CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF PARTI NATIONALISTE BASQUE – ORGANISATION RÉGIONALE D'IPARRALDE v. FRANCE

(Application no. 71251/01)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

07/09/2007

In the case of Parti nationaliste basque – Organisation régionale d'Iparralde v. France,

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

Christos Rozakis, *President*,
Loukis Loucaides,
Jean-Paul Costa,
Françoise Tulkens,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 71251/01) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an association established under French law, Parti nationaliste basque – Organisation régionale d'Iparralde ("the applicant party"), on 25 April 2001.

2. The applicant party was represented before the Court by Mr J. Chalbaud, Mr I. Quintana and Mr A. Carballo, lawyers practising in Bilbao. The French Government ("the Government") were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs, Ministry of Foreign Affairs.

3. Having regard to the observations submitted by the respondent Government and those submitted in reply by the applicant party, and to the opinion adopted by the European Commission for Democracy through Law (Venice Commission) at its 66th plenary session (17-18 March 2006 – CDL-AD(2006)014), produced at the Court's request (Rule A1 § 2 of the Rules of Court), the Chamber declared the application admissible by a decision of 5 October 2006.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant party is established as an association registered on the basis of the Associations Act of 1 July 1901. Its name in Basque is Euzko Alderdi Jeltzalea – Iparraldeko Erakundea (Basque Nationalist Party – Iparralde Regional Organisation), and its registered office is in Bayonne (France). "Iparralde" is the Basque designation for part of south-western France.

Its constitution of 19 August 1996 states that it is "formed as a regional branch of the EAJ-PNB in the provinces of Laburdi (Labourd), Benafarroa (Lower Navarre) and Zuberoa (Soule)" and adopts "the national ideology of the EAJ-PNB" and "the traditional principles and *modus operandi* of the EAJ-PNB to the extent that they are compatible with the present Constitution". The EAJ-PNV (Euzko Alderdi Jeltzalea – Partido Nacionalista Vasco; the French abbreviation is EAJ-PNB) is a political party established under Spanish law whose aim is to defend and promote Basque nationalism.

5. The applicant party states that its activities are the same as those of any political party: it devises political programmes, puts forward candidates for elections and takes part in election campaigns.

6. In order to be able to receive funds, in particular financial contributions from the EAJ-PNV, the applicant party formed a funding association in accordance with section 11 of the Political Life (Financial Transparency) Act of 11 March 1988. On 16 September 1998 it applied to the National Commission on Election Campaign Accounts and Political Funding (*Commission nationale des comptes de campagnes et des financements politiques* – "the CCFP") under section 11-1 of the same Act for authorisation of the funding association.

On 22 January 1999 the CCFP rejected the application, giving the following reasons in its decision:

> "...
>
> [The CCFP] has been asked to authorise the funding association for the Parti nationaliste basque as that political organisation's funding association within the meaning of section 11 of the Act of 11 March 1988 as amended.
>
> It was noted in the Commission's opinion published in the Official Gazette of 18 November 1998 ... and was acknowledged by the [applicant] party's chairman in his letter of 20 January 1999 that the party receives funds from the Spanish Basque Nationalist Party.

Section 11-4 of Law no. 88-227 of 11 March 1988, as amended by section 16-1 of Law no. 95-65 of 19 January 1995, prohibits the funding of a political party by any foreign legal entity [*personne morale*].

The Parti nationaliste basque receives financial support from the Spanish Basque Nationalist Party, whose official recognition under Spanish law does not in any way remove its status as a foreign legal entity.

Accordingly, this unlawful source of funding, which accounts for most of the resources of the Parti nationaliste basque, precludes the party from having a funding association authorised in accordance with the law.

..."

7. On 22 June 1999 the applicant party applied to the CCFP to reconsider its decision. The application was refused on 2 July 1999 in a decision worded as follows:

"...

As to the [alleged] absence of a ban on the financing of a French political party by a foreign political party:

Having compared the provisions of Article L. 52-8 of the Elections Code, applicable to election campaigns, and section 16-1 of the Act of 19 January 1995, the applicant contends that section 16-1 ... simply states that only a political party can fund another political party and that, contrary to the position regarding election campaigns, no provision of any statute or regulations expressly prohibits the funding of a political party by another political party established under the law of a foreign country.

This argument disregards the fifth subsection of section 11-4 of the Act of 11 March 1988, as amended by the Acts of 15 January 1990 and 19 January 1995, which provides: 'No funding association or financial agent may receive direct or indirect contributions or material assistance from a foreign State or a foreign legal entity.'

Pursuant to section 11 of the Act of 11 March 1988, the intervention of a funding association or financial agent is compulsory for the receipt of funds.

It thus follows from these two provisions, read together, that a party cannot receive funds from a political party that is a foreign legal entity.

As to the [alleged] infringement of the Community principle of the free movement of capital and [alleged] incompatibility with developments in national electoral law:

These two principles conflict with express provisions of French law.

Firstly, the free movement of capital does not prevent local law from regulating certain aspects of this principle.

Secondly, the transnational representativeness of parties does not necessarily presuppose financial support from abroad and, contrary to what the applicant argues, the prohibition of such support does not in any way impair the full exercise of the right to vote and to stand for election. ..."

8. On 3 September 1999 the applicant party applied for judicial review of that decision to the *Conseil d'Etat*, which dismissed the application on 8 December 2000 in a judgment worded as follows:

"...

Section 11 of the Political Life (Financial Transparency) Act (Law no. 88-227 of 11 March 1988), in the wording resulting from Law no. 90-55 of 15 January 1990, provides that political parties and their territorial and specialist organisations 'collect funds through the intermediary [of an agent] duly designated by them, which may be either a funding association or an individual'. Section 11-1, inserted into the Act of 11 March 1988 by the Act of 15 January 1990, provides that 'authorisation to act as a political party's funding association shall be given by the National Commission on Election Campaign Accounts and Political Funding'. It follows from the first subsection of section 11-6, inserted into the Act of 11 March 1988 by the Act of 15 January 1990, that the granting of authorisation is subject to the funding association's compliance with the requirements of sections 11-1 and 11-4 of the Act. Among the requirements concerned are those set forth in the penultimate subsection of section 11-4, which provides: 'No funding association or financial agent of a political party may receive direct or indirect contributions or material assistance from a foreign State or a foreign legal entity.'

...

Substantive legality

The applicant group argues that the Commission erred in its application of section 11-4 of the Act of 11 March 1988 and that, should the Commission's interpretation be held to prevail, the statutory provisions cited in support of its decision should be struck down as being contrary to the Constitution and incompatible with France's international obligations.

As to the alleged erroneous application of section 11-4 of the Act of 11 March 1988:

... the penultimate subsection of section 11-4 of the Act of 11 March 1988 prohibits funding associations from receiving financial contributions 'from a foreign State or a foreign legal entity'. Foreign political parties, which belong to the category of foreign legal entities, fall within the purview of that prohibition. The amendments resulting from the Act of 19 January 1995 to the second subsection of section 11-4 with the effect, firstly, of prohibiting a legal entity from funding a party or a political group and, secondly, of excluding 'political parties and groups' from this prohibition on account of the role conferred on them by Article 4 of the Constitution of 4 October 1958 had neither the purpose nor the effect of exempting foreign political parties from the prohibition on the funding of a French political party by any foreign legal entity. Consequently, the applicant group has no basis for arguing that the impugned decision was based on an erroneous application of the provisions of the penultimate subsection of section 11-4 of the Act of 11 March 1988 in conjunction with the second subsection of that section.

As to the alleged breach of Article 11 of the Declaration of the Rights of Man and of the Citizen:

It is not for the *Conseil d'Etat*, acting in its judicial capacity, to assess whether the law is compatible with the Constitution. Accordingly, the argument that section 11-4 of the Act of 11 March 1988 contravenes Article 11 of the Declaration of the Rights of Man and of the Citizen, to which the Preamble to the Constitution refers, fails.

As to the alleged incompatibility of the law with France's international obligations:

As regards the Convention for the Protection of Human Rights and Fundamental Freedoms:

The applicant group relies on the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10, paragraph 1, of which secures freedom of expression to everyone 'without interference by public authority and regardless of borders' and Article 14 of which provides that the enjoyment of the rights and freedoms set forth in the Convention is to be secured 'without [discrimination] on any ground such as ... national ... origin ...'.

Even accepting, as the applicant group argues, that the rules on the conditions for funding political parties have a bearing on the right to freedom of expression within the meaning of paragraph 1 of Article 10 of the Convention, which includes, as well as the freedom to hold opinions, 'the freedom to receive and impart information and ideas', paragraph 2 of the same Article nonetheless provides that '[t]he exercise of these freedoms, since it carries with it duties and responsibilities', may be subject to such 'restrictions ... as are prescribed by law and are necessary in a democratic society' to the extent that they satisfy one or other of the requirements set forth in that paragraph, among which is 'the prevention of disorder'.

Political groups and parties falling within the purview of Article 4 of the Constitution of the French Republic are intended to contribute to the exercise of suffrage in the implementation of national sovereignty. In prohibiting foreign States and foreign legal entities from funding national political parties, the legislature sought to preclude the possibility of creating a relationship of dependency which would be detrimental to the expression of national sovereignty. The aim thus pursued is linked to the 'prevention of disorder' within the meaning of paragraph 2 of Article 10 of the Convention. On account of both the justification of this measure and the fact that the right to freedom of expression is affected only indirectly by the rules governing the funding of political parties, and in view of the margin of appreciation which Article 10, paragraph 2, affords the national legislature, the provisions of section 11-4 of the Act of 11 March 1988 are not incompatible either with the requirements of Article 10 of the Convention, or indeed with those of Article 14.

As regards Community law:

The applicant group argues that since the resources obtained by the funding association whose authorisation has been refused stem from a political party with its registered office in a member State of the European Community, the provisions of the penultimate subsection of section 11-4 of the Act of 11 March 1988, in so far as they apply to a situation governed by Community law, are incompatible with a number of provisions of the Treaty establishing the European Community.

...

Thirdly, even supposing that the rules governing the funding of political parties may, in certain respects, have a bearing on the free movement of capital between member States as guaranteed by Article 56 of the EC Treaty, that Article, as Article 58 clearly indicates, does not affect the right of member States to 'take measures which are justified on grounds of ... public security'. Regard being had both to the aim it pursues and to the limited impact it has on the free movement of capital, the prohibition set forth in the penultimate subsection of section 11-4 of the Act of 11 March 1988 is to be counted among the measures that may be taken by a member State under Article 58 of the Treaty. Accordingly, the submission that the Act is incompatible with Article 56 must be dismissed.

Fourthly, the provisions of section 11-4 of the Act of 11 March 1988, which, as stated above, are intended to avoid creating any relationship of dependency between political parties in the performance of their function and a foreign State or a foreign legal entity, are likewise not incompatible with the provisions of Article 191 of the Treaty, which appear in a part of the Treaty dealing with the Community institutions and more specifically the European Parliament, and which read: 'Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.' Accordingly, and even supposing that Article 191 creates any rights in respect of private individuals, this submission must fail. ..."

II. RELEVANT DOMESTIC LAW

9. The first paragraph of Article 4 of the Constitution of 4 October 1958 provides:

"Political parties and groups shall contribute to the exercise of suffrage. They shall be formed and carry on their activities freely. They shall respect the principles of national sovereignty and democracy."

Section 7 of the Political Life (Financial Transparency) Act (Law no. 88-227 of 11 March 1988) reaffirms that "political parties and groups shall be formed and shall carry on their activities freely", adding that they have legal personality and are entitled to take part in court proceedings and to acquire movable and immovable property, by way of gift or for consideration, and that they "may perform any actions consistent with their purpose, including establishing and running newspapers and training institutions in accordance with the statutory provisions in force".

10. The financing of politics in general and political parties in particular is governed by law (main source: technical files on the Senate's website, www.senat.fr).

A. Funding of political parties

11. In addition to the operating costs they have to meet in the same way as any other association, political parties incur significant expenditure

during election campaigns. They have two main sources of funds: private funding, which is generally modest, and State funding, which nowadays accounts for a decisive share.

1. Private funding

12. Like any association, political parties may charge membership fees. In practice, however, these account for only a very small proportion of their resources.

13. The Act of 11 March 1988 (as amended) gives them the further possibility of receiving donations from individuals (donations from other legal entities are in principle prohibited); however, voluntary contributions from individuals are traditionally modest.

The following provisions of the Act of 11 March 1988 (as amended) are relevant to the present case:

Section 11

"Political parties and the territorial or specialist organisations they may designate for this purpose shall collect funds through the intermediary of an agent duly designated by them, which may be either a funding association or an individual."

Section 11-1

"Authorisation of a political party's funding association shall be granted by the National Commission on Election Campaign Accounts and Political Funding referred to in Article L. 52-14 of the Elections Code, provided that the sole object of the association is the funding of a political party and that its articles of association comply with the provisions of the following subsections of this section. The authorisation shall be published in the Official Gazette.

The articles of an association authorised to act as a political party's funding association must include:

(1) the delimitation of the geographical area within which the association is to carry on its activities; and

(2) an undertaking to open a single bank or post-office account into which all donations received for the funding of a political party are to be deposited."

Section 11-2

"The political party shall declare in writing to the prefecture of the *département* in which its registered office is situated the name of the individual it has chosen as its financial agent. The declaration must be accompanied by the express consent of the person designated and must specify the geographical area within which the financial agent is to perform his or her duties.

The financial agent must open a single bank or post-office account into which all donations received for the funding of the political party are to be deposited."

Section 11-4

"Donations made by duly identified individuals to one or more associations authorised as funding associations or to one or more financial agents of the same political party may not exceed 7,500 euros per annum.

Other legal entities, with the exception of political parties or groups, may not contribute to the funding of political parties or groups, either by making donations in any form to their funding associations or financial agents or by providing them with property, services or other direct or indirect benefits for less than the usual price.

The funding association or financial agent shall provide the donor with a receipt. A decree issued after consultation of the *Conseil d'Etat* shall lay down the conditions for drawing up and using such receipts. This decree shall also determine the procedure whereby receipts issued for donations by individuals of amounts lower than or equal to 3,000 euros shall not mention the name of the receiving party or group.

All donations of more than 150 euros to a funding association or financial agent of a political party must be made by cheque.

No funding association or financial agent of a political party may receive direct or indirect contributions or material assistance from a foreign State or a foreign legal entity.

Notices and documents issued by the funding association or financial agent to third parties for the purpose of soliciting donations must indicate, as appropriate, the name of the association and the date of its authorisation or the name of the agent and the date of the declaration to the prefecture, and also the political party or group for which the sums collected are intended."

Section 11-5

"Anyone who makes or accepts donations in breach of the provisions of the preceding section shall be liable to a fine of 3,750 euros or one year's imprisonment or both."

Section 11-6

"The authorisation of any association that has failed to comply with the requirements laid down in sections 11-1 and 11-4 of this Act shall be revoked.

In that event, or where the summary statement mentioned in section 11-1 is found not to have been transmitted, the votes obtained in the geographical area of the association's activity by the political party or group which requested its authorisation shall be discounted, for the following year, from the total referred to in the first subsection of section 9 above."

Section 11-8

"No political party or group which has obtained authorisation for a funding association or has appointed a financial agent may receive donations from duly identified persons other than through the intermediary of such association or agent. In the event of a breach of this requirement, the provisions of the last subsection of section 11-7 shall apply."

2. State funding

14. Every year, appropriations are set aside in the Budget Bill for political parties and groups; one half is allocated according to their results in the last election to the National Assembly and the other half according to their representation in Parliament (section 8 of the Act of 11 March 1988 as amended). The first portion of these subsidies is distributed among parties and groups which put forward candidates who each obtained at least 1% of the votes cast in at least fifty constituencies in the most recent election to the National Assembly, or which put forward candidates solely in one or more overseas *départements* or in St Pierre and Miquelon, Mayotte, New Caledonia, French Polynesia or Wallis and Futuna who obtained at least 1% of the votes cast in all constituencies in which they stood. The second portion is distributed among parties and groups eligible for the first portion, in proportion to the number of members of parliament belonging to or attached to them (section 9 of the Act of 11 March 1988 as amended).

State subsidies are now the main source of political parties' funding (80,264,408 euros (EUR) was distributed among more than forty parties or groups in 2002).

In addition, the State grants parties resources which may be regarded as indirect funding. Outside election campaign periods, political organisations represented by parliamentary groups in the National Assembly or the Senate are entitled to "air time", allowing them to broadcast on public radio stations and television channels; they are also granted certain tax concessions (reduced-rate corporation tax) on some of their own income (for example, from leasing out their buildings and undeveloped land).

B. Funding of election campaigns

15. Except in the case of the election of *département* councillors in cantons with fewer than 9,000 inhabitants or municipal councillors in municipalities with fewer than 9,000 inhabitants, all candidates intending to receive donations for the organisation of their campaigns are required to do so through a financial agent, who is the sole person entitled to collect funds to cover campaign costs and the payment of expenses (except for those borne by a political party or group). Donations from individuals are capped at EUR 4,600 per candidate per campaign. Contributions from other legal

entities, with the exception of political parties and groups, and from foreign States or foreign legal entities are prohibited (Articles L. 52-4 and L. 52-8 of the Elections Code). Election expenditure is subject to a ceiling according to the number of inhabitants in the constituency concerned (Article L. 52-11 of the Elections Code). The financial agent must keep campaign accounts recording all receipts and expenditure relating to the election campaign. The accounts must be certified by an accountant and submitted to the scrutiny of the National Commission on Election Campaign Accounts and Political Funding, which approves or rejects them. If the accounts are approved, the State reimburses candidates who obtain at least 5% of the votes cast in the first round in the form of a lump sum of up to 50% of the maximum permitted expenditure in the constituency in question, within the limits of the amounts actually spent (see, in particular, Article L. 52-11-1 of the Elections Code).

The State bears the costs associated with "official election material", defined as the cost of paper, printing of ballot papers, circulars, posters and official billposting fees (these costs are reimbursed on the basis of an official scale to candidates obtaining at least 5% of the votes cast).

III. WORK OF THE EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) AND THE PARLIAMENTARY ASSEMBLY AND COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

16. At its 46th plenary meeting (9-10 March 2001), the Venice Commission adopted guidelines on the financing of political parties (document CDL-INF (2001) 8), the relevant parts of which read:

> "The Venice Commission:
>
> Being engaged in the promotion of fundamental principles of democracy, of the rule of law and the protection of human rights, and in the context of improving democratic security for all;
>
> Noting with concern problems relating to the illicit financing of political parties recently uncovered in a number of Council of Europe member States;
>
> Taking into account the essential role of political parties within democracy and considering that freedom of association, including that of political association, is a fundamental freedom protected by the European Convention on Human Rights and is one of the cornerstones of genuine democracy, such as that envisaged by the Statute of the Council of Europe;
>
> Paying particular attention to State practice in the area of financing of political parties;
>
> Recognising the need to further promote standards in this area on the basis of the values of European legal heritage;

Has adopted the following guidelines:

1. For the purpose of these guidelines, a political party is an association of persons one of the aims of which is to participate in the management of public affairs by the presentation of candidates to free and democratic elections.

2. Such political parties may seek out and receive funds by means of public or private financing.

A. Regular Financing

a. Public Financing

3. Public financing must be aimed at each party represented in Parliament.

4. In order, however, to ensure the equality of opportunities for the different political forces, public financing could also be extended to political bodies representing a significant section of the electoral body and presenting candidates for election. The level of financing could be fixed by legislator on a periodic basis, according to objective criteria.

Tax exemptions can be granted for operations strictly connected to the parties' political activity.

5. The financing of political parties through public funds should be on condition that the accounts of political parties shall be subject to control by specific public organs (for example by a Court of Audit). States shall promote a policy of financial transparency of political parties that benefit from public financing.

b. Private Financing

6. Political parties may receive private financial donations. Donations from foreign States or enterprises must however be prohibited. This prohibition should not prevent financial donations from nationals living abroad.

Other limitations may also be envisaged. Such may consist notably of:

a. a maximum level for each contribution;

b. a prohibition of contributions from enterprises of an industrial, or commercial nature or from religious organisations;

c. prior control of contributions by members of parties who wish to stand as candidates in elections by public organs specialised in electoral matters.

7. The transparency of private financing of each party should be guaranteed. In achieving this aim, each party should make public each year the annual accounts of the previous year, which should incorporate a list of all donations other than membership fees. All donations exceeding an amount fixed by the legislator must be recorded and made public.

..."

17. On 22 May 2001 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1516 (2001) on the financing of political parties, the relevant parts of which read:

"...

7. The Assembly believes that the rules on financing political parties and on electoral campaigns must be based on the following principles: a reasonable balance between public and private funding, fair criteria for the distribution of State contributions to parties, strict rules concerning private donations, a threshold on parties' expenditures linked to election campaigns, complete transparency of accounts, the establishment of an independent audit authority and meaningful sanctions for those who violate the rules.

8. Accordingly, the Assembly considers that:

A. *As regards sources of finance*

i. States should encourage citizens' participation in the activities of political parties, including their financial support to parties. It should be accepted that membership fees, traditional and non-controversial sources of finance, are not sufficient to face the ever increasing expense of political competition.

ii. Political parties should receive financial contributions from the State budget in order to prevent dependence on private donors and to guarantee equality of chances between political parties. State financial contributions should, on the one hand, be calculated in ratio to the political support which the parties enjoy, evaluated on objective criteria such as the number of votes cast or the number of parliamentary seats won, and on the other hand enable new parties to enter the political arena and to compete under fair conditions with the more well-established parties.

iii. State support should not exceed the level strictly necessary to achieve the above objectives, since excessive reliance on State funding can lead to the weakening of links between parties and their electorate.

iv. Besides their financial contributions, States may contribute indirectly to financing political parties based on law, for example by covering the costs of postage and of meeting rooms, by supporting party media, youth organisations and research institutes; and also by granting tax incentives.

v. Together with State funding, private funding is an essential source of finance for political parties. As private financing, in particular donations, creates opportunities for influence and corruption, the following rules should apply:

a. a ban on donations from State enterprises, enterprises under State control, or firms which provide goods or services to the public administration sector;

b. a ban on donations from companies domiciliated in offshore centres;

c. strict limitations on donations from legal entities;

d. a legal limit on the maximum sum of donations;

e. a ban on donations by religious institutions.

..."

18. In Recommendation Rec(2003)4 of 8 April 2003 on common rules against corruption in the funding of political parties and electoral campaigns, the Committee of Ministers of the Council of Europe recommended that the governments of member States "specifically limit, prohibit or otherwise regulate donations from foreign donors" (Article 7).

THE LAW

19. The applicant party complained that its request for authorisation of the funding association it had set up in accordance with section 11 of the Political Life (Financial Transparency) Act of 11 March 1988 had been refused on the ground that most of its resources derived from financial support from the Spanish Basque Nationalist Party, a foreign legal entity. This had severely affected its finances and its capacity to pursue its political activities, particularly in relation to elections. It contested the *Conseil d'Etat*'s conclusion that the prohibition on the funding of political parties by foreign legal entities was "necessary in a democratic society" for the "prevention of disorder" and submitted that the rule in question had been applied in its case on account of the views it promoted. It relied on Articles 10 and 11 of the Convention, taken together, and on Article 3 of Protocol No. 1, which provide:

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."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

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. The parties' submissions

1. The Government

20. The Government submitted that the sole consequence of the decision by the National Commission on Election Campaign Accounts and Political Funding (CCFP) in the applicant party's case had been to deprive it of entitlement to State funding and the financial benefits provided for in the Political Life (Financial Transparency) Act of 11 March 1988; if it put forward candidates in political elections, it would not be entitled to have any of its campaign expenses refunded. The decision did not have the effect of prohibiting the applicant party from carrying on its activities and resorting to other sources of funding. The Government accordingly concluded that there was no "interference" in the present case with the exercise of the rights protected by Articles 10 and 11 of the Convention.

21. The Government further submitted that, even supposing that such interference were to be established, it was prescribed by law, pursued a legitimate aim and was necessary in a democratic society.

22. As to the first point, the Government noted that the decision in issue had been based on sections 11-4 and 11-6 of the Act of 11 March 1988, by which political parties' funding associations were prohibited from receiving financial contributions from a "foreign legal entity" (*personne morale de droit étranger*), such as a foreign political party, the applicable penalty being loss of the authorisation entitling them to claim State funding. They submitted that it had been foreseeable that such authorisation would be denied in the applicant party's case on the basis of those provisions since,

although they expressly provided only for "revocation" of the authorisation, they were to be construed as giving the CCFP – whose discretion was limited – the possibility of refusing authorisation, even if that entailed granting and subsequently revoking it. Furthermore, it was not disputed that the applicant party had not satisfied the requirements of section 11-4 of the Act of 11 March 1988 and had received donations from a foreign legal entity. Lastly, there was settled case-law to the effect that it was possible to cite the grounds for revoking a permit or authorisation as a basis for refusing to grant such a permit or authorisation, seeing that the result was the same (the Government referred to the *Aldana Barrena* judgment of 8 January 1982 of the *Conseil d'Etat*, from which it appeared that the grounds for revoking refugee status were also capable of justifying a refusal to grant such status).

23. As to the second point, the Government contended that the prohibition took into account "national security interests" in seeking to protect "the expression of national sovereignty", to which political parties contributed under the French Constitution. The principle of national sovereignty was inextricably linked with that of national independence, which prohibited foreign interference in the operation of national politics. The aim pursued accordingly related not only to the "prevention of disorder", as the *Conseil d'Etat* had emphasised in the instant case, but also to the "prevention of crime", seeing that it was harder to verify the origin and legality of funds from abroad.

24. As to the third point, the Government asserted that the measure in issue was reasonable and proportionate to the aims pursued. They pointed out that it did not undermine the applicant party's legal validity, its freedom of expression or its participation in political life; its sole effect was to deny the party the opportunity to claim, through its funding association, public funding and the financial benefits laid down in the Act of 11 March 1988 (reimbursement of the campaign expenses of candidates in political elections) and thereby to bar it from receiving contributions that were subject to the tax concessions provided for by law. They added that, in compensation for the prohibition on certain sources of funding, sections 8 and 9 of the Act of 11 March 1988 afforded national political parties access to State funding, distributed among all parties in accordance with objective and transparent criteria, in proportion to their representation in Parliament or as a lump sum if the donations they had received from individuals reached a certain level. In that way, the law compensated by means of State funding for the acceptance of certain restrictions and contributed to promoting freedom of political expression by providing a balanced and reasonable response to the imperatives of national independence and transparency in political life.

Furthermore, although the law barred the applicant party from receiving funds from the Spanish Basque Nationalist Party or any other foreign legal

entity, the party still retained the possibility of receiving contributions from foreign individuals.

Moreover, the refusal to authorise the funding association formed by the applicant party, on the basis of the undisputed fact that it had recourse to funding from a foreign political party, was not irrevocable; there was nothing to prevent it from submitting a fresh application for authorisation of an association that operated in accordance with the national regulations and received donations that complied with the statutory conditions. Nor was there anything to stop it from appointing an individual as its "financial agent" to that end. It would then have the possibility of collecting funds both from French political parties or groups and from individuals.

2. The applicant party

25. The applicant party stressed that the prohibition on its receiving any financial support from the Spanish Basque Nationalist Party deprived it of most of its resources, with the result that, in practice, it lacked the means to be able to carry on its political activities. Referring to a study carried out by the Max Planck Institute at the Council of Europe's request, it submitted that a precondition for the integration of minorities was their participation in political life, in particular through the formation of political parties; however, the prohibition of all funding from abroad particularly affected parties of this kind. It added that the refusal to authorise the funding association it had set up had had a direct impact on its ability to obtain funding for its political activities, including participation in elections.

26. The applicant party submitted that such interference with the exercise of its rights was not "prescribed by law" in the sense attached to that expression by the Court, since the refusal of its application for authorisation on the basis of the penultimate subsection of section 11-4 of the Act of 11 March 1988 had not been foreseeable in that the first subsection of section 11-6 of the same Act did not envisage the "refusal" of an application for authorisation but the "revocation" of authorisation already obtained. Furthermore, the second paragraph of Article L. 52 of the Elections Code expressly provided that "legal entities, with the exception of political parties or groups, [could] not contribute to the funding of the election campaign ..." and section 11-4 (in its version as amended by the Act of 19 January 1995) of the Act of 11 March 1998 provided that "legal entities, with the exception of political parties or groups, [could] not contribute to the funding of political parties or groups ...", and there was no statutory provision excluding foreign political parties. In addition, the penultimate subsection of section 11-4 referred to "foreign legal entities", without specifying that this included foreign political parties.

27. The applicant party disputed that such interference could legitimately pursue the aim of "preventing disorder" where it related to funds from political parties registered in another member State of the

European Union. It contended that the Government's submissions on this point were contrary to the aim of Regulation (EC) no. 2004/2003 of the European Parliament and Council of 4 November 2003 on the status and funding of "political parties at European level", namely to strengthen ties between parties and citizens of the European Union. In any event, the principle of national sovereignty to which the Government referred would not be affected in the case of a political party that took part solely in local elections. The applicant party added that neither the Venice Commission's guidelines on the financing of political parties nor Recommendation 1516 (2001) of the Parliamentary Assembly of the Council of Europe on the financing of political parties mentioned the need to prohibit contributions from foreign political parties. That observation also led it to reject the Government's contention that the prohibition was necessary for the "prevention of crime" within the meaning of Articles 10 and 11; indeed, it emphasised that in the instant case the Spanish Basque Nationalist Party was subject to the machinery established under Spanish law for ensuring transparency and financial scrutiny.

28. As to whether the interference was proportionate, the applicant party pointed out that, as the CCFP had found, most of its resources stemmed from the Spanish Basque Nationalist Party, with the result that its inability to receive such funding had a considerable effect on its financial capacity. It emphasised that public funding would be negligible in its case, since such funding depended on results in national elections and, in practice, was distributed among the four main parties at national level. As regards reimbursement of election expenses, this presupposed that the party had funds available in advance, which was not possible without the contribution from the Spanish Basque Nationalist Party. In addition, it argued that there was a contradiction between the prohibition on funding by European parties and the possibility of funding by foreign individuals, given that it was easy to scrutinise funds from the former but not from the latter. In its submission, the prohibition in issue was not based on any "pressing social need", seeing that it concerned contributions from a party registered in a member State of the European Union, and especially as it contravened the principle of the free movement of capital within the Union.

Lastly, although the applicant party still had the possibility of appointing a financial agent and obtaining funds by that means, such funds could only take the form of donations from individuals or from French political parties. Yet the party's own aims meant that its geographical sphere of activity was limited to a very small part of France, so that it could not expect any financial support from other French parties. Indeed, it pointed out that, as matters stood, either its resources would be limited to contributions from individuals, in which case it would no longer have the means to finance its political activities, or it would continue to receive contributions from the

Spanish Basque Nationalist Party, in which case it would be prohibited from intervening in electoral matters in any way.

B. Opinion of the Venice Commission

29. In its opinion, based in particular on a study of the domestic law in forty-four member States of the Council of Europe, the Venice Commission noted that twenty-eight of these States prohibited or substantially limited foreign donations to political parties and the other sixteen did not impose any such restrictions. It pointed out that national regulations on political parties resulted from history, political tradition and practice and hence differed greatly from one country to another. With regard to funding, approaches ranged from a total lack of regulations (for example, in Switzerland) or non-prohibition of foreign donations (for example, in Cyprus, Bosnia and Herzegovina, the Czech Republic and Hungary) to an explicit ban on foreign contributions and donations (as in France and the Russian Federation); intermediate solutions included imposing strict limitations (for example, in Armenia, Azerbaijan, Georgia and Moldova) or providing for exceptions to the rule, to a greater or lesser extent, in the case of funds originating from European Union member States (for example, in Spain, Germany, the United Kingdom – except Northern Ireland – and Lithuania). It concluded that each example of the prohibition of financing of political parties from foreign sources had to be considered separately in the light of the political system of the country concerned, its relations with its neighbours, its constitutional law and the general system it had adopted for the financing of political parties.

30. The Venice Commission went on to point out that its guidelines on the financing of political parties emphasised the need to prohibit donations from foreign States and enterprises, and that Recommendation Rec(2003)4 of the Committee of Ministers urged member States "specifically [to] limit, prohibit or otherwise regulate donations from foreign donors" (see paragraph 18 above). As to whether, in particular, it was "necessary in a democratic society" for this prohibition to cover funds from foreign political parties, the Venice Commission referred to the principles deriving from the Court's case-law, as set out in *The United Macedonian Organisation Ilinden and Others v. Bulgaria* (no. 59491/00, §§ 57-62, 19 January 2006). An analysis of the domestic provisions containing such a prohibition indicated that the reasons varied from one country to another, particularly on account of their specific history and political and constitutional experiences. One such reason related to the internationalist policies of extremist parties between the two World Wars. A second stemmed from similar circumstances during the Cold War and the ensuing polarisation of the world. A third resulted from fear of separatist movements. A fourth concerned the implementation of a system of public funding of parties and

the consequent desire for the funds thus allocated to remain within the country. It was more difficult, in the Venice Commission's opinion, to identify why many States did not impose a prohibition of this kind (for example, Austria, Belgium, Denmark and Finland). In some countries, the reason was possibly that such a measure had never been thought necessary. Other countries appeared to have adopted this position in order to facilitate politically their own support of political movements in the Third World. A further group seemed reluctant to hinder legitimate cooperation between political parties in the context of the Parliamentary Assemblies of the Council of Europe and the OSCE, the European Parliament and cooperation organisations such as the Nordic Council.

31. Having regard to the specific nature of the European Union and the "new legal order" it constituted, the Venice Commission found it "reasonable and appropriate" that the Union's member States should adopt a specific approach to the financing of political parties by political parties established in other member States. It pointed out in particular that Article 191 of the Treaty of Rome provided that "[p]olitical parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union." It added in this context that Regulation (EC) no. 2004/2003 of the European Parliament and the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding (see paragraph 27 above) afforded such parties the possibility of receiving donations from political parties which were members of them (Article 6), while Article 7 of the Regulation stated that their funding "from the general budget of the European Union or from any other source may not be used for the direct or indirect funding of other political parties, and in particular national political parties, which shall continue to be governed by national rules". The Venice Commission observed that the very existence of the Regulation showed that cooperation and, to some extent, integration of financing systems were necessary for the functioning of political parties both at national level and at the level of the Union. It also referred to Article 56 of the Treaty, which enshrined the principle of the free movement of capital, pointing out that this notion in principle covered all transfers of funds from one member State to another, probably including those between political parties. Since this was a fundamental freedom enshrined in the Treaty, the member States were required to respect it. The Venice Commission thus concluded that rules adopted by member States for the funding of political parties had to observe this principle, although the European Union's powers with regard to political parties were limited to the regulation of "political parties at European level". The only exceptions permitted in this regard by Community law were those set out in the Treaty itself (for example, in Article 58, which reserved the right of member States "to take measures

which are justified on grounds of public policy or public security") or identified by the Court of Justice of the European Communities.

32. In conclusion, the Venice Commission observed that in the light of the varying approaches to the issue from one Council of Europe member State to another, there could be no single answer to the question whether the prohibition on the funding of political parties by foreign political parties was "necessary in a democratic society". It considered, however, that the experience of cooperation between political parties within supranational European organisations and institutions supported a less restrictive approach; such cooperation was itself "necessary in a democratic society", whereas it was not obvious that the same could be said about the imposition of obstacles to cooperation through the prohibition of all financial relations between political parties established in different countries. Various factors could nevertheless be capable of justifying the prohibition of contributions from foreign political parties: in particular, where contributions were used to pursue unlawful aims (for example, where the foreign party in question advocated discrimination or human rights violations), undermined the fairness or integrity of political competition, destabilised the electoral process, threatened the territorial integrity of the State concerned or hindered its democratic development, or where prohibition formed part of the State's international obligations. Accordingly, in the Venice Commission's opinion, to establish whether the prohibition on the financing of political parties by foreign political parties was compatible with the requirements of Article 11 of the Convention, each individual case had to be considered separately in the context of the general legislation applicable in the State concerned on the funding of political parties and of the State's international obligations – including, where appropriate, those resulting from membership of the European Union.

C. The Court's assessment

33. As a preliminary point, the Court reiterates that political parties come within the scope of Article 11 of the Convention (see, for example, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 25, *Reports of Judgments and Decisions* 1998-I, and *Socialist Party and Others v. Turkey*, 25 May 1998, § 29, *Reports* 1998-III). Accordingly, this provision is clearly applicable in the instant case.

Furthermore, the protection of opinions and the freedom to express them within the meaning of Article 10 of the Convention is one of the objectives of the freedoms of assembly and association enshrined in Article 11, particularly in the case of political parties, so that Article 11 must be considered in the light of Article 10 (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 88-89, ECHR 2003-II; *United Communist Party of Turkey and*

Others, cited above, §§ 42-43; *Socialist Party and Others*, cited above, § 41; and *The United Macedonian Organisation Ilinden and Others*, cited above, §§ 59-61).

In the instant case the Court cannot see any evidence to suggest that the impugned measure sought to penalise the applicant party on account of the political views it promoted. Accordingly, although this factor is not decisive (see *The United Macedonian Organisation Ilinden and Others*, cited above, § 59), the Court considers that the issues raised by the case relate essentially to Article 11 of the Convention.

34. As to Article 3 of Protocol No. 1, the financial repercussions of the impugned measure on the ability of the applicant party and its members to take part in parliamentary elections cannot in any event be seen as anything other than "secondary" or "incidental effects" of the measure; accordingly, irrespective of whether the Court finds a violation (see, *mutatis mutandis*, *United Communist Party of Turkey and Others*, cited above, § 64, and *Socialist Party and Others*, cited above, § 57) or no violation of Article 11 (see, *mutatis mutandis*, *Refah Partisi (the Welfare Party) and Others*, cited above, § 139), it is unnecessary to examine the case under Article 3 of Protocol No. 1.

35. Having clarified that point, the Court will examine whether there was interference with the applicant party's exercise of the rights guaranteed by Article 11 of the Convention and, if so, whether the interference was justified in view of the requirements of paragraph 2 of that Article.

1. Whether there was interference

36. The Political Life (Financial Transparency) Act of 11 March 1988 limits the sources of funding for political parties. There is an annual ceiling of EUR 7,500 per person on donations from individuals, and contributions from other legal entities (with the exception of French political parties or groups) and foreign States are prohibited. In compensation for this, public funds are allocated to political parties in proportion to their results in elections to the National Assembly (sections 8 and 9 of the Act).

Under section 11 of the 1988 Act, political parties collect their funds through the intermediary of an agent, in the form of either a funding association (which must be authorised by the CCFP – section 11-1 of the Act) or an individual (designated as the "financial agent" in a simple declaration to the prefecture – section 11-2).

37. In view of the applicant party's specific nature as the French "branch" of the Spanish Basque Nationalist Party, and in particular its small size and the local character of its sphere of activity, the prohibition on its receiving contributions from the Spanish Basque Nationalist Party undoubtedly has a significant impact on its financial resources and hence its ability to engage fully in its political activities.

More specifically, as a result of the refusal, on the basis of this prohibition, of the request to authorise the funding association set up by it, the applicant party is unable to receive funds through the association. While it has the alternative possibility of appointing an individual as "financial agent" for that purpose (without any authorisation being required), that person would not be able to receive contributions from the Spanish Basque Nationalist Party either.

38. In short, having regard to the impact of the circumstances in issue on the applicant party's financial capacity to carry on its political activities, the Court is in no doubt that there has been interference with the exercise of its rights under Article 11.

2. Whether the interference was justified

39. Such interference will constitute a breach of Article 11 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2 and was "necessary in a democratic society" for the achievement of those aims.

(a) "Prescribed by law"

40. The Court reiterates that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen – 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; experience shows, however, that it is impossible to attain absolute precision in the framing of laws (see, for example, *Ezelin v. France*, 26 April 1991, § 45, Series A no. 202).

41. In the instant case, contrary to what the applicant party maintained, the prohibition on the funding of French political parties by foreign political parties is prescribed by the Act of 11 March 1988. It follows from section 11 of the Act that political parties may receive funds only through a funding association or a financial agent (see also the CCFP's decision of 2 July 1999), and from subsection 5 of section 11-4 that funding associations and financial agents cannot receive contributions from foreign legal entities. A political party established in another State is clearly a "foreign legal entity". The fact that the second subsection of section 11-4, which lays down in more general terms the rule that donations from legal entities are prohibited, provides for an exception to this rule in the case of donations from "political parties or groups", without specifying whether this concerns only French parties or groups, is not sufficient to cast doubt on the clarity of the law on this point.

42. The Court can, however, understand the applicant party's doubts as to whether the refusal of its request for authorisation of the funding association it had set up was foreseeable. It notes that the Act of 11 March 1988 (section 11-1) envisages only two scenarios in which a request for

authorisation can be refused: where the object of the association is not limited to the funding of a political party, and where its articles of association do not define the geographical area within which the association is to carry out its activities or do not contain an undertaking to open a single bank or post-office account into which all donations received for the funding of a political party are to be deposited. However, in the present case the refusal was not based on one of these grounds but on the finding that most of the applicant party's resources derived from financial support from the Spanish Basque Nationalist Party. Admittedly, the *Conseil d'Etat* held in the instant case that "[i]t follows from the first subsection of section 11-6 ... that the granting of authorisation is subject to the funding association's compliance with the requirements of sections 11-1 and 11-4 of the Act". However, this is a somewhat extensive interpretation of that subsection, which is worded: "The authorisation of any association that has failed to comply with the requirements laid down in sections 11-1 and 11-4 of this Act shall be revoked." It appears that in reality this provision solely allows *ex post facto* scrutiny of funding associations that have obtained authorisation. It is therefore permissible to question whether the law, as interpreted by the *Conseil d'Etat*, was foreseeable in its effect.

On this specific point, the Government maintained that there was settled case-law to the effect that it was possible to cite the grounds for revoking a permit or authorisation as a basis for refusing to grant such a permit or authorisation, seeing that the result was the same. They relied in that connection on the *Conseil d'Etat*'s *Aldana Barrena* judgment of 8 January 1982, from which it appeared that the grounds for revoking refugee status were also capable of justifying a refusal to grant such status. In the Court's view, that judgment is not conclusive in that it simply set aside a decision by the Appeals Board on the ground that it had refused to take into consideration facts occurring after the refusal issued by the French Office for the Protection of Refugees and Stateless Persons. The Court can, however, see the logic in the *Conseil d'Etat*'s interpretation of the above-mentioned provisions, given that a strict reading of them would mean granting and subsequently revoking authorisation, since the CCFP – as the Government submitted – has limited discretion. Accepting, therefore, that such an interpretation was foreseeable, the Court concludes that the interference in issue was "prescribed by law".

(b) Legitimate aim

43. As to the "legitimate aim" pursued, the *Conseil d'Etat* referred to the "prevention of disorder". It pointed out in that connection that political parties were "intended to contribute to the exercise of suffrage in the implementation of national sovereignty" and that "[i]n prohibiting foreign States and foreign legal entities from funding national political parties, the legislature [had] sought to preclude the possibility of creating a relationship

of dependency which would be detrimental to the expression of national sovereignty"; the aim pursued had thus related to the protection of the "institutional order".

The Court accepts that the concept of "order" within the meaning of the French version of Articles 10 and 11 of the Convention encompasses the "institutional order", although the expression "*défense de l'ordre*" (protection of order) refers essentially to the prevention of disorder, as can be seen from the English version of Articles 10 and 11, which uses that term.

Having thus acknowledged the legitimacy of the aim pursued, the Court considers that, contrary to what the applicant party maintained, the fact that the prohibition also applies to contributions from political parties established in another member State of the European Union is not sufficient to call it into question; in the Court's view, that particular factor must be taken into account in examining whether the interference was "necessary".

44. The Government added that the law was also aimed at the "prevention of crime", in that it was more difficult to check the origin and lawfulness of funds from abroad. The Court observes that that was not the *Conseil d'Etat*'s assessment in the present case, but considers it unnecessary to determine this question since it is sufficient that the interference in issue pursued just one of the legitimate aims listed. It will therefore confine itself to its above finding that the aim of the interference was the "prevention of disorder".

(c) "Necessary in a democratic society"

45. The Court observes at the outset that the prohibition on the financing of political parties by any legal entities other than French political parties and groups forms part of a body of rules designed to ensure financial transparency in political life. It would observe, firstly, that it is especially alert to the importance of such regulations "in a democratic society" as this has been highlighted by both the Venice Commission and the Parliamentary Assembly of the Council of Europe (see paragraphs 16-17 above).

46. That said, the Court reiterates that the exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on the freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts (see, for example, *Sidiropoulos and Others v. Greece*, 10 July 1998, § 40, *Reports* 1998-IV). That applies all the more in relation to political parties in view of the importance of their role in a "democratic society" (see, for example, *United Communist Party of Turkey and Others*, cited above, §§ 25, 43 and 46).

When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court also has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, for example, *Sidiropoulos and Others*, loc. cit., and *United Communist Party of Turkey and Others*, cited above, § 47).

47. In the instant case the Court has no difficulty in accepting that the prohibition on the funding of political parties by foreign States is necessary for the preservation of national sovereignty; indeed, the "Guidelines and Report on the financing of political parties" adopted by the Venice Commission (see paragraph 16 above) state that financial contributions from foreign States should be prohibited.

It is not so easily persuaded, however, with regard to the prohibition on funding by foreign political parties. It fails to see exactly how State sovereignty would be undermined by this factor alone. Moreover, it is striking that the above-mentioned guidelines – which, precisely, approach this question from the standpoint both of the need to ensure "democratic security" and of freedom of political association – do not indicate that there should be such a ban, whereas they emphasise the need to prohibit funding by "foreign enterprises".

The Court considers, however, that this matter falls within the residual margin of appreciation afforded to the Contracting States, which remain free to determine which sources of foreign funding may be received by political parties. In support of that approach, it notes that it appears from the opinion produced in the present case by the Venice Commission that the member States of the Council of Europe are divided on the financing of political parties from foreign sources (see paragraph 29 above), and that in Article 7 of Recommendation Rec(2003)4 of 8 April 2003 on common rules against corruption in the funding of political parties and electoral campaigns, the Committee of Ministers of the Council of Europe recommended that the governments of member States "specifically limit, prohibit or otherwise regulate donations from foreign donors" (see paragraph 18 above).

This leads the Court to conclude that the fact that political parties are not permitted to receive funds from foreign parties is not in itself incompatible with Article 11 of the Convention.

48. The applicant party submitted that a specific approach nevertheless had to be adopted where a political party established in one member State of the European Union received funds from a political party established in another member State.

In the Court's opinion, that is no doubt a factor to be taken into consideration, seeing that a certain degree of "intrusion" by such parties into the political life of other European Union member States may appear consistent with the logic of European integration. Indeed, this seems to be the approach taken by the Venice Commission, whose opinion stresses the value of financial cooperation between parties at European Union level and points out that the prohibition in issue might contravene the Community principle of the free movement of capital (see paragraph 31 above).

However, in the first place, it is not for the Court to interfere in matters relating to the compatibility of a member State's domestic law with the European Union project. Moreover, the choice of the French legislature not to exempt political parties established in other European Union member States from this prohibition is an eminently political matter, which accordingly falls within its residual margin of appreciation.

49. It remains to be determined in practical terms whether the measure complained of is proportionate to the aim pursued; this entails assessing its impact on the applicant party's ability to engage in political activities.

The Court reiterates in this connection that when assessing the "necessity" of an interference with the right to freedom of association, the extent of the interference is decisive. It has held that "drastic measures, such as the dissolution of an entire political party and a disability barring its leaders from carrying on any similar activity for a specified period, may be taken only in the most serious cases" (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 100); conversely, "mild measures" should be more broadly acceptable.

50. In the instant case the Government rightly pointed out that the measure complained of does not call into question the applicant party's legality or constitute a legal impediment to its participation in political life or censorship of the views it intends to promote in the political arena.

Admittedly, as the applicant party indicated, in order to engage fully in political activities it has to forgo financial assistance from the Spanish Basque Nationalist Party.

However, to fund its political activities, it would nevertheless be able to use membership fees and donations from individuals – including those from outside France – which it could collect through a financial agent or a funding association authorised on the basis of a fresh application. Furthermore, there is nothing in law to prevent it from receiving funds from other French political parties or from taking advantage of the system of public funding instituted by the French legislature. It is true, as the applicant party pointed out, that these sources of funding appear somewhat

hypothetical in its particular case. In view of its political aims, it is unlikely that it would attract the support of another French party; and in view of its geographical sphere of activity, it is likely to take part in local rather than parliamentary elections, so that it scarcely appears to be in a position to take advantage of the system of public funding (which is based on results in parliamentary elections). Its election candidates would nevertheless enjoy all the same benefits as those from other parties in terms of the funding of their election campaign (the costs of "official election material" being borne by the State and election expenses being refunded subject to certain conditions).

51. In conclusion, the impact of the measure in question on the applicant party's ability to conduct its political activities is not disproportionate. Although the prohibition on receiving contributions from the Spanish Basque Nationalist Party has an effect on its finances, the situation in which it finds itself as a result is no different from that of any small political party faced with a shortage of funds.

52. In the light of the foregoing, the Court considers that the interference with the applicant party's right to freedom of association may be regarded as "necessary in a democratic society" for the "prevention of disorder" within the meaning of Article 11 of the Convention. There has therefore been no violation of that provision, taken separately or in conjunction with Article 10 of the Convention.

FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that there has been no violation of Article 11 of the Convention, taken separately or in conjunction with Article 10;

2. *Holds* unanimously that it is not necessary to consider the case under Article 3 of Protocol No. 1.

Done in French, and notified in writing on 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Rozakis is annexed to this judgment.

C.L.R.
S.N.

DISSENTING OPINION OF JUDGE ROZAKIS

Regretfully I am not in a position to follow the Court's majority in finding that in the circumstances of the present case there has been no violation of Article 11, for the following reasons.

1. I cannot dispute the wisdom of Article 4 of the 1958 French Constitution, when it provides that political parties and groups "must respect the principles of national sovereignty and democracy". States and the democratic societies living within them have the inalienable right and interest to preserve these two fundamental values, respecting, at the same time, the rights and interests of those segments of society which do not belong to the national and social mainstream.

Equally, I cannot dispute the wisdom of the Political Life (Financial Transparency) Act (Law no. 88-227 of 11 March 1988), which determines the arrangements for the financing of political parties. Political parties do not only aspire to take control of the reins of a State, but also, even when they do not have governance over the State, exert significant influence on political life and an impact on the fate of the State and society. There is a legitimate interest on the part of the latter in having a clear, transparent picture of the financing of political parties, and in scrutinising their sources of income, conditions which act as safety valves for the parties' independence and as a safeguard against abuses resulting from partiality and corruption.

Lastly, I can also understand that scrutiny of the funding of political parties may be stricter when funds come from a foreign State – there one can readily accept that a total prohibition may be imposed – or foreign entities, including foreign political parties. Yet in so far as foreign political parties are concerned, a general unconditional prohibition on financial transactions and assistance should be applied with caution, taking into consideration modern trends and tendencies and political realities existing in some parts of the world, particularly in the closely integrated environment of the European Union.

2. Section 11-4 of the Act in question deals with the financing of political parties from foreign sources. It provides: "No funding association or financial agent of a political party may receive direct or indirect contributions or material assistance from a foreign State or a foreign legal entity."

Section 11-4 of the Act is complemented by sections 11-5 and 11-6 of the same Act. It clearly transpires from these provisions that the Act does not impose any preventive controls on the establishment of a funding association of a political party, but provides for sanctions in the event of transgression of the general rule, which may entail revocation of the authorisation already granted for the association to operate, or the punishment of anyone "who makes or accepts donations in breach of

[section 11-4]". One should also underscore that section 11-4 does not make specific reference to "foreign political parties", but speaks of a "legal entity" (*personne morale*), thus leaving some room for the authorities implementing it to consider in individual cases whether the prohibition also applies to foreign parties or groups.

3. I would hence conclude that the law, as it stands alone, cannot be regarded as violating freedom of association, as provided for by Article 11 of the Convention. It does not prevent the establishment of an association – a matter which constitutes in the eyes of the Convention's case-law the gravest of interferences – and it limits the prohibition to another State's financing of a political party – something which, to my mind, is readily justified by paragraph 2 of Article 11 – leaving the matter of the financing of a political party by a foreign political party to be determined on the basis of an interpretation of the broad term of "*personne morale*", which may or may not necessarily cover foreign political parties. This interpretation may depend on the circumstances of a particular case or on societal developments at local, national or international level.

4. What seems questionable in the circumstances of this case is the interpretation which was given by the national courts of sections 11-4 to 11-6 of the French Act, following the *dicta* of the *Conseil d'Etat* in the *Aldana Barrena* case. The "pragmatic" approach which had been enunciated by the *Conseil d'Etat* and adopted by the national courts in the present case, justifying the decision of the National Commission on Election Campaign Accounts and Political Funding, entails a blanket preventive prohibition on the very establishment of a funding association. Such a blanket prohibition, apart from the fact that it imposes an unbearable burden on the party concerned, does not allow any flexibility to an authority or a judge in ruling on financing in a particular case on the basis of wider considerations than the mere fact of the origins of the funding. It would be consonant with the requirements of the Convention if the authorities could rule on the legality of a source of funding, after the establishment of the association, on the basis of various factors, such as the circumstances surrounding the funding (its amount, its use, transparency of the transactions, sphere of activity of both the offering and the receiving entities, etc.). The law itself, providing for repressive measures rather than preventive measures, allows for such supervision to be carried out after the association has been established.

5. The above considerations constitute, to my mind, an interpretation of sections 11-4 to 11-6 of the French Act which brings that Act into line with the requirements of Article 11 of the Convention. We should not lose sight of the fact that, while Article 11 § 2 of the Convention, which provides for limitations to freedom of association, leaves a margin of appreciation to the States Parties to determine certain practicalities of that freedom, in the circumstances of the present case there are two elements which, I believe, have gone beyond a permissible and acceptable margin.

The first is the use of preventive controls which interfered with the very establishment of the association, despite the fact that the authorities would have had the possibility, by applying the domestic law in a qualified manner, of imposing measures and sanctions on an association that had already been established. The second is the total disregarding of the fact that both parties function within the domain of the European Union. This latter element is of primordial importance, and fundamentally changes the parameters of this case in relation to the relevant parameters of other cases, where the financing of a political party by a foreign party takes place in an "unorganised" international environment. In the present case, both the French and the Spanish parties are entities which lawfully work within their respective States, France and Spain, both members of the European Union. Although one may share the reticence of various quarters, including the Council of Europe, when they recommend strict controls on foreign funding of political parties – which may amount to a total prohibition – because of the dangers that that may entail for the proper operation of a political party, the situation changes when we are faced with two European Union parties, working within the integrational landscape of the twenty-seven members. Admittedly, even in that context controls and prohibitions may still apply, and section 11-4 of the French Act still has a valid place; however, what seems to me to be unacceptable and to have a direct impact on the extent of the limitations allowed by the second paragraph of Article 11 of the Convention is the total disregard, by those who have applied the national law, of the specificity of the case of two parties working within the context of the European unification process.