ISSN (online): 2014-2242 / www.cac.cat

QUADERNS DEL CAC

Legal forms of cooperation in managing municipal public service radio and television

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Received on 13 March 2017, accepted on 22 May 2017

Abstract

Over the past few years, the local Catalan audiovisual map has undergone a transformation due to the economic crisis and the lack of viability of some projects. The resulting panorama highlights the need for cooperation between municipalities when providing audiovisual media services, especially television and radio, generating economies of scale and providing good quality audiovisual media services, in addition to fulfilling the mission demanded by broadcasting laws. This paper analyses the different ways the Catalan regulatory framework allows municipalities to cooperate in providing audiovisual media services, especially through consortiums, mancomunitats (associations of municipalities) and communities of municipalities.

Keywords

Audiovisual, management, regulation, municipalities, cooperation, public service.

Resum

En els darrers anys, la crisi econòmica i la poca viabilitat d'alguns projectes han transformat el mapa audiovisual local català. El panorama resultant posa de manifest la necessitat de cooperació entre els municipis a l'hora de prestar serveis de comunicació audiovisual, especialment de televisió i ràdio, per tal de generar economies d'escala i prestar serveis audiovisuals de qualitat, a més de complir amb la missió que les lleis de l'audiovisual els han encomanat. Aquest article analitza les diferents fórmules que el marc normatiu català permet als municipis per cooperar en la prestació dels serveis de comunicació audiovisual, en especial el consorci, la mancomunitat i la comunitat de municipis.

Paraules clau

Audiovisual, gestió, regulació, municipis, cooperació, servei públic.

Introduction

The transformation of the local Catalan audiovisual map due to the economic context and the debatable viability of the projects launched before the crisis have reinforced the need for cooperation when it comes to providing audiovisual media services at the municipal level. At the same time, in recent years, we have witnessed not only a significant transformation in the local legal framework, which has affected the configuration of public services, but also in the regulation of the audiovisual sector. These transformations call for a reassessment of the mechanisms for cooperation between municipalities providing audiovisual media services, analysing the models for providing those services and considering the changes required for the municipalities to be able to perform the functions entrusted to them.

In this regard, the point of departure for our paper is that in our legal system there is no single model for inter-municipal cooperation, rather (especially in legislation affecting local government) we find diverse options for providing audiovisual media services. The 2005 Catalan law on audiovisual media (*Llei 22/2005, de 29 de desembre, de la comunicació*

audiovisual de Catalunya, hereafter LCAC) establishes that local audiovisual media services must be provided directly by the municipality. Certainly, this legal provision imposes a significant limitation when it comes to choosing the different ways for providing the service. In any case, municipalities still have some room for choice between different management models.

This paper is based on the study of the regulatory framework affecting the audiovisual sector, public services and local government cooperation in managing municipal public service radio and television. The legal analysis, which includes a review of the literature on the subject (both in the field of law and other disciplines), is complemented by fieldwork based on face-to-face and telephone interviews with managers of radio and television service providers. Therefore, this paper explores the different instruments that basic Catalan legislation on local government provides for in the case of inter-municipal cooperation: *mancomunitat*s (associations of municipalities), consortiums and communities of municipalities, to which we will also add inter-administrative enterprises.

1. Public service audiovisual media at the municipal level

1.1 Audiovisual media services as a public service

In our legal system, the definition of public service is not at all straightforward. In fact, the impossibility of identifying its content in an unequivocal way has cast doubt on its very existence. In any case, without entering into this discussion and from a general point of view, we can consider public services as service provision activities intended for the satisfaction of a public need, where provision is the duty and responsibility of the administration (Santamaría Pastor 2004, 304-305; Cosculluela Montaner 2012, 609; Martínez-Alonso Camps 2007, 55-56). Therefore, when we talk about a public service we are not referring to just any type of administrative action, rather, we are referring to the provision of services intended for citizens and considered indispensable for life in society (Fernández Rodríguez 1999, 59). It is precisely their social importance that justifies granting public services their own legal arrangements, which aim to ensure that the administration can guarantee their regular and consistent provision, whether directly or via third parties.

Initially, turning a certain activity into a public service meant reserving its provision exclusively to the administration (García de Enterría 1955, 116-119). Today, however, the notion of public service is no longer necessarily linked to the monopoly of the activity or to the total exclusion of the market from the provision of these services. As indicated earlier, this means that there is an assumption that this activity is guaranteed by the public powers, but the intensity and scope of administrative intervention will vary according to the needs for developing and organising the service (Sendín García, 115-121; Malaret and Garcia 1998, 85-87). This idea of the public administration as guarantor of public service provision has been reinforced in recent years, with private entities entering the sector (Esteve Pardo 2015) and shifting administrative intervention from directly providing the services to guaranteeing their provision.

Determining which specific administrative activities should be considered "public services" is an eminently political decision, conditioned by the context and the socio-economic reality at a given time. In our case, the recognition of audiovisual media services as a public service, and the possibility of assigning responsibility for their provision to the public sector, is established explicitly in Spanish legislation, as we can see in article 40 of the Spanish Audiovisual Media Act of 2010 (*Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual*, hereafter LGCA), which expressly defines them as "*essential* general interest services" (art. 40.1 LGCA).

The justification for making this provision activity a public service is that its main purpose is to disseminate content that promotes constitutional values and principles – especially freedom of information and freedom of expression (art. 23.2 LCAC) – as well as shaping pluralist public opinion and respect for diversity. As already highlighted (Linde Paniagua 2013, 97), creating public media is not just a simple political option, but also involves the obligation to guarantee truthful and pluralist information. This obligation is fulfilled through the imposition of a series of specific obligations that are recognised as inherent to the provision of this service by different public administrations (Vidal Beltrán and Boix Palop 2013, 34-35).

1.2 Local audiovisual media services in Catalonia

In the case of Catalonia, these public service duties are expressly contained in article 25 LCAC, where it is stated that public providers of audiovisual services are obliged to fulfil, at least, a series of public service missions such as "providing the audiovisual media service using the assigned frequencies and the authorised power, consistently and with suitable quality", providing the Catalan Audiovisual Council (Consell de l'Audiovisual de Catalunya, hereafter CAC) with the necessary information to verify the fulfilment of these duties.

Catalan legislation defines the legal system of public service audiovisual media as "the supply, through a distribution system that does not require the use of conditional access technologies, of audiovisual content and, if applicable, according to the programme contract, of additional data transmission services geared towards satisfying the democratic, social, educational and cultural needs of the citizens that form the local community, as members of that community" (art. 32.1 LCAC).

Moreover, article 32.1 of the Catalan law also tells us that providers of this service not only have to fulfil the public service missions laid down in article 26.3 LCAC and adapted to the interests of the respective local communities, but must also transmit truthful, objective and balanced information, ensure diverse social and cultural expressions, and guarantee a high quality entertainment offer. The LCAC itself regulates three fundamental aspects, among others, of the public provision

of public audiovisual media services: audiovisual content, organisation and operation, and the form in which the services are provided.

1.3. Types of local public service audiovisual media in Catalonia: radio and television

Now that we have determined how we understand public service in our case, we must highlight the importance of the local dimension of audiovisual services in Catalonia, because since the beginning, radio and television broadcasters with municipal coverage have spread rapidly throughout the territory. We can identify three types of local media according to their nature and management: public, private and community media. Here, we will focus on public radio and television broadcasters in order to analyse the forms of collaboration between municipalities.

a) The digital terrestrial television model in Catalonia

After the launch of the first local television station with regular broadcasts in Catalonia in the 1980s (Radiotelevisió Cardedeu (Guimerà 2006)), different local television stations were set up in a deregulated legal framework and were therefore operating in a legal vacuum (Corominas 2009). In the analogue public television model, city councils launched solo projects and broadcast in areas mainly with local or county-level coverage.

The shift from analogue television to digital terrestrial television (DTT) was an essential step in planning at the European level. DTT involved developing a production and programming model where it was imperative to produce more and higher-quality programmes in the context of audience fragmentation. The public had to be seduced by new content that became a key strategic asset within the television market, and one of the fundamental drivers of the social impact of digital terrestrial television (Marzal; Murciano 2007). The move to DTT was undertaken to increase the number of programmes with a reduction in distribution costs, to improve the quality in reception and image, and to take better advantage of the radio spectrum and portable and mobile reception of television signals, as well as facilitating interactivity for users (CAC 2002).

The shift to DTT was not only technical, but also caused structural changes in the model with legal, economic and social implications. The Spanish local digital television plan (*Plan Tècnico Nacional de la Televisión Digital Local*) reorganised the television sector and gave legal protection to local television stations, dividing the territory into 21 divisions – multiplex coverage areas (Coromina 2009) – seen as territorial units for structuring local digital television. In order to operate within one of these areas, city councils could set up consortiums to run public channels, which obliged them to reach agreements for their joint management. The management model inaugurated with digitalisation was completely new in local public television and not at all simple (Corominas 2009). The procedures for establishing consortiums were complex at the administrative level and many had economic difficulties when it came to making the necessary investments to launch and maintain a channel (Guimerà 2006). The economic crisis and the lack of audiovisual culture in some municipalities worsened the situation and left many projects on stand-by.

Of all of the programmes, the government decided to reserve 37 for public management and 59 for private management (Guimerà 2007; Martori 2014). Despite the fact that most of the city councils had shown willingness to participate in local public television projects, at the time of the analogue switch-off, there were only 12 local public DTT channels operating. According to official CAC data, only eleven public channels continue to broadcast with a DTT licence, seven of them through consortiums and three through public municipal companies (Barcelona Televisió, Televisió de Badalona and Televisió L'Hospitalet). This leaves the rest of the channels (Canal 10 Empordà, Canal Blau, Canal Terrassa Vallès, Maresme Digital (m1tv), TAC12, Penedès TV, Vallès Oriental Televisió (VOTV) and Vallès Visió) with consortiums as the only model for managing the service.

Some television stations collaborate in developing special programmes or live broadcasts through specific agreements, which is the case of Vallès Visió and Vallès Oriental Televisió. But most of the cooperation between television providers is coordinated through La Xarxa (local media network), both for jointly producing programmes and exchanging content.

b) Public service radio: problems and limitations

Municipal radio is more important in the Catalan media ecosystem (32% of radio frequencies in Catalonia are local frequencies, and in the public sector, 74% of stations are local), and this is a very widespread phenomenon: 272 Catalan municipalities have a local radio station (CAC 2017).

They mainly offer music, news and sports content. Although they have been professionalised, the importance of volunteers is still crucial for the stations' operation, especially in small municipalities. Radio has not been digitalised and is still broadcast by FM. Therefore, the same change in the model's organisation and structure has not happened as it did in the case of television.

Most radio stations have municipal coverage and are managed by municipal enterprises or institutes, though there are also other options, such as the creation of special decentralised organisations. The structure of the model does not oblige city councils to group together to manage a station jointly as in the case of television stations. Nevertheless, there are several examples of collaboration, such as the agreement between Ràdio Arenys, Ràdio Canet, Ràdio Sant Vicenç de Montalt and Ràdio Llavaneres to jointly develop programmes or the co-production agreement between Ràdio Arenys and La Xarxa.

Jointly developing content helps to share production costs and to boost participation in the different municipalities. Moreover, it feeds the programme schedule with original content. La Xarxa organises a lot of the collaboration between radio stations through programmes where several stations participate.

Although agreements are the most used option for inter-municipal collaboration in providing radio services, we also find other cases such as the Emun Terres de Ponent consortium, which was previously a community of municipalities. Associations can also be used to collaborate in providing radio services, as in the case of the Terres de l'Ebre Municipal Broadcasters Association (Associació Emissores Municipals de les Terres de l'Ebre, EMUTE), which also generates content jointly.

c) The role of the internet in providing radio and television services

In the context of digitalisation, new forms of internet-based media have emerged and have spread to the local level. In the case of Catalonia, these new forms of media tend to be managed directly by city councils or by municipal public enterprises. In some cases, they are online versions of existing media (television and radio stations) that offer audios and videos on demand, but in other cases they are platforms that only broadcast content on the internet.

The majority of these providers are online television stations that transmit videos asynchronously (especially when there are celebratory or cultural events in the municipality), as in the case of Amunt TV (Arenys de Munt) or Ràpita TV (Sant Carles de la Ràpita), or they are multiplatform media that combine videos, audios and texts with up-to-date news, as in the case of Cugat.cat (Sant Cugat del Vallès).

Online television emerged at a time of ill-health for local public television, as a phenomenon that could provide a solution to some of the problems of DTT, but which also raised new questions. This type of broadband television, designed to be consumed on computers, tablets, mobiles or connected televisions (or hybrid televisions), offers greater flexibility in terms of broadcasting times and content, since users consume the videos on demand.

These new forms of content dissemination present few barriers to entering the television market because it is not necessary to have a licence to operate, but we are still dealing with services included within the public sphere (Barata Mir 2012, 435), though much less regulated than traditional radio and television services. There are some twenty new local television channels that operate solely on the internet (promoted by city councils that have developed projects on their own for economic reasons), but there are also other municipal providers that offer audiovisual content on their own websites, alongside regular broadcasting.

Providers that broadcast on the internet tend to involve a single municipality and, therefore, forms of cooperation for providing audiovisual services are practically non-existent. However, online television stations that are members of La Xarxa and that exchange content or jointly produce programmes with other members are the exception.

2. Forms of cooperation in providing television and radio services

Now that we have provided a brief account of local public service audiovisual media in Catalonia, we can move on to analyse the different legal forms of cooperation that exist for providing local television and radio services. In this regard, as indicated earlier, we must first take into account a significant limitation: the obligation that the service be directly managed by the municipalities (art. 32.2 LCAC), notwithstanding the different forms of association for supplying audiovisual media services provided for in our local legal system.

2.1 Ways of managing public service audiovisual media: the direct management obligation

Although there are many types of management within our legal system, the LCAC established that the provision of this public service must be directly managed by the municipalities or through one of the local forms of association (art. 32.2 LCAC). In this regard, although local authorities have a certain degree of autonomy in choosing their management model, it is understood that the provision of these audiovisual services should primarily be the remit and responsibility of public entities, moving away from their provision by private actors (Barata Mir and Fita Caba 2012, 173).

When the LCAC speaks of "direct management" of the service at the local level, it refers us directly to article 85.2 of Law 7/1985 of 2 April regulating the local government system (*Llei 7/1985, de 2 d'abril, reguladora de les bases del règim local*, hereafter LBRL), which lays down the different forms of management of local public services. This article establishes that local public services must be managed in the most efficient and sustainable way possible and through one of the following management models: by the local authority itself or by creating a local autonomous body, a local public business entity or a local commercial enterprise (with public share capital). In any case, creating a local public business entity or a commercial enterprise would be a secondary option, since article 85.2 of the LBRL provides that this can only be done when it would be more sustainable and efficient than the other forms of management provided for in the article.

We also have to take into account that in regulating the management of local audiovisual services, the LCAC establishes an additional limitation on the admissible management forms. Thus, unlike that provided for in the LBRL, article 33.1 of the LCAC demands that the direct management of public service audiovisual media be undertaken by a body or organisation other than the local entity that owns the service. Indeed, article 33.1 of the LCAC states that "direct management of local public audiovisual services requires that the corresponding managing organisation or body define, develop and distribute the audiovisual content", or, in similar terms, article 33.4 of the LCAC establishes the need for the governing bodies of the

local entities that own the service to sign a programme contract with the managing organisation or body. In principle, we would find ourselves with the need to create a special-purpose entity, though it is also possible to create a special decentralised organisation, which would guarantee the existence of two separate entities (the service owner and the managing body) as established in the Catalan Audiovisual Council Agreement 160/2013 of 11 December, which provides recommendations for the organisation and operation of local public audiovisual services.

In any case, together with the forms of direct municipal management, the LCAC allows for the provision of public service audiovisual media in Catalonia through "legally-established forms of association between local entities and consortiums made up of local entities" (art. 32.2 LCAC). The reference to "forms of association" (*modalitats associatives*) in Catalan legislation seems to refer us exclusively to voluntary forms of collaboration created freely between the different local entities involved and excluding *vegueries*, counties and metropolitan areas[1].

From this perspective, if we want to study the forms of association provided for in our legal system, we have to look essentially at the Catalan law that regulates the different types of association that can be set up between local Catalan bodies (*Decret Legislatiu 2/2003, de 28 d'abril, pel que s'aprova el Text refós de la Llei municipal i de règim local de Catalunya*, hereafter TRLMRLC).

2.2 Forms of cooperation at the local level

As we have said, the TRLMRLC regulates the different forms of association between local Catalan bodies: *mancomunitats* and communities of municipalities. The LCAC also expressly allows for the management of audiovisual media services through consortiums, though it limits this form of management to 'consortiums made up of local bodies' (art. 32.2 LCAC). Lastly, we understand that within the forms of association allowed by the LCAC, we should also include inter-administrative commercial enterprises; that is, enterprises set up jointly via agreement between different public administrations, and in our case, between different local administrations.

a) The consortium as a failed model: the case of DTT

According to the current law on the public sector's legal system (*Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público*, hereafter LRJSP), consortiums are public law entities of an associative and voluntary nature, created by several public administrations and, occasionally, private entities, whose aim is to undertake activities in the joint promotion, provision or management of public services. Their main characteristics are the following:

- They are legal entities, as recognised by local government legislation and regulations on public administrations. The agreement between the different members of the consortium gives rise to a new legal entity, different to and independent from those that form the consortium. The consortium is not, therefore, a mere model for managing public services, but rather a public organisation granted legal personality independent from the entities that form it and, therefore, with its own capacity to be subject to rights and obligations, as well as to exercise them.
- Secondly, in relation to the legal nature of consortiums, we must take into account that local government legislation does not consider them as local authorities. Therefore, traditionally, consortiums are special-purpose entities, inasmuch as they are voluntarily established by several public administrations for the achievement of specific ends (Nieto Garrido 1997, 151-153; Toscano Gil 2016, 484-488).
- In terms of their make-up, as we already indicated, consortiums are institutions of a heterogeneous nature that arise from the union of public administrations in different territorial areas and even private entities. It should be taken into account, however, that the LCAC limits the creation of consortiums for the provision of audiovisual services to "consortiums made up of local bodies" (art 32.2 LCAC). Therefore, the law itself significantly limits the types of consortiums that can undertake direct management of public service audiovisual media at the local level, excluding those that are formed by public, or private, entities that are not considered local bodies.
- Lastly, in terms of their functions, the members of the consortium determine which goals and ends they wish to pursue through consortium charters. From a general point of view, consortiums are set up to manage activities and services that are of shared interest to the members. In this regard, as the LCAC expressly provides for, it is clear that local public audiovisual services are a type of service that could be included among the purposes of consortiums.

To end, and without being able to analyse the legal arrangements of consortiums in more detail, we must insist that the current basic regulation of this instrument can be found in the new LRJSP, which, as was the case with the LRSAL, requires the consortiums to form part of one of the public administrations within them. This subsequently determines the application of the budget, compatibility and management arrangements of the public administration of which they are part (art. 120 LRJSP).

b) An (almost) unprecedented possibility: *mancomunitats*

Together with consortiums, *mancomunitats* are one of the main instruments through which inter-municipal cooperation is coordinated in our legal system. In general, we can define *mancomunitats* as public administrations, of an institutional (or instrumental) nature, formed by two or more municipalities in order to jointly manage certain municipal works or services (Martín Mateo 1997, 41; Morillo-Velarde Pérez 2011, 1601;

Salanova Alcalde 1993, 55). Their main features are the following:

- *Mancomunitats* have their own legal personality and full capacity to work to achieve their purposes. Therefore, with the *mancomunitat*, a new public legal entity is created, separate to the municipalities that form it and subject to rights and obligations.
- Historically, *mancomunitats* arose to overcome the excessive fragmentation of our local map, promoting the joint undertaking or provision of certain municipal works, activities or services. *Mancomunitats* are institutions that are deeply rooted in our territory and that are assigned the provision of very diverse municipal services (Vilalta Reixach 2016, 80-85), among which, notwithstanding what we will say next, we could include local audiovisual media services.
- As we have already highlighted, *mancomunitats* are voluntary entities. Their existence is not imposed directly by the decision of legislators or by the legal system, but rather they are voluntarily set up and freely agreed by the parties involved.
- Lastly, it is also worth taking into account that membership of a *mancomunitat* is characterised by its limited scope, since our system only recognises the possibility for municipalities to form a *mancomunitat* (art. 44.1 LBRL and art. 115.1 TRLMRLC).

In terms of the relationship of *mancomunitats* with the provision of local public service audiovisual media, they are a seldom-used instrument. In fact, we can only find one example, from 2001 until 2012, when the city councils of Igualada, Santa Margarida de Montbui, Òdena, Vilanova del Camí, La Pobla de Claramunt, Jorba and Castellolí joined together in the *Mancomunitat Intermunicipal de la Conca d'Òdena* to provide the local television service (Conca TV) for the county of L'Anoia. Later, the service was passed on to a consortium and Conca TV stopped broadcasting in 2012.

c) Communities of municipalities in the provision of audiovisual media services

Communities of municipalities are a unique entity in the Catalan legal system, originally based on the French communities of municipalities (*communauté des comunes*).[2] They are the only option of the three offered by the TRLMRLC for cooperation in service provision that do not have their own legal personality. Their defining characteristics are the following:

- In terms of their make-up, as in the case of *mancomunitats*, only municipalities can form part of communities of municipalities (art. 123.1 TRLMRLC).
- Regarding their objectives, the purpose of the communities is defined in a very broad way and they can be formed to manage or execute tasks and functions shared by the municipal members (art. 123.1 TRLMRLC). On occasion, the question has arisen as to whether these shared functions and tasks also include the provision of public services, such as audiovisual services. In this regard, it is considered that, indeed, the purpose of communities of municipalities can also include this service, since Catalan legislation defined their material scope of action in broad terms – even more so than in the case of *mancomunitats* (Torres Cobas 2003, 282).
- They have no legal personality of their own and therefore cannot be considered as local authorities, because, strictly speaking, a new legal entity independent from the community members is not created. In any case, as provided for in article 123.2 TRLMRLC, the agreements adopted in the community bind all of the municipalities involved and are effective before third parties, as though they were adopted by each and every one of the municipalities that form the community.

Despite the fact that communities of municipalities are a very flexible option, they have had limited prestige in Catalonia, where we find only ten cases. With regard to managing audiovisual media services at a local level, the involvement of communities of municipalities as a management model is equally token. The *Comunitat de Municipis Emun-Segrià* is the only case where the purpose is to provide audiovisual services; specifically, the joint management of resources related to broadcasting services and the production of radio products. This Community was created on 28 December 2005 with the corresponding agreement between the following municipalities of Lleida: Alfarràs, Alguaire, Rosselló and Almenar, all in the county of Segrià. In any case, it was dissolved in 2009 and transformed into a consortium.

d) Inter-administrative enterprises

Creating enterprises owned by public administrations is a possibility that was already provided for in the law governing public administrations (*Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*, hereafter LRJPAC), which states that, when, through an inter-administrative agreement, the need arises to set up a shared organisation, this can adopt the form of a commercial enterprise (art. 6.5 LRJPAC).

At the local level, this possibility was also expressly provided for. Since the reform of Law 57/2003 of 16 December, basic legislation on local government no longer demands that a commercial enterprise for the direct management of a public service *belong fully to the local authority*, rather, it is only necessary for the share capital to be "publicly owned" (art 85.2.d LBRL). Therefore, the LBRL allows for the establishment of commercial enterprises providing local public services and formed by different public bodies. These enterprises should adopt one of the forms provided for in the revised text of the Spanish Corporations Act (*Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*). Therefore, they are fully regulated

by private law, except in areas where rules regarding budgets, accounting, financial management, effectiveness measures and public procurement are still applicable.

Indeed, regarding the provision of audiovisual services by commercial enterprises, we must take into account some important aspects of their contractual arrangements. In order for these enterprises to be genuinely considered as a form of *direct* management of a public service (in accordance with article 32.2 LCAC), not only would the share capital have to be fully public, but, in addition, they would have to be able to be considered as an internal resource or technical service of the different local administrations involved, in accordance with the provisions of the 2011 royal decree on public sector contracts (*Real Decreto Legislativo 3/2011, de 14 de noviembre, por el que se aprueba el texto refundido de la Ley de Contratos del Sector Público*, hereafter TRLCSP).

Otherwise, management of that public service could not be directly assigned to a commercial enterprise and, consequently, this would require using the types of contracts and procurement procedures provided for in public sector contract legislation.

In this regard, in order for such an enterprise to be considered an internal resource or technical service of an administration, we have to take into account the demands resulting from Community case law and currently reflected in article 24.6 of TRLCSP. This article tells us that "public sector bodies, organisations and entities can be considered as internal resources and technical services of the contracting authorities for which they carry out an essential part of their activity when the authorities hold the same control over them as they do over their own services."[3]

Lastly, it is worth taking into account that, as indicated earlier and in accordance with the reform introduced by the LRSAL, we can only turn to commercial enterprises to manage local public services when it is proven, through supporting documentation prepared for this purpose, that they are more sustainable and efficient than direct management by the local authority itself or by a local autonomous body (art. 85.2 LBRL).

Conclusions

Throughout this paper, we have seen that the provision of audiovisual media services, as defined by the LCAC, is restricted to direct management forms or, if the service is provided by two or more municipalities, to the forms of collaboration provided for in our regulations: consortiums, *mancomunitats* and communities of municipalities, as well as inter-administrative enterprises.

Therefore, having reached this point, we can now present some conclusions on the use of these management forms in providing municipal public service radio and television.

Firstly, we find a legal framework that is densely regulated, with different rules on audiovisual matters (LGCA, LCAC), local government (LBRL, LRSAL, TRLMRLC), and on the organisation and operation of public administrations (LRJSP, LPAC, LRJPCat). In the case of inter-municipal cooperation, the regulations restrict the formulas that can be adopted for providing services. This restriction is especially intense with regard to the instrument that the LCAC prioritises in the case of local television (the consortium), and which local government regulations (especially the LRSAL) have also enormously restricted in recent years. This *clash* between audiovisual regulation and local government regulation can be seen in the restrictive policy regarding consortiums brought about by the LRSAL, which has meant that today there are DTT consortiums formed by a single municipality, a fact that should necessarily lead to their dissolution. The other instruments present different degrees of flexibility, from the moderate flexibility of the *mancomunitats* to more flexible formulas such as administrative enterprises and communities of municipalities. It would be advisable to eliminate the references to consortiums from the LCAC text, because a preference is indicated for a specific model and this has been problematic.

Other elements are determining when it comes to choosing one model or another, such as the difficulties in creating, modifying or dissolving the entities, the types of members that can form them or the legal form they should take, which should be optional but not an obligation. The expression used to define audiovisual media service providers –*ens* (entity) or *organisme* (organisation)– should be opened to any mode of inter-municipal cooperation, including the use of agreements, leaving room for municipalities to autonomously choose the most appropriate model according to their specific case.

After exploring the context of audiovisual media service provision, we think that, in general, it is advisable to make the forms of municipal cooperation in service management more flexible, but also to strengthen guarantees that the service is provided independently and with local content. In this regard, more emphasis should be placed on the service's transparency and on accountability than on limiting the possibilities for cooperation. The same goes for the participation of private parties, which should be defined in more detail in the LCAC, compensating for their involvement by strengthening transparency and accountability measures.

Notes

1. Strictly speaking, these entities are not associations of local bodies but compulsory groupings of municipalities.
2. On communities of municipalities in Catalonia and their precursors in comparative law, see, among others: Font i Llovet, T. (Dir): *Les tècniques de cooperación intermunicipal i la seva reforma*, Elements de debat territorial, no. 16, Diputació de Barcelona, 2002.
3. The literature on the legal system of administrations' internal resources and technical services is extensive. Among many others, the following serve as a reference: Pascual García, J.: *Las encomiendas de gestión a la luz de la Ley de Contratos del Sector Público*, Madrid, Boletín Oficial del Estado, 2010; Pernas García, J.J: *Las operaciones* in house *y el Derecho*

comunitario de los contratos públicos, Madrid, Ed. Iustel, 2008; or Vilalta Reixach, M: "Los llamados contratos de auto-provisión (o contratos in house providing)", in Yzquierdo Tolsada, M (Dir.): *Contratos. Civiles, mercantiles, públicos, laborales e internacionales, con sus implicaciones tributarias*. Navarra, Thomson Reuters – Aranzadi, 2014.

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