Information Note on the Court's case-law No. 120

June 2009

Herri Batasuna and Batasuna v. Spain - 25803/04

Judgment 30.6.2009 [Section V]

Article 11

Article 11-1

Freedom of association

Dissolution of political parties with links to a terrorist organisation: *no violation*

Facts: The political organisation Herri Batasuna was established as an electoral coalition and took part in the 1979 general elections. In 1986 Herri Batasuna was entered in the register of political parties at the Ministry of the Interior. In 2001 the applicant Batasuna filed documents with the register of political parties seeking registration as a political party.

In June 2002 the Spanish Parliament enacted Organic Law 6/2002 on political parties ("the LOPP"). The main innovations introduced by the new law appeared in Chapter II on the organisation, functioning and activities of political parties, and in Chapter III on their dissolution or judicial suspension. By a decision given in August 2002, the central investigating judge at the *Audiencia Nacional* suspended the activities of Batasuna and ordered the closure, for three years, of any offices and premises that Herri Batasuna and Batasuna might use. In September 2002 State Counsel, acting on behalf of the Spanish Government, brought proceedings before the Supreme Court seeking the dissolution of the applicant parties, on the ground that they had breached the new LOPP by a series of activities that irrefutably amounted to conduct incompatible with democracy and constitutional values, the democratic process and human rights. On the same day the Attorney General also brought proceedings before the Supreme Court seeking the dissolution of the parties in question, in accordance with the LOPP. In 2003 Batasuna requested that a preliminary question on the constitutionality of the LOPP be submitted to the Constitutional Court. The Supreme Court dismissed the request, noting that the objections raised by Batasuna concerning the constitutionality of the LOPP had already been examined and dismissed in a judgment delivered by the Constitutional Court in March 2003. The Supreme Court declared the parties Herri Batasuna and Batasuna illegal and ordered their dissolution on the ground that they pursued "a strategy of 'tactical separation' through terrorism". The court found it established that the parties concerned were fundamentally indistinct from each other and from the terrorist organisation ETA. The Supreme Court described them as "groupings sharing substantially the same ideology … and, moreover, closely controlled by the aforesaid terrorist organisation" and concluded that there was in reality a "single entity, namely the terrorist organisation ETA, concealed behind these apparently separate legal entities set up at different times by virtue of a process of 'operational succession' planned in advance by ETA". The court based its decision on the LOPP. It also ordered the liquidation of the assets of the parties concerned in accordance with the same law. By two judgments given in 2004, the Constitutional Court dismissed the *amparo* appeals lodged by the applicants against the Supreme Court judgment.

Law: The dissolution of the applicant parties amounted to interference with the exercise of their right to freedom of association. The LOPP defined with sufficient clarity the organisation and functioning of political parties and the actions liable to result in their being dissolved or suspended by the courts. Furthermore, the acts taken into account by the Supreme Court in ordering the dissolution of the applicant parties had been committed after the LOPP had entered into force. Accordingly, the interference in question had been "prescribed by law". In addition, the parties' dissolution had pursued a number of the legitimate aims enumerated in Article 11, including protecting public safety, preventing disorder and protecting the rights and freedoms of others.

As to whether the interference had been necessary in a democratic society and had been proportionate, the Court first had to ascertain whether the dissolution of the applicant parties corresponded to a "pressing social need" before considering, if appropriate, whether it had been "proportionate to the legitimate aims pursued". In ordering the parties' dissolution, the Supreme Court had not confined itself to mentioning the fact that the applicants had not condemned attacks carried out by ETA, but had listed a number of acts giving grounds to conclude that the applicant parties were instrumental in ETA's terrorist strategy. These could be divided into two categories: firstly, those which had contributed to creating a climate of social conflict and secondly, those which amounted to implicit support for ETA's terrorist activities. In all cases, as observed by the domestic courts, these acts came very close to explicit support for violence and endorsement of persons with probable terrorist links. Furthermore, the acts and speeches of the members and leaders of the applicant parties referred to by the Supreme Court did not rule out the use of force in order to achieve their aims. The Court was also unable to subscribe to the applicants' argument that none of the acts referred to by the Supreme Court was mentioned in the LOPP as a ground for dissolving a political party. In the Court's view, the applicants' actions had to be considered together as forming part of a strategy in pursuance of their political aims, which in their very essence ran counter to the democratic principles articulated in the Spanish Constitution. That corresponded to one of the grounds for dissolution under the LOPP, namely lending political support to the activities of terrorist organisations in order to achieve the aims of undermining the constitutional order or creating serious social unrest. In the instant case the domestic courts had arrived at reasonable conclusions after a detailed study of the evidence before them and the Court saw no reason to depart from the reasoning of the Supreme Court in finding links between the applicant parties and ETA. Furthermore, in view of the situation that had existed in Spain for many years with regard to terrorist attacks, particularly in the "politically sensitive region" of the Basque country, those links could objectively be considered as a threat to democracy. Lastly, the Supreme Court's findings had to be placed in the context of the international resolve to condemn the public defence of terrorism. Consequently, the acts and speeches imputable to the applicant parties, taken together, created a clear image of the social model that was envisaged and advocated by them, which was in contradiction with the concept of a "democratic society". Accordingly, the order made against the applicants by the Supreme Court and upheld by the Constitutional Court could reasonably be considered as corresponding to a "pressing social need", even seen in the context of the narrow margin of appreciation left to States. It remained for the Court to ascertain whether the interference complained of had been proportionate to the legitimate aim pursued. In view of the fact that the above-mentioned projects were in contradiction with the concept of a "democratic society" and presented a considerable threat to Spanish democracy, the sanction imposed on the applicants had been proportionate to the legitimate aim pursued within the meaning of Article 11 § 2. In view of the foregoing, the parties' dissolution could be said to have been "necessary in a democratic society", in particular to ensure

public safety, prevent disorder and protect the rights and freedoms of others for the purposes of Article 11 § 2.

Conclusion: no violation (unanimously).

See also *Exteberria, Barrena Arza, Nafarroako Autodeterminazio Bilgunea* and *Aiarako and Others v. Spain* (nos. 33579/03, 35613/03, 35626/03 and 35634/03) and *Herritarren Zerrenda v. Spain* (no. 43518/04) under Article 3 of Protocol No. 1 below.
