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THE COURT DECLARES INVALID A REGIONAL PARLIAMENT DECISION THAT PREVENTED A TRADE UNION'S PARTICIPATION IN THE BOARD OF DIRECTORS OF A REGIONAL PUBLIC TV

The First Chamber of the Constitutional Court of Spain has upheld an appeal for constitutional protection brought by the Regional Services Federation UGT-Madrid (FES-UGT) against the decision adopted on March 7th 2016 by the Board of the Regional Parliament of Madrid. This decision excluded such trade union from the list of professional and social associations designated by the Parliamentary Commission. The role of this commission consists of the monitoring of the *Radio Televisión Madrid* Public Body as well as to propose five candidates to join its regional TV Board of Directors. By a ruling drafted by Magistrate María Luisa Balaguer, the Chamber declares that the abovementioned decision violated: the right of the trade union to equality (art 14 of the Spanish Constitution [CE]), the right to have access to the public media through legally established means (art 20.3 CE) and the right freely join a trade union (28.1 CE).

The Court examines the appeal considering that the parliamentary control established in the Constitution (art 20.3) over publicly funded medias has the main purpose of “*guaranteeing*” the exercise of freedom of information and freedom of speech, which are basic elements for the formation of a free public opinion. The importance of the designation of the members of the Board of Directors charged with the control over public media derives therefrom.

Regional Law 8/2015, dated December 8th 2015, governs the composition of the Board of Directors of *Radio Televisión Madrid*, as well as the mechanisms for the election of its members. This statute provides that administrators will be chosen by the Regional Parliament of Madrid “*among those proposed by Parliamentary Groups and the most representative professional and social organizations in the communications sector*”. Likewise, the Regional Parliament wields the power to establish the criteria whereby those professional and social organizations, charged with the proposition of administrators, will be selected.

Also in accordance with this law, the Parliamentary Commission in charge of the Control of the *Radio Televisión Madrid* Public Body shall be responsible to determine the professional and social organizations enabled to choose the candidates to be appointed to the Board of Directors. This Commission shall also establish the number of members of the Board of Directors that belongs to each of the professional and social organizations according to their representativeness, their affiliate members, their activity reports and the relevance of the media they represent. Those candidates shall be designated among all the candidatures submitted by the Board of the Permanent Council of the Regional Parliament and comply with the aforementioned conditions.

According to the Judgement, it follows from this legal regime that the selection made by the Parliamentary commission charged with the Control of the *Radio Televisión Madrid* Public Body “*cannot be completely [left] at its discretion, but must rather comply with the criteria of representativeness established [in the statute]*”. Since some objective criteria of selection do exist (representativeness, number of members, activity report, etcetera), the Commission must, at each

occasion, justify the motives whereby it includes or excludes certain organizations that may propose the candidates for the Board of Directors.

In this particular occasion, the decision that the Parliamentary Commission submitted to the Board of the Parliament restrained itself to enumerate the professional and social associations that had been selected and the number of candidates that each could propose. The Chamber asserts that neither the wording of the decisions nor the minutes of the meeting allow to “*discern the motives whereby the Parliamentary Commission considered that the Regional Service Federation UGT-Madrid is not a representative enough professional and social association of that sector*”.

“*This lack of any statement of reasons is particularly relevant inasmuch as the Regional Service Federation of UGT-Madrid complied with the conditions spelled out by the call, and the fact was that there was a higher number of positions to fill than there were candidatures, the former being the only association that was rejected at this stage of the procedure*”, according to the ruling.

Considering that the Board of the Regional Parliament “*fulfils the technical legal function of organizing and rationalizing the functioning of that assembly*”, the Court ruled that it was its “*inexcusable*” obligation to request the Commission to issue “*a decision with a statement of reasons*”.

The Judgement concludes that the parliamentary acts at issue have affected the appellant’s right to have access on an equal footing (art 14 CE) to public media (art 20.3 CE). The latter conclusion derives from the fact that the absence of a statement of reasons of the Commission’s decisions, which was upheld by the Board, prevented the possibility of “*verifying whether the exclusion of the appellant was carried out according to the law and the Parliament’s internal regulations*”, and whether it was “*discriminatory*”, given that no “*objective and reasonable reasoning*” was issued that “*may justify that an association which complies with the conditions spelled out in a certain set of rules be prevented from conserving its participation at the selection process*”.

“*The distinct treatment applied by the decisions of the Commission and the Board of the Parliament*”, the Judgement further argues, “*is unacceptable from a constitutional point of view unless it is based on objective criteria, and if it not adapted to reasonableness and to the objective eventually pursued by the exclusion*”. In the case at issue, the distinct treatment does not take place between two unions, but between a trade union and associations of another nature, “*so much so that the presence of a union at the Director’s Board is made impossible through the exclusion of the plaintiff*”.

The Judgement considers that, in this case, there was no unequal treatment between two unions; it was rather a case of “*direct exclusion of the union at issue from a certain directive body of a public entity, with no normative provision that may provide the legal base for such an absolute exclusion*”, and a case where the Regional Parliament “*does not offer any statement of the reasons that allows to understand the motives of a decisions that affects the capacity of the appellant to play a role at the Public Broadcasting Company of Madrid*”. As a consequence, the Court also finds that the freedom to join a trade union (art 28.1 CE) has been breached.

The Court has issued an order that the parliamentary procedure be recommenced at the stage immediately preceding the challenged decisions. This measure was taken with the aim that the Parliament’s Board requests to the Parliamentary Commission of Control a proposition with a “*due statement of reasons*” regarding the selection of associations that may propose candidates to the Board of Directors of Madrid’s public television.

Madrid, 12 March 2018