

Press release issued by the Registrar

**CHAMBER JUDGMENT
HERRI BATASUNA AND BATASUNA v. SPAIN
ETXEBERRIA AND OTHERS v. SPAIN
HERRITARREN ZERRENDA v. SPAIN**

The European Court of Human Rights has today notified in writing three Chamber judgments¹ in the cases of *Herri Batasuna and Batasuna v. Spain* (application nos. [25803/04](#) and [25817/04](#)), *Etxeberria and Others v. Spain* (nos. [35579/03](#), [35613/03](#), [35626/03](#) and [35634/03](#)) and *Herritarren Zerrenda v. Spain* (no. [43518/04](#)). The first cases concern the dissolution of the political parties Herri Batasuna and Batasuna. The second and third cases concern the disqualification from standing for election imposed on the applicants on account of their activities within the political parties that had been declared illegal and dissolved. (The judgments are only available in French.)

Herri Batasuna and Batasuna v. Spain

1. Principal facts

The political organisation Herri Batasuna was established as an electoral coalition and took part in the general elections of 1 March 1979. On 5 June 1986 Herri Batasuna was entered in the register of political parties at the Ministry of the Interior. On 3 May 2001 the applicant Batasuna filed documents with the register of political parties seeking registration as a political party.

On 27 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. The LOPP was published in the Official Journal of the State on 28 June 2002 and entered into force on the following day.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

By a decision of 26 August 2002, central investigating judge no. 5 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.

On 2 September 2002, State Counsel, acting on behalf of the Spanish Government and further to the agreement adopted by the Council of Ministers on 30 August 2002, 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 that was incompatible with democracy, prejudicial to constitutional values, democracy and human rights and contrary to the principles laid down in the explanatory memorandum to the LOPP.

On the same day the Public Prosecutor's Office also brought proceedings before the Supreme Court seeking the dissolution of the parties in question, in accordance with section 10 *et seq.* of the LOPP.

On 10 March 2003 Batasuna requested that a preliminary question on the constitutionality of the LOPP be submitted to the Constitutional Court, since it considered that certain sections of the LOPP violated the rights to freedom of association, freedom of expression, freedom of thought, and the principles of lawfulness, judicial certainty, the non-retrospective nature of less favourable criminal laws, proportionality and *non bis in idem*, and also the right to participate in public affairs.

By a unanimous judgment of 27 March 2003, the Supreme Court dismissed their request, noting that the objections raised concerning the constitutionality of the LOPP had already been examined and dismissed in a judgment delivered by the Constitutional Court on 12 March 2003. The Supreme Court declared the parties Herri Batasuna, EH and Batasuna illegal, ordered their dissolution and liquidated their assets.

By two unanimous judgments of 16 January 2004, the Constitutional Court dismissed the *amparo* appeals lodged by the applicants.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 19 July 2004 and declared partly admissible on 11 December 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), *President*,
Rait **Maruste** (Estonia),
Karel **Jungwiert** (the Czech Republic),
Renate **Jaeger** (Germany),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco), *judges*,
Alejandro **Saiz Arnaiz** (appointed in respect of Spain), *ad hoc judge*,

and also Claudia **Westerdiek**, *Section Registrar*.

3. Summary of the judgment²

Complaints

Relying on Articles 10 and 11 of the Convention, the applicants alleged that their dissolution had entailed a violation of their right to freedom of association. They complained that the LOPP was not accessible or foreseeable, was applied retrospectively and had no legitimate aim; they also considered that the measure imposed on them could not be considered necessary in a democratic society and compatible with the principle of proportionality.

Decision of the Court

Article 11

The Court considered that the dissolution of the applicant parties amounted to an interference in the exercise of their right to freedom of association, that it was “prescribed by law” and pursued “a legitimate aim” within the meaning of Article 11 of the Convention.

As to the necessity in a democratic society and the proportionality of the measure, the Court, after reviewing its case-law at some length, considered that the dissolution corresponded to a “pressing social need”. It considered that, in the present case, the national courts had arrived at reasonable conclusions after a detailed study of the evidence before them, which had allowed them to conclude that there was a link between the applicant parties and ETA. In view of the situation that had existed in Spain for many years with regard to terrorist attacks, those links could objectively be considered as a threat for democracy. In the Court’s opinion, the Supreme Court’s findings had to be placed in the context of an international wish to condemn the public defence of terrorism. In consequence, the Court considered that the acts and speeches imputable to the applicant political parties, taken together, created a clear image of the social model that was envisaged and advocated by the parties, which was in contradiction with the concept of a “democratic society”.

With regard to the proportionality of the dissolution measure, the fact that the applicants’ projects were in contradiction with the concept of “a democratic society” and entailed a considerable threat to Spanish democracy led the Court to hold that the sanction imposed on the applicants had been proportional to the legitimate aim pursued, within the meaning of Article 11 § 2 of the Convention.

The Court concluded unanimously that there had been no violation of Article 11 of the Convention.

Article 10

As the questions raised by the applicants under Article 10 concerned the same facts as those examined under Article 11 of the Convention, the Court considered that it was not necessary to examine them separately.

Etxeberria and Others v. Spain

² This summary by the Registry does not bind the Court.

1. Principal facts

The applicants are Spanish nationals and electoral groupings which were active within the political parties that were declared illegal and dissolved (in particular, Herri Batasuna and Batasuna) on the basis of the LOPP.

On 28 April 2003 the electoral commissions of the Basque Country and Navarre registered the candidacies of the groupings in the municipal, regional and autonomous community elections scheduled to take place in the Basque Country and Navarre on 25 May 2003.

On 1 May 2003 State Counsel and the Public Prosecutor's Office submitted requests for judicial review of an electoral matter, seeking to have approximately 300 candidacies, including those of the electoral groupings in question, struck off the lists; those requests were submitted to the Special Division of the Supreme Court, constituted in compliance with section 61 of the organic law on judicial power (hereafter "the LOPJ"). They accused the groupings of pursuing the activities of the political parties Batasuna and Herri Batasuna, which had been declared illegal and dissolved in March 2003.

On 3 May 2003 the Supreme Court granted the appeals submitted by State Counsel and the Public Prosecutor's Office in the part concerning the electoral groupings which have now applied to the Court, and barred the groupings from standing on the ground that their aim had been to carry on the activities of the three parties that had been declared illegal and dissolved. It based its findings on section 44 § 4 of the organic law on the general electoral system, as amended by the LOPP. The electoral groupings concerned then lodged an *amparo* appeal with the Constitutional Court.

By a judgment of 8 May 2003 the Constitutional Court dismissed the appeals, *inter alia*, of the four electoral groupings in the present application. Sixteen of the electoral groupings involved in the domestic proceedings had their *amparo* appeals allowed. As to the four electoral groupings in the present application, the Constitutional Court referred to its own case-law with regard to the constitutionality of the electoral disputes procedure as set out in section 49 of the organic law on the general electoral system. While reiterating that it did not have jurisdiction to review the findings of the Supreme Court, it also referred to the Supreme Court judgments in question and held that they were reasonable and sufficiently well-motivated to attest to the existence of a joint strategy, drawn up by the terrorist organisation ETA and the dissolved party Batasuna, aimed at helping to rebuild the party and to present candidates in the forthcoming municipal, regional or autonomous community elections.

2. Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 6 November 2003 and declared partly admissible on 11 December 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), *President*,
Rait **Maruste** (Estonia),
Karel **Jungwiert** (the Czech Republic),
Renate **Jaeger** (Germany),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco), *judges*,

Alejandro **Saiz Arnaiz** (appointed in respect of Spain), *ad hoc judge*,

and also Claudia **Westerdiek**, *Section Registrar*.

3. Summary of the judgment³

Complaints

Relying on Article 3 of Protocol No. 1, the applicants at the origin of applications nos. 35613/03 and 35626/03, each of whom was at the head of the list of one of the electoral groupings in question, alleged that they had been deprived of the possibility of standing as candidates in the elections to the Parliament of Navarre and to represent the electorate, which had hindered the free expression of the opinion of the people in the choice of the legislature.

Relying on Article 10 of the Convention, all the applicants complained about the fact that they had been barred from standing in the elections to the Parliament of Navarre and in the municipal and regional elections in the Basque Country and in Navarre. Challenging the foreseeability of section 44 § 4 of the organic law on the general electoral system, and alleging that there had been no legitimate aim or necessity in a democratic society for the interference, they alleged that the purpose of the interference, and of the LOPP, was to prohibit all forms of political expression of Basque separatism, and that the disputed measure was not proportionate to the aim pursued.

All of the applicants also alleged that they had had no effective remedy in respect of the request for judicial review of an electoral matter before the Special Division of the Supreme Court.

Decision of the Court

Article 3 of Protocol No. 1

In the Court's opinion, Spanish legislation provided for the disputed measure and the applicants could reasonably have expected that the provision in question, which was sufficiently foreseeable and accessible, would be applied in their case.

As to the aims of the measure, the Court considered that the dissolution of the political parties Batasuna and Herri Batasuna would have been pointless if they had been able to continue *de facto* their activities through the electoral groupings in this application. Accordingly, it held that the impugned restriction pursued aims that were compatible with the principle of the rule of law and the general objectives of the Convention.

With regard to the proportionality of the measure, the Court took the view that the national authorities had available considerable evidence and the time necessary to conclude that the electoral groupings in question wished to continue the activities of the political parties that had previously been declared illegal. The Supreme Court had based its reasoning on elements external to the manifestos of the disputed groupings and, in addition, the authorities had taken decisions to bar individual candidacies after an examination in adversarial proceedings,

³ This summary by the Registry does not bind the Court.

during which the groupings had been able to submit observations, and the domestic courts had found an unequivocal link with the political parties that had been declared illegal.

Accordingly, the Court considered that the impugned restriction was proportionate to the legitimate aim pursued, and, in the absence of any element of arbitrariness, that it had not infringed the free expression of the opinion of the people.

The Court concluded unanimously that there had been no violation of Article 3 of Protocol No. 1.

Article 10

The Court concluded that Article 10 of the Convention was applicable in this case, as freedom of expression had to be interpreted as encompassing also the right to communicate information and ideas to third parties in a political context.

With regard to applications nos. 35613/03 and 35626/03, the Court referred to its conclusions under Article 3 of Protocol No. 1 and declared that no separate issue arose under Article 10 of the Convention.

With regard to applications nos. 35579/03 and 35634/03, taking into account the close relationship between the right to freedom of expression and the criteria arising from the case-law concerning Article 3 of Protocol No. 1, the Court considered that the State was entitled to enjoy a margin of appreciation for Article 10 comparable to that accepted in the context of Article 3 of Protocol No. 1, and that in the present case the State had not exceeded that margin of appreciation. It also dismissed the complaint concerning the allegation that the organic law on the general electoral system had been applied with retrospective effect.

In consequence, the Court concluded unanimously that there had been no violation of Article 10 of the Convention.

Article 13

The Court considered that the applicants had not shown that the time-limits imposed had prevented the representatives of the groupings in question from submitting their appeals to the Supreme Court or the Constitutional Court, from filing observations and defending their interests appropriately.

The Court concluded unanimously that there had been no violation of Article 13 of the Convention.

Herritarren Zerrenda v. Spain

1. Principal facts

By an agreement of 17 May 2004, the central electoral commission (*Junta Electoral Central*) registered the candidacy of Herritarren Zerrenda for the elections to the European Parliament on 13 June 2004, which had been called by Royal decree no. 561/2004 of 19 April 2004.

On 19 May 2004 State Counsel, representing the Spanish Government, submitted a request to the Special Division of the Supreme Court, under section 61 of the organic law on judicial power, for judicial review in an electoral matter, and seeking to have this candidacy barred. On 18 May 2004, the Public Prosecutor's Office (the Public Prosecutor) also submitted a request to the Special Division of the Supreme Court, seeking to have the applicant's candidacy barred.

By two judgments of 21 May 2004, the Supreme Court granted the appeals submitted by State Counsel and the Public Prosecutor's Office and barred the applicant for standing for election on the ground that his purpose was to continue the activities of the three parties that had been declared illegal and dissolved. It based its decisions on section 44 § 4 of the organic law on the general electoral system, as amended by the LOPP.

The applicant then lodged an *amparo* appeal with the Constitutional Court.

By a judgment of 27 May 2004, the Constitutional Court dismissed the appeal.

On 13 June 2004 elections to the European Parliament were held. As the applicant had called on the electorate to vote for him in spite of his barred candidacy, he obtained 113,000 votes in Spain. Those votes were considered null and void.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 26 November 2004 and declared partly admissible on 11 December 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), *President*,
Rait **Maruste** (Estonia),
Karel **Jungwiert** (the Czech Republic),
Renate **Jaeger** (Germany),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco), *judges*,
Alejandro **Saiz Arnaiz** (appointed in respect of Spain), *ad hoc judge*,

and also Claudia **Westerdiek**, *Section Registrar*.

3. Summary of the judgment⁴

Complaints

Relying on Article 10 of the Convention and Article 3 of Protocol No. 1, the applicant complained that he had been barred from standing as a candidate in the elections to the European Parliament and that he had been deprived of the possibility of standing in elections to the European Parliament and representing the electors, which had hindered the free expression of the opinion of the people in the choice of the legislature. He also claimed that

⁴ This summary by the Registry does not bind the Court.

there had been a violation of Article 13 on account of the judicial review procedure before the Special Division of the Supreme Court.

Decision of the Court

The Court reached the same conclusions as in the case of *Etxebarria and Others* and concluded that there had been no violation of Article 13 of the Convention and Article 3 of Protocol No. 1, and that no separate question arose under Article 10 of the Convention.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.