy debate of 1960, Canada televised the following one in 1968. Germany organized the first electoral debate on television in 1972 and France in 1974, but Jacques Chirac refused to face the ultra-right-wing Jean-Marie Le Pen in 2002. In Germany, the debates were not resumed either until 2002 by Helmut Kohl's refusal to give the alternative to his opponents. Australia televises its first debate in 1984. In Italy, in the decade of the 90s of the twentieth century, the electoral debates of the RAI began carried out on public networks due to the direct relationship of Silvio Berlusconi with the ownership of Mediaset, the main private audiovisual group. In Spain, the first televised debate takes place on May 24th, 1993 between Felipe González and José María Aznar.

The self-regulation of the organization of televised electoral debates is the dominant system in Western parliamentary democracies. The electoral legislation establishes the democratic guarantees of participation, diversity, and plurality, but leaves the organizational capacity, provided that the basic rules are not violated, to the actors of the political system (parties and coalitions) and of the broadcasting (television networks) to agree it being held, the number, format, and structure of the debates.

This dominant system has been questioned and challenged on several occasions by some actors who felt excluded or harmed by the guidelines agreed according to that criterion. The main argument of these resources is the appeal to the non-discrimination of pluralistic diversity and access under equal or proportional conditions to a public resource such as the radioelectric space used by broadcasters, as occurs with the right of all the parties to place propaganda in certain places and facilities of urban spaces. This last line of argument was the one appealed by the German Liberal Democratic Party due to its exclusions from some electoral debates, which, however, the Supreme Court of that country did not take into account (Maurer, 2016).

The self-regulation of the organization of the debates, which the western legislative and jurisprudential tradition has enshrined on the responsibility of the actors of the representative democracy system, contrasts with the current impulses of political fragmentation, multiparty diversity, and new forms of democratic participation (Bachrach, Botwinick, 1992; Fung, 2006). This contrast calls into question whether the organization of the debates, in addition to the power of political actors and broadcasters, is also a right of the public to know the ideas on which they will cast their vote of confidence.

So far it is not like that because the parties and their candidates, or broadcasters, do not always want to participate or organize debates. A statistic prepared by Nick Anstead (2015) indicates that of the 10 elections held in Australia since 1984 there were only debates in nine; in Canada, from 1968 to 2015, there were only 10 debates from 13 elections; and in Germany, since 1972, there were 9 debates in 12 elections.

Consolidated and favorite candidates, especially when they are in power, are the most reluctant to accept the debates so as not to increase the knowledge of their opponents (Garro, 2019). Despite mediation, the debates offer a space for confrontation and reinforce opinions on leadership skills, credibility, and economic competence if they are previously unknown (Babos & Vilagi, 2018; López-García, Llorca-Abad & Valera-Ordaz, 2018).

The influence of the debates and the image transmitted by the candidates on the final decision of the voters are quite debatable issues. Winning the debate does not mean winning the elections. Even the commented Nixon's handicap against Kennedy of 1960 is refuted by Brusckke and Divine (2017) when they discovered that the survey data that attributed the disadvantage were biased. What research unanimously confirms is that debates increase participation (Klein and Rosar, 2007; Gallego Reguera and Bernárdez Rodal, 2017).

The two main debate formats are the face-to-face (TV-Duelle), with those parties that have options to preside over the government, and those of the multi-party group and the so-called "round of the elephants" (Maurer & Reinemann, 2003; Anstead, 2015). The former is characteristic of the bipartisan system and the latter respond to the current trend of multiparty fragmentation of democratic systems. The electoral regulations of the European countries establish the criterion of proportionality and the representation reached in the previous elections to establish the participation, with a minimum quota of between 5 and 10% of votes or seats in the corresponding chamber. That is a round of debates for face to face and another round for the rest of the candidates.

The breakdown of bipartisan systems has introduced other formats of three, four, and five, as well as the minority round, the latter with reduced audiences against the millionaire follow-up of the main leaders. Traditional and classic American matrix formats have been diversified and analyzed regarding direct public participation, infotainment (Conde-Vázquez, Puentes-Rivera, López-López, 2019), transmedia development (Saavedra-Llamas, Rodríguez-Fernández, 2018), the fact-checking applications (Mazaira-Castro, Rúas-Araújo, Puentes-Rivera, 2019), and the repercussions of campaigns through the Internet (Tambini, 2018).

These latest trends, which go beyond the organizational environment and go into the importance of the structure of the media ecosystem, platforms, artificial intelligence, algorithms, and new networks of today's Internet society, are aspects that the new regulation of communication must also contemplate from the point of view of political participation and democratic quality. The European Commission's concern is reflected in its reports and its new directives.

Experts- journalists such as Manuel Campo Vidal and Alan Schroeder- and prominent politicians- such as the former minister and organizational secretary of the PSOE, José Blanco, and the former secretary of State for Communication of the government of Mariano Rajoy, Carmen Martínez de Castro- put value on some conferences held at the Faculty of Social and Communication Sciences of the University of Vigo (Congress Debate TV, 2019) the importance of debates and their regulation, as long as they are considered as the most important moment of the electoral campaign (Navarro Marchante, 2019) and "an antidote against fake news and post-truth" (Campo Vidal, 2019).

5. New audiovisual and electoral regulation

The General 7/2010 Law of Audiovisual has to be amended before the end of 2020 to adapt the provisions of the European Directive 2018/1808 on audiovisual services (Perales, 2018; Díaz Arias, 2019; Instituto RTVE, 2019). The new Directive of 2018, which is an expanded revision of the same norm of 2010, categorizes digital platforms and social networks as new broadcasters subject to audiovisual regulation, matching their coverage to the legal conditions of traditional radio and TV operators. The new Audiovisual Services Directive also extends other social aspects of child protection, against xenophobia, media literacy, the need for independent regulators, and the easing of advertising broadcasts through audiovisual media.

The Directive, approved in mid-November 2018, gives States 21 months to transpose state and regional laws with powers in audiovisual matters. For this reason, the Ministry of Economy and Business (MEE) of the Government of Spain launched in January 2019 a public consultation with 25 questions on the various aspects that Directive 2018/1808 develops, to which different organizations, professionals, and citizens responded. Twelve experts in audiovisual matters and professors from different Spanish Universities also answered that public consultation, some of whose answers we reproduce below to argue the need for audiovisual reforms and electoral coverage that are sustained in this communication (Novos Medios, 2019).

The responses to said public consultation on the reform of Law 7/2010 were signed by Mercedes Caridad Sebastián, Professor of Documentation at the Carlos III University of Madrid; Juan Carlos Miguel de Bustos, Professor of Audiovisual Communication at the University of the Basque Country; Javier Marzal Felici, Professor of Audiovisual Communication at the Jaume I University of Castellón; Francisco Campos Freire, Professor of Journalism at the University of Santiago de Compostela; Carmelo Garitaonandía, Professor of Journalism at the University of the Basque Country; Mercedes Medina Laverón, Professor of the Faculty of Communication of the University of Navarra; Andrés Mazaira, professor at the University of Vigo; Enrique Guerrero, professor at the University of Navarra; Ana María López Cepeda, professor at the Faculty of Journalism of Cuenca; Fatima García López and Sara Martínez Cardama, professors of the Carlos III University of Madrid; and Eladio Gutiérrez Montes, expert in Digital Terrestrial Television.

The twelve academic experts and audiovisual professionals argue that the compulsory transposition process is an opportunity to elaborate “a new basic state and regional legislation that includes the transposition of the EU Directive 2018/1018 responding at the same time to these technological, economic, audiovisual harmonization, protection of rights, changes in consumption, and social uses challenges that anticipate the third decade of this century. The task is not easy, but it is extremely necessary because of its fourfold impact: technological, economic, regulatory, and social” (Novos Medios, 2019).

They also point out that the current basic audiovisual legislation has become obsolete:

The genesis of the General 7/2010 Law of Audiovisual was inspired by the European audiovisual policy of the first decade of the 21st century, Directive 2007/65 / EU, subsequently completed with some incorporations of the following Directive 2010/13/ EU and operator influences that took advantage of it to concentrate or restructure in the face of the economic crisis. The basic Spanish audiovisual law of 2010 was born already late, too short-term, without further development, even then diluted in some socially capital aspects. It is a basic legislation designed from DTT and from the dual market of national, regional or local public and private operators that has been overcome by the technological disruption of global digital platforms and networks, which represent new forms of use or consumption. The

ubiquitous algorithms transform markets, business models, and generate new social impacts.

(Novos Medios, 2019)

Along with basic issues such as the strengthening of guarantees of pluralism, independence, financing of the public audiovisual service, support for European and independent audiovisual production, reform of the CNMC, and creation of a convergent and competent independent regulator in the field of audiovisual content, the response of the twelve academics of the Spanish Universities also affects the following questions:

- Situation, regulation aspects and action plans regarding the problem of fake news in Spain.
- Situation and criteria on codes, good practices, action plans, and regulation of the protection of minors as well as their private data, both in traditional media and in the contents generated by users on the platforms.
- Treatment and regulation in the legal framework of aspects related to racism, xenophobia, and terrorism.
- Harmonization of state and regional audiovisual legislation as well as constitutional recognition of cultural and linguistic diversity.
- Criteria for the establishment of plural and participatory mechanisms to represent the diversity of consumers, users, citizens, and business, professional, and social organizations in governance and regulation systems.
- Criteria for the inclusion of indicators of pluralism, diversity, promotion of equality, and accessibility of people with visual and auditory capacity.
- Criteria for the regulation and promotion of media literacy actions.
- Criteria on domain situations in the use of data and algorithms by platforms compared to traditional operators in the management of programmatic advertising.
- Criteria and new models of financing fiction production and promotion of creative industries in the face of the emergence of new forms of consumption and networks of Internet operators.
- Criteria for the reinforcement of independence in the governing bodies of public audiovisual services and audiovisual regulatory entities.

- Criteria for more active and proactive participation and social representation in the aforementioned bodies.
- Criteria for the protection and conservation of audiovisual heritage. (Novos Medios, 2019)

Finally, in response to question 25 of the Secretary of State for Digital Advancement (SEAD by its acronym in Spanish) of the Ministry of Economy and Business on what alternative solutions could be raised concerning other modifications to be introduced in the audiovisual regulatory framework, the following is answered:

As a general idea, the process of interlocution with the agents and related parties is equally convenient and advisable for other modifications, including the reform of the coverage norms of the electoral campaigns in the traditional media and the new problem arisen with the issues of misinformation and fake news in these democratic processes, as several European countries and of the world have, and still are, regulating. This modification transcends the areas of the Organic Law of the Electoral Regime and the state and regional audiovisual laws. The change in the media and the information society since LOREG was approved is very important. And that is why this law, its developments, and resolutions deserve a review and adaptation to the current context. (Novos Medios, 2019)

6. Conclusions

The carried-out review of the electoral and audiovisual legislation shows that the answer to the first question about the obsolescence and imprecision of the LOREG requires its revision or development through its derived audiovisual norms. Because the LOREG is an organic law, academics and experts conclude that its thorough reform would require a political situation of greater stability and consensus than that registered in recent years and that envisioned for the immediate next. However, the forced reform of audiovisual legislation opens a window of opportunity to update issues related to electoral coverage through these media.

The regulation of electoral debates is necessary and convenient and must be framed within a framework of co-regulation, which reconciles the freedom of the media and political actors with the rights of citizens to be well informed, through an independent regulator of the audiovisual sector-body in which the new European Directive places great emphasis- and of the Electoral Board in the last instance. This duality of co-regulation is the most consolidated European model, which the United Kingdom develops through OFCOM (The Office of Communications) and the courts.

The regulation by law of the debates would be positive because it would allow incorporating the public's right to participate, as spectators or actors, without subtracting the freedom of the candidates to intervene or not in them. The regulation, which in any case could be a part of the obligation of the public audiovisual to have media at the service of the candidates to access the audience, would expand diversity, pluralism, and independence. This regulation does not interfere at all with the

principles of Spanish or European electoral legislation or jurisprudence, which mission is to protect basic rights without interfering with their exercise.

Since the approval of the current Spanish electoral legislation, in 1985, and despite its successive reforms, much broader and more ambitious changes have been developed in the communication system in general and in the media in particular. The public media system was expanded and both the number and the impact of private channels multiplied, analog technology gave way to digital, convergence and the Internet further diversified the landscape, European regulation reconverted the concept designation of radio television in linear or non-linear audiovisual services, then social networks and digital platforms appear, and now comes artificial intelligence, smart TV, the first blackout of DTT, 5G access, and audiovisual communication from the cloud. With all that, the ways of access, consumption, and production of contents changed.

In this context of changes and mutations, the carrying out of electoral debates becomes important, as events of general interest, with much greater relevance than the traditional free spaces for electoral propaganda, the obsolescence of restrictions on the diffusion of polls, the absence of regulation on the impact of new technologies or propaganda phenomena such as fake news, and the problem of the public media's traditional formats of information coverage of campaigns, constrained by the pressure of political parties and the self-censorship of the risk of sanctions of the electoral boards. The sum of all these factors forms a sufficient argument for a new codification of the regulation on electoral coverage in the media.

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