

ALTERNATIVE REPORT TO THE SEVENTH PERIODIC REPORT OF SPAIN

144th Regular Session (June 23 to July 25, 2025) of the United Nations Human Rights Committee

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I. Executive Summary

This alternative report, prepared by the international law firm IHR LEGAL at the request of Spanish digital media outlet "El Español," is submitted to the United Nations Human Rights Committee (hereinafter, the "Committee" or "HRC") in the context of Spain's seventh periodic report. The aim is to provide supplementary information on the national human rights situation, particularly regarding the right to freedom of expression and the right of access to public information, enshrined in Article 19 of the International Covenant on Civil and Political Rights (hereinafter "the Covenant").

The report provides a critical analysis of the recent adoption and implementation of the Action Plan for Democracy (*Plan de Acción por la Democracia*) promoted by the current government. While the plan's stated aim is to combat disinformation and strengthen democratic quality, several organizations, journalists, media outlets, and freedom of expression experts have expressed concerns about its potential misuse as a mechanism for indirect control and censorship. These concerns stem from measures such as creating a mandatory media registry and centralizing the allocation of government advertising under discretionary criteria.

The report emphasizes that government advertising, conducted by public authorities to inform citizens about matters of general interest, also represents a major source of revenue for media outlets. Thus, discriminatory changes in the allocation of government advertising may severely limit affected media.

Additionally, the report denounces a lack of transparency in managing government advertising, despite existing legal provisions mandating public access to such information. The Spanish government has failed to provide clear, comprehensive, and updated data on advertising allocations and has also ignored formal information requests by the media and other stakeholders. This issue is especially alarming considering the historical increase in public spending on government advertising and allegations of its discriminatory use to benefit government-friendly outlets while marginalizing critical ones.

In light of applicable international standards, both universal and regional, the report argues that these practices violate Spain's obligations concerning freedom of expression and access to public information. It concludes that the Action Plan for Democracy and the opaque advertising allocation practices are incompatible with Article 19 of the Covenant, potentially amounting to indirect censorship and unjustified restrictions under international law.

The report concludes with recommendations urging the Committee to call on Spain to uphold media independence, ensure a transparent and objective allocation of government advertising, guarantee full and timely access to public information, and assign advertising management to an independent body to avoid its use as a political control tool.

II. Institutional Presentation

IHR Legal is an international and interdisciplinary firm based in Washington, D.C., with presence in Geneva, specializing in international human rights law. The firm comprises internationally recognized professionals with extensive experience in the Universal Human Rights System and the Inter-American Human Rights System, including former high-ranking officials and governmental advisors. More information about the firm is available at: ihr.legal

III. Introduction

The objective of this report is to provide supplementary information to that submitted by Spain on July 18, 2024, in the context of its seventh reporting cycle before the Committee. This report focuses on a new institutional and regulatory framework that affects the right to freedom of expression for media members and highlights the failure of Spanish authorities to comply with the right of access to information.

Following the structure used by the Committee in the list of issues prior to submission of the report¹, we begin with general information on the national human rights situation, including new measures and developments related to the Covenant's implementation. This section will summarize the Committee's requests and our responses to the State's omissions. It focuses on the new Action Plan for Democracy proposed by the current government, approved by the Council of Ministers, and currently being implemented. Special attention is given to concerns raised about this Plan's implications for freedom of expression.

The second section presents specific information on the implementation of the Covenant's articles, including compliance with the Committee's past recommendations. It reports serious violations of the right of access to information, also protected under Article 19 of the Covenant. It contradicts the State's claims that this right is upheld through Act 19/2013 on transparency, access to public information, and good governance, applicable to all public administrations. Despite this legal framework, the Spanish authorities have not provided clear, accurate, or complete data on the allocation and expenditure of government advertising, despite multiple requests. In fact, public spending on government advertising has reached its highest level in 18 years,² with strong indications that such funds are being used to reward or punish media outlets based on their political alignment with the current government.

¹ Human Rights Committee. List of issues prior to submission of the seventh periodic report of Spain, CCPR/C/ESP/QPR/7, December 3, 2019.

² On January 22, 2025, the Government approved the Advertising and Institutional Communication Plan 2025, where the total advertising investment (institutional plus commercial campaigns) foreseen is 161.2 million Euros for 146 campaigns, 16% more than in 2024. This is the largest budget in 18 years, only behind 2007-2008 (Zapatero's government). Adding the last five years (2020-2024), the accumulated expenditure was 727 million Euros, consolidating the Government as the largest advertiser in Spain. Information available at: <https://www.lamoncloa.gob.es/serviciosdeprensa/cpci/Documents/Plan%202025.pdf>.

Finally, based on the situations described, this report provides recommendations that the Committee may include in its concluding observations on Spain's seventh periodic report.

IV. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

A. Reporting Cycle Background

In its list of issues prior to Spain's seventh periodic report, the Committee requested the State information on "significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the previous concluding observations".³ However, Spain did not provide information on this point.

The Committee also asked Spain to provide information "on the processes in place for implementing the recommendations contained in the Committee's previous concluding observations,"⁴ including the recommendation that the State should ensure the full enjoyment of the rights to freedom of expression, association, and peaceful assembly and ensure that any restrictions comply with the strict requirements set out in the Covenant and interpreted by General Comment No. 34.⁵ However, in its seventh report, the State limited itself to providing information on the status of two cases that were the subject of the Committee's opinions, without responding to this question.⁶

B. Supplementary Information

In the absence of detailed State information, this report informs the Committee about a significant development affecting freedom of expression in Spain: the Action Plan for Democracy.⁷ This Plan and the ongoing discriminatory distribution of government advertising reported since 2024 pose serious risks to media independence and pluralism. It enables the government to continue distributing public advertising arbitrarily—restricting expression in a manner inconsistent with the Covenant and the Committee's recommendations.

1. The Action Plan for Democracy

The Plan was proposed amid criticism from President Pedro Sánchez against right-wing media, following an April 2024 corruption complaint filed by the organization *Manos Limpias* against

³ Human Rights Committee. List of issues prior to submission of the seventh periodic report of Spain, CCPR/C/ESP/QPR/7, December 3, 2019, para. 2.

⁴ Human Rights Committee. List of issues prior to submission of the seventh periodic report of Spain, CCPR/C/ESP/QPR/7, December 3, 2019, para. 1.

⁵ Human Rights Committee. Concluding observations on the sixth periodic report of Spain, CCPR/C/ESP/CO/6, 14 August 2015, para. 25.

⁶ Human Rights Committee. Seventh periodic report of Spain, CCPR/C/ESP/7, 29 November 2024, paras. 1–4.

⁷ Government of Spain. Action Plan for Democracy. Available at: https://www.mpr.gob.es/prencom/notas/Documents/2024/2024-3002_Plan_de_accion.pdf.

his wife, Begoña Gómez, based on journalistic investigations.⁸ President Sánchez described certain media as "pseudo-media" and accused them of being part of a "mud machine" aimed at dehumanizing him through misinformation.⁹

On April 24, 2024, after a judge opened preliminary proceedings against Mrs. Gómez, President Sánchez published an open letter accusing the leaders of the *Partido Popular* and *Vox* of orchestrating this attack.¹⁰ Since then, on several occasions, the president has alluded to this "machine" and the "mud-slinging" promoted by the media against him and his family. He later presented the Action Plan for Democracy to Congress on July 17, 2024. The Council of Ministers approved it on September 16, and it is now being implemented.

The Plan includes 31 measures—7 of which are already underway—and is said to be based on the new European Media Freedom Act.¹¹ Key measures include:

1. Creating a media registry disclosing ownership and government advertising received.
2. Reforming the Government Advertising Act to ensure transparency and non-discrimination.
3. Limiting public funding to media outlets to prevent dependency.
4. Launching a national strategy to combat disinformation.

The government has allocated €7.83 million to promote the Plan, making it the third most expensive campaign of 2025. It is thus a political priority for the administration.

Additionally, on February 25, 2025, the Council of Ministers approved a draft bill to improve democratic governance in digital services and media.¹² Among other measures, this bill establishes the media registry mentioned in the Action Plan for Democracy. The registry will be managed by the National Commission on Markets and Competition (CNMC), which will also oversee media compliance with transparency obligations and impose sanctions when necessary.

⁸ Infobae. "Cronología de la investigación a Begoña Gómez: de la denuncia de Manos Limpias a la declaración que tendrá lugar el 19 de julio," 5 July 2024, available at: <https://www.infobae.com/espana/2024/07/05/cronologia-de-la-investigacion-a-begona-gomez-de-la-denuncia-de-manos-limpias-a-la-declaracion-que-tendra-lugar-el-19-de-julio/>.

⁹ Clarín. "Pedro Sánchez prepara medidas contra los 'pseudo medios digitales' y desata las alarmas en España", 23 June 2024, available at: https://www.clarin.com/mundo/pedro-sanchez-prepara-medidas-pseudo-medios-digitales-desata-alarmas-espana_0_f4PwveHq8n.html?srsId=AfmBOopo0gGoCRzBxAbu-5CjEO6Gbu9Oa6_bC97O51Y-Ed18VTM-RTV4.

¹⁰ Post by Pedro Sánchez on X, 24 April 2024, available at: <https://x.com/sanchezcastejon/status/1783181535337734409?lang=en>.

¹¹ Newtral. "Cronología del Plan de Acción por la Democracia del Gobierno", 14 March 2025, available at: <https://www.newtral.es/cronologia-plan-accion-democracia/20250314/>.

¹² Ministry for Digital Transformation and the Civil Service. Press release, 25 February 2025, available at: https://digital.gob.es/dam/es/portalmtdfp/comunicacion/sala-de-prensa/comunicacion_ministro/2025/02/2025-02-25/NdPCminDSAEMFA.pdf.

These obligations include, in line with Article 6 of the European Regulation, disclosure of the media outlet's name, contact information, influential stakeholders, real owners, and the amount of public funding received. Media that fail to provide or update this information could face sanctions. Platforms may also be fined up to €30,000 or 6% of their annual turnover, depending on their infractions. Moreover, registration in this registry will be a prerequisite for media outlets to access public funding. According to the government, this measure aims to prevent public administrations from covertly financing aligned media outlets.

The draft bill also proposes a reform of the Government Advertising Act, included in the 2025 Annual Legislative Plan.¹³ A major innovation is the creation of a centralized media authority under the direct control of the Prime Minister's Office, replacing the Ministry of Finance's Centralized Contracting Board. This change allows the Executive to allocate resources based on more subjective criteria, such as audience quality rather than quantity, and introduces sustainability principles in advertising distribution.

President Sánchez has justified these reforms by stating that the goal is to "limit the amount of public funding that administrations can allocate to media outlets, to ensure none are more dependent on public funds than on readers," and to prevent political parties from "buying editorial lines with taxpayer money."¹⁴

2. Context of Government Advertising Allocation

Government advertising refers to communications from public authorities to inform citizens about matters of general interest. In Spain, this is regulated mainly by Act 29/2005 on Government Advertising and Communication, and a Framework Agreement signed in late 2023 between the central government and a consortium of media agencies responsible for selecting, distributing, and negotiating advertising campaigns. This agreement is managed by the Secretary of State for Communication through the Director of the Department of Institutional Communication.

This issue is critical because government advertising is a major revenue source for the media. In recent years, the government has been Spain's largest advertiser, spending over €90 million in 2023.¹⁵ This gives the Executive significant influence over media outlets through its allocation choices.

¹³ Público. "El Gobierno abrirá el melón de la reforma de la ley de publicidad institucional en 2025", 15 April 2025, available at: <https://www.publico.es/politica/gobierno/gobierno-abrir-melon-reforma-ley-publicidad-institucional-2025.html>.

¹⁴ Rteve. "Peligros, vaguedades y aciertos: ¿qué dicen los expertos del plan de Sánchez sobre los medios?", 21 July 2024, available at: <https://www.rtve.es/noticias/20240721/peligros-vaguedades-aciertos-expertos-plan-sanchez-medios/16188474.shtm>.

¹⁵ La Moncloa. 2023 Annual Report on the Advertising Execution of the Ministry of the Presidency, available at: <https://www.lamoncloa.gob.es/serviciosdeprensa/cpci/paginas/PlanesEInformes.aspx>; La Gaceta. "El Gobierno, el mayor anunciante en España por segundo año consecutivo", 27 June 2024, available at: <https://gaceta.es/espana/el-gobierno-el-mayor-anunciante-en-espana-por-segundo-ano-consecutivo-20240627-1036/>.

Previously, advertising was distributed based on technical criteria like audience demographics and GfK DAM rankings (the official digital audience measurement system in Spain).¹⁶ However, since 2024, outlets such as The Objective, Dircomfidencial¹⁷, and El Español¹⁸ have reported the use of alternative metrics—like bounce rates¹⁹ and direct traffic²⁰—to disadvantage critical outlets and favor those aligned with the government.²¹ Some agencies have reported being directly instructed by the government on which media to include or exclude from campaigns.²² Virginia Pérez Alonso, director of Público and former president of the Platform for Freedom of Information, criticized the lack of transparency: “Public institutions operate under a zero-transparency principle when it comes to government advertising, preventing media and citizens from verifying whether allocations follow objective criteria.”²³

As a result, outlets critical of the government have seen major reductions in advertising revenue. El Español, Spain’s most-read digital daily, saw a 64.7% drop in government advertising income in 2024. It was also excluded, without technical justification, from the year’s most significant campaign by the Ministry of Finance, worth €4.9 million.

In contrast, El País, ideologically closer to the government, has received the most government advertising revenue, despite not ranking among the top five outlets for unique users or average

¹⁶ GfK DAM is a tool for measuring individuals’ digital consumption through cross-device tracking. Pursuant to a resolution by the Monitoring Committee for the Measurement of Digital Audiences in Spain, since 2022 GfK DAM has been the official digital consumption measurement tool in Spain. As such, it is the primary indicator used for negotiating both private and government advertising.

¹⁷ Dircomfidencial. “Preocupación entre las agencias de medios con Moncloa por la gestión de la publicidad institucional”, 11 November 2024, available at: <https://dircomfidencial.com/marketing/preocupacion-entre-las-agencias-de-medios-con-moncloa-por-la-gestion-de-l-a-publicidad-institucional-20241111-0405/>.

¹⁸ El Español. “El Español cierra 2024 como líder en usuarios, audiencia media, páginas vistas y sesiones en pleno escándalo por la publicidad institucional”, 27 December 2024, available at: https://www.elespanol.com/invertia/medios/20241227/espanol-cierra-lider-usuarios-audiencia-media-paginas-vistas-sesiones-pleno-escandalo-publicidad-institucional/911659200_0.html.

¹⁹ The bounce rate is the percentage of users who visit a webpage and leave without performing any specific action.

²⁰ The direct traffic of a website refers to the number of users who access it by typing the URL directly into the browser, rather than through a referral.

²¹ El Español. “El escándalo de la publicidad institucional: la caja negra de Pedro Sánchez”, 12 November 2024, available at: https://www.elespanol.com/espana/politica/20241112/escandalo-publicidad-institucional-caja-negra-pedro-sanchez/900549937_14.amp.html.

²² El Español. “El látigo y la pluma: el descontento de las agencias por el reparto de la publicidad institucional”, 13 November 2024, available at: https://www.elespanol.com/reportajes/20241113/latigo-pluma-descontento-agencias-reparto-publicidad-institucional/900660489_0.amp.html. Dircomfidencial. “Preocupación entre las agencias de medios con Moncloa por la gestión de la publicidad institucional”, 11 November 2024, available at: <https://dircomfidencial.com/marketing/preocupacion-entre-las-agencias-de-medios-con-moncloa-por-la-gestion-de-l-a-publicidad-institucional-20241111-0405/>.

²³ International Press Institute. “Plan de Regeneración Democrática de España: implicaciones para la libertad de prensa”, 7 October 2024, available at: <https://ipi.media/plan-regeneracion-democratica-implicaciones-libertad-prensa/>.

daily audience.²⁴ Similarly, traditional print media, although declining in audience and private ad revenue, have received 12.18% of government advertising, more than double their private market share of 5.6%.²⁵ This misalignment supports the government's narrative against digital-native media allegedly funded by the opposition.

Taking into account the context described above, although the measures of the Action Plan for Democracy seem at first sight to be aimed at ensuring that the media do not disseminate false news and that government advertising is regulated, the reality is that the Plan provides the government with greater tools to interfere in the distribution of government advertising according to its affinity with each media outlet. In this sense, the following will explain why this Plan is incompatible with the Covenant, particularly with regard to the establishment of a media registry and the control of government advertising.

3. Human rights standards on the arbitrary allocation of government advertising

The right to freedom of expression is recognized in Article 19 of the Covenant. In light of this right, the Committee, in its General Comment No. 34, explained that “a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression.”²⁶ In this regard, States must ensure that the legislative frameworks governing the media are compatible with the requirements set out in paragraph 3 of Article 19 of the Covenant.²⁷ That is, any restriction on freedom of expression must be explicitly provided by law and necessary to ensure respect for the rights of others, or the protection of national security, public order, or public health or morals.

On the arbitrary allocation of government advertising, the Committee noted in its General Comment No. 34 that such practices may indeed constitute an additional violation of the right to freedom of expression:

41. Care must be taken to ensure that systems of government subsidy to media outlets and the placing of government advertisements are not employed to the effect of impeding freedom of expression (...)

²⁴ El Español. “El Español cierra 2024 como líder en usuarios, audiencia media, páginas vistas y sesiones en pleno escándalo por la publicidad institucional”, 27 December 2024, available at: https://www.elespanol.com/invertia/medios/20241227/espanol-cierra-lider-usuarios-audiencia-media-paginas-vistas-sesiones-pleno-escandalo-publicidad-institucional/911659200_0.html.

²⁵ The Objective. “El Gobierno ultima una nueva ley de publicidad institucional a la medida de sus medios afines”, 11 February 2025, available at: <https://theobjective.com/medios/2025-02-01/gobierno-nueva-ley-de-publicidad-institucional/>.

²⁶ Human Rights Committee. General Comment No. 34. Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 13.

²⁷ Human Rights Committee. General Comment No. 34. Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 39.

42. The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.²⁸

In application of the above, the HRC, in its Concluding Observations on Lesotho, expressed concern “about the reports received by the Committee that newspapers which adopt a negative attitude against the Government are refused advertisement by the State and parastatal companies”.²⁹ In that context, the Committee urged the State to respect freedom of the press and to refrain from taking measures that interfere with it.

In a similar vein, the Joint Declaration on Diversity in Broadcasting called for the implementation of measures “to ensure that government advertising is not used as a vehicle for political interference in the media.”³⁰ Likewise, the Joint Declaration on International Mechanisms for Promoting Freedom of Expression stated the following regarding government advertising:

Governments and public bodies should never abuse their custody over public finances to try to influence the content of media reporting; the placement of public advertising should be based on market considerations.³¹

Similarly, in a recent report by the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, attention was drawn to the phenomenon of media capture. This phenomenon can be defined as the process by which independent institutions come under the control of governments, plutocrats, or corporations. The Rapporteur also noted that this may be accompanied by political interference, for instance, through the instrumentalization of public advertising and state subsidies to undermine media outlets critical of the government in power.³² For this reason, in response to allegations of discrimination against critical media, the Special Rapporteur has urged several States to allocate government advertising in a transparent manner.

²⁸ Human Rights Committee. General Comment No. 34. Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 41-42.

²⁹ Human Rights Committee. Concluding Observations on Lesotho, CCPR/CO/79/Add.106, para. 22.

³⁰ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression, and African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information. Joint Declaration on Diversity in Broadcasting, 2007, available at: <https://www.oas.org/en/iachr/expression/showarticle.asp?artID=719&IID=1>.

³¹ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression, and African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information. Joint Declaration on International Mechanisms for Promoting Freedom of Expression, 2011, available at: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=849>.

³² Human Rights Council. Strengthening media freedom and the safety of journalists in the digital age. 20 April 2022. A/HRC/50/29, para. 75.

For example, the Special Rapporteur drew attention to the case of Hungary,³³ following a visit to the country, where discriminatory allocation of government advertising between pro-government and critical media outlets was observed. This practice had worsened since Prime Minister Viktor Orbán came to power. In light of this situation, the Special Rapporteur urged Hungary to establish transparent and non-discriminatory systems for the allocation of government advertising:

The deliberate skewing of public revenue advertising in favour of outlets with a particular political view has adverse consequences, not only for the health of the media sector but also for the viability of the entire information ecosystem. First, the distribution of a high proportion of public funds to pro-government media gives them an unfair advantage over independent media and distorts democratic debate. Secondly, in a competitive market where media viability is challenged by various factors, the deliberate deprivation of independent media of an important source of funds is contrary to the obligation of the State to promote media independence, diversity and pluralism. The Special Rapporteur believes that in line with international standards, the Government should put into place effective systems to ensure transparency, fairness and non-discrimination in the allocation of resources to the media, including public advertising funds.³⁴

For its part, the European Court of Human Rights (hereinafter “ECtHR”) has explained that States must not only refrain from arbitrary interference with freedom of expression, but must also take effective measures to protect this freedom and ensure pluralism. In this regard, “in the field of audiovisual broadcasting, the above principles place a duty on the State to ensure, first, that the public has access (...) to impartial and accurate information and a range of opinion and comment, reflecting, inter alia, the diversity of political outlook within the country and, secondly, that journalists and other professionals working in the audiovisual media are not prevented from imparting this information and comment”.³⁵

In light of the foregoing, in the case of *Vgt Verein gegen Tierfabriken v. Switzerland*, the ECtHR examined a situation in which the company responsible for placing advertisements on national radio refused to broadcast an advertisement submitted by an animal protection association, due to its political content regarding meat consumption. The ECtHR found that this interference with freedom of expression was not necessary in a democratic society, as the ban on political advertising did not apply to all media outlets.³⁶ In this regard, although the case *Vgt Verein gegen Tierfabriken* concerns the prohibition of political advertising by private entities, and not state advertising, it effectively condemned a law that resulted in the discriminatory allocation of

³³ Human Rights Council. Strengthening media freedom and the safety of journalists in the digital age. 20 April 2022. A/HRC/50/29, para. 77.

³⁴ Human Rights Council. Visit to Hungary. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, 11 May 2022, A/HRC/50/29/Add.1.

³⁵ ECtHR. Guide on Article 10 of the European Convention on Human Rights – Freedom of Expression, 30 April 2021, available at: https://ks.echr.coe.int/documents/d/echr-ks/guide_art_10_eng, para. 736.

³⁶ ECtHR. Case of *Vgt Verein gegen Tierfabriken v. Switzerland*, 28 June 2001, Application No. 24699/94.

advertising by endorsing the view that such allocation—whether made by private or state entities—cannot be based on clearly discriminatory criteria.³⁷

Finally, at the Inter-American Human Rights System, the Declaration of Principles on Freedom of Expression, adopted by the Inter-American Commission on Human Rights (hereinafter “IACHR”), establishes the following in Principle 13:

The exercise of power and the use of public funds by the state, (...), **the arbitrary and discriminatory placement of official advertising and government loans;** (...), among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express **threaten freedom of expression, and must be explicitly prohibited by law.** The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression. (emphasis added)

Similarly, the IACHR, in its *Principles on the Regulation of Government Advertising and Freedom of Expression*, explained that in the case of government advertising distribution, “indirect censorship occurs when such allocation is done with discriminatory aims according to the editorial position of the media outlet included in or excluded from such allocation, and with the purpose of imposing conditions on its editorial position or line of reporting”.³⁸ To prevent such scenarios, States must establish procedures for the procurement and distribution of government advertising that minimize discretion and avoid suspicions of political favoritism.³⁹ Moreover, the criteria for allocation must be clearly established in law and should be guided by the effectiveness of the message, through the selection of the target audience.⁴⁰

Additionally, the 2003 Annual Report of the Office of the Special Rapporteur for Freedom of Expression (hereinafter, “RELE”) examined in greater depth the discriminatory allocation of government advertising as one of the earliest forms of indirect censorship. In this regard, three types of state subsidies in the allocation of government advertising have been identified: by category, by viewpoint, and by the need for selection. Specifically, allocation by viewpoint constitutes the most blatant violation of the right to freedom of expression, as the criteria for allocating government advertising resources are entirely based on the opinions expressed by the media outlet.⁴¹ While States have the authority to make decisions regarding how to allocate

³⁷ Special Rapporteur for Freedom of Expression. “Discriminatory Allocation of Official Advertising,” available at: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artid=270&lid=2>.

³⁸ IACHR. *Principles on the Regulation of Official Advertising and Freedom of Expression*, 2011, para. 11.

³⁹ IACHR. *Principles on the Regulation of Official Advertising and Freedom of Expression*, 2011, para. 46.

⁴⁰ IACHR. *Principles on the Regulation of Official Advertising and Freedom of Expression*, 2011, para. 52.

⁴¹ RELE. *Chapter V: Indirect Violations of Freedom of Expression. Discriminatory Allocation of Official Advertising*, 2003, para. 10.

advertising, including the possibility of denying advertising to all media, they may not deny such income to only certain outlets based on discriminatory criteria.⁴² Government advertising can be essential for the operation of a media outlet, and denying access to it may harm the outlet in a way equivalent to a fine or even a prison sentence. In such cases, the need to obtain a favorable allocation of government advertising may pressure media outlets into producing reports favorable to those responsible for such decisions.⁴³ In other words, the distribution of government advertising acts as a strong deterrent to freedom of expression.⁴⁴

In sum, the arbitrary and discriminatory allocation of government advertising constitutes a form of indirect censorship that is incompatible with international human rights standards. Various international bodies and mechanisms have consistently affirmed that the use of public resources to reward or punish media outlets based on their editorial stance violates freedom of expression, distorts democratic debate, and undermines informational pluralism. Therefore, States have the obligation to establish clear, objective, transparent, and non-discriminatory mechanisms for the allocation of official advertising, in order to ensure media independence and prevent any political interference that may restrict the free flow of ideas and opinions in a democratic society.

4. The Incompatibility of Certain Measures of the Action Plan for Democracy with the Right to Freedom of Expression

As previously mentioned, the Action Plan for Democracy proposes a series of restrictions on freedom of expression, such as the obligation to register in a media registry and limitations on the government advertising that media outlets may receive. Although the government has claimed that these measures are based on the European Media Freedom Act, which aims to establish a common framework for the protection of media pluralism and independence across European Union countries, some academic experts have argued that the Plan misapplies the European regulation. This is because, while the EU regulation focuses on protecting media outlets and strengthening them as key tools in the fight against disinformation, what the President delivered was a highly negative discourse against the media.⁴⁵

As an illustration of the above, the Action Plan for Democracy proposes the creation of a media registry which, in the words of the Minister of Culture, Mr. Ernest Urtasun, will make it possible

⁴² RELE. *Chapter V: Indirect Violations of Freedom of Expression. Discriminatory Allocation of Government Advertising*, 2003, para. 12.

⁴³ RELE. *Chapter V: Indirect Violations of Freedom of Expression. Discriminatory Allocation of Government Advertising*, 2003, para. 12.

⁴⁴ RELE. *Chapter V: Indirect Violations of Freedom of Expression. Discriminatory Allocation of Government Advertising*, 2003, para. 13.

⁴⁵ Rteve. “Peligros, vaguedades y aciertos: ¿qué dicen los expertos del plan de Sánchez sobre los medios?”, 21 July 2024, available at: <https://www.rtve.es/noticias/20240721/peligros-vaguedades-aciertos-expertos-plan-sanchez-medios/16188474.shtm>.

“to establish the criteria for what constitutes a media outlet, as opposed to other platforms whose purpose is not to inform.”(own translation)⁴⁶ In this regard, Mr. Eduardo Suárez, Editorial Director at the Reuters Institute for the Study of Journalism at the University of Oxford, has criticized the problematic nature of allowing the government to define what qualifies as a media outlet and what constitutes disinformation.⁴⁷ Along the same lines, several journalists have warned that the central government seeks to control the press through this registry. For example, Mr. Juan Luis Cebrián, former president of the Prisa Group and founder of *El País*, stated that with this Plan, the government will decide “what counts as fake news and what does not,” and will “reward the good and punish the bad,” thereby establishing “a form of censorship.”⁴⁸ Likewise, Mr. Álvaro Nieto, director of *The Objective*, stated that the Action Plan for Democracy is “further proof that the Government intends to control the press” and that it is nothing more than a smokescreen in light of its recent scandals.

Additionally, what is even more concerning is that the media registry will serve as the basis for determining the allocation of government advertising. In other words, media outlets that, in the opinion of the state authority, disseminate disinformation will not receive government advertising. The government’s rationale is that critical media are financed by the opposition, and that limiting their access to government advertising would help to curb their influence.⁴⁹ Specifically, the government has referred to the need to control digital media, which it accuses of spreading fake news against it and of being indirectly funded by regional governments led by the PP.⁵⁰

In this way, by centralizing and controlling the allocation of government advertising, the Government may use metrics that benefit certain media outlets while excluding others, according

⁴⁶ La Sexta. “El plan de regeneración del Gobierno impondrá un registro de medios y ‘límites’ a la publicidad institucional”, 17 September 2024, available at: https://www.lasexta.com/noticias/nacional/plan-regeneracion-Gobierno-impondra-registro-medios-limites-publicidad-institucional_2024091766e967ffcf7b30001372ff0.html.

⁴⁷ Rteve. “Peligros, vaguedades y aciertos: ¿qué dicen los expertos del plan de Sánchez sobre los medios?”, 21 July 2024, available at: <https://www.rtve.es/noticias/20240721/peligros-vaguedades-aciertos-expertos-plan-sanchez-medios/16188474.shtm>.

⁴⁸ Nueva Economía Forum. “Cebrián critica el plan de regeneración democrática de Sánchez por ser ‘de degeneración’”, 18 September 2024, available at: <https://www.nuevaeconomiaforum.org/index.php/ca/noticias/cebrian-critica-el-plan-de-regeneracion-democratica-de-sanchez-por-ser-de-degeneracion>.

⁴⁹ Digitalis. “España creará una central de medios para gestionar la publicidad institucional,” 8 January 2025, available at: <https://diariodigitalis.com/publicidad/2025/01/08/espana-creara-una-central-de-medios-para-gestionar-la-publicidad-institucional/>.

⁵⁰ EFE. “Pedro Sánchez: No podemos permitir que el espacio digital se convierta en el ‘salvaje oeste’,” 5 February 2025, available at: <https://efe.com/espana/2025-02-05/sanchez-derechos-digitales-tecnocasta/>; ABC. “Moncloa impulsa el registro de medios que busca limitar su publicidad institucional,” 25 February 2025, available at: <https://www.abc.es/espana/gobierno-aprueba-anteproyecto-controlar-medios-pilotara-cnmc-20250225134225-nt.html>.

to its interests.⁵¹ In other words, the Plan creates a significant risk that the Executive could economically strangle media outlets whose editorial lines are contrary to those of the ruling government.

On this point, the Madrid Press Association expressed its concern over the fact that it would be the Executive Branch determining the limitation or withdrawal of public funds from media outlets found to repeatedly disseminate falsehoods, which could lead the government to act against those who, in good faith, publish well-sourced information that may be inconvenient for public authorities.⁵² Similarly, Ms. Antoinette Nikolova, director of the Balkan Free Media Initiative, cited the Spanish Government in the U.S. newspaper *Politico* in a highly critical tone, accusing the Spanish Prime Minister of going beyond what is recommended in the text of the European Media Freedom Act to restrict which organizations may qualify for public funding, interpreting the legislation to suit his own agenda.⁵³

Similarly, various actors in the media sector have raised concerns about the risk of arbitrariness introduced by the new criteria, which deviate from the principle of reaching the largest number of citizens and penalize traffic originating from social media or external platforms.⁵⁴ It has been pointed out that groups seemingly close to the government—such as Prisa (owner of *El País*), *eldiario.es*, or *Infolibre*—would benefit from this model based on traffic quality and number of subscribers, despite having lost their leadership in overall audience figures.⁵⁵

No less important, it is worth highlighting that 35 civil society organizations issued a manifesto in response to the Action Plan for Democracy, questioning, among other things, the lack of public participation in the drafting of a plan “for democracy”:

It is concerning that a Plan of this nature is being designed in an undemocratic manner. It seems regrettable that civil society and organizations specialized in democratic quality were not consulted during its drafting, especially when citizens’ trust in their institutions

⁵¹ PMK. “El Gobierno de España busca controlar la Publicidad Institucional y reforzar el marco regulatorio de los medios,” 8 January 2025, available at: <https://www.puromarketing.com/9/214918/Gobierno-espana-busca-controlar-publicidad-institucional-reforzar-marco-regulatorio-medios>. Digitalis. “España creará una central de medios para gestionar la publicidad institucional,” 8 January 2025, available at: <https://diariodigitalis.com/publicidad/2025/01/08/espana-creara-una-central-de-medios-para-gestionar-la-publicidad-institucional/>.

⁵² Asociación de la Prensa de Madrid. “La APM mantiene sus reservas sobre quién determinará la retirada de fondos públicos a medios que difundan bulos,” 17 July 2024, available at: <https://www.apmadrid.es/comunicado/la-apm-mantiene-sus-reservas-sobre-quien-determinara-la-retirada-de-fondos-publicos-a-medios-que-difundan-bulos/>.

⁵³ Politico. “If the EU is to support media freedom, its members must lead by example,” 10 April 2025, available at: <https://www.politico.eu/article/eu-accession-media-freedom-democracy-serbia-hungary-slovakia-italy-spain/>.

⁵⁴ EDATV. “Moncloa repartirá publicidad por criterios de inclusividad y no discriminación,” 1 February 2025, available at: <https://edatv.news/politica/moncloa-repartira-publicidad-institucional-base-criterios-no-discriminacion>.

⁵⁵ EDATV. “Moncloa repartirá publicidad por criterios de inclusividad y no discriminación,” 1 February 2025, available at: <https://edatv.news/politica/moncloa-repartira-publicidad-institucional-base-criterios-no-discriminacion>.

is grounded in fundamental principles such as transparency, civic participation, integrity, and accountability. (own translation)⁵⁶

In summary, various academics, media outlets, organizations, and journalists have warned that the measures contained in the Action Plan for Democracy could instrumentalize the fight against disinformation to restrict freedom of expression and economically stifle critical voices, thereby eroding the very democratic principles the Plan claims to protect.

For all the reasons set out above, this regulatory framework, in light of the applicable standards, is incompatible with the Covenant, particularly with the right to freedom of expression. As noted, States must implement measures to ensure that the allocation of government advertising is carried out in a transparent, objective, and non-discriminatory manner, since interference in this process may curtail freedom of expression to such an extent that it amounts to a form of indirect censorship. However, if the Action Plan for Democracy is implemented as proposed, the Executive would be able to determine which media outlets may receive public funding and which may not, even imposing sanctions on those it deems to disseminate “disinformation.” This entails press control and the discretionary use of government advertising as a mechanism of reward or punishment, depending on the editorial stance of the media outlets.

V. Specific information on the implementation of articles of the Covenant, including with regard to the Committee’s previous recommendations

A. Right to freedom of expression (Article 19)

1. Reporting Cycle Background

In the list of issues prior to the submission of the seventh periodic report, the Committee requested, among other points, updated information on the regulatory framework governing access to public information, specifying whether it applies to all three branches of government.⁵⁷

In this regard, in its report, the State indicated that this right is guaranteed by *Act 19/2013, on transparency, access to public information, and good governance, and that it applies to all Public Administrations*. It also clarified that this legislation enshrines the right of every citizen to access public information, understood as the contents or documents held by public authorities that have been produced or acquired in the exercise of their functions, except where such access would affect national security and defense, the investigation of crimes, or individuals’ privacy.

⁵⁶ Access Info Europe. “35 organizaciones lanzan un manifiesto con medidas urgentes para mejorar la salud democrática en España,” 17 July 2024, available at: <https://www.access-info.org/2024-07-17/35-organizaciones-lanzan-un-manifiesto-con-medidas-urgentes-para-mejorar-la-salud-democratica-en-espana/>.

⁵⁷ Human Rights Committee. List of issues prior to the submission of the seventh periodic report of Spain, CCPR/C/ESP/QPR/7, 3 December 2019.

Additionally, the State asserted that the information subject to transparency obligations is published on the relevant websites in a clear, structured, and understandable manner. It further indicated that, in order to ensure the effectiveness of this right, the Law establishes an administrative procedure for accessing public information, which concludes with a decision that may be challenged before the administrative courts. However, as will be shown below, access to information on government advertising is, at best, difficult, delayed, inaccurate, and incomplete. To make matters worse, this lack of access conceals a distribution of advertising that violates the rights to equality and non-discrimination.

2. *Supplementary Information*

To begin with, it is important to highlight that information on government advertising, including its allocation, is legally required to be public. In this regard, Article 3 of *Law 29/2005 on Government Advertising and Communication* provides that “institutional campaigns shall always be aligned with the requirements derived from the principles of public interest, institutional loyalty, truthfulness, **transparency**, effectiveness, responsibility, efficiency, and austerity in spending.” (own translation) In line with these principles, Article 14 states that “the Government shall prepare an annual report on advertising and communication, which shall include all institutional campaigns covered by this Law, their cost, the contractors awarded the corresponding contracts, and, in the case of advertising campaigns, the corresponding media plans.” (own translation)

Nevertheless, the reality is that **the Spanish Government has never made public how much money each media outlet receives for government advertising**. In fact, as can be observed, the annual reports on advertising and communication published since 2006 on La Moncloa—the official website of the Prime Minister and the Council of Ministers—mention the awarded campaigns, the amounts involved, and the media agencies contracted, but they provide no information on which media outlets actually received payments for government advertising in practice.⁵⁸

In this context, information was recently published for the first time regarding the allocation of approximately 190 million euros in government advertising during the current Government’s term.⁵⁹ However, this information was not disclosed on official websites nor did it result from any government transparency initiative; rather, it was made public by the newspaper *El Confidencial* after two years of information requests and appeals for incomplete data, submitted

⁵⁸ La Moncloa. Planes e Informes de Publicidad y Comunicación Institucional, disponible en: <https://www.lamoncloa.gob.es/serviciosdeprensa/cpci/paginas/PlanesEInformes.aspx>.

⁵⁹ El Confidencial. “¿Adónde va la publicidad institucional en España? Los pagos a medios que el Gobierno oculta”, 27 de junio de 2024, disponible en: https://www.elconfidencial.com/espana/2024-06-27/publicidad-institucional-gobierno-secreto_3883104/.

under Act 19/2013. Despite this effort to obtain information, five ministries (Foreign Affairs, Labor and Social Economy, Finance and Civil Service, Consumer Affairs, and Territorial Policy) and two dependent agencies (the Official State Gazette and the Spanish Data Protection Agency) have refused to provide data on their distribution of government advertising.⁶⁰ As a result, to this day, there is no complete or up-to-date information available on the allocation of government advertising in Spain..

This situation is particularly serious in a context such as the one described, where there are strong indications that the Government is interfering in the allocation of government advertising to benefit aligned media outlets and exclude those critical of it. For example, despite the overall increase in public spending on government advertising, *El Español*—the most-read digital media outlet in Spain—experienced a 64.7% reduction in its government advertising revenue in 2024, both due to a lower number of awarded campaigns and a decrease in allocated amounts.

As previously mentioned, *El Español* was excluded from the most significant government advertising campaign of 2024, carried out by the Ministry of Finance, with an investment of €4.9 million. The campaign was titled *Awareness on tax matters and information and assistance to citizens in complying with their tax obligations and accessing services or aid provided by the tax agency*. In response, on October 3, 2024, *El Español* submitted a request for information to the Ministry of Finance regarding the criteria used for the allocation of this campaign. However, more than 7 months later, this request has not been answered, despite the legal response period being one month, pursuant to Article 20 of Act 19/2013.⁶¹ This request and its proof of receipt are attached to this report.

In sum, there is a lack of transparency regarding the allocation of government advertising in Spain, as this information has not been proactively published by the government, nor has it been provided in response to requests from interested media outlets. In this context, it is not possible to verify whether the distribution of government advertising is being carried out objectively, or whether, as some media outlets have alleged, the government is interfering in this process to discriminate against critical voices and cut off their access to public funding.

⁶⁰ El Confidencial. “¿Adónde va la publicidad institucional en España? Los pagos a medios que el Gobierno oculta,” 27 June 2024, available at: https://www.elconfidencial.com/espana/2024-06-27/publicidad-institucional-gobierno-secreto_3883104/.

⁶¹ Article 20. Decision. 1. The decision granting or denying access shall be notified to the applicant and to any affected third parties who have so requested, within a maximum period of one month from the date the request is received by the competent authority. This period may be extended by an additional month if the volume or complexity of the requested information so requires, provided that the applicant is duly informed. (Act 19/2013 of 9 December on Transparency, Access to Public Information, and Good Governance). (own translation)

3. *Human rights standards on the right of access to information*

In light of the right of access to information enshrined in Article 19 of the Covenant, all information held by a public body must be subject to disclosure, except under very limited circumstances—this is known as the principle of maximum disclosure.⁶² On this right, the Committee has explained that it includes the right of the media to have access to information on public affairs and the right of the general public to receive media output.⁶³ Accordingly, to comply with the right of access to information:

(...) States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant.⁶⁴

Additionally, in the case of *Gauthier v. Canada*, the Committee explained that the media must have broad access to information concerning elected bodies.⁶⁵ Such access may only be subject to limitations that are necessary to not obstruct the functioning of those bodies, and must comply with the requirements set forth in Article 19.⁶⁶

For its part, within the European Human Rights System, although Article 10 of the European Convention on Human Rights does not enshrine a general right of access to information, the case law of the ECtHR has developed the view that such a right arises when the disclosure of information has been ordered by a court or in circumstances where access to information is essential for the exercise of the freedom to receive and impart information, and where its denial would interfere with that right.⁶⁷

In that vein, within the European system, the refusal to disclose information of public interest may also be considered an interference with freedom of expression. In such cases, in order to determine whether there is an arbitrary interference with the right of access to information, the following factors must be taken into account: (i) the purpose of the requested information; (ii)

⁶² OACNUDH. Libertad de opinión y de expresión. Informe de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, 10 de enero de 2022, párr. 6.

⁶³ Human Rights Committee. General Comment No. 34. Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 18.

⁶⁴ Human Rights Committee. General Comment No. 34. Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 19.

⁶⁵ Human Rights Committee. Communication No. 633/1995, *Gauthier v. Canada*.

⁶⁶ Human Rights Committee. Communication No. 633/1995, *Gauthier v. Canada*.

⁶⁷ ECtHR. *Magyar Helsinki Bizottság v. Hungary*, Application No. 18030/11, 8 November 2016.

the nature of the information (whether or not it is of public interest); (iii) the role of the requester; and (iv) whether the information is actually available.⁶⁸

In this regard, in the case of *Magyar Helsinki Bizottság v. Hungary*, a non-governmental organization requested the names and appointments of public defenders from several police departments. Only some of these departments provided the requested information, and the domestic courts refused to order its disclosure. The ECtHR concluded that the right of access to information is violated when, despite the existence of a legal obligation, State authorities refuse to disclose information covered by that obligation or provide inaccurate or insufficient information.⁶⁹

Likewise, in the case of *Youth Initiative for Human Rights v. Serbia*, an NGO requested information from the Serbian intelligence agency on how many people had been subjected to electronic surveillance in 2005. Although the agency initially refused, a public authority ordered the disclosure of the information, after which the agency claimed it did not possess the requested data. The European Court held that, since the NGO's aim was to disseminate this information and contribute to public debate, similar to the role played by the press, the refusal to disclose it constituted an interference with freedom of expression. This was especially so given that the agency's claim that it did not hold such information was unconvincing, considering the nature of the request. Furthermore, since the disclosure had been ordered by a public authority, the agency's refusal to comply was arbitrary, contrary to domestic law, and amounted to a violation of Article 10.⁷⁰

Similarly, within the Inter-American Human Rights System, the Inter-American Court of Human Rights (hereinafter "IACtHR") has recognized that individuals' right to obtain information is complemented by a corresponding positive obligation on the part of the State to provide it, so that such information can be known and assessed.⁷¹ This obligation, known as the "duty of proactive transparency," imposes on the State the responsibility to disseminate all information necessary for the exercise of other rights.⁷² In this regard, in the case of *Claude Reyes et al. v. Chile*, the IACtHR held that:

[T]he State's actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can

⁶⁸ ECtHR. *Magyar Helsinki Bizottság v. Hungary*, Application No. 18030/11, 8 November 2016.

⁶⁹ ECtHR. *Magyar Helsinki Bizottság v. Hungary*, Application No. 18030/11, 8 November 2016.

⁷⁰ ECtHR. *Youth Initiative for Human Rights v. Serbia*, Application No. 48135/06, 25 June 2013.

⁷¹ IACtHR. *Environment and Human Rights (State obligations in relation to the environment within the framework of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4.1 and 5.1, in relation to Articles 1.1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of 15 November 2017, Series A No. 23, para. 221.

⁷² IACtHR. *Case of I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs, 30 November 2016, Series C No. 329, para. 156.

question, investigate and consider whether public functions are being performed adequately. Access to State-held information of public interest can permit participation in public administration through the social control that can be exercised through such access.⁷³ (emphasis added)

From the foregoing, it follows that State action must be guided by the recognition of the principle of maximum disclosure. For a State to comply with this principle and make all possible information accessible, it must acknowledge that information of public interest belongs to the people, that access to it is not a matter of governmental grace or favor, and that the possibility of withholding or denying such information must be truly exceptional.⁷⁴ In this way, a presumption is established in favor of openness regarding essential State functions and the public nature of its core documents.⁷⁵

In the specific case of government advertising, the IACHR, in its Principles on the Regulation of Government Advertising and Freedom of Expression, affirmed that the State must ensure transparency regarding data on government advertising, so that individuals may access all information held by the State on the matter.⁷⁶

In conclusion, the right of access to information is an essential tool for ensuring transparency, accountability, and democratic oversight of public administration, under the principle of maximum disclosure. Various human rights systems have recognized that information held by the State belongs to the people, and that access to such information may only be restricted under exceptional and duly justified circumstances. The unjustified refusal to disclose information of public interest—especially when it affects democratic debate or the exercise of other rights, such as the allocation of government advertising—constitutes arbitrary interference with both the right to freedom of expression and the right of access to information. Accordingly, States are obligated to establish legal frameworks, clear procedures, and effective mechanisms that ensure the availability, accessibility, and transparency of such information.

4. Human rights standards on the equality and non-discrimination of media outlets

As previously explained, the establishment of restrictions on the right of access to information held by the State, through the practices of its authorities, creates fertile ground for discretionary and arbitrary State action. This, in turn, generates legal uncertainty regarding the exercise of that

⁷³ IACtHR. *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of 19 September 2006, Series C No. 151, para. 86.

⁷⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Right of Access to Information*, para. 114. Available at: <https://cidh.oas.org/relatoria/section> (last accessed: 18/09/2024).

⁷⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Right of Access to Information*, para. 114. Available at: <https://cidh.oas.org/relatoria/section> (last accessed: 18 September 2024).

⁷⁶ IACHR. *Principles on the Regulation of Official Advertising and Freedom of Expression*, 2011, para. 66.

right and the extent of the State's authority to restrict it.⁷⁷ In this regard, it is only reasonable that the absence of information concerning the distribution of government advertising raises serious concerns about its neutrality, as it ultimately results in discriminatory effects against certain media outlets, particularly those critical of the government. For this reason, the following section outlines relevant standards on equality and non-discrimination among media outlets.

To begin with, in its General Comment No. 34, the Committee emphasized that guaranteeing the right to freedom of expression necessarily entails ensuring equality and non-discrimination among different voices. For example, with regard to laws that restrict freedom of expression, the Committee stated that laws must not violate the provisions of the Covenant relating to non-discrimination.⁷⁸ It also added that these restrictions must be understood in the context of the universality of human rights and the principle of non-discrimination.⁷⁹ Furthermore, with respect to the media, it noted that laws and practices applicable to the media must ensure fair and non-discriminatory treatment:

States parties should ensure that legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of paragraph 3. Regulator systems should take into account the differences between the print and broadcast sectors and the internet, while also noting the manner in which various media converge. (...) States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and licence fees should be **reasonable and objective, clear, transparent, nondiscriminatory** and otherwise in compliance with the Covenant. Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services **should provide for an equitable allocation** of access and frequencies between public, commercial and community broadcasters. It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses.⁸⁰ (emphasis added)

Moreover, with regard to journalistic activity, the Committee has stated that any accreditation system must be applied in a non-discriminatory manner, based on objective criteria and taking into account the wide range of individuals and viewpoints.⁸¹

⁷⁷ IACtHR. *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of 19 September 2006, Series C No. 151, para. 98.

⁷⁸ Human Rights Committee. General Comment No. 34. Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 26.

⁷⁹ Human Rights Committee. General Comment No. 34. Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 32.

⁸⁰ Human Rights Committee. General Comment No. 34. Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 39.

⁸¹ Comité de Derechos Humanos. Observación General no. 34. Artículo 19. Libertad de opinión y libertad de expresión, CCPR/C/GC/34, 12 de septiembre de 2011, párr. 44.

In line with the above, for example, in the case of *Granier et al. (Radio Caracas Televisión) v. Venezuela*, the IACtHR held that the non-renewal of RCTV's broadcasting license constituted a violation not only of the right to freedom of expression but also of the principle of non-discrimination, as it was an arbitrary measure directed against a media outlet critical of the government. The Court emphasized that direct or indirect pressure aimed at silencing the journalistic work of social communicators is incompatible with freedom of expression.⁸²

Furthermore, with regard to equality in the context of government advertising, the special rapporteurs on freedom of expression have emphasized that equality among media outlets and respect for the right to freedom of expression requires that State-held instruments—such as government advertising—not be used as a means of political interference in the media.⁸³ Accordingly, in their *Joint Declaration on International Mechanisms for Promoting Freedom of Expression*, they stated that a scenario of equality implies that advertising placements must be based on market considerations.⁸⁴

Additionally, the UN Special Rapporteur on the Right to Freedom of Opinion and Expression has indicated that governments must establish effective mechanisms to guarantee not only equality and non-discrimination for media outlets, but also transparency in the allocation of resources, including public funds for advertising.⁸⁵ For example, in the case of Hungary⁸⁶, the Special Rapporteur analyzed how the allocation of a disproportionately high share of public funds to pro-government media creates a discriminatory environment that gives those outlets an unfair advantage over independent media and distorts democratic debate.

In summary, international human rights standards have clearly established that the principle of equality and non-discrimination among media outlets is an essential component of the right to freedom of expression. The lack of transparency in the distribution of government advertising and arbitrary practices by the State may result in the misuse of public power to reward or punish certain editorial lines, directly undermining pluralism. Therefore, legal frameworks applicable to the media must be governed by objective, reasonable, and non-discriminatory criteria, ensuring

⁸² IACtHR. *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 22 June 2015, Series C No. 293, para. 163.

⁸³ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression, and African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on Diversity in Broadcasting*, 2007, available at: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=719&IID=2>.

⁸⁴ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression, and African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information. *Joint Declaration on International Mechanisms for Promoting Freedom of Expression*, 2011, available at: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=849>.

⁸⁵ Human Rights Council. *Visit to Hungary*. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, 11 May 2022, A/HRC/50/29/Add.1.

⁸⁶ Human Rights Council. *Strengthening media freedom and the safety of journalists in the digital age*, 20 April 2022, A/HRC/50/29, para. 77.

that all voices, including those critical of the government, have equitable access to State resources and to the public sphere to carry out their journalistic work without undue interference.

5. The Lack of Transparency in the Allocation of Government Advertising Constitutes a Violation of the Right of Access to Information, as well as the Right to Equality and Non-discrimination

Accordingly, based on the above, the Spanish authorities have a duty to disclose information regarding the allocation of government advertising because: (i) it is information of public interest; (ii) there is no legitimate justification for restricting access to it; and (iii) its disclosure is mandated by law.

First, it is evident that the allocation of government advertising, being closely linked to public spending, is a matter of public interest. In this regard, citizens have the right to know how public resources are being used. It is also worth noting that current spending on government advertising is the highest it has been in the last 18 years in Spain, which makes the issue even more relevant. Accordingly, the media serve as a vehicle for disseminating this information and, in light of General Comment No. 34, should have broad access to such information in order to provide it to the general public.

Second, under the principle of maximum disclosure, all information held by a public body should be made public, except in limited and exceptional cases necessary to safeguard, for example, national security, individuals' right to privacy, or the proper functioning of institutions. However, in the case of the allocation of government advertising, not only does no such justification exist for restricting access to this information, but the Government has also failed to invoke any. Rather, the failure to disclose this information appears either to be the result of governmental negligence or, given the current context, may be aimed at concealing a discriminatory distribution of government advertising.

In this regard, although the lack of public information makes it impossible to determine the full extent to which arbitrary criteria are being used in the allocation of government advertising, the broader context—where President Sánchez has repeatedly stated that he will put an end to “pseudo-media” forming part of a “mud-slinging machine driven by right-wing and far-right interests”—constitutes a strong indication of discriminatory allocation, contrary to the international standards outlined above. As discussed, the State should ensure a transparent framework strictly based on market considerations for allocating government advertising, since opacity in this process creates fertile ground for undue interference with freedom of expression and discrimination. Thus, the denial of access to such information also constitutes a breach of the State's international obligations regarding equality and non-discrimination.

Finally, as previously stated, Article 14 of Act 29/2005 on Government Advertising and Communication imposes the obligation on the government to report annually on all institutional campaigns carried out, including their cost, media plans, and contractors. In other words, by legal mandate, the information that media outlets are currently attempting to access should be publicly available. Despite this, in the 20 years since this law came into force, the Spanish Government has never disclosed how much money each media outlet receives from government advertising.

In summary, contrary to what Spain asserted in its seventh periodic report, the right of access to information is not being effectively guaranteed under Act 19/2013, particularly with regard to information on government advertising. Not only is this information not being published annually as also required by Act 29/2005, but information requests are not being answered within the legal timeframes. Furthermore, the failure to disclose this information is not a minor omission—it may be concealing an arbitrary allocation of government advertising, which, as demonstrated, constitutes a serious violation of the right to freedom of expression, as well as the rights to equality and non-discrimination.

VI. Conclusions and Recommendations

In light of the facts analyzed and the applicable international standards, it is clear that the measures contained in the Action Plan for Democracy, as well as the lack of transparency in the management and allocation of government advertising in Spain, constitute a concrete threat to the exercise of the right to freedom of expression and the right of access to public information, as enshrined in Article 19 of the International Covenant on Civil and Political Rights.

In particular, the creation of a mandatory media registry, the centralization of advertising allocation in bodies dependent on the Executive, and the use of opaque and discretionary criteria to distribute these resources create an environment prone to indirect censorship and the exclusion of critical voices. This stands in direct contradiction to the standard requiring States to implement measures that ensure government advertising is allocated in a transparent, objective, and non-discriminatory manner.

Likewise, the failure to disclose information related to the allocation of government advertising constitutes a clear violation of the right of access to information, particularly given that this information is of public interest and that Spanish law itself mandates its disclosure.

In this context, it is considered that the implementation of the Action Plan for Democracy, in its current form, and the Government's management of government advertising are incompatible

with Spain's international obligations and have directly affected the media outlet *El Español*, as a form of punishment for its editorial stance.

Therefore, the Human Rights Committee is urged to call on the State to review and amend these practices and regulatory frameworks in order to ensure the full respect and protection of the rights to freedom of expression and access to information. Specifically, we respectfully suggest that, in its concluding observations on Spain's seventh periodic report, the Committee recommends that the State:

1. Respect and ensure freedom of the press, including for digital media and outlets critical of the government.
2. Promote the independence, diversity, and pluralism of the media.
3. Consult with civil society and organizations specializing in freedom of expression on potential reforms to the criteria for allocating government advertising.
4. Introduce clear, transparent, and objective criteria for the allocation of government advertising, prioritizing technical market-based considerations and specifying the weight or relevance of each criterion in the final decision.
5. Delegate the allocation of government advertising to independent authorities.
6. Establish procedures for the procurement and distribution of government advertising that minimize discretion.
7. Refrain from interfering in the allocation of government advertising or from applying other forms of indirect sanctions based on discriminatory criteria such as the editorial stance of media outlets.
8. Disclose, in a complete, accessible, and clear manner, all public spending on government advertising, including the media outlets awarded and the criteria used for the allocation.
9. Provide timely and complete responses to information requests submitted under *Act 19/2013 on Transparency, Access to Public Information, and Good Governance*.
10. Ensure compliance by all authorities with *Act 19/2013 on Transparency, Access to Public Information, and Good Governance*, and with *Act 29/2005 on Government Advertising and Communication*.

VII. Contact Information

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We authorize the publication of this report on the Committee's website.

**Exhibit: Request of access to
information filed by El Español on
October 3, 2024, with no response
to date**

FECHA SOLICITUD: 3 de octubre de 2024

NOMBRE: : ARTURO CRIADO GEA

Nº IDENTIFICACIÓN: 50885761D

TELÉFONO: 618810042

CORREO ELECTRÓNICO: arturo.criado@elespanol.com

Datos de la solicitud:

Procedimiento: Acceso a la información pública

Ámbito: Ministerio de Hacienda

SIA: 202288

Asunto

PUBLICIDAD INSTITUCIONAL

Información que solicita

En relación a la campaña del Ministerio de Hacienda "SENSIBILIZACIÓN FISCAL E INFORMACIÓN Y ASISTENCIA A LA CIUDADANÍA EN EL CUMPLIMIENTO DE SUS OBLIGACIONES FISCALES Y EN EL ACCESO A SERVICIOS O MEDIDAS DE AYUDA PRESTADOS POR LA AGENCIA TRIBUTARIA"

Querría conocer las siguientes cuestiones:

- A) Listado de medios a los que se les ha adjudicado la campaña, así como el importe de adjudicación.
- B) Porcentaje de dinero de la campaña destinado a los distintos canales, dado que en la licitación son horquillas aproximadas: Prensa escrita, televisión, radio, gráfico, exterior y digital, etc.
- C) En el caso de digital y papel, criterios seguidos para realizar la adjudicación a cada medio escogido.
- D) Agencias y departamentos ministeriales del Gobierno que han participado en la toma de decisiones de adjudicación de esta campaña.
- E) ¿Ha existido participación de la Secretaría de Estado de Comunicación a la hora de escoger los criterios de adjudicación?
- F) Plan de medios presentado por la Agencia así como las modificación solicitadas posteriormente por el Ministerio de Hacienda.

Un saludo,

El plazo de respuesta es un mes desde la recepción de la solicitud por el órgano competente para resolver
El acceso a la información es gratuito. No obstante, la expedición de copias o la transposición de la información a un formato distinto al original puede dar lugar al pago de una tasa

Información sobre la protección de datos de carácter personal

Los datos personales que facilita en el procedimiento de solicitud de derecho de acceso a la información pública son tratados de acuerdo con lo dispuesto en el Reglamento (UE) 2016/679 del Parlamento Europeo y del Consejo, de 27 de abril de 2016. Conforme a este reglamento, debe dar su consentimiento para que estos datos personales puedan ser utilizados por la Dirección General de Gobernanza Pública (Secretaría de Estado de Función Pública) con la finalidad de gestionar las solicitudes de acceso a la información pública de la Administración General del Estado. Sus datos personales no serán comunicados a terceros. Puede ejercer los derechos de acceso, rectificación, supresión, limitación y oposición dirigiéndose al responsable del tratamiento.

unidadinformaciontransparencia@hacienda.gob.es

DIRECCIÓN

C/ ALCALA, 9 MADRID - 28071
TEL: 91 595 80 00

Antes de dar su consentimiento debe leer la información adicional sobre protección de datos de carácter personal.

Reglamento (UE) 2016/679 del Parlamento Europeo y del Consejo, de 27 de abril de 2016:

<https://eur-lex.europa.eu/legal-content/ES/TXT/?qid=1526288649585&uri=CELEX:32016R0679>

Información adicional sobre protección de datos de carácter personal: <https://www.hacienda.gob.es/Documentacion/Publico/DPD/RAT-Hacienda-con-indices.pdf#page=77&zoom=100,0,0>

Nº EXPEDIENTE: 00001-00096315
FECHA EXPEDIENTE: 3 de octubre de 2024
Nº REGISTRO REGAGE: REGAGE24e00074849461
FECHA REGISTRO: 3 de octubre de 2024

Interesado

Nombre: ARTURO CRIADO GEA
Nº Identificación: 50885761D
Teléfono: 618810042
Correo electrónico: arturo.criado@elespanol.com

Información del registro

Procedimiento: Acceso a la información pública
Ámbito: Ministerio de Hacienda
Asunto: Justificante de registro
Tipo de Asiento: ENTRADA
SIA: 202288

Formulario presentación

Código documento: 952405
Archivo Adjunto: Solicitud_Firmada.pdf
hash: c2dcf67f9c13c9871923f01dbee15c66

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NOMBRE SOLICITANTE: ARTURO CRIADO GEA
Nº EXPEDIENTE: 00001-00096315
FECHA EXPEDIENTE: 3 de octubre de 2024



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NUMERO DE EXPEDIENTE

Documento de comienzo de tramitación

FECHA DEL DOCUMENTO: 11 de diciembre de 2024

Por medio del presente documento se le notifica que se ha dado inicio a la tramitación del procedimiento de acceso a la información pública de acuerdo con lo establecido en la Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno.

Con fecha 4 de octubre de 2024 su solicitud de acceso a la información pública con número 00001-00096315, está en AEAT del , centro directivo que resolverá su solicitud.

A partir de la fecha indicada, ha comenzado el cómputo del plazo de un mes para contestar a su solicitud previsto en el artículo 20.1 de la Ley 19/2013, de 9 de diciembre.

Asimismo se le comunica que transcurrido el plazo máximo para resolver sin que se haya dictado y notificado resolución expresa se entenderá que su solicitud ha sido desestimada, de acuerdo con lo establecido en el artículo 20.4 de la Ley 19/2013, de 9 de diciembre.