



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ATRESMEDIA CORPORACION DE MEDIOS DE COMUNICACION S.A. v. SPAIN

(Application no. 29807/23)

JUDGMENT

Art 10 (read in light of Art 3 P1) • Freedom of expression • Central Electoral Commission's ("CEC") refusal of the format of a political debate proposed by a private broadcasting company during the 2019 parliamentary elections campaign • Debate would include a candidate of a party which did not secure parliamentary representation in the previous equivalent elections but was expected to obtain more than 10% of the votes according to a pre-election survey • CEC acted after complaints by political parties which did secure such representation but were not invited to participate in the proposed debate • Relatively narrow margin of appreciation enjoyed by the State in regulating electoral processes and media coverage during election campaigns • Ensuring neutrality in election coverage and equality between political competitors during an election could be seen as answering a "pressing social need" in a democratic society • Disputed measure did not amount to a permanent and absolute ban and was not a comprehensive, unconditional one • Applicant company could organise alternative formats of debate • Relevant and sufficient reasons • Interference "necessary in a democratic society"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 October 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of ATRESMEDIA CORPORACION DE MEDIOS DE COMUNICACION S.A. v. Spain,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Kateřina Šimáčková, *President*,

María Elósegui,

Gilberto Felici,

Andreas Zünd,

Diana Sârcu,

Sébastien Biancheri,

Nicholas Emiliou, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 29807/23) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Spanish company, Atresmedia Corporación de Medios de Comunicación S.A. (“the applicant company”), on 26 July 2023;

the decision to give notice to the Spanish Government (“the Government”) of the complaint under Article 10 of the Convention;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant company;

the comments submitted by Media Defence, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 8 September 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns a complaint under Article 10 by the applicant company – a private media broadcasting group – about a decision of the Central Electoral Commission not to accept the format of a political debate proposed by the applicant company during the election campaign for the national parliamentary elections in 2019.

THE FACTS

2. The applicant company is a private media broadcasting group which was established in 1988 and has its registered seat in San Sebastian de Los Reyes (Madrid). The applicant company was represented by Mr I. Salama Salama, a lawyer practising in Madrid.

3. The Government were represented by their co-Agents, Ms H. E. Nicolás Martínez and Mr J.A. Jurado Ripoll.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE AND POLITICAL DEBATE PROPOSED BY THE APPLICANT COMPANY

5. The applicant company is a broadcasting and media business group which includes various private television channels, including Antena 3, which broadcasts news and entertainment programmes.

6. Ahead of the national parliamentary elections on 28 April 2019, the applicant company decided to organise an election debate between five candidates for the office of Prime Minister, which was to be held on 23 April 2019 and televised on Antena 3. Those five candidates represented Partido Popular (PP), Partido Socialista Obrero Español (PSOE), Unidas Podemos (UP), Ciudadanos and Vox. The applicant company based its selection of participants on their affiliation with the five political parties that had a national presence and were expected to obtain more than 10% of the votes, according to a pre-election survey published in March 2019 by the Spanish Centre for Sociological Research (*Centro de Investigaciones Sociológicas* – “the CIS” – an independent public body responsible for official social statistics). The participants were therefore likely candidates to become Prime Minister.

7. Prior to the 2019 elections, four out of the five above-mentioned political parties – that is, all except Vox – had secured parliamentary representation in the previous general elections held in June 2016. They had the biggest representation in Congress at the time. Vox had received 0.2% of the votes in the 2016 elections and had not secured parliamentary representation.

8. During elections to the Parliament of Andalusia held in December 2018, Vox had obtained 10.96% of the votes.

9. According to its March 2019 pre-election survey, on the basis of opinion poll data from approximately 16,000 interviews, the CIS estimated that Vox’s vote share was 11.9% (29 to 37 seats).

II. PROCEEDINGS BEFORE THE CENTRAL ELECTORAL COMMISSION

10. In the period preceding the elections, three regional political parties participating in the general election campaign (Coalición Canaria, Electoral Coalition Junts and Euzko Alderdi Jeltzalea-Basque Nationalist Party (EAJ-PNV)) lodged complaints with the Central Electoral Commission (“the CEC”), contesting the criteria which the applicant company had applied in selecting the participants in the debate. They asserted that the forthcoming televised debate did not adhere to the principles of pluralism, proportionality, equality and neutrality as set out in section 66(2) of Institutional Law no 5/1985 of 19 June 1985 on the General Electoral System (“the LOREG”) (see paragraph 44 below). They submitted that, unlike Vox, they had secured

parliamentary representation in the previous equivalent elections. They further maintained that Vox did not qualify as a significant political group (*grupo político significativo*) within the meaning of Instruction no. 4/2011 of the CEC of 24 March (see paragraph 47 below). The political parties which had lodged the complaints therefore considered that the inclusion of Vox's candidate for Prime Minister in the debate, to the exclusion of their own, was contrary to the above principles. They accordingly requested that the applicant company be ordered to either refrain from holding the debate without their participation or give them equivalent compensatory airtime.

11. In reply, the applicant company stated that the planned five-way debate was clearly informative, given that VOX had secured 10.96% of the votes in the recent elections to the Parliament of Andalusia; was one of the main contenders in the forthcoming general election; had electoral lists throughout the country; and was the fifth-largest political force according to the polls. The company also stated that all the above information was objective and verifiable. It noted that EAJ-PNV was expected to receive fewer votes than Vox, according to the CIS survey, and that, unlike Vox, it had candidates only in certain provinces, while the debate was to be broadcast throughout the entire country. Vox could therefore be considered a relevant and significant political group for the purposes of the LOREG. The company also stated that it was willing to offer airtime to the regional political parties which had complained. In particular, it pointed out that a debate was scheduled to take place on 20 April 2019 as part of the programme "La Sexta Noche", in which representatives of the parties that had secured political representation in the previous general elections, including the complainants, had been invited to participate. The company also listed other programmes in which the representatives of the parties that had complained would be given an opportunity to appear. The applicant company therefore argued that those parties would receive sufficient airtime. Lastly, it emphasised its unwavering respect for the principles of pluralism, equality, proportionality and neutrality, by which it had always abided, in full compliance with the LOREG and the Instructions of the CEC.

12. By a single decision of 16 April 2019 the CEC allowed the three complaints. Having reiterated the content of section 66(2) of the LOREG, it noted that under Article 8 of Instruction no. 4/2021, adopted to implement it, where a private television broadcaster organised or broadcast electoral interviews or debates, it should have particular regard to the results obtained by each political formation in the previous equivalent elections. According to the CEC, the criterion of proportionality "[did] not prevent the provision of information concerning [parties] which had not participated in or secured representation in the previous elections; however, it [did] determine that [those who had not secured representation] could not receive more airtime than political formations which had secured representation in the previous elections". It stressed that it was bound by the relevant criteria, which could

not be substituted by other criteria, such as the news in question supposedly being topical, or opinion poll data.

13. Turning to the proposed debate, the CEC found that there could be “no objection to the participation” of representatives from PP, PSOE, UP and Ciudadanos, as they had secured the most parliamentary representation and the highest number of votes in the most recent elections to the Congress of Deputies held in 2016. However, that did not apply to Vox, as it had not secured parliamentary representation and had received 0.1% of the votes in those elections. Conversely, the political parties which had complained had secured parliamentary representation and a higher percentage of valid votes – factors which were relevant to “the legally established criteria for applying the principle of proportionality to election debates and interviews”.

14. The CEC further found that Vox did not meet the criteria of “a significant political group” for the purposes of section 4 (2.3) of Instruction no. 2/2011 (see paragraph 47 below) either, as it had not received 5% or more of the valid votes cast. The CEC acknowledged that Vox had received 10.96% of the valid votes cast in the recent elections to the Parliament of Andalusia, which would entitle it to such status in Andalusia. However, the disputed debate was to be held at national level, and Vox had not received 5% of the valid votes cast and could therefore not be regarded as a significant political group at that level.

15. Lastly, the CEC was unable to accept the applicant company’s argument that it had proposed to organise a debate on 20 April 2019 in which Vox would not take part because “the proportionality principle [had] been given priority”. The CEC noted that section 66(2) of the LOREG did not provide for the voluntary application of the principle of proportionality, but imposed it unconditionally. There was no scope for privately owned broadcasters to exercise discretion in applying the principle of proportionality to debates of their choice; it was to be applied to all debates organised during the electoral process.

16. The CEC concluded as follows:

5. It follows from the foregoing that the [complaints by the three political parties] must be upheld and that the five-candidate debate proposed by [the applicant company] runs counter to the principle of proportionality, which must be respected by private television broadcasters during election periods, as set out in section 66(2) of the LOREG. Consequently, that debate cannot be held under the terms indicated; instead, if the broadcaster so decides, it must be modified to comply with the requirements of that principle.”

III. PROCEEDINGS BEFORE THE SUPREME COURT

17. On 12 June 2019 the applicant company lodged an administrative appeal with the Supreme Court against the CEC’s decision of 16 April 2019, and formalised the claim by means of written submissions dated 11 September 2019. In those written submissions, the company requested that

the decision issued by the CEC be annulled as unlawful, and that section 8(2) of Instruction no. 4/2011 be declared null and void.

18. In support of its above claims, the applicant company argued, firstly, that any restriction on the freedoms set out in Article 20 § 1 (d) of the Constitution had to meet strict requirements. The CEC's decision, based on Instruction no. 4/2011, breached Articles 53 and 81 of the Constitution (see paragraphs 39 and 40 below). Section 8 of the Instruction, which was relevant to the present case, established substantive rules for debates organised by private media during the election period. While section 66(2) of the LOREG provided for only limited regulation, Instruction no. 4/2011 introduced a comprehensive framework, exceeding its remit by supplementing the principles of proportionality and neutrality in media coverage, and effectively imposing a single debate format based on previous election results. The applicant company noted that such limits had been expressly adopted by the legislature in other contexts, but not in relation to debates. The reference in section 66(2) to the CEC's power to issue instructions did not authorise it to regulate such a matter independently, but only within constitutional limits and in respect of secondary aspects. However, Instruction no. 4/2011 imposed a significant restriction on freedom of information, thereby encroaching on a domain reserved for the legislature.

19. The applicant company further argued that the CEC's decision infringed Article 20 § 1 (a) and (d), Article 23 and Article 38 of the Constitution by restricting the essence of fundamental rights, preventing voters from receiving complete information and forcing partial reporting, which was particularly unjustified in a developing multi-party system. It submitted that the restriction lacked a legitimate aim and was disproportionate, and criticised the CEC for favouring established parties and creating barriers for new ones, contrary to equality. The applicant company maintained that organising a debate for candidates with strong national electoral prospects was reasonable, and argued that less restrictive measures were available, such as allowing the debate to take place and arranging for compensatory airtime. Lastly, it argued that the restriction was disproportionate, as it harmed the public interest by depriving citizens of relevant election information for no clear benefit.

20. Vox stated that it intended to participate in the proceedings, but subsequently withdrew its complaint.

21. On 25 February 2021 the Supreme Court dismissed the administrative appeal; it found that neither the decision of the CEC of 16 April 2019 nor Instruction no. 4/2011 (referred to in that decision) infringed the Constitution or the domestic laws.

22. The Supreme Court held that the applicant could refer to the alleged unlawfulness of section 8(2) of the Instruction as grounds for seeking the annulment of the impugned decision of the CEC, and that the Supreme Court

had jurisdiction to review and, where appropriate, annul a regulatory provision.

23. The Supreme Court further reiterated that freedom of expression and the freedom to impart accurate information enjoyed overriding protection, including in the context of elections, even though such primacy was not unlimited. Rights set out in Article 23 of the Constitution (the right to participate in public affairs through freely elected representatives, see paragraph 38 below) placed restrictions on freedom of expression and the freedom to impart information. Those restrictions applied equally to both publicly and privately owned media. The principles applicable to private television broadcasters in particular, in respect of debates, interviews and reporting related to the election campaign, stemmed directly from section 66(2) of the LOREG and not Instruction no. 4/2011. Indeed, the impugned provision of the LOREG did not set out identical rules for public and private media. The difference lay in the fact that, in respect of public media, it assigned primary responsibility for ensuring compliance with the substantive limits to the relevant administrative bodies, whose decisions were subject to review by the CEC. As regards private media, it entrusted the CEC with issuing instructions in accordance with which those limits were to be respected.

24. As regards the alleged prioritising of statutes over the constitutional provisions (Article 53 § 1 and Article 81 of the Constitution), the Supreme Court held that, as the CEC's jurisdiction to review the decisions of private television broadcasters under section 66(2) of the LOREG was not in dispute, and as the relevant restrictions derived from that LOREG itself, any alleged breach of the constitutional provisions in question could arguably have resulted from only section 8(2) of Instruction no. 4/2011. However, no such violation could be discerned, as section 8(2) did not impose substantive restrictions on the exercise of the freedom to impart information. Rather, it affirmed the freedom of private broadcasters to decide whether to organise election debates and interviews, only requiring that, should they choose to do so, they take into account the results of the most recent equivalent elections. Instruction no. 4/2011 set down a criterion that was neither arbitrary nor novel, but instead derived from the LOREG itself, which employed it in several contexts. There was no explicit legislative provision in that regard, as private broadcasters were not obliged to organise debates or interviews, unlike other election-related obligations expressly regulated by law, such as making venues and airtime available to candidates and providing advance payments of subsidies to those entitled to them. In such cases, the LOREG used the criterion relating to the most recent equivalent elections. Moreover, "the variety of circumstances in which it [was] invoked suggest[ed] that this [was] the rule to be followed". Accordingly, Instruction no. 4/2011 merely reflected a general rule already underlying the legislative framework and did not encroach upon matters reserved to statute.

25. The Supreme Court further noted that, where a private broadcaster organised a debate limited to the two leading candidates from previous elections, it was required to provide compensatory airtime or alternative debates for “other political groups represented in those previous elections”. The same obligation applied, in the court’s view, in the present case: the obligation to provide such compensation stemmed from the right enshrined in the LOREG in favour of those parties that had secured representation in the previous equivalent elections. It followed that other parties had to be offered debates or airtime in order to compensate for their absence from the initial debate – a point which the applicant company did not dispute. Moreover, “nothing prevent[ed] the representatives of [parties] which [had] failed to secure seats in the previous elections from being added to those debates, provided that the opportunity [was] afforded to those which [had] secured [such seats]”. The Supreme Court emphasised that no single format was imposed, and that there was “sufficient flexibility” for private broadcasters.

26. The Supreme Court found that the disputed provisions of Instruction no. 4/2011 were based on “the rule laid down by the Institutional Law [the LOREG]”. Reiterating that Instruction no. 4/2011 did not encroach upon matters reserved to the legislature, it further considered that it did not infringe Article 10 § 2 of the Convention, since it had a sufficient legal basis; pursued the aim of ensuring “accurate, pluralistic, complete and neutral information”, so that voters might decide freely; was appropriate and necessary for that purpose; and was not disproportionate, because it did not affect the content of the information but the manner in which it was communicated.

27. As regards the applicant company’s proposed debate format, the Supreme Court held as follows:

“In contrast, [the applicant company’s proposal] does not ensure that people will be made aware of all the options; it disregards those who have already secured representation and gives preference to those who do not have it, on the basis of a prediction which may or may not materialise. It thus rests upon an unverified hypothesis as opposed to an effective reality. It therefore fails to have regard to the principles of safeguarding political pluralism and equality between the [candidates], [is] partial [and] is neither neutral nor proportionate. In short, it is not in accordance with the law for those reasons, not because there are no better solutions – there are. [The applicant company’s proposal] was insufficient in the light of section 66(2) of the [LOREG].”

28. With regard to the governing principles applicable to private television broadcasters in the context of elections, the Supreme Court stated that “it [did] not appear objectionable to require private television channels to respect political pluralism [and] the principle[s] of equality, neutrality in media coverage and proportionality”. It clarified that proportionality served as a yardstick for assessing whether the other principles – in particular neutrality in media coverage – had been respected. The court further observed that section 66 of the LOREG was “of crystalline clarity”: public media and

private television broadcasters alike were required to operate within the scope resulting from those principles.

29. The Supreme Court considered that the applicant company had not challenged the restrictions flowing from those principles, and had constructed its entire argument without taking them into account. It concluded that Instruction no. 4/2011, which concerned only the manner in which debates were to be organised, did not curtail the material scope of the freedom to impart accurate information, since it merely articulated the way in which the above-mentioned principles – as chosen by the legislature itself – were to be made effective in election debates, while allowing sufficient flexibility for private broadcasters to organise such debates in accordance with their own interests. In the court’s assessment, none of this affected the essential content of the freedoms guaranteed by Article 20 of the Constitution; on the contrary, it was fundamental to ensuring that voters had at their disposal all the elements necessary to form their judgment.

30. As regards the alleged discriminatory treatment of private television in comparison with the written press, radio and digital media, the Supreme Court held that section 66 of the LOREG clearly made private television broadcasters subject to the principles of political pluralism, equality, proportionality and neutrality in media coverage. In accordance with the same section, however, private radio stations were only subject to the principles of political pluralism and equality. That distinction was justified by the exceptional reach and influence inherent in the medium of television, and the powerful effect that images and sound had on public opinion. As regards the lack of equivalent regulation for digital media, the Supreme Court explained that by referring to the legislative context prevailing at the time of the enactment of the LOREG and the subsequent amendments to it. The Supreme Court noted, in this regard, that since television had not yet lost its primacy or communicative force, the regime established by section 66(2) of the LOREG continued to apply to private television broadcasters, without prejudice to any future regulation of new forms and channels of communication.

31. Lastly, the Supreme Court noted that the changes in the political landscape resulting from the party system being transformed from a broadly bipolar configuration to a multi-party one did not call into question the legislature’s approach, as clarified by Instruction no. 4/2011. The increase in the number of participants in the election only reinforced the need to ensure that the coverage provided by the relevant television channels, including private broadcasters, extended to all of them. In particular, such coverage had to include those parties that had previously gained sufficient public support to secure representation without excluding new actors, regardless of whether they already qualified as significant political groups. The court concluded that neither the CEC’s decision nor Instruction no. 4/2011, on which the decision was based, was in breach of the LOREG or the Constitution.

IV. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

32. On 5 April 2021 the applicant company lodged an *amparo* appeal based on Article 20 § 1 of the Constitution (the right to freedom of expression) in conjunction with Article 23 (the right to participate in public affairs through freely elected representatives), as well as Article 53 § 1 (judicial protection of fundamental rights) and Article 81 § 1 (the definition of institutional laws and the requirement of an absolute majority for their adoption).

33. On 27 March 2023 the Constitutional Court declared the appeal inadmissible on the grounds that there had clearly been no violation of a fundamental right protectable in *amparo* proceedings.

V. OTHER DEVELOPMENTS

34. On 22 April 2019 the public television channel TVE held debates in which the candidates from PP, PSOE, UP and Ciudadanos participated.

35. Following the CEC's decision, the applicant company held the planned debate on 23 April 2019 but withdrew Vox's invitation to participate. The debate was held with the participation of the PP, PSOE, UP and Ciudadanos candidates and broadcast on two television channels belonging to the applicant company (Antena 3 and La Sexta) and on its radio network called Onda Cero; the debate was also available on its Atresplayer digital platform.

36. Vox obtained 10.26% of the votes in the general elections of 28 April 2019 and secured parliamentary representation. As the political parties were unable to form a government following the elections, Parliament was dissolved and new elections were called, to take place on 10 November 2019. During the election campaign prior to those elections, the applicant company organised and broadcast through its private channel, La Sexta, a debate involving the participation of candidates for the office of Prime Minister (the President of the Government) who represented the eight parties with the largest representation in Congress, including Vox.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. The Constitution of Spain

37. Under Article 20 § 1 (a) and (d) of the Constitution, the right to freely express and disseminate thoughts, ideas and opinions through words, in writing or by any other means of communication, and the right to freely

communicate or receive accurate information by any means of dissemination are recognised and protected.

38. Under Article 23 § 1 of the Constitution, citizens have the right to participate in public affairs directly or through representatives freely elected in periodic elections by universal suffrage.

39. Under Article 53 of the Constitution, rights and liberties recognised in the Constitution are binding on all public authorities. The exercise of such rights and liberties may be regulated only by law, which shall, in any case, respect their essential content.

40. Under Article 81 of the Constitution, institutional laws are those relating to the development of fundamental rights and public liberties, those which establish Statutes of Autonomy and the general electoral system, and other laws provided for in the Constitution.

B. Institutional Law no. 5/1985 of 19 June 1985 on the General Electoral System (“the LOREG”)

41. According to the Preamble of the LOREG, in a democratic State, an electoral system must guarantee the free expression of popular sovereignty as its core element. This generic freedom is accompanied by a range of other freedoms, including freedom of expression, information, assembly and association.

42. Under section 9 of the LOREG, the CEC is a permanent body composed of eight judges of the Supreme Court appointed by the General Council of the Judiciary and five active professors of law, political science or sociology appointed at the joint proposal of the parties, federations, coalitions or groups of electors represented in the Congress of Deputies (section 9(1)). Appointments are made within 90 days of the inaugural sitting of the Congress of Deputies. Where no proposal is made within that time-limit, the Bureau of the Congress of Deputies, having consulted the political groups present in the Chamber, will proceed to make an appointment, taking into account the existing representation therein (section 9(2)). CEC members are appointed by Royal Decree and remain in office until the new CEC takes up its duties at the start of the next parliamentary term (section 9(3)).

43. The CEC is competent to decide on complaints, claims and challenges addressed to it in accordance with the LOREG or other domestic provisions giving it such jurisdiction (section 19(h)); to unify the interpretative criteria of the Electoral Commissions, the Provincial Commissions and, where appropriate, the Electoral Commissions of the Autonomous Communities, in the implementation of electoral regulations (section 19(f)); and to address infringements of the electoral process, provided they do not constitute a criminal offence, and impose fines up to the maximum amount provided for in the LOREG (section 19(k)).

44. Section 66 of the Law reads as follows:

“1. Respect for political and social pluralism, as well as equality, proportionality and neutrality in media coverage in the programming of publicly-owned media during the election period, shall be guaranteed by the organisation of [such] media and by their oversight as provided for in the law. The decisions of the administrative bodies of the above-mentioned media during the indicated election period may be challenged before the competent electoral commission in accordance with the provisions of the previous section, and in accordance with the procedure established by the Central Electoral Commission.

2. During the election period, privately-owned broadcasters must respect the principles of pluralism and equality. Likewise, during that period, private television stations must also respect the principles of proportionality and neutrality in media coverage in election debates and interviews, as well as in information relating to the election campaign, in accordance with the instructions issued for this purpose by the competent electoral commission.”

45. Under section 153 of the LOREG, any infringement of the mandatory rules set out by that Law which does not constitute a criminal offence is punishable by the competent electoral commission. Fines range from 300 to 3,000 euros (EUR) for authorities or civil servants, and from EUR 100 to 1,000 for private individuals (*por particulares*).

C. Instruction no. 4/2011 of 24 March 2011 of the CEC

46. According to the Preamble to Instruction no. 4/2011 of 24 March 2011, issued by the CEC, on the interpretation of section 66 of Institutional Law no. 5/1985 on the General Electoral System with regard to the guarantees of the media’s respect for the principles of pluralism, equality, proportionality and neutrality in media coverage during the election period, that instrument replaced the previous Instruction of 1999 in the light of changing circumstances. Such circumstances included, in particular, the 2010 reform of the audiovisual sector, which resulted in the expansion of digital television and privately owned channels, and the amendment of section 66 of the LOREG. Under the amended provision, during the election period, private broadcasters were required to respect the principles of pluralism, equality, proportionality and neutrality in media coverage. The CEC was entrusted with issuing instructions defining the scope of those obligations. As regards the duty incumbent on privately owned media to comply with the principles of proportionality and neutrality in media coverage, the CEC emphasised that its “unequivocal legal mandate” in that regard had to be reconciled with fundamental rights, namely the right to freedom of expression and to disseminate ideas and opinions, and the right to freely communicate and receive accurate information (Article 20 of the Constitution), and freedom of enterprise within the framework of a market economy (Article 38 of the Constitution). Accordingly, the CEC differentiated between public and private media and adapted the Instruction of 1999 (which originally applied to publicly owned broadcasters) to privately owned television channels.

47. The relevant parts of Instruction no. 4/2011 read as follows:

[Section 4]. Plans for media coverage of the election campaign

“...

2.2 Plans for media coverage must include the [candidates] of those political forces which did not stand in the previous equivalent elections or did not secure representation in them, and which possess the status of a significant political group. Such coverage may not be equal to or greater than that afforded to the [candidates] who secured representation.

2.3 The status of significant political group shall be granted to those political formations standing in the elections in question which, despite not having stood in the previous equivalent elections or not having secured representation in them, have subsequently, in recent electoral processes and within the territorial scope of the media outlet, obtained a number of votes equal to or greater than 5% of the valid votes cast.

In the case of electoral coalitions, these may only be regarded as a significant political group if any of the political parties comprising them meets, on its own, the requirement laid down in the preceding subsection.

2.4 Media coverage of [candidates] from political formations which did not stand in the previous equivalent elections or which did not obtain representation in [those elections] may not be equal to or greater than that given to those which are recognised as a significant political group.

...”

**[Section 7]. Principles to be upheld by privately owned radio and television
broadcasters**

“1. During election periods, the management bodies of privately owned radio and television broadcasters shall guarantee respect for the principles of pluralism and equality, as provided for in section 66(2) of the LOREG.

2. In particular, during the election period, private television channels shall also respect the principles of proportionality and neutrality in media coverage in election debates and interviews, as well as in the information relating to the election campaign which they decide to broadcast, as established in the above-mentioned section 66(2) of the LOREG.”

**[Section 8]. The principle of proportionality that must be guaranteed by private
television channels**

“1. The information specifically devoted to the election campaign that private television channels decide to broadcast shall comply not only with the principles of pluralism, equality and neutrality in media coverage, but also with the principle of proportionality, understood in the sense that such [coverage] shall give preferential consideration to the results obtained by each political formation in the most recent equivalent elections, without this criterion preventing the provision of other information regarding those [candidates] who did not stand or did not secure representation in the most recent elections. In any case, th[is] latter [group of candidates] may not receive greater media coverage than the political formations that secured representation in the most recent elections.

2. It is for the management bodies of private television channels to decide freely whether to organise or broadcast election interviews or debates; however, if they do so,

they must take particular account of the results obtained by each political formation in the most recent equivalent elections.

In the event that a media outlet decides to broadcast a debate between the two candidates who received the highest number of votes in the most recent equivalent elections, it shall broadcast other bilateral or multilateral debates, or provide sufficient compensatory airtime for the other candidates who also secured representation in the most recent equivalent elections.”

[Section 9]. Challenges to broadcasts and programmes aired by privately owned radio and television broadcasters

“During election periods, broadcasts and programmes aired by privately owned broadcasters which have an impact on the election may be challenged before the competent electoral commissions, in accordance with the provisions of section six of this Instruction, subject to the following specific provisions:

(a) challenges to broadcasts and programmes aired by privately owned radio broadcasters may only be based on a breach of the principles of pluralism and equality;

(b) challenges to broadcasts and programmes aired by privately owned television broadcasters may only be based on a breach of the principles of pluralism and equality, unless they concern election interviews and debates, or specific information regarding the election campaign, in which case they may also be based on a breach of the principles of neutrality in media coverage and proportionality.”

II. THE COUNCIL OF EUROPE

A. The Committee of Ministers

48. In Recommendation No. R(99)15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns, adopted on 9 September 1999, the Committee of Ministers of the Council of Europe stressed that the fundamental principle of editorial independence of the media assumed special importance in election periods. It highlighted its awareness of the need to take account of the significant differences which existed between print and broadcast media, and emphasised that the coverage of elections by broadcast media should be fair, balanced and impartial. It further acknowledged that any regulatory framework on the coverage of elections should respect the fundamental principle of freedom of expression protected under Article 10 of the European Convention on Human Rights, as interpreted by the Court. According to the Appendix to the Recommendation, during election campaigns, regulatory frameworks should encourage and facilitate the pluralistic expression of opinions via broadcast media. With due respect for the editorial independence of broadcasters, regulatory frameworks should also provide for the obligation to cover election campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service broadcasters and private broadcasters in their relevant transmission areas (section II.1 of the Appendix). Where self-regulation did

not provide for this, member States should adopt measures whereby public and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates (section II.2 of the Appendix).

49. According to Recommendation CM/Rec(2007)15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns (adopted by the Committee of Ministers on 7 November 2007 at the 1010th meeting of the Ministers' Deputies), regulatory frameworks on media coverage of elections should respect the editorial independence of the media. Member States should ensure that there is an effective and manifest separation between the exercise of control of media and decision-making as regards media content and the exercise of political authority or influence (Principles, § I.3).

B. The European Commission for Democracy through Law

50. At its 51st and 52nd sessions on 5-6 July and 18-19 October 2002, the European Commission for Democracy through Law (Venice Commission) adopted its guidelines on elections and an explanatory report (CDL-AD(2002)023). Together, these two documents make up the Code of Good Practice in Electoral Matters, which was approved in 2003 by the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe. The relevant parts of the guidelines read as follows:

2.3. Equality of opportunity

“a. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:

- i. the election campaign;
- ii. coverage by the media, in particular by the publicly owned media;
- iii. public funding of parties and campaigns.

b. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television airtime, public funds and other forms of backing.

c. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.

d. Political party, candidates and election campaign funding must be transparent.

e. The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising.”

51. The explanatory report, in so far as relevant, reads as follows:

“Equality of opportunity should be ensured between parties and candidates and should prompt the state to be impartial towards them and to apply the same law uniformly to all. In particular, the neutrality requirement applies to the electoral campaign and coverage by the media, especially the publicly owned media, as well as to public funding of parties and campaigns. This means that there are two possible interpretations of equality: either ‘strict’ equality or ‘proportional’ equality. ‘Strict’ equality means that the political parties are treated without regard to their present strength in parliament or among the electorate. It must apply to the use of public facilities for electioneering purposes (for example bill posting, postal services and similar, public demonstrations, public meeting rooms). ‘Proportional’ equality implies that the treatment of political parties is in proportion to the number of votes. Equality of opportunity (strict and/or proportional) applies in particular to radio and television airtime, public funds and other forms of backing. Certain forms of backing may on the one hand be submitted to strict equality and on the other hand to proportional equality.

The basic idea is that the main political forces should be able to voice their opinions in the main organs of the country’s media and that all the political forces should be allowed to hold meetings, including on public thoroughfares, distribute literature and exercise their right to post bills. All of these rights must be clearly regulated, with due respect for freedom of expression, and any failure to observe them, either by the authorities or by the campaign participants, should be subject to appropriate sanctions.

...

The most important thing is to draw up a list of the media organisations in each country and to make sure that the candidates or parties are accorded sufficiently balanced amounts of airtime or advertising space, including on state radio and television stations. In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.”

C. The Parliamentary Assembly of the Council of Europe

52. According to Resolution 2254 (2019) of the Parliamentary Assembly of the Council of Europe, entitled “Media freedom as a condition for democratic elections”, free elections are a pillar of every democratic society, and the electorate cannot be said to have genuine freedom of choice if that choice is not a well-informed one. Consequently, the right to freedom of information and media freedom are essential preconditions of the right to free elections, in accordance with Article 3 of Protocol No. 1 to the Convention. The media must be free to inform the public, without being subject to any political, economic or other pressure, and with due regard for professional ethics. The professional media are subject to various obligations designed to ensure balanced and impartial coverage of elections and the fair participation of all candidates and political parties in the election process.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

53. The applicant company complained under Article 10 of the Convention that the CEC's decision of 16 April 2019 amounted to a prohibition on the holding and televised broadcasting of the election debate in its originally planned format, and therefore amounted to a breach of the freedom to impart information and the public's right to receive it. Article 10 of the Convention reads as follows:

Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

54. The applicant company considered that its above complaint under Article 10 about the electoral authority intervening in the organisation of a televised election debate during the campaign period was to be examined in the light of Article 3 of Protocol No. 1, which reads as follows:

Article 3 of Protocol No. 1

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

A. Admissibility

55. The Court finds that the complaint under Article 10 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant company

56. The applicant company argued that the CEC's decision had amounted to a binding prohibition on the five-party debate, and characterised the interference as a prior restraint imposed during an election campaign.

57. The applicant company argued that the interference had not been prescribed by law, since section 66(2) of the LOREG in conjunction with Instruction no. 4/2011 constituted an unforeseeable framework which afforded the authorities excessive discretion and was therefore prone to arbitrariness. Section 66(2) of the LOREG merely referred to vague principles of proportionality and neutrality without defining them. The general and open-ended nature of section 66(2) of the LOREG, as applied and interpreted through Instruction no. 4/2011, fell short of the quality-of-law requirements and failed to provide a foreseeable legal framework. The combined operation of the statutory provision and its administrative implementation allowed for divergent and even contradictory applications. The applicant company submitted in that regard that, as a matter of fact, election debates and political interviews had not been subject to any consistent application of a rule of proportionality on the basis of previous election results. For instance, in 2023 Radio Televisión Española had held a televised debate ahead of the general elections scheduled for 23 July 2023 in which the newly created political party Sumar had participated, despite the fact that that party had not secured parliamentary representation previously. Furthermore, radio and online debates, as well as television entertainment programmes, were not subject to the strict rule on proportionality. Lastly, it argued that, contrary to the Government's submissions (see below), the Court had not yet expressed its opinion on Instruction no. 4/2011.

58. The applicant company further submitted that neither Instruction no. 4/2011, the CEC, nor the Supreme Court had identified any legitimate aim within the meaning of Article 10 § 2 of the Convention. Their abstract references to neutrality or equality did not correspond to the legitimate aims set out in the relevant Convention provision, and the Supreme Court's reference to the need to ensure the equal treatment of candidates had not been explained, in the context of the serious interference such as that in the case at hand. Contrary to the Government's submissions (see below), the Venice Commission's Code of Good Practice in Electoral Matters did not support the authorities' rigid approach. Although point I.2.3.b of that Code referred to treatment "according to the results achieved in the elections" as regards proportional equality, point I.2.3.c made clear, specifically "in conformity with freedom of expression", that legal provisions should ensure that all participants in elections were guaranteed minimum access to privately owned

media during the election campaign (see paragraph 50 above). However, in the present case, that approach had been applied not as a guarantee of minimum access, but as one of exclusion. The CEC had imposed a single rigid format, preventing the broadcast of a debate capable of providing comprehensive and meaningful information to voters.

59. Furthermore, the legislature required only that election debates comply with the principles of proportionality and neutrality in media coverage, without deriving from those open-ended notions any single mandatory understanding, still less a single mandatory debate format. Moreover, the debate format imposed by the CEC treated national-level candidates in similar situations differently and reduced voters' ability to compare "the only five [national-level] alternatives with realistic prospects of governmental responsibility". Conversely, the applicant company's selection criteria were reasonable: parties which (i) were standing in all constituencies; and (ii) were expected to obtain more than 10% of the votes, according to all published polls. There were objective elements capable of justifying, on reasonable grounds, the differential treatment of the parties not invited to the debate, while the five parties invited by the applicant company had been objectively comparable. Accordingly, the applicant company's criteria did not infringe the principle of equality among electoral lists.

60. The applicant company further argued that the interference had not been necessary in a democratic society, as no pressing social need had been shown. Televised debates were a protected form of political expression. Relying on *Manole and Others v. Moldova* (no. 13936/02, ECHR 2009 (extracts)), it stressed that the protection of freedom of expression in a democratic society was not satisfied by abstract or formal guarantees, or by a mechanically neutral regulatory approach. In addition, Article 10 of the Convention required an effective framework capable of ensuring genuine pluralism and meaningful public debate. The applicant company argued that a regulatory format which, while purporting to ensure "neutrality", suppressed the most informative and deliberative form of political expression at a decisive electoral moment, could not be regarded as compatible with that requirement. Prior administrative control over debate formats could have a chilling effect on broadcasters.

61. The applicant company further argued that exclusive reliance on previous equivalent elections disadvantaged emerging parties despite their strong prospects at the time of events. Voters needed information relevant to the 2019 electoral landscape, not that of four years earlier. Including a representative of Vox in the debate had been objectively justified by polling results and the fact that Vox had secured representation in Andalusia. By allowing only one rigid debate format based solely on past election results, the CEC had left no real editorial discretion. Recent electoral indicators, such as polling and recent non-equivalent parliamentary representation, should also have been considered. Election debate, as opposed to election

advertising, required “the broadest sphere of freedom” and allowed only strictly exceptional restrictions. As the interference concerned editorial autonomy and the organisation of an election debate in the period immediately preceding the election, the margin of appreciation afforded to the State was narrow and required the Court’s strict scrutiny. The applicant company further noted that the cases relied on by the Government, such as *Animal Defenders International v. the United Kingdom* ([GC], no. 48876/08, ECHR 2013 (extracts)) and *Bowman v. the United Kingdom* (19 February 1998, *Reports of Judgments and Decisions* 1998-I), concerned statutory limits on advertising or campaign expenditure, and did not justify extending a wide margin of appreciation to restrictions on editorial autonomy and live pre-election debates.

62. The applicant company further argued that, contrary to the Government’s submissions about the “voluntary” exclusion of Vox, it had been compelled to exclude Vox by virtue of the wording of the CEC’s decision. The measure taking away the broadcaster’s ability to organise the debate as planned had amounted to a prior restraint on editorial freedom in the middle of an election campaign, and had been imposed *ex ante* and with immediate effect, before the debate could be publicly broadcast. Vox’s subsequent withdrawal from the domestic proceedings was, in its view, legally irrelevant. The applicant company argued that the alternatives relied on by the Government, such as an eight-party debate or dissemination through other media, had not constituted genuine or less restrictive measures. The value of an election debate depended on the territorial scope and realistic electoral prospects of participants; television had particular reach and impact, and less effective media could not justify suppressing the most impactful form of expression. The applicant company reiterated that a five-party debate accompanied by compensatory measures had been a viable and proportionate solution consistent with even the Government’s own framing, but the CEC’s decision had prevented it from pursuing that option and had instead imposed, in its view, the most severe form of interference without a proper proportionality assessment.

63. In conclusion, the applicant company maintained that the Government had failed to demonstrate relevant and sufficient reasons showing a pressing social need for the interference. In its view, the restriction had prevented voters from comparing, in a single public and adversarial forum, the programmes of the only five national-level parties with realistic prospects of governmental responsibility, thereby affecting not only the form but also the substance of the information available at a decisive electoral moment. The interference had been disproportionate and had exceeded any permissible margin of appreciation, and could not be regarded as “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention. Lastly, the applicant company argued that restricting its right to freedom of information undermined the conditions safeguarded by Article 10 of the

Convention read in the light of Article 3 of Protocol No. 1 to the Convention. The integrity of the democratic process itself was at stake, not just the interests of any specific political party. Representative democracy could not function if a binding administrative decision prevented voters from engaging in a full, informed and genuinely comparative assessment of the national alternatives presented to them. Rather than protecting pluralism and equality, the restriction distorted public debate and weakened the foundations of the democratic process.

(b) The Government

64. The Government conceded that there had been an interference with the applicant company's right to freedom of information. They submitted, however, that the interference had resulted from the strict application of Spanish electoral legislation and administrative rules, and had complied with Convention standards.

65. They submitted that the interference had been prescribed by law, namely section 66(2) of the LOREG in conjunction with section 8(2) of Instruction no. 4/2011 of the CEC, which laid down clear and foreseeable rules. Instruction no. 4/2011 was an administrative regulation adopted by the highest electoral authority, which the LOREG had entrusted with specifying the application of the principle of proportionality in the organisation of election debates. In support of their argument, the Government referred to an unrelated case in which the complainants had unsuccessfully challenged certain provisions of Instruction no. 4/2011 before the domestic courts and a subsequent complaint to the Court in that connection had been declared inadmissible.

66. The Government submitted that the proportionality rules stemming from section 66(2) of the LOREG, as specified by Instruction no. 4/2011, pursued the legitimate aim of safeguarding neutrality in media coverage and equality between candidates during the election period, thereby preserving the democratic process; as such, the measures were necessary in a democratic society. They accepted that the applicant company's choice to invite five political parties to participate in the election debate in question might have been reasonable from an informational or commercial perspective. Notably, the Vox candidate's participation had been newsworthy and could have had informational value, as Vox had been an emerging party at the time with a strong media and social media presence, and according to the polls, it could have secured parliamentary representation for the first time. However, in the Government's view, the decisive question was not the reasonableness of the applicant company's editorial choice. Instead, the key issue was whether the statutory criteria implementing the principle of proportionality were "arbitrary or irrational". They argued that they were neither.

67. The Government relied on the Venice Commission's Code of Good Practice in Electoral Matters (see paragraph 51 above) in arguing that

proportionality could legitimately be based on the results of previous elections. They rejected the applicant company's interpretation of the reference to "minimum access" to private media as incorrect, as Vox had never been denied minimum access to the media during the campaign. Interpreting the Code in the manner proposed by the applicant company would render the concept of proportionality devoid of practical effect.

68. The Government contended that the interference had been necessary in a democratic society, since the legislation and rules applied sought to safeguard the electoral process. Referring in particular to *Animal Defenders International* (cited above, § 123), *Mathieu-Mohin and Clerfayt v. Belgium* (2 March 1987, § 54, Series A no. 113) and *Bowman* (cited above, § 43), they reiterated that the State enjoyed a margin of appreciation, as it did generally with respect to the organisation of its electoral system. The criterion established in section 8(2) of Instruction no. 4/2011 – taking into account the results obtained in the previous equivalent elections – was logical, reasonable and the most objective option. Moreover, it was complemented by the notion of a "significant political group". The same criterion was used in several provisions of the LOREG governing other aspects of the electoral process. By contrast, reliance on opinion polls – as suggested by the applicant company – would introduce subjectivity and uncertainty which would require media service providers and supervisory authorities to assess the reliability and methodology of surveys, thereby undermining legal certainty and transparency.

69. The Government stressed that the CEC had not prohibited holding or broadcasting a debate involving Vox, nor had it imposed a specific debate format (they referred, by way of contrast, to *Orlovskaya Iskra v. Russia*, no. 42911/08, § 130, 21 February 2017). It had merely indicated that the debate could not be held as announced – specifically, with the inclusion of a party which had not secured parliamentary representation in the last equivalent elections, but with the exclusion of others that had obtained such representation, without adequate compensatory measures – and had to comply with the principles of proportionality, neutrality and equality laid down in domestic law. In their view, the CEC's role was confined to ensuring respect for binding electoral rules guaranteeing the free expression of the will of the electorate. The proposed five-party format had not respected that rule, since it had excluded parties that had obtained more representation in the previous equivalent elections than some of those invited.

70. The Government argued that several alternatives had remained open to the applicant company. For example, it could have organised an eight-party debate including the three parties which had complained, thus also providing voters with additional information compared with the four-party debate which had been held one day before the debate organised by the applicant company (see paragraphs 34-35 above). They observed that in a subsequent general election, the applicant company had in fact organised an eight-way

debate including political formations which had not been standing at national level (see paragraph 36 above). Other possibilities had included granting compensatory airtime or holding the proposed five-way debate through another medium, such as the radio or the internet, both of which had been available through the applicant company's media group. In their submission, the applicant company itself had chosen to exclude one participant (Vox) rather than add others, thereby limiting the information offered to the public.

71. The Government further maintained that the criteria applied by the CEC were objective, neutral and applicable to all media service providers alike, and that neither the rules derived from the LOREG and Instruction no. 4/2011 nor their application in the present case had been arbitrary. On the contrary, the same approach had been followed consistently, including when new political parties had emerged. The Government also rejected the applicant company's reliance on the 2023 debate involving the Sumar coalition, submitting that, applying the same criteria, that debate had complied with the rules, since the coalition had included parties which had previously secured parliamentary representation and had not been a wholly new political formation. To demonstrate the consistent and objective application of the system, they referred to decisions by the CEC that were unrelated to the present case (nos. 351/2019 and 315/2019) in which the CEC had accepted that private broadcasters could include significant political groups in debates, provided that adequate compensatory measures were afforded to other political formations which were entitled to them.

72. Lastly, the Government observed that Vox itself had neither challenged the CEC's decision nor pursued the matter before the Supreme Court when it had been invited to participate in the proceedings, which they considered to be indicative of the limited practical impact of the measure in question. They stressed that private broadcasters could not unilaterally disregard binding electoral rules of general application.

(c) The third-party intervener – Media Defence

73. With reference to material from the United Nations, the European Union and the Council of Europe, including the Recommendations of the Committee of Ministers (see, in particular, paragraphs 48-49 above), the intervener emphasised the fundamental importance of freedom of expression in the electoral context, stressing that political speech and debate on matters of public interest enjoyed a particularly high level of protection under Article 10 of the Convention, and that restrictions in this sphere should therefore be subject to strict scrutiny. In its view, broadcast media played a key role during election periods by informing voters, reflecting a diversity of views and facilitating inclusive political debate. While acknowledging that the promotion of political pluralism and fairness in election coverage might constitute a legitimate aim capable of justifying certain regulatory measures, the intervener stressed that such regulation had to respect the editorial

independence of the media and could not result in disproportionate interference with press autonomy. Conditions imposed on broadcasters which organised political debates during election campaigns should therefore be narrowly tailored, proportionate to the legitimate aim pursued and supported by sufficient reasoning, so as to avoid the risk that regulatory frameworks could be used as tools of political influence or indirect censorship.

74. The intervener further highlighted, with reference to various statistical sources, the transformation of the media environment which had been brought about by digital platforms. In the current context, where there were multiple sources of information, a lack of representation on a particular programme or platform could be offset by participation in the broader election debate across other media. In its view, the existence of external pluralism in the overall media landscape reduced the need for restrictive regulatory intervention in the editorial choices of individual broadcasters.

2. The Court's assessment

(a) Existence of the interference with the applicant company's Article 10 rights

75. Article 10 of the Convention applies not only to the content of information but also to the means of dissemination, since any restriction imposed on the latter necessarily interferes with the right to receive and impart information (see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 87, 20 January 2020). The Court has repeatedly recognised the vital role of the media in facilitating and fostering the public's right to receive and impart information and ideas (*ibid.*, § 165, with further references).

76. By the decision of 16 April 2019, the CEC found that the debate in question could not be held as proposed by the applicant company and had to be modified, if the broadcaster so decided, to comply with the requirements of the principle of proportionality. It is not disputed between the parties, and the Court finds, that that decision constituted an interference with the applicant company's freedom to impart information.

77. An interference must be "prescribed by law", pursue one or more legitimate aims within the meaning of Article 10 § 2 of the Convention, and be "necessary in a democratic society".

78. As the circumstances of the case relate to the parliamentary elections and the "choice of the legislature" was at stake, the Court finds it appropriate to consider the applicant company's complaint under Article 10 of the Convention in the light of Article 3 of Protocol No. 1 thereto (see *Orlovskaya Iskra*, cited above, § 102).

(b) Prescribed by law

(i) General principles

79. The expression "prescribed by law" in the second paragraph of Article 10 requires that the impugned measure should have a legal basis in

domestic law. As regards the words “in accordance with the law” and “prescribed by law” which appear in Articles 8 to 11 of the Convention, the Court has always understood the term “law” in its “substantive” sense, not its “formal” one. “Law” must be understood to include both statutory law – encompassing also enactments of lower ranking statutes and regulatory measures taken by professional regulatory bodies under independent rule-making powers delegated to them by Parliament – and judge-made “law”. In sum, the “law” is the provision in force as the competent courts have interpreted it (see *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 157, 5 April 2022). It also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 120, ECHR 2015). The notion of “quality of the law” requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law. It thus implies that there must be adequate safeguards in domestic law against arbitrary interferences by public authorities (see *Magyar Kétfarkú Kutya Párt*, cited above, § 93).

80. A norm cannot be regarded as a “law” within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable a person to regulate his or her conduct. That person must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. The criterion of foreseeability cannot be interpreted as requiring that all detailed conditions and procedures governing the interference be laid down in the substantive law itself, and the requirement of “lawfulness” can be met if points which cannot be satisfactorily resolved on the basis of substantive law are set out in enactments of lower rank than statutes. A law which confers a discretion is thus not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (*ibid.*, § 94, with further references). The electoral context takes on special significance in this regard. Accordingly, the Court has found wide and unpredictable interpretations of legal provisions governing elections to be either unforeseeable in their effects or indeed arbitrary and therefore incompatible with Article 3 of Protocol No. 1 (*ibid.*, §§ 98-99, and the cases cited therein). When those legal provisions form the basis for restricting the exercise of freedom of expression, this is an additional element to be taken into account (*ibid.*, § 100).

(ii) *Application to the present case*

81. The parties agree, and the Court notes, that the interference was based on section 66(2) of the LOREG and section 8(2) of Instruction no. 4/2011 issued by the CEC (see paragraphs 44 and 47 above). The first of those norms specifies the principle of proportionality applicable to media coverage during

election campaigns and provides criteria for the organisation of election debates. The accessibility of those provisions is not in dispute.

82. The parties' opinions differed, however, as to whether the above provisions – and section 8(2) of the Instruction in particular – were foreseeable as to their effects, and as to whether the overall regulatory framework provided sufficient clarity, foreseeability and protection against arbitrariness.

83. The Court reiterates that the role of adjudication vested in the national courts is precisely to dissipate such interpretational doubts as may remain. The Court's power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *NIT S.R.L.*, cited above, § 160, with further references).

84. In response to the applicant company's arguments, the Supreme Court found that Instruction no. 4/2011 specified the criteria already contained in the LOREG and did not introduce new substantive restrictions, and that it constituted a sufficient legal basis for the interference. The Court does not find that conclusion arbitrary or manifestly unreasonable. Instruction no. 4/2011 was issued to implement section 66(2) of the LOREG. The latter provision expressly reserves to the CEC the power to issue such instructions. Instruction no. 4/2011 contains detailed clarifications as to the status of a "significant political group", the principles binding on privately owned radio and television broadcasters, and, specifically, the principle of proportionality set out in section 66 of the LOREG in relation to private television channels. In particular, it clearly provides for preferential consideration to be given to the results obtained by each political formation in the most recent equivalent elections, and clarifies in detail how information should be provided on formations which did not secure representation in the most recent elections. It further sets out, in section 9, how challenges may be lodged in relation to the broadcasts of privately owned television broadcasters (see paragraph 47 above). Having further regard to the interpretation of the CEC and the Supreme Court of both the LOREG provision and Instruction no. 4/2011 in relation to the facts of the present case, the Court is not persuaded that the legal discretion granted to the executive in this case was expressed in terms of an unfettered power (compare, for example, *Engels v. Russia*, no. 61919/16, §§ 26-27, 23 June 2020). On the contrary, in view of the precise and detailed provisions of Instruction no. 4/2011, which was adopted by the CEC in accordance with the LOREG, the Court considers that it allowed media professionals to regulate their conduct (see, for instance, *Mándli and Others v. Hungary*, no. 63164/16, § 56, 26 May 2020, and contrast *Engels*, cited above, § 27).

85. The applicant company's argument as to the lawfulness of the impugned interference rests primarily on its contention that in the given context, the term "law" should be understood as referring exclusively to an Act of Parliament (in this case, the LOREG), whilst the norms applied in its case were a combination of primary and secondary legislation. The Court is unable to accept that argument, as the term "law" as it appears in the phrases "in accordance with the law" and "prescribed by law" in Articles 8 to 11 of the Convention is to be understood in its "substantive" sense, not its "formal" one. It thus includes, *inter alia*, "written law", not limited to primary legislation but including also legal acts and instruments of lesser rank. In sum, the "law" is the provision in force as the competent courts have interpreted it (see, for example, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 83, 14 September 2010, and, *mutatis mutandis*, *Vavříčka and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, §§ 268-269, 8 April 2021). The Court further reiterates that the phrase "prescribed by law" refers in the first place to national law and that it is not, in principle, for it to examine the validity of "secondary legislation", that being primarily a matter for the national courts (see, among many other authorities, *Rekvényi v. Hungary* [GC], no. 25390/94, § 35, ECHR 1999-III, and *Mándli and Others*, cited above, § 56; see also, *mutatis mutandis*, *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, §§ 153 and 156, ECHR 2013 (extracts)).

86. While the necessity of the interference based on Instruction no. 4/2011 will be assessed below, the Court is therefore satisfied that the interference was prescribed by law.

(c) Legitimate aim

87. The Court observes that the rules relied upon by the CEC were designed to ensure neutrality in election coverage and equality between political competitors during the election period, which are central elements of democratic elections. In the Court's view, such considerations are closely linked to the protection of the rights of others and the proper functioning of the democratic electoral process (see *NIT S.R.L.*, cited above, § 174; *Associazione Politica Nazionale Lista Marco Pannella v. Italy*, no. 66984/14, § 53, 31 August 2021; and *ATV Zrt v. Hungary*, no. 61178/14, § 39, 28 April 2020, as regards measures intended to ensure the audience's right to balanced and unbiased coverage of matters of public interest in news programmes).

88. The Court therefore considers that the interference pursued the legitimate aim of protecting the rights of others within the meaning of Article 10 § 2 of the Convention.

(d) Necessary in a democratic society

(i) General principles

89. The general principles concerning the question of whether an interference with freedom of expression is “necessary in a democratic society” are well established in the Court’s case-law and have been summarised in, among other authorities, *Pentikäinen v. Finland* ([GC], no. 11882/10, § 87, ECHR 2015, with further references). In particular, freedom of expression constitutes one of the essential foundations of a democratic society. As set out in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (*ibid.*). The adjective “necessary”, within the meaning of Article 10 § 2, implies the existence of a “pressing social need”. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision. The Court’s task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities, but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. What the Court has to do is, *inter alia*, look at the interference complained of in the light of the case as a whole and determine whether the national authorities adduced “relevant and sufficient” reasons to justify it, including whether they relied on an acceptable assessment of the relevant facts (see *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016).

(α) The right to impart information and the principle of pluralism

90. Although the press must not overstep certain bounds, their duty is nevertheless to impart – in a manner consistent with their obligations and responsibilities – information and ideas on all matters of public interest (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III). Not only do the media have the task of imparting such information and ideas, but the public also has a right to receive them (see, among other authorities, *Axel Springer AG v. Germany* [GC], no. 39954/08, § 80, 7 February 2012, with further references). Article 10 of the Convention protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (see *NIT S.R.L.*, cited above, § 183). The particular role of the press in imparting information and ideas on political issues and on other subjects of public interest, which the public is moreover entitled to receive, cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor (*ibid.*, § 184; see also *Manole and Others*, cited above, § 99), including in relation to audiovisual media, whose programmes are often broadcast very widely (see, among other authorities, *VgT Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, § 73, ECHR 2001-VI).

91. If seen from the perspective of Article 3 of Protocol No. 1, the principles of pluralism, equality of opportunity between political competitors and the neutrality of the electoral process may justify certain regulatory measures during election campaigns, including with regard to media coverage. At the same time, there are numerous ways of organising and running electoral systems and a variety of institutional arrangements within the Contracting States, reflecting differences in historical development, political traditions and social context. It is therefore primarily for each State to shape its own electoral framework, subject to the Court's supervision as to whether the requirements of Article 3 of Protocol No. 1 have been complied with (see *Communist Party of Russia and Others v. Russia*, no. 29400/05, § 108, 19 June 2012, and *Ždanoka v. Latvia* [GC], no. 58278/00, § 103, ECHR 2006-IV).

(β) The role of the media during elections

92. During elections the press facilitates the “free expression of the opinion of the people in the choice of the legislature”. The “public watchdog” role of the press during elections includes mass media outlets independently exercising freedom of the press on the basis of free editorial choice to impart information and ideas on subjects of public interest. In particular, discussion of candidates and their programmes contributes to the public's right to receive information and strengthens voters' ability to make informed choices between candidates for office (see *Orlovskaya Iskra*, cited above, § 130). Free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system. The two rights are inter-related and operate to reinforce each other. For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely (see *Bowman*, cited above, § 42). Nonetheless, in certain circumstances the two rights may come into conflict, and it may be considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the “free expression of the opinion of the people in the choice of the legislature”. In striking the balance between these two rights, States have a margin of appreciation, as they do generally with regard to the organisation of their electoral systems (*ibid.*, § 43; see also *Animal Defenders International*, cited above, § 123, and *Orlovskaya Iskra*, cited above, § 111).

(γ) The Court's case-law regarding the margin of appreciation

93. The breadth of the margin of appreciation to be afforded to domestic authorities depends on a number of factors, such as the type of expression at issue (see *Orlovskaya Iskra*, cited above, § 107). The Court has found that States enjoy a wide margin of appreciation in matters relating to the rights

protected under Article 3 of Protocol No. 1 to the Convention, for instance, as regards the choice of electoral system by which the free expression of the opinion of the people in the choice of the legislature is ensured (see *Matthews v. the United Kingdom* [GC], no. 24833/94, § 64, ECHR 1999-I, and *Mathieu-Mohin and Clerfayt*, cited above, § 54; see further *Oran v. Turkey*, nos. 28881/07 and 37920/07, § 72, 15 April 2014; *Partija “Jaunie Demokrāti” and Partija “Mūsu Zeme” v. Latvia* (dec.), nos. 10547/07 and 34049/07, 29 November 2007; and *TV Vest AS and Rogaland Pensjonistparti v. Norway*, no. 21132/05, §§ 64-66, ECHR 2008 (extracts)). The Court has also established that there is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in the fields of political speech and matters of public interest, including during election periods (see the above-cited cases of *Animal Defenders International*, § 104, and *Orlovskaya Iskra*, §§ 115-16). Article 10 does not, however, guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern (see *NIT S.R.L.*, cited above, § 179, and *Bladet Tromsø and Stensaas*, cited above, § 65). The Court has further found that States must be accorded some discretion in regulating certain forms of election campaigning with a view to safeguarding the democratic order within their own political systems (see *Teslenko and Others v. Russia*, nos. 49588/12 and 3 others, § 125, 5 April 2022, and *Assotsiatsiya NGO Golos and Others v. Russia*, no. 41055/12, § 89, 16 November 2021, and the cases cited therein).

(δ) Obligations of the State in the sector of audiovisual media

94. In such a sensitive sector as the audiovisual media, the State has a positive obligation to put in place an appropriate legislative and administrative framework to guarantee true effective pluralism. When it comes to audiovisual broadcasting, States are under a duty to ensure, first, that the public are given access through television to impartial and accurate information and a range of opinions and comments, 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 such information and comment. As the choice of the means by which to achieve these aims will vary according to local conditions, it therefore falls within the State’s margin of appreciation (see *NIT S.R.L.*, cited above, § 192, and *Manole and Others*, cited above, § 100).

(ii) Application to the present case

95. The Court sees no reason to depart from its approach that, bearing in mind the State’s positive obligation to put in place an appropriate legislative and administrative framework to guarantee true effective pluralism, States generally have a margin of appreciation in this area (see the case-law cited in

paragraphs 92-94 above). Furthermore, the Court considers it relevant for its assessment that the disputed measure did not amount to a permanent and absolute ban (see, by contrast, *TV Vest AS and Rogaland Pensjonistparti*, cited above, § 66). Instead, the applicant company complained that it had been unable to hold a pre-election debate in a specific format on the basis of its own selection criteria for candidates invited to participate. However, given that the interference in the present case occurred in relation to political expression during a pre-election period, and having regard to its case-law on the matter, the Court considers that the margin of appreciation accorded to the respondent State has to be relatively narrow (see, *mutatis mutandis*, *Associazione Politica Nazionale Lista Marco Pannella*, cited above, § 78; see also, in so far as relevant, the case-law cited in paragraph 93 above).

96. Furthermore, the Court has already stated that political pluralism can be regarded as a “pressing social need” legitimising some forms of interference with freedom of expression (see, *mutatis mutandis*, *Communist Party of Russia and Others*, cited above, § 127, with a further reference). Regard being had to the margin of appreciation left to the national authorities in this area, the Court finds that ensuring neutrality in election coverage and equality between political competitors during an election period, which the authorities in the present case relied on, can be seen as answering a “pressing social need” in a democratic society.

97. The crux of the applicant company’s complaint is its alleged inability, as a result of the CEC’s intervention, to host a debate involving the participation of candidates from four parties which had obtained the most representation in the previous equivalent elections and from Vox, an emerging party at the time. According to polls carried out shortly before the election, Vox was expected to secure approximately 12% of the votes cast in the 2019 elections, and had candidate lists throughout the entire country and not just in certain provinces.

98. The applicant company contended that the above debate format had been the most appropriate one in the political landscape ahead of the 2019 elections. However, the Court observes that the CEC applied, and the Supreme Court endorsed, the proportionality rule set out in Instruction no. 4/2011, which relied on criteria derived from domestic electoral law, in particular the results obtained by political parties in the previous equivalent elections. The rules governing election debates were general rules applicable to all broadcasters. The Court finds no reason to depart from these findings. It notes, additionally, that the CEC’s interpretation of the proportionality rule as set out in Instruction no. 4/2011 is consonant with the guidelines on equality of opportunity in the Code of Good Practice in Electoral Matters of the Venice Commission (see paragraph 51 above). According to the Venice Commission, depending on the subject matter, equality may be strict or proportional. If it is proportional, political parties must be treated according to the results achieved in the

elections (*ibid*). Against this background, the Court further notes the Supreme Court's assessment that reliance on opinion polls – as suggested by the applicant company – would introduce subjectivity and uncertainty, and require media service providers and supervisory authorities to assess the reliability and methodology of surveys, thereby undermining legal certainty and transparency (see paragraph 27 above). The Supreme Court further found that, in the circumstances, where the political landscape was being reshaped by the transition to a multi-party configuration and the emergence of new political actors, the increase in the number of participants in the electoral contest only reinforced the need to ensure that the coverage provided extended to all of them (see paragraph 31 above). Regard being had to the margin of appreciation left to the national authorities with regard to the organisation of their electoral systems, the Court finds that assessment relevant, and finds no strong reasons to depart from it. It remains to be seen whether the reasons relied on by the authorities were also sufficient.

99. The Court notes in this regard, firstly, that the electoral authority did not intervene on its own initiative, but acted following complaints lodged by political parties which had secured parliamentary representation in the previous equivalent elections but had not been invited to participate in the debate announced by the applicant company. The CEC was therefore called upon to determine whether the format of the proposed debate complied with the rules governing election coverage. The domestic authorities were required to reconcile the applicant company's editorial freedom in organising a political debate with the legitimate interest of other political parties not to be excluded from nationwide election coverage in a manner inconsistent with the applicable legal framework. The Court is satisfied that the domestic authorities sought to strike a fair balance between those competing interests.

100. Secondly, the Court reiterates that the degree of interference under Article 10 § 2 of the Convention cannot be considered in the abstract and must be assessed in the particular context of the case (see, *mutatis mutandis*, in the context of Article 11, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 105, ECHR 2004-I). As stated above, the disputed measure, which applied to television only, did not amount to a permanent and absolute ban (see, by contrast, *TV Vest AS and Rogaland Pensjonistparti*, cited above, §§ 63 and 66, and *VgT Verein gegen Tierfabriken*, cited above, § 74) and was not a “comprehensive, unconditional one” (see, *mutatis mutandis*, *Gorzelik and Others*, cited above, § 105). It was not demonstrated that the applicant company had been deprived of any means of organising a debate involving the participation of Vox, or that section 8(2) of Instruction no. 4/2011 had operated as a total barrier to the applicant company's organising such a debate (contrast *Bowman*, cited above, §§ 46-47). As clearly indicated by the wording of its decision, the CEC did not prohibit the organisation of a debate involving a representative of Vox. Having found that the compensatory measures suggested by the applicant company for the three parties which had

complained were insufficient, the CEC instead required that the debate, if organised, be held in a manner consistent with the applicable rules governing proportionality and equality between political competitors.

101. Thirdly, the Court shares the Supreme Court's view that the CEC's decision did not impose a single format for the debate. The applicant company complained, in essence, that it had been unable to hold a debate in a specific format (see, in so far as relevant, *Associazione Politica Nazionale Lista Marco Pannella and Radicali Italiani*, cited above, § 92). Noting that the measure, as the Government suggested, did not prevent the applicant company from using other means, such as radio and the internet, to broadcast its programmes (see *NIT S.R.L.*, cited above, § 223, and contrast *VgT Verein gegen Tierfabriken*, cited above, § 77), the Court does not need to address specifically whether the availability of those other means to the applicant company was a sufficient counterbalancing factor, particularly given the exceptional outreach of audiovisual media. It is sufficient for the Court to note that the applicant company had the opportunity to organise a televised debate involving the participation of Vox which included the political parties whose exclusion had prompted the complaints to the electoral authority (see also, for the Supreme Court's assessment, paragraph 27 above). The Court therefore sees no reason to depart from the domestic court's assessment that the applicant company retained editorial discretion to adapt the format of the debate so as to comply with the relevant legal framework. In these circumstances, the scope and effect of the impugned restriction on the applicant company's exercise of its freedom to impart information does not appear excessive (see, *mutatis mutandis*, *Rekvényi*, cited above, § 49). The applicant company's free choice to hold a debate excluding one participant (representing Vox) rather than add three others does not alter this conclusion. Additionally, the Court notes that against this background, no issue arises as to the exercise of freedom of speech by candidates – in this case, representatives of Vox – in the context of election debates.

102. In sum, the Court has had regard to the nature of the criteria applied, the fact that the intervention by the electoral authority responded to complaints raised by other political actors, the availability of alternative formats which were compatible with domestic law, and the margin of appreciation enjoyed by the State in regulating electoral processes and media coverage during election campaigns. It considers that the interference complained of was supported by relevant and sufficient reasons, was proportionate to the legitimate aim pursued and was therefore "necessary in a democratic society".

103. There has accordingly been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 10 of the Convention read in the light of Article 3 of Protocol No. 1 to the Convention admissible;
2. *Holds* that there has been no violation of Article 10 of the Convention read in the light of Article 3 of Protocol No. 1 to the Convention;

Done in English, and notified in writing on 8 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Kateřina řimáčková
President