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## **Political power's media capture strategies in Spain (2016-21)**

### **1. Introduction**

The political scientist Mungiu-Pippidi (2013: 41) defines 'media capture' as "a situation in which the media have not succeeded in becoming autonomous in manifesting a will of their own, nor able to exercise their main function, notably of informing people". And she goes on to add that "instead, they have persisted in an intermediate state, with vested interests, and not just the government, using them for other purposes".

The concept of 'media capture' began to be used by economists at the beginning of this century. The economic—or market—dimension of that media capture was clear to see at the start of the Great Recession, when financial entities made their way onto media firms' boards of directors by exchanging debt for shares. Besides granting loans and investing in advertising, such entities consequently became significant shareholders in media outlets. All of this occurred within a context where economic information was absolutely central to the articulation of the democratic debate.

In subsequent years, new mechanisms for economic actors to capture the media emerged as a result of technological transformations and the demise of the traditional advertising-based business model. Such mechanisms made it even more difficult to practise independent journalism. Some examples are digital intermediaries such as Facebook and Google. Besides filtering the news that the public consumes, they are able to limit criticism of their anti-competitive practices or their privacy policies. Other examples are foundations and philanthropists. These undoubtedly determine how certain topics are treated (Schiffrin 2018, Schiffrin 2021).

In addition to these capture mechanisms detected in the market, various forms of government interference—political power's media capture—not only continued to exist, but have gradually evolved. Such mechanisms logically depend on the democratic quality of the setting in which they are implemented. Standing out among these are media ownership (i.e.,

the existence of public media), regulation and financial strategies (Elanikolopov and Petrova 2016). Regarding the latter, there are several direct funding methods other than the transfer of funds to public media, such as subsidies and institutional advertising. There are market disruption measures too, such as “laws designed to financially hobble media companies, decrees to underwrite debts of supportive media or state guarantees offered to private lenders to secure loans for friendly media outlets” (Dragomir 2018).

Focusing on the western European setting, political power’s media capture has traditionally been more evident in what Hallin and Mancini refer to as Polarised Pluralist media systems. These are typical of southern Europe, including Spain. Those authors point out that, in Mediterranean countries, the role of the State “reflects a combination of authoritarian traditions of intervention and democratic traditions of the welfare state similar to those that prevail in the Democratic Corporatist countries”. The latter of these traditions are characteristic of central and northern Europe (2004: 119). Furthermore, from among the aforementioned authoritarian traditions, they highlight “restricted access to public information”, “official pressures against critical reporting” and a tendency towards media instrumentalisation by the political elites (p. 140).

In this article, I endeavour to demonstrate that the aforementioned authoritarian traditions of political power’s media intervention/capture are ongoing at national and regional levels in Spain, where governments of different political leanings are in power, and has become even greater in certain areas in recent years.

I focus on the actions of the most recent national governments: the conservative Partido Popular (PP) one from 2016 to 2018, and the two subsequent ones headed by Pedro Sánchez, secretary general of the social-democratic Partido Socialista Obrero Español (PSOE), from 2018 to date. The second of these two governments (2019 to date) is a coalition formed by PSOE and Unidas Podemos (UP), the latter of which is an alliance of several parties to the

left of PSOE. I also provide examples of regional governments' actions that are especially relevant to the topics being addressed.

For clarification purposes, it should be noted that, in Spain, media-related powers are shared between the State and the Autonomous Communities—regions that have a high degree of political autonomy. Indeed, besides all telecommunications and radiocommunication-related actions (Article 149.1.21), the 1978 Spanish Constitution sets out that the State has powers to make the basic rules for the press, radio and television regime, and, in general, for all social communication media, without prejudice to the powers that, in their development and execution, the Autonomous Communities may have (Article 149.1.27). Thus, regional governments can, for example, promote their own public audiovisual media, grant regional- and local-coverage radio and television broadcasting licences and award media subsidies.

Political power may capture the media in a number of different ways, but I shall address the three I believe to be the most significant bearing in mind what happened in the period studied: control over public media's governing bodies, the lack of truly independent regulators, and opaqueness and indicators of instrumentalisation in the management of institutional advertising.

Besides these, several others are also worthy of mention, such as the existence of publicly owned news agencies at national and regional levels, in which individuals are appointed to high-level positions directly by the respective governments, without there being any law regulating their organisation or parliamentary control, even though Article 20.3 of the Constitution stipulates that it is an obligation. A second example showing signs of concern relates to certain government practices limiting journalists' work. On this particular issue, the conservative governments headed by Mariano Rajoy were criticised because of his videoconference appearances that did not admit questions. Meanwhile, in the current legislature and at the height of the COVID-19 pandemic, numerous journalists signed a manifesto demanding that the government headed by Pedro Sánchez should not allow the

Secretary of State for Communication to filter what questions the prime minister would answer in press conferences. In October 2021, the Catalan government withdrew the director of the online newspaper *e-Notícies*'s accreditation to attend its press conferences. In taking that step, its arguments were based on its objection to the professional's tone, which was very critical of the Government of Catalonia's policies.

## **2. Control over public media's governing bodies**

Based on the classification put forward by Humphreys (1996: 155-8), the Spanish public broadcaster's (RTVE's) governance model, since the restoration of democracy in Spain, has gone through three stages. The first (1980-86) was a system characterised by its governmental nature, with a board of directors whose president—who enjoyed extensive powers—was directly appointed by the government for a period equal to its term of office. The second (2006-12) was a parliamentary system, in which the two legislative chambers, Congress of Deputies and Senate, were the only ones to elect all of the board's directors and president (a 2012 reform reduced the two-thirds majority—established in 2006—to an absolute majority in the second round of voting). And the third, commencing in 2017, is a mixed system that, on paper at least, combines elements of parliamentary and professional systems. However, its application has been a total failure, as I shall go on to explain.

Promoted by the PP government in 2012, the aforementioned reform—allowing it to make appointments without consensus thanks to its parliamentary majority (Fernández Viso and Fernández Alonso 2019)—and its implementation were highly contested by a wide range of politicians, professionals and academics, who felt that value should be placed on the previous stage—the one commencing in 2006—when the public television broadcaster's newscasts had had the highest audience shares and had received major international awards for their rigorousness and independence (Fernández Alonso, Fernández Viso and Blasco Gil 2017). However, in response to the return to governmentalisation in 2012, a new reform—via Law

5/2017—was promoted by the main opposition parties at that time (the liberal party Ciudadanos, the left-wing party Podemos and PSOE), when the conservative government no longer had a majority in the Congress of Deputies (Fernández Viso and Fernández Alonso 2019).

Law 5/2017 laid the foundations for RTVE's current governance model, establishing a system for the election of members of the board of directors that introduced a public competition for the very first time. Specifically, that law sets out that, the directors of the national public broadcaster must be elected, after holding a public competition, by the two chambers of the Spanish parliament, six by the Congress of Deputies and four by the Senate. Furthermore, the Congress of Deputies must appoint one of the 10 elected directors as the board's president. All of the appointments require a two-thirds majority in the first round of voting. If that majority is not reached, an absolute majority in a second round is sufficient so long as each appointment has the backing of at least half the parliamentary groups in each of the two chambers. Compared to the 2012 regulations, the fundamental novelties are the public competition and the need to secure agreement by half of the groups.

Although the new law established a maximum period of three months to complete the competition, the process overran and the motion of no confidence ensued. As a result of that motion on 1 June 2018, the social democrat Pedro Sánchez became prime minister. The new government immediately approved Decree-Law 4/2018, which established a provisional legal framework to designate an acting board of directors until such time as the appointments could be made in accordance with Law 5/2017. In the presentation of motives for that Decree-Law, a legislative formula provided for under the Constitution in the event of extraordinary and pressing need, it was argued that the decision had been taken because the board's expiry meant that a rotating presidency had to be established and that the competition had to be sped up.

Decree-Law 4/2018 incorporated two significant provisions. First, if the Senate did not manage to appoint the four candidates within their remit—which was foreseeable at the time because, regardless of the motion of no confidence, the PP still had an absolute majority in that chamber, but importantly it did not have the backing of half of the parliamentary groups—then the vote would take place in the Congress of Deputies, where the parties that had supported the change of government had sufficient strength—votes and number of groups—to renew the body in question. Second, the mentioned Decree-Law stipulated that, as a last resort, if the Congress of Deputies did not manage to appoint all the members of RTVE's board of directors, then the government could propose, to that very chamber, the appointment of a provisional sole administrator who, in the second round of voting, could be elected by absolute majority. That Decree-Law also regulated the make-up of the committee of experts that would be tasked with assessing candidates who put themselves forward for appointment in the public competition before their potential election by the parliamentary chambers.

While the competition was being implemented, a turbulent process of appointment of RTVE's provisional management team occurred, which required up to seven rounds of voting in the Congress of Deputies and the Senate. These were ultimately thwarted by two erroneous votes, which were declared null and void. The motivation behind those erroneous votes is impossible to assess because voting was held in secret.<sup>1</sup> So, in extremis, the retired journalist Rosa María Mateo was nominated as RTVE's provisional sole administrator. She was elected in the second round of voting thanks to the absolute majority that had promoted the motion of no confidence.<sup>2</sup> The process was truly bizarre and unprecedented.

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<sup>1</sup> [https://elpais.com/politica/2018/07/17/actualidad/1531826638\\_214299.html](https://elpais.com/politica/2018/07/17/actualidad/1531826638_214299.html)

<sup>2</sup> [https://elpais.com/politica/2018/07/27/actualidad/1532679688\\_136428.html](https://elpais.com/politica/2018/07/27/actualidad/1532679688_136428.html)

Clear evidence of partisan interference in the process described was the complaint made on Twitter by the then director of the online newspaper *Público*, Ana Pardo de Vera. In it, she said that the leader of Podemos—the party that helped to prop up the social-democratic government—had offered her the position of RTVE president: “Pablo Iglesias called me on Monday to tell me that prime minister Sánchez and he had reached an agreement making RTVE’s appointments dependent on Podemos. He wanted me to be the provisional president until the public competition method could go ahead... [Translation from Spanish].”<sup>3</sup>

In December 2018, the committee of experts, whose members had been nominated by the various parliamentary groups on the basis of their representation, announced the assessments of 95 candidates<sup>4</sup> and had preselected the top-scoring 20 to appear before the appointment committees of the Congress of Deputies and the Senate prior to both chambers making the final appointments from among them.

From that point, the process of electing RTVE’s directors and president was blocked until autumn 2020, partly because of the two electoral processes occurring in 2019. Based on the argument that—following the death of the highest scoring candidate, the journalist Alicia Gómez Montano—there were not enough women among the 20 preselected candidates to ensure that the gender quota established by Law 5/2017 could be met, the RTVE Joint Parliamentary Control Committee ultimately decided that all the candidates should appear before the previously mentioned appointment committees, effectively cancelling the committee of expert’s work and, in turn, the public competition itself.

Finally, PSOE and UP, the two parties of the by-that-time coalition government, the main opposition party (PP) and the Basque nationalist party (Partido Nacionalista Vasco, PNV)

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<sup>3</sup> <https://twitter.com/pardodevera/status/1012690343819710464?lang=eu>

<sup>4</sup> *Boletín Oficial del Estado*, 18–12–2018.



reached an agreement on the distribution of RTVE's top positions at the beginning of 2021, publicly announcing it even before the candidates' parliamentary appearances had ended. Moreover, only three of the 20 top-scoring candidates were among those elected, as was a candidate whose management project was awarded zero points in the assessment done by the committee of experts (Fernández Alonso 2021).

The evident worsening of partisan interference observed in this process is not exclusive to the national public broadcaster. Other very notable examples that follow a similar pattern can also be found at regional level, where 13 of Spain's 17 Autonomous Communities have public broadcasters. I shall give some examples relating to two particular regions. First, Catalonia, where the directors and heads of news of the regional public radio and television broadcaster have been shared out between the two big pro-independence parties. Another example relating to Catalonia is that of two recent rulings by the Supreme Court of Spain—one in 2020 and the other in 2021—condemning the Catalan public media for not respecting news neutrality and political pluralism during the electoral period (Fernández Alonso 2021). Second, Madrid, where, after the regional elections in May 2021, the first legislative initiative taken was the one relating to the Madrid public broadcaster Radiotelevisión Madrid (RTVM)—Law 1/2021, modifying Law 8/2015. It was passed after a single reading, without any opportunity to introduce amendments or to have a committee debate. The new law removes the involvement of social and professional bodies in the election of members of the broadcaster's board of directors and cuts the majority for electing them from a two-thirds one to an absolute one. In turn, as a result of that reform, the PP, which secured a resounding victory in the previously mentioned elections, was able to immediately appoint—with the backing of Vox, a party that split from PP and is further to the right of it—a provisional sole administrator, José Antonio Sánchez, who had been RTVE's president after the previously

mentioned return to governmentalisation in 2012.<sup>5</sup> These events drew condemnation from the International Federation of Journalists.<sup>6</sup>

### **3. Fragility of independent regulators**

In the Mediterranean Europe setting, there are independent regulators with very diverse powers. These include the Conseil Supérieur de l'Audiovisuel (CSA) in France, whose focus is on the audiovisual sector; the Entidade Reguladora para a Comunicação Social (ERC) in Portugal, which covers the entire communication sector; the Autorità per le Garanzie nelle Comunicazioni (AGCOM) in Italy, which is a converged regulator; and the Comisión Nacional de los Mercados y la Competencia (CNMC) in Spain, which is a multisectoral regulator and a model that is quite uncommon in Europe.

In addition to the CNMC, which has powers relating to national-coverage audiovisual broadcasting, Spain has three regional audiovisual regulators inspired by the French regulator: the Catalan Audiovisual Council (CAC), The Andalusian Audiovisual Council (CSA) and the Valencian Community Audiovisual Council (CACV). Since the State has exclusive power over telecommunications, they cannot have a convergent nature. Of the three regional regulators, the Catalan one is the oldest and has broad powers. It was created by Law 8/1996 on the regulation of audiovisual programming distributed by cable. And the most recent regulator is the Valencian Community one, which is regulated by Law 10/2018. The regional governments in 14 of Spain's 17 Autonomous Communities therefore hold all media-related powers.

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<sup>5</sup> [https://www.elespanol.com/invertia/medios/20210716/jose-antonio-sanchez-mandos-telemadrid-staff-directivo/596941317\\_0.html](https://www.elespanol.com/invertia/medios/20210716/jose-antonio-sanchez-mandos-telemadrid-staff-directivo/596941317_0.html)

<sup>6</sup> <https://www.ifj.org/es/centro-de-medios/noticias/detalle/article/espana-en-defensa-de-radio-television-madrid-y-la-libertad-de-informacion.html?share>

Regarding the CNMC, it was created quite late on by Law 3/2013. The law was approved by parliamentarians of the PP, which at that time had an absolute majority, and those of the conservative nationalist Catalan and Basque parties. This body assumes most of the functions that had previously corresponded to the National Energy Commission (CNE), Telecommunications Market Commission (CMT), National Competition Commission (CNC), Railways Regulation Committee (CRF), National Postal Sector Commission (CNSP), Airport Economic Regulation Commission (CREA) and the State Council for Audiovisual Media (CEMA), although the latter was never created despite being provided for in the General Audiovisual Communication Law 7/2010. The rest were dismantled.

The creation of the CNMC—the twofold justification for which was a €28-million saving at the height of the Great Recession and the existence of synergies among the merged entities—drew considerable criticism from various sectors, basically because they felt that a competition authority should operate independently (Brokelmann 2012). Finally, within a context of the European Commission threatening to open a sanctions procedure against Spain for that reason, the CNMC Council now has two chambers, one dedicated to competition and one to regulatory oversight issues.

According to the criteria used by Mutu (2014), one of the CNMC's weak points in terms of independence is the system for appointing its 10 council members. Article 15 of Law 3/2013 sets out that those members, among whom are the president and vice president, must be appointed by the government and selected from among individuals of renowned prestige and professional competence in the Commission's area of activity, once those nominated for the positions have appeared before the corresponding committee of the Congress of Deputies. That committee has the power to veto—by absolute majority—the appointment of nominated candidates, though the initiative returns to the government. The council members' term of office is six years and they cannot be re-elected. Partial renewal of the council takes place every two years.

For the first council, up to eight members were nominated by the PP, which governed with an absolute majority.<sup>7</sup> But, with the partial renewal of the council in 2020, six of the current members were nominated by the governing parties—five by PSOE and one by UP—and one by the left-wing Catalan nationalist party Esquerra Republicana de Catalunya (ERC) and the PNV, which also lend their support to Pedro Sánchez’s government. Furthermore, the appointment of the new president—Cani Fernández, a lawyer of undeniable prestige—was overshadowed by the fact she had been working in the Cabinet of the Prime Minister’s Office at that very time.<sup>8</sup> In addition, the fact that Mariano Bacigalupo, the husband of the third deputy prime minister and minister of Ecological Transition, Teresa Ribera, remained in the CNMC’s regulatory oversight chamber while the battle over electricity tariffs was in full swing was very controversial.<sup>9</sup>

Regarding its media-related powers, another of the CNMC’s weak points is, as noted by Fernández Viso (2017: 145), the assumption, by the government, of very significant functions to influence the sector’s structure and ensure its pluralism, such as granting audiovisual licences, monitoring the fulfilment of their conditions or deciding on their renewal and the business that can be done with them (frequent leases being a case in point), thereby

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<sup>7</sup> [https://www.eldiario.es/economia/derecha-regulador-vigilar-competencia-empresas\\_1\\_5796053.html](https://www.eldiario.es/economia/derecha-regulador-vigilar-competencia-empresas_1_5796053.html)

<sup>8</sup> [https://www.elconfidencial.com/economia/2020-06-06/la-cnmc-entra-en-una-nueva-era-los-retos-para-el-superregulador-mas-a-la-izquierda\\_2626811/](https://www.elconfidencial.com/economia/2020-06-06/la-cnmc-entra-en-una-nueva-era-los-retos-para-el-superregulador-mas-a-la-izquierda_2626811/)

<sup>9</sup> <https://www.elmundo.es/economia/2021/12/22/61c36cde21efa007158b45be.html>

disregarding the recommendations made by the Council of Europe and the European Commission on the transfer of powers over this sphere to independent regulators.<sup>10</sup>

Just as striking is the fact that the CNMC does not have the capacity to perform content analyses, which is essential for assessing RTVE's internal pluralism, as acknowledged in its own reports on the fulfilment of public service obligations, which it produces with considerable delay.<sup>11</sup> The regulator works with data provided by the public operator itself.

In contrast, the Catalan audiovisual regulator, the CAC, does have capacity to perform content analyses, as well as powers over awarding, transferring and leasing licences to provide regional and local FM radio and digital terrestrial television (DTT) services. However, its independence is clearly questionable because of its obvious political bias in appointing council members and the permanent clash between those nominated by pro-independence political parties and constitutionalist ones when it comes to resolving pluralism-related complaints. The tension had reached such heights that the council member-secretary Daniel Sirera—the former president of the PPC (the Catalan arm of the PP)—lodged a successful appeal before the courts after an agreement made in a plenary session of the regulator—and approved by council members nominated by the separatist parties and the president's casting vote—had forced his abstention on the approval of a very controversial agreement relating

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<sup>10</sup> From the 101 media-related mandatory injunctions listed on the regulators website, four types of action clearly stand out: those relating to child protection (20), accessibility for people with disabilities (27), transparency (28) and advertising (21):

[https://www.cnmc.es/listado/sucesos\\_audiovisual\\_requerimientos/block/250](https://www.cnmc.es/listado/sucesos_audiovisual_requerimientos/block/250)

<sup>11</sup> The last report published refers to 2018, but is dated 17 March 2021:

<https://www.cnmc.es/ambitos-de-actuacion/audiovisual/mision-servicio-publico-crtve>

to regional public radio.<sup>12</sup> Along similar lines, council members nominated by the constitutionalist parties denounced the procurement, on the margins of the plenary session, of a firm to monitor their social media activities.<sup>13</sup>

Clear evidence of political power's capture of the CAC is the recent agreement between the main pro-independence parties—ERC and Junts per Catalunya (Together for Catalonia)—and the Catalan social-democratic party Partit dels Socialistes de Catalunya (PSC) to renew the council members, for which a two-thirds majority in the regional parliament is required. The appointment of Xevi Xirgo as the new president and of Enric Casas as a member was very striking, especially when considering that the former had been the director of the Catalan nationalist newspaper *El Punt Avui* and the biographer and friend of the former President of Catalonia Carles Puigdemont, and the latter had been the PSC's image and communication secretary.<sup>14</sup> Likewise, some agreements made after heated internal debates are symptomatic of the capture commented on thus far. These have had considerable media impact. For example, agreements 89/2017 and 90/2017 supporting the broadcast of institutional advertising about the illegal referendum held on 1 October 2017 by both TV3 and Catalunya Ràdio—Catalonia's public television and radio generalist channels, respectively—despite the fact that the High Court of Justice of Catalonia had notified those in charge of both channels to abstain from doing so.

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<sup>12</sup> [https://www.abc.es/espana/catalunya/politica/abci-justicia-anula-acuerdo-exculpo-terribas-seguimiento-policias-desde-radio-202006291412\\_noticia.html](https://www.abc.es/espana/catalunya/politica/abci-justicia-anula-acuerdo-exculpo-terribas-seguimiento-policias-desde-radio-202006291412_noticia.html)

<sup>13</sup> [https://www.vozpopuli.com/economia\\_y\\_financeas/empresas/constitucionalistas-cac-denuncian-coacciones-expresar-opinion-proces\\_0\\_1134188045.html](https://www.vozpopuli.com/economia_y_financeas/empresas/constitucionalistas-cac-denuncian-coacciones-expresar-opinion-proces_0_1134188045.html)

<sup>14</sup> <https://elpais.com/espana/catalunya/2022-02-11/acusaciones-de-partidismo-en-la-eleccion-del-nuevo-regulador-audiovisual-de-cataluna.html>

#### **4. Opaqueness and indicators of instrumentalisation in the management of institutional advertising**

The aim of institutional advertising is to deploy public-interest campaigns that, logically, should be planned by taking into account efficiency criteria to reach the highest number of target viewers, listeners or readers. However, it is often eclipsed by many complaints about the lack of transparency in relation to planning criteria and to the contracts entered into between the administrations and media outlets. Waal maintains that this is so (2014: 206), underscoring not only the risk that public advertising's instrumentalisation poses to journalistic practices, but also that Spain—compared to other countries—is an outlier with serious transparency problems in this particular area: “Of all the means that states have to support media, state advertising is arguably the least transparent and thus the most problematic. Across the globe, this resource is misused by states to support friendly media and discriminate against critical journalism. Direct links are not always easy to prove, but countries where suspicions that quid-pro-quo arrangements are rife include Pakistan, Uruguay, Georgia, Argentina, Thailand, South Africa, Colombia, Kenya, Hungary, Moldova, Macedonia, and Spain (mostly at the local level).”

I have been able to observe this lack of transparency thanks to the work being done within the framework of a research project funded by the Spanish State Programme for Knowledge Generation and Scientific and Technological Strengthening of the RD&I System, and a consultancy contract with the Independent Authority for Fiscal Responsibility (AIReF).<sup>15</sup> As

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<sup>15</sup> Project title: “The impact of public funding on the economies of private media firms: subsidies and institutional advertising. Analysis of the Spanish case (2008-2020)” (reference PGC2018-093887-B-I00). The consultancy contract with AIReF was entered into for the purpose of providing “consultancy, technical assistance and specialised support services (...) on the Government of Castile and León’s institutional communication evaluation project

a result of many interviews held with representatives of the Government of Spain and the regional governments, as well as information requests submitted to them via the transparency system, it is possible to conclude that only two Autonomous Communities—Catalonia and Castile-La Mancha—have provided us with precise data on the amounts spent on institutional advertising through contracts awarded to the various communication firms used since the financial crash in 2008. As far as other regional governments are concerned (Basque Country, Navarre, and Castile and León), it has only been possible to obtain relatively complete data for recent years, coinciding with the approval of various transparency laws. In other cases, the information is very limited and confusing (Galicia, Asturias, Madrid and the Valencian Community). Furthermore, some regional governments did not reply by the deadline or refused to supply the information requested.

Regarding the Government of Spain, it publishes a lot of information on the budget allocated to institutional and commercial advertising—broken down by ministry—and on campaign content. However, it does not provide information on the amounts awarded to specific media outlets despite there being an clear obligation to do so under the provisions of Law 29/2005, on institutional advertising and communication. Article 14 of that law stipulates that the Government must produce an annual advertising and communication report, which should include every institutional campaign provided for in that law, as well as the amounts spent on them, the awardees of contracts entered into and, for advertising campaigns, the corresponding media plans.

Following my explicit request for information on the amounts awarded to specific media outlets through contracts, the replies received from the various ministries and public bodies

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between 2014 and 2019”. The author of this article is the project’s chief investigator and the academic responsible for the consultancy services commissioned from the Autonomous University of Barcelona by the above-mentioned authority.



of the General State Administration of Spain were very varied. Let us take a look at some examples. The Ministry of Economic Affairs and Digital Transformation referred us to the annual institutional advertising plans and reports published by the Prime Minister's Office, which, as already pointed out, do not go into detail about the amounts awarded to specific media outlets. The Ministry of Finance told us to look for the required information on the Platform for Public Sector Procurement, but this channel really did not enable us to find it. The Ministry of the Interior, the department that spends the most on institutional advertising campaigns refused to give us the information, stating that a prior action of reworking would be required. The Ministry of Agriculture, Fisheries and Food told us that the Administration did not know what the amounts awarded to specific media were because the planning—as usually happens—is done by an external agency, whereas the Ministry of Health, whose reply was exemplary, provided us with all of the information requested, stating that despite one of the external agencies' misgivings, it felt that the public interest in accessing the information prevailed. In short, it was absolutely impossible to perform an assessment of the total amount of transfers for public advertising to specific media outlets.

The distinction between institutional and commercial advertising, which was observed in the case of the Government of Spain—but not in those of regional governments—is very significant, especially when bearing in mind that the volume of spending on commercial advertising is greater. Article 1.2 of the previously mentioned Law 29/2005 stipulates that its provisions are not applicable to campaigns of an industrial, commercial or trade-related nature promoted by the General State Administration of Spain and by other bodies forming part of the State public sector. Having made enquiries with the Prime Minister's Office on this particular point, I was informed that, in relation to commercial advertising, they were only bound by the constraints of Article 3 of General Advertising Law 34/1988, which refers to instances of illegal advertising, and therefore had no obligation in regard to matters of transparency.

For example, in the 2020 financial year, the State ran 69 institutional communication campaigns or initiatives costing €41,861,490, and 47 commercial advertising campaigns costing €85,410,246 (Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática 2021: 48-49). As for previous years, Magallón (2021: 82) notes that, between 2006 and 2018, the budget allocated to commercial campaigns rose overall by 10.42%, whereas the one allocated to institutional advertising fell by 89.76%.

It is very significant that neither the Government of Spain nor the regional governments have made information available about planning criteria.

I only found one study—relating to Catalonia—containing an in-depth analysis of amounts awarded to media outlets for institutional advertising, collating audience shares with the amounts received under contracts entered into by the regional administration between 2007 and 2018. After unsuccessfully trying to get hold of the political decision-makers version of events, Fernández Alonso and Badia Masoni (2021) concluded in that study that the successive governments— of two tripartite coalitions formed by social democrats, pro-independence republicans and greens, of *Convergència i Unió* (a nationalist liberal Christian-democratic alliance), of *Junts pel Sí* (Together for Yes) and of Together for Catalonia with ERC—had planned campaigns using criteria that were clearly arbitrary, which had very strikingly benefited politically aligned media outlets, especially *El Punt Avui*, *Ara*, 8TV, *El Punt Avui TV*, *RAC 1* and *El Nacional*. Those authors went on to underscore the penalisation suffered by those firms whose media had a liberal or conservative editorial line and were especially critical of separatism.

Until other similar studies become available, it should be noted that some evidence to support the conclusions drawn for the Catalan case has been observed. For example, institutional advertising has been a very important subject of debate in the make-up of the

current left-wing coalition government of the Valencian Community<sup>16</sup> and the centre-right-wing one of Castile and León due to the mistrust that this subject instils in the minority partners of both.<sup>17</sup> In the latter of the two, an investigation committee has even been created in the regional parliament—at the request of Ciudadanos—to analyse the management of public advertising between 2014 and 2019.<sup>18</sup>

## Conclusions

From the evidence presented about political power's media capture in Spain, it can be concluded that such capture is made by national and regional governments with very different ideological tendencies. The protagonists are the two big Spanish political parties (PSOE and PP) in some cases, whereas the left-wing coalition (UP) as well as the Catalan and Basque nationalist parties are in others.

The intensity of capture is the same or even higher than it was in previous periods (Casado del Río et al., 2017, Fernández Alonso et al., 2017, Fernández Viso, 2017), with a number of especially worrying examples having been observed. Such cases include the resounding failure of the public competition that aimed to make progress towards an RTVE governance

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<sup>16</sup> [https://www.eldiario.es/comunitat-valenciana/descontrol-publicidad-institucional-negociacion-botanic\\_1\\_1530275.html](https://www.eldiario.es/comunitat-valenciana/descontrol-publicidad-institucional-negociacion-botanic_1_1530275.html)

<sup>17</sup> <https://www.expansion.com/economia/politica/2019/06/21/5d0cba3be5fdeab84b8b4597.html>

<sup>18</sup> Similarly, repeated complaints and initiatives by various professional and business bodies have been observed, the aim of which is to improve management in this area. This is the case, for example, of the Platform for the Defence of Freedom of Information (PDLI) and the associations of editors and media agencies.

model that had a strong professional component; the counter-reform of the law regulating RTVM, returning its governance model to one that is clearly governmental in nature; or the shift that has occurred in the CAC, which had once been considered a model for promoting other regional councils, but is now more politicised than ever.

It is only in the case of institutional advertising that a few small yet positive signs can be found, though only in terms of transparency. Neither the campaign planning criteria nor its process are made public. Furthermore, the data available on procurement reveal the administrations' evident arbitrariness, which tends to favour politically aligned media outlets. The traditional trait of strong government interventionism with authoritarian components, as noted by Hallin and Mancini (2004) when talking about Polarised Pluralist media systems, is therefore confirmed for Spain. However, there is absolutely no sign of a "clear tendency of convergence toward the Liberal System" (p. 301), which these authors advocated nearly two decades ago, which could have resulted in a reduction in such interventionism. It would be interesting to conduct a comparative study to see whether what is now happening in Spain is extrapolable to other European countries, and to what extent. Should this study be conducted, it would be novel to consider the management of institutional advertising (and how it impacts on firm's accounts) as the focus of analysis. Indeed, while I have incorporated this aspect into this work, it has not been observed in others on media systems.

In any event, it is very clear that measures should be adopted to reverse the practices of political power's media capture in Spain. Regarding national and regional public radio and television broadcasters, the desirable governance model is, in my opinion and on paper, a professional one. The parliamentary model has meant that the partisan battle has been transferred to the governing bodies of those organisations, and something similar would almost certainly happen with a civic or corporatist governance model since the most representative social entities in Spain are interest groups with strong ties to political parties or tendencies. However, given the failure of the RTVE competition, it seems clear that there

is a problem of political culture in Spain that makes implementing a model of a professional nature difficult because it would almost certainly limit political control over public media. A halfway option, which is possibly valid for independent regulators too, could be the appointment of council members by bodies with different profiles (not just political representation), as happens in France with the national public radio and television broadcaster and with the *Autorité de régulation de la communication audiovisuelle et numérique* (Arcom). Such an alternative has not previously been proposed, though it is very likely to come up against considerable resistance from political parties, who usually appeal to the fact that they are the ones who embody the will of the people when it comes to making high-level appointments, just as they are for appointments to the General Council of the Judiciary. Indeed, the different political parties' desire to control this body has meant that Spain has lost its full democracy status in the ranking that The Economist<sup>19</sup> produces annually.

Regarding the independent regulators, all of them should have their powers expanded to cover online platforms and social media and, of course, to remove powers from governments to award FM and TDT licences (and to authorise the sale or lease of such licences), as observed in many European countries (with exceptions such as Italy). In turn, the *Direktorenkonferenz der Landesmedienanstalten*, which brings together the directors of regional regulators in Germany, could serve as a source of inspiration in terms of articulating coordinated work between Spanish regulators (which should include the CNMC). A fact that should be underscored is the existence of only three regional regulators in Spain, which means that the regional governments have a greater capacity to interfere in the media because they retain many powers over the sector. However, an increase in regulators and powers

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<sup>19</sup> <https://elpais.com/espana/2022-02-10/espana-pasa-a-tener-una-democracia-con-imperfecciones-segun-la-clasificacion-de-the-economist.html>

makes no sense if the council members do not act with the necessary independence. As I have explained, this is what happens in Catalonia, whose regulator has considerable room to act but has its hands tied by the majority parties.

As far as institutional advertising is concerned, policies ensuring transparency in campaign planning and procurement are urgently needed. In turn, institutional advertising cannot be a covert form of subsidising media outlets, and much less so if that is done only with politically aligned ones. In this sense, the Constitutional Court has handed down several rulings on the need for planning to take into account the audience, social repercussion and impact index of the media outlet. There is also knowledge of CNMC recommendations suggesting that the weighting of automatically evaluable criteria should be higher than that established for value judgment criteria in assessments for contract tender, and of Spanish Court of Auditors recommendations that place emphasis on rigorous subsequent monitoring of a campaign's effectiveness, ensuring that the information published is homogeneous, covers all the campaigns done and accurately reflects the amounts spent (Aguado Guadalupe 2018: 1003). On an international scale, example could be taken from countries like Canada and Portugal. Canada has regulated in great detail the process of campaign planning, procurement and evaluation<sup>20</sup>, and Portugal's independent regulator (*Entidade Reguladora de Comunicação Social*) centralises and publishes monthly reports of all the amounts awarded to specific media outlets for institutional advertising by the various administrations and public business entities<sup>21</sup>. However, we are once again met by inertia in our political culture, which makes

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<sup>20</sup> See Appendix B of the Directive on the Management of Communications:

<https://www.tbs-sct.gc.ca/pol/doc-fra.aspx?id=30682>

<sup>21</sup> <https://www.erc.pt/pt/estudos-e-publicacoes/publicidade/relatorios-publicidade-institucional-do-estado>

governments more reticent to cede what is an evident tool for exerting control over the media.

In any event, none of the proposals set out in these conclusions is included in the General Audiovisual Communication Bill, which the Government of Spain submitted to the Parliament in December 2021<sup>22</sup>, or in any other current legislative initiative, which is a clear sign of political resistance to ending the capture practices I have commented on. This leads me to think that, to reverse the trend described in this article, it would be expedient to promote some civic initiative as soon as possible in order to at least bring academic and professional groups together to foster a debate, like the one articulated by the Media Reform Coalition<sup>23</sup> in the United Kingdom, on the necessary independence of the media, which in turn is crucial for strengthening democratic debate.

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<sup>22</sup> *Boletín Oficial de las Cortes Generales*. Congress of Deputies. XIV Legislature. Series A: Bills, number 77-1, 17 December 2021.

<sup>23</sup> <https://www.mediareform.org.uk/about>

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