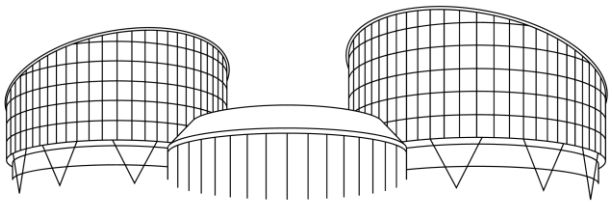

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF HERRI BATASUNA AND BATASUNA v. SPAIN

(Applications nos. 25803/04 and 25817/04)

JUDGMENT

STRASBOURG

30 June 2009

FINAL

06/11/2009

This judgment has become final under Article 44 § 2 of the Convention.

In the case of Herri Batasuna and Batasuna v. Spain,

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

Peer Lorenzen, *President*,
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre, *judges*,
Alejandro Saiz Arnaiz, ad hoc *judge*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 23 June 2009,

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

PROCEDURE

1. The case originated in two applications (nos. 25803/04 and 25817/04) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two political parties, Herri Batasuna and Batasuna ("the applicant parties"), on 19 July 2004.

2. The applicant parties were represented before the Court by Mr D. Rouget, a lawyer practising in Saint-Jean-de-Luz. The Spanish Government ("the Government") were represented by their Agent, Mr I. Blasco, Head of the Legal Department for Human Rights, Ministry of Justice.

3. Relying on Articles 10 and 11 of the Convention, the applicant parties alleged, in particular, that their dissolution had entailed a violation of their right to freedom of expression and of their right to freedom of association. They complained that Institutional Law no. 6/2002 on political parties (*Ley Orgánica 6/2002 de Partidos Políticos* – "the LOPP") of 27 June 2002, which they described as an *ad hoc* law, was neither accessible nor foreseeable, had been applied retrospectively and that their dissolution had pursued no legitimate aim but had been intended, in their view, to silence any debate and to deprive them of their freedom of expression. They considered that the measure imposed on them had not been necessary in a democratic society and that it was incompatible with the principle of proportionality. Lastly, the first applicant party observed that the acts referred to in the judgment of the Spanish Supreme Court of 27 March 2003 against the applicant parties had taken place one year before the LOPP had come into force, and that Herri Batasuna had been dissolved even though the Supreme Court had not found it guilty of any such act occurring after the

relevant Law had come into force. In those circumstances, it had to be concluded that the Law had been applied to it retrospectively.

4. The Chamber to which the case had been allocated decided to join the applications (Rule 42 § 1 of the Rules of Court).

5. By a decision of 11 December 2007, the Chamber declared the applications partly admissible.

6. On 1 July 2008 the Chamber notified the parties of its intention to relinquish the case to the Grand Chamber, in accordance with Rule 72 § 1. Relying on Rule 72 § 2, the Government objected to that relinquishment. Accordingly, the Chamber continued to examine the case.

7. The applicant parties and the Government filed additional observations (Rule 59 § 1). The Chamber decided, after having consulted the parties, that it was not necessary to hold a hearing on the merits of the case (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The first applicant, the political party Herri Batasuna, was founded on 5 June 1986.

9. The second applicant, the political party Batasuna, was founded on 3 May 2001.

A. Background to the case

10. On 27 June 2002 the Spanish parliament enacted Institutional Law no. 6/2002 on political parties (*Ley Orgánica 6/2002 de Partidos Políticos* – "the LOPP"). According to its explanatory memorandum, that Law was intended to develop Articles 1, 6, 22 and 23 of the Spanish Constitution by amending and updating Law no. 54/1978 of 4 December 1978 on political parties, regard being had to the experience acquired over the years, and to establish a complete and coherent framework for political parties, reflecting their role in a consolidated democracy.

11. 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 and suspension by the courts of their activities.

12. Chapter II lays down the basic criteria intended to ensure compliance with the constitutional requirement that the organisation and operation of political parties be democratic and that they may freely engage in their activities in accordance with the Constitution and the law. Section 9 requires

parties to respect democratic principles and human rights, describing in detail the type of conduct that would be in breach of the principles in question. According to the explanatory memorandum, the Law is based on the principle that any project or objective is constitutional provided that it is not pursued by means of activities which breach democratic principles or the fundamental rights of citizens. The Law is not intended to prohibit the defence of ideas or doctrines calling into question the constitutional framework. Its aim is rather to reconcile freedom and pluralism with respect for human rights and the protection of democracy. The explanatory memorandum states that a party may be dissolved only in the event of repeated or accumulated acts which unequivocally prove the existence of undemocratic conduct at odds with democracy and in breach of constitutional values, democracy and the rights of citizens. In that connection, sub-paragraphs (a), (b) and (c) of paragraph 2 of section 9 draw a clear distinction between organisations which defend their ideas or programmes, whatever they may be, in strict compliance with democratic methods and principles, and those whose political activity is based on an accommodation with violence, political support for terrorist organisations or violation of the rights of citizens or democratic principles.

13. Chapter III sets out the grounds on which political parties may be dissolved or their activities suspended by order of the court and describes the applicable procedure in the courts. The Law invests the "special Chamber" of the Supreme Court established by section 61 of the Judicature Act (*Ley Orgánica del Poder Judicial* – "the LOPJ") with jurisdiction for the dissolution of political parties. Furthermore, provision is made for specific priority proceedings, involving a single level of jurisdiction, which may be brought only by the public prosecutor's office or the government, of their own motion or at the request of the Chamber of Deputies or the Senate. According to the LOPP's explanatory memorandum, the proceedings in question are intended to reconcile the principle of legal certainty and the rights of the defence with the principle of promptness and a reasonable time-limit. The judgment delivered by the Supreme Court upon completion of those proceedings may be challenged only by way of an *amparo* appeal to the Constitutional Court. Section 12 details the effects of the court-ordered dissolution of a political party. Once the judgment has been served, the dissolved party must cease all activity. Furthermore, it may not set up a political organisation or use an existing party with a view to pursuing the activities of the party that has been declared illegal and dissolved. In order to rule as to whether or not there is any continuity between an existing party and a party which has been dissolved, the Supreme Court has regard to whether any "substantial similarity" exists between the structure, organisation and operation of the parties in question, or other evidence such as the identity of their members or leaders, their funding or their support for violence or terrorism. The assets of a dissolved political party are liquidated

and transferred to the Treasury to be used for social and humanitarian purposes.

14. The LOPP was published in the Official Gazette of the State on 28 June 2002 and came into force the following day.

B. Proceedings to dissolve the applicant parties

15. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Founding of the applicant parties as political parties

16. Founded as an electoral coalition, the political organisation Herri Batasuna took part in the general elections of 1 March 1979 (the first elections in Spain following the entry into force of the 1978 Constitution). On 5 June 1986 it was entered into the register of political parties at the Ministry of the Interior.

17. Following the Supreme Court's sentencing on 1 December 1997 of twenty-three members of Herri Batasuna's national directorate to imprisonment for collaboration with an armed organisation, *Euskal Herritarrok* ("EH") was set up on 2 September 1998 to stand in the Basque elections of 25 October 1998, initially as an association of voters and then as a political party.

18. On 3 May 2001 Batasuna filed documents at the register of political parties seeking registration as a political party.

2. Action brought by the autonomous government of the Basque Country challenging the constitutionality of the LOPP

19. On 27 September 2002 the Basque autonomous government brought an action before the Constitutional Court challenging the constitutionality of the LOPP, criticising in particular sections 1(1), 2(1), 3(2), 4(2) and (3), 5(1), 6 and 9, Chapter III (sections 10 to 12) and paragraph 2 of the sole transitional provision of that Law.

20. By a judgment of 12 March 2003, the Constitutional Court declared the impugned Law constitutional. As regards the very existence of such a Law making provision for the dissolution of political parties and its purpose which, according to the Basque government, consisted of "establishing a model of militant democracy imposing restrictions on political parties, in particular by imposing on them an obligation, not provided for in the Constitution, to accept a given political regime or system", the Constitutional Court stated:

> "According to the applicant government, the argument set out above is based on references in certain paragraphs of sections 6, 9 and 10 of the LOPP to the 'constitutional values expressed in constitutional principles and human rights'

(section 9(1)), to 'democratic principles' (sections 6 and 9(2)), to the 'system of liberties' and to the 'democratic system' (sections 9 (2) and 10(2), sub-paragraph (c)), to the 'constitutional order' and to 'public peace' (section 9(2), sub-paragraph (c)). Despite the fact that the legal significance of those references can be grasped only in the context of each of the provisions containing them and that each of the provisions in question must in turn be interpreted in the light of the law and of the legal system as a whole, the Basque government's submission that there is no place, in our constitutional order, for a model of 'militant democracy' within the meaning given to that expression by the Government, namely, a model in which not only compliance with, but also positive acceptance of, the established order and first and foremost the Constitution is required, must be endorsed ... The impugned Law allows for no such model of democracy. Right at the outset, the explanatory memorandum lays down the principle of a distinction between the ideas and aims proclaimed by political parties, on the one hand, and their activities, on the other, and states that 'the only aims explicitly vetoed are those which fall within the criminal law', so that 'any project or objective is deemed to be constitutional provided that it is not pursued by means of activities which breach democratic principles or the fundamental rights of citizens'. Consequently, and as regards the aspect which is of particular interest here, the Law lists as grounds for illegality 'conduct' – that is to say, acts – of political parties which, through their activities, and not through the ultimate aims proclaimed in their manifestos, fail to satisfy the requirements of Article 6 of the Constitution, which the impugned Law merely mentions.

... Secondly, and most importantly, it is clear that the principles and values to which the Law refers can be none other than those proclaimed by the Constitution, and that their content and scope depend on the meaning arising out of the interpretation of the positive constitutional provisions as a whole. Thus, in our system, 'democratic principles' can only be principles specific to the democratic order arising out of the institutional and normative fabric woven by the Constitution, the actual functioning of which leads to a system of powers, rights and balances giving form to a variant of the democratic model which is precisely that assumed by the Constitution in establishing Spain as a social and democratic State governed by the rule of law (Article 1 § 1 of the Constitution)."

21. As regards the applicant parties' argument that the provisions of the Law, namely some of the cases referred to in section 9(3) (tacit support, for example), established a "militant democracy" in breach of the fundamental rights of freedom of ideology, participation, expression and information, the Constitutional Court stated:

"... the system established by the first three paragraphs of section 9 of the LOPP must firstly be described. The first paragraph refers not to a positive adherence of any kind but to simple respect for constitutional values, which must be demonstrated by political parties when engaging in their activities and which is compatible with the broadest ideological freedom. Paragraph 2 provides that a political party may be declared illegal only 'when as a result of its activities, it infringes democratic principles, in particular when it seeks thereby to impair or to destroy the system of liberties, to hinder or to put an end to the democratic system by repeatedly and seriously engaging in any of the conduct described below'. Lastly, sub-paragraphs (a), (b) and (c) list the general criteria for a party to be declared illegal on account of its activities ... As regards paragraph 3 of section 9 of the LOPP, the flawed drafting of its introduction might suggest that the instances of behaviour described by that provision are in addition to those specified in the preceding paragraph and that they must therefore be interpreted separately. However, an interpretation of these two

provisions taken together and an interpretation of the whole section which contains them show that the instances of behaviour described in paragraph 3 of section 9 have the general features described in paragraph 2 of the same section. The instances of behaviour referred to in section 9(3) of the Law merely specify or clarify the principal causes of illegality set out in general terms in section 9(2) of the Law. A separate interpretation and application of such conduct can be done only on the basis of the cases provided for in section 9(2).

That having been said, while it is not for the Constitutional Court to determine whether or not mere failure to condemn [terrorist acts] can be construed as implicit support for terrorism, it is clear that symbolic actions can be used, in certain circumstances, to legitimise terrorist acts or excuse or minimise their anti-democratic effects and implicit violation of fundamental rights. In such circumstances it is plainly impossible to speak of a violation of the right to freedom of expression.

...

The same can be said, in general, of sub-paragraph (c) of section 10(2) of the LOPP, which provides: 'where, through its activities, it repeatedly and seriously violates democratic principles or seeks to impair or to destroy the system of liberties or to hinder the democratic system or to put an end to it by means of the conduct referred to in section 9.' It must also be stated in this regard that that provision concerns only the activities of political parties and in no way extends to their aims or objectives. The wording of that provision shows, therefore, that only those parties which through their activities rather than their ideology effectively and proactively seek to 'impair or to destroy the system of liberties' are liable to be dissolved."

22. As regards the Basque government's complaint that the dissolution measure prescribed by law was disproportionate, the Constitutional Court stated:

"... taken separately, none of the conduct described in section 9 of the LOPP can entail a party's dissolution. In order for that measure to be pronounced, as stated in section 9(2), the conduct in question must be engaged in 'repeatedly and seriously'. Secondly, it must be pointed out that the existence of a party which, through its activities, collaborates with or supports terrorist violence, jeopardises the survival of the pluralist order proclaimed by the Constitution and that, faced with that danger, dissolution would appear to be the only sanction capable of repairing the damage done to the legal order. Lastly, it must be stressed that Article 6 of the Constitution contains a definition of a party. According to the Constitution, a party may only be considered a party if it is the expression of political pluralism. Consequently, it is quite acceptable, constitutionally, for a party whose activities undermine pluralism and to a greater or lesser extent destabilise the democratic order, to be dissolved. Similarly, the European Court of Human Rights has considered that even though the margin of appreciation left to States must be a narrow one where the dissolution of political parties is concerned, where the pluralism of ideas and parties inherent in democracy is in danger, a State may forestall the execution of a policy at the root of that danger [*Refah Partisi (the Welfare Party) and Others v. Turkey*, nos. 41340/98, 41342/98, 41343/98 and 41344/98, 31 July 2001].

... it is not sufficient to establish the existence of just one of the acts described by the Law. On the contrary, those acts need to be engaged in 'repeatedly and seriously' (section 9(2)) or 'repeatedly or cumulatively' (section 9(3)). ... To conclude, [the relevant provisions] describe particularly serious conduct and establish as grounds for dissolution only those which are manifestly incompatible with the peaceful and lawful

means which are an essential part of the process of political participation to which the Constitution requires political parties to lend their qualified support. ... The criteria established by the case-law of the European Court of Human Rights as regards the dissolution of political parties have therefore been complied with (*United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, *Reports of Judgments and Decisions* 1998-I; *Socialist Party and Others v. Turkey*, 25 May 1998, *Reports* 1998-III; *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, ECHR 1999-VIII; *Refah Partisi (the Welfare Party) and Others v. Turkey*, nos. 41340/98, 41342/98, 41343/98 and 41344/98, 31 July 2001 and [GC], ECHR 2003-II; *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, ECHR 2002-II; and *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, no. 25141/94, 10 December 2002). That case-law states that in order to comply with the European Convention on Human Rights, the dissolution of a party must satisfy certain criteria, namely: (a) the law must include the circumstances and causes of dissolution (that criterion is clearly satisfied by the rules at issue, since they are set out in a formal law); (b) the aim pursued must be legitimate (which, as indicated above, consists in the instant case of protecting the democratic process of political participation through the exclusion of any associative organisation which could be likened to a party exercising an activity not falling within the constitutional definition of political parties); and (c) the dissolution must be 'necessary in a democratic society' (demonstrated in the context of the foregoing analysis of the specific causes of dissolution provided for by law).

... The fact that convicted terrorists are regularly appointed to positions of leadership or entered on lists of candidates for election may appear to constitute an expression of support for terrorist methods which goes against the obligations imposed by the Constitution on all political parties. Furthermore, the fact that such a practice can be taken into account only if the convicted terrorists have not 'publicly rejected terrorist aims and methods' cannot be interpreted as an obligation to disavow earlier activities. The provision in question [section 9(3)(c)] is of prospective effect only and applies only to political parties which are led by convicted terrorists or whose candidates are convicted terrorists. It lays down as a cause of dissolution the regular use of people who may legitimately be assumed to sympathise with terrorist methods rather than with any ideas and programmes that terrorist organisations might seek to implement.

..."

23. Lastly, as regards the Basque government's complaint that the principle of non-retrospectivity in relation to section 9(4) of the LOPP and paragraph 2 of the sole transitional provision had been violated, the Constitutional Court held:

"For the purposes of applying section 9(4) of the LOPP, which lists the factors that can be taken into account in assessing and characterising activities that may give rise to the dissolution of a political party, the aforementioned paragraph characterises as unlawful 'the establishment, on a date immediately preceding or following the date of entry into force, of a political party which pursues the activities of another party or succeeds that party with a view to evading application of the provisions of this Law in respect of it'. Worded as it is, that provision cannot be held to be unconstitutional as it is quite clear that its sole purpose is to enable section 9(4) of the LOPP to be applied 'to activities pursued after the entry into force of this Institutional Law', as stated therein. In no circumstances does it make provision for the judging of activities and acts prior to the LOPP, since only those subsequent to the entry into force of the Law are deemed to be relevant.

> In other words, the Law specifically states that the various causes that may lead to dissolution of a party may be taken into account only after its entry into force. The activities considered separately and 'the continuing nature or repetition' of the activities mentioned in section 9(4), to which the transitional provision refers, are subsequent to the entry into force of the LOPP. That said, for the purposes of determining the significance of those activities and assessing their relevance to the overall conduct of the party concerned (and for that purpose only, since to take account of conduct pre-dating the effective date of the Law in order to justify a declaration of unlawfulness would be unconstitutional because it would constitute a breach of the principle of non-retrospectivity enshrined in Article 9 § 3 of the Constitution), it is perfectly possible to take into consideration what the Law refers to as the 'trajectory' (section 9(4)) of the party in question, which trajectory could encompass acts prior to the entry into force of the Law, but that cannot in any way be considered as a retrospective effect under the Constitution."

24. The Constitutional Court also rejected the complaints based on the principle of *non bis in idem*, the lack of foreseeability and the exceptional nature of the Law, the specific features of the judicial proceedings and the allegations concerning the system for founding and registering political parties. Accordingly, it dismissed the applicant parties' claims, stating in paragraph 23 of its reasoning that sections 3(1), 5(1), 9(2) and (3) and paragraph 2 of the sole transitional provision of the LOPP were constitutional only if "interpreted in accordance with the terms set out in paragraphs 10, 11, 12, 13, 16, 20 and 21" of the reasoning of its judgment.

25. The government of the Autonomous Community of the Basque Country subsequently lodged an application with the Court (no. 29134/03), which was declared inadmissible on the ground of incompatibility *ratione personae* on 3 February 2004.

3. The proceedings to dissolve the applicant parties

26. Meanwhile, by a decision of 26 August 2002 delivered in the context of criminal proceedings for illegal association (Article 515 of the Spanish Criminal Code), central investigating judge no. 5 at the *Audiencia Nacional* had ordered the suspension of Batasuna's activities and the closure, for three years, of any headquarters and offices that could be used by Herri Batasuna and Batasuna. The same measure was applied to EH, which is not an applicant before the Court.

27. On 2 September 2002, implementing an agreement adopted by the Council of Ministers on 30 August 2002, the Attorney-General (*Abogado del Estado*) lodged an application with the Supreme Court on behalf of the Spanish government for the dissolution of the political parties Herri Batasuna, EH and Batasuna on the ground that they had breached the new LOPP on account of various acts which conclusively demonstrated conduct inconsistent with democracy, constitutional values, democratic practice and the rights of citizens.

28. On the same day, State Counsel (*Procurador General*) also filed an application with the Supreme Court with a view to the dissolution of the

political parties Herri Batasuna, EH and Batasuna in accordance with sections 10 et seq. of the LOPP. In his application, he asked the Supreme Court to find that the parties in question were illegal, and order that they be removed from the register of political parties, that they immediately cease their activities and that the effects of the Law be extended to any party newly created in breach of the Law or succeeding any of the parties concerned, that their assets be liquidated and that they be dissolved in accordance with section 12(1) of the LOPP.

29. On 10 March 2003 Batasuna sought the referral of a preliminary question to the Constitutional Court concerning the constitutionality of the LOPP as it was of the view that the Law as a whole, and several of the sections thereof taken separately, violated the rights to freedom of association, freedom of expression and freedom of thought, and the principles of lawfulness, legal certainty, non-retrospectivity of less favourable criminal laws, proportionality and *non bis in idem*, as well as the right to take part in public affairs.

30. By a unanimous judgment of 27 March 2003, the Supreme Court refused to refer Batasuna's question to the Constitutional Court, pointing out that that organisation's challenges to the constitutionality of the LOPP had already been examined and rejected in the Constitutional Court's judgment of 12 March 2003. It declared Herri Batasuna, EH and Batasuna illegal and pronounced their dissolution under sections 9(2) and (3) of the LOPP on the ground that they were part of "a terrorist strategy of 'tactical separation'". It considered that significant similarities between the three parties at issue, and between them and the terrorist organisation ETA – "three organisations having substantially the same ideology ... and, moreover, tightly controlled by that terrorist organisation" – had been established. It concluded that in reality there existed a "single entity, namely, the terrorist organisation ETA, hidden behind an apparent plurality of legal entities created at different times according to an 'operational succession' devised in advance by that organisation". It also liquidated the assets of the parties at issue, in accordance with section 12(1)(c) of the same Law.

31. The Supreme Court noted in its judgment that, while political parties constituted the essential foundations of political pluralism, they had to engage in their activities and pursue their aims and objectives in accordance with the law and democratic processes, stating that activities involving the use of violence or restricting the fundamental rights of others could not be tolerated. The Supreme Court referred to the Spanish constitutional system, which, in its view, unlike other legal systems, did not constitute a model of "militant democracy", since the only condition imposed on the expression of differences was respect for the rights of others. It pointed out that the LOPP recognised that any project or objective was constitutional provided that it was not "pursued by means of activities which breach[ed] democratic

principles or the fundamental rights of citizens". In that regard, it pointed out that, by law, political parties were liable to be declared illegal only on the basis of "activities" consisting of serious and repeated conduct. In the instant case, according to the Supreme Court, the calls to violence justifying the restriction of the freedoms of the parties at issue stemmed from a deliberate apportionment of tasks between terrorism and politics, ETA devising "justification of the need for terrorism as one of the functions" entrusted to Herri Batasuna.

32. Bearing in mind the historical and social context of the fight against terrorism in Spain, the Supreme Court held that the terrorist organisation ETA and its satellite organisation, *Koordinadora Abertzale Sozialista* ("KAS"), had been directing Herri Batasuna since its creation. To reach that conclusion, it relied on evidence demonstrating the existence of hierarchical links between the three organisations and revealing, in particular, that KAS, as ETA's delegate, had controlled the process of appointing the most senior members of Herri Batasuna and its successors (EH and Batasuna) and had participated in it. The Supreme Court held that Herri Batasuna had been created in response to ETA's wish to split armed activity and mass activity "organically and structurally", which resulted in "clear hierarchical submission" of the parties at issue to the terrorist organisation ETA. In that connection, it referred to a KAS internal document which read as follows:

> "KAS ... considers that armed struggle in association with mass struggle and institutional struggle – the latter serving the former – is the key to the advance and triumph of the revolution; mass struggle likewise requires an historical alliance of Popular Unity, the physical manifestation of which is Herri Batasuna."

33. As regards the "operational succession" held to exist between the three political parties that had been declared illegal, the Supreme Court relied on the fact that the people occupying posts of responsibility within the three organisations – notably their spokesperson, A.O. – and belonging to different parliamentary groups, were the same. It also took account of the existence of premises used by all the parties at issue. As regards links between the applicant parties and the terrorist organisation ETA, it noted that several of their members, in particular their spokesperson, A.O., had been convicted of terrorism-related offences.

34. The Supreme Court held that the evidence set out below, subsequent to the date of entry into force of the LOPP, showed that the applicant political parties were instruments of ETA's terrorist strategy.

– On 3 July 2002 Batasuna had refused to appoint representatives to the Basque parliamentary committee responsible for the situation and needs of victims of terrorism, as it considered it to be "political, manipulated and biased".

– On 3 July 2002, reacting to the decision of central investigating judge no. 5 at the *Audiencia Nacional* by which Batasuna had been declared civilly liable for damage caused by street violence (*kale borroka*), A.O., the

spokesperson for that organisation, had exhorted the Basque people to respond "energetically to this new attack" and had criticised the decision for having provoked a "serious and anti-democratic situation".

– On 7 July 2002, during a commemoration of the 1936 battle of Monte Albertia, A.O. had made the following statement:

> "We must continue to work and to struggle, either within or outside the law. The reality is that we will not falter because we are at a point in history where the process we have undertaken must be rendered irreversible."

– On 13 July 2002 the mayor and a Batasuna councillor of the municipality of Lezo had taken part in a demonstration in support of ETA terrorists living in Venezuela.

– On 16 July 2002, at a gathering outside the San Sebastian navy command, a Batasuna municipal spokesperson, referred to as J.L., had explained that the purpose of that demonstration was to let the State authorities know "that they could not move around with impunity in Euskal Herria".

– On 19 July 2002 J.E.B., Batsuna's spokesperson in the municipality of Vitoria, had stated that Batasuna "didn't want ETA to stop killing, but did not want Euskal Herria to have recourse to any kind of violence and wanted those who engaged in it to cease to exist".

– At a plenary session of the municipal council on 30 July 2002 Batasuna had refused to condemn the campaign of threats against councillors of the Basque Socialist Party (PSE-EE) in the municipality of Amorebieta.

– At a press conference on 2 August 2002 concerning the potential handover to Spain of K.B., an ETA member convicted in France, the mayor and the chairman of the Human Rights Committee of the municipality of Ondarroa, L.A. and A.A., Batasuna members, had declared that they supported K.B. and "all those who [were] in the same situation".

– Batasuna and its leaders had refused to condemn the Santa Pola attack of 4 August 2002 in which two people had died. In that regard, during a press conference in Pamplona A.O. had described that event as a "painful consequence" of the failure to solve the "political conflict" in the Basque Country and had accused the Spanish Prime Minister [then J.M. Aznar] "of bearing the greatest responsibility" for "what [had happened] [at] that time and what [might] happen in future".

– Municipalities run by Batasuna and that party's website had used an anagram of "Gestoras Pro-Amnistía", an organisation that had been declared illegal by central investigating judge no. 5 at the *Audiencia Nacional* and was on the European list of terrorist organisations (Council Common Position 2001/931/PESC).

– At a demonstration organised by Batasuna in San Sebastian on 11 August 2002 and run by Batasuna's leaders A.O., J.P. and J.A., slogans supporting ETA prisoners and threatening expressions such as "*borroka da*

bide bakarra" (the struggle is the only way), "*zuek faxistak zarete terroristak*" (you, the Fascists, are the real terrorists) or "*gora ETA militarra*" (long live ETA military) had been used.

– On 12 and 14 August 2002, Batasuna-run town halls had put up placards on their facades supporting terrorism or those engaging in terrorism, alluding to the transfer of "Basque prisoners to the Basque Country" and showing photographs of several terrorists.

– At a Batasuna press conference held in Bilbao on 21 August 2002, A.O. had criticised the "Spanish State's genocide strategy" and proclaimed that the Basque people were going to "organise themselves" and "fight" so that some "little Spanish Fascist" could never again tell Basques what their institutions should be. He had also warned the government of the Autonomous Community of the Basque Country (nationalist government coalition) that if it took part in closing down Batasuna headquarters, the result would be "an unwanted scenario", expressions which had been interpreted the following day by the media as "a threat against the Basque executive".

– During an interview with the newspaper *Egunkaria* on 23 August 2002, J.U., Batasuna's representative in the Basque parliament, had stated that "ETA [did] not support armed struggle for the fun of it, but that [it was] an organisation conscious of the need to use every means possible to confront the State".

– On 23 August 2002 at a Batasuna meeting held in Bilbao following the demonstration organised by that party against its dissolution, J.P. had criticised the leaders of the Basque Nationalist Party for abiding by Spanish law, accusing them of lacking "national dignity". He had also encouraged the participants to "go out into the street and respond vigorously".

– Municipalities governed by the parties in question had advocated terrorist activities, as evidenced by the fact that two ETA terrorists had been made honorary citizens (*hijo predilecto*) by the municipalities of Legazpia and Zaldibia.

– Since 29 June 2002 Batasuna council representatives in Vitoria and Lasarte-Oria had been committing acts of harassment against the representatives of non-nationalist parties, thus contributing to a climate of civil confrontation.

– Municipalities governed by Batasuna had displayed sketches and placards calling for a struggle against the State, against representatives of State power, against other political parties or members of those parties, notably the Prime Minister of the Spanish government and the leaders of the Partido Popular and the Spanish Socialist Party.

– After the entry into force of the LOPP, the three parties at issue had continued to pursue the same strategy of complementing, on a political level, the actions of the terrorist organisation ETA in the context of a jointly organised "operational succession".

35. Relying on the above evidence, the Supreme Court held that the activity of the applicant political parties, as manifested through conduct in line with a strategy predefined by the terrorist organisation ETA, consisted of "providing assistance and political support to the actions of terrorist organisations with the aim of overthrowing the constitutional order or seriously disturbing the public peace", within the meaning of section 9(2)(c) of the LOPP. It concluded that the conduct of which the applicant parties had been accused corresponded to the cases referred to in sub-paragraphs (a), (b), (d), (f) and (h) of paragraph 3 of section 9 of that Law. It stated firstly that some of the conduct described, such as Batasuna's demonstration in San Sebastian, where pro-ETA slogans had been heard, could be characterised as explicit political support for terrorism, while other conduct, such as the refusal of Batasuna and its leaders to condemn the Santa Pola attack of 4 August 2002, sought to "justify terrorist actions and minimise their importance and the violation of the fundamental rights arising therefrom". In that connection, the Supreme Court stated:

> "In the constitutional context, the existence of political parties which, from an intellectual point of view, fail to take a clear and unequivocal stance against terrorist activities or which, with calculated ambiguity, systematically seek to conceal the fact that they do not disavow criminal acts by officially deploring the consequences thereof without, however, censuring in any way the barbaric behaviour of those who cause such acts through the use of violence to achieve their objectives, cannot be tolerated.
>
> ...
>
> For the purposes of these proceedings, the repeated strategic and systematic silence of a political party concerning terrorist activities can only be interpreted, from a political and constitutional viewpoint, as a clear sign of their 'acceptance by omission' or 'implicit acceptance', that is, as their alignment with the arguments of the perpetrators of those criminal actions and the tacit acceptance of violence as a means of achieving set objectives which, in our constitutional system, can only be achieved by peaceful means."

36. The court held, secondly, that other conduct of which the applicant parties had been accused, such as the harassment of representatives of non-nationalist parties in the municipalities of Vitoria and Lasarte-Oria, had contributed to the emergence of a climate of civil confrontation intended to intimidate opponents of terrorism and deprive them of their freedom of opinion.

37. It observed, thirdly, that conduct such as publicly describing ETA prisoners as political prisoners or using the anagram of "Gestoras Pro-Amnistía" proved that the parties at issue were using symbols reflecting terrorism or violence. It noted, lastly, that the applicant parties had also taken part in activities in praise of terrorist activities.

38. Turning to the need for and the proportionality of the dissolution of the applicant parties, the Supreme Court pointed out that it was taking account of the text of the Convention and of the Court's case-law, which

would serve as a guide in the interpretation of fundamental constitutional rights, in accordance with Article 10 § 2 of the Spanish Constitution. It considered that, in view of the applicant parties' frequent calls to violence, as established by the above-mentioned evidence, the measure to dissolve the applicant parties had been justified for the purposes of protecting the fundamental rights of others, "a necessary element of democracy". The Supreme Court referred in particular to the Court's judgment in *Refah Partisi (the Welfare Party) and Others v. Turkey* ([GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II), considering that that judgment imposed on parties claiming to exercise functions in a democratic society a real legal duty to distance themselves from any ambiguous or unclear messages as to the use of violence (ibid., § 131). It pointed out furthermore that the calls to violence at issue in the case before it appeared to be more explicit than those at issue in the case submitted to the Court.

4. Amparo *appeal to the Constitutional Court*

39. Batasuna and Herri Batasuna lodged two *amparo* appeals with the Constitutional Court against the judgment of the Supreme Court.

40. In their appeals, they complained firstly of the lack of impartiality of the President of the Supreme Court, who had been the reporting judge in the proceedings leading to their dissolution even though he was the president of the Judicial Council, the body which had issued a favourable report on the bill resulting in the Law at issue. They submitted that the conflation of jurisdictional and consultative functions in one person had resulted in a loss of objective impartiality. Batasuna relied in that regard on Article 24 § 2 of the Constitution (right to a fair hearing before an independent and impartial tribunal).

41. Secondly, the applicant parties alleged that the guarantees of a fair trial had not been rigorously observed in so far as the dissolution of Batasuna had been based, *inter alia*, on the conduct attributed to certain Zaldibia and Legazpia municipal councillors, who had made an alleged member of ETA and an ETA member who had been convicted and had served his sentence honorary citizens (*hijo predilecto*), facts which had been established *ex parte*, after completion of the phase of the proceedings during which new evidence could be introduced and without the applicant parties having been able to defend themselves against such allegations.

42. They complained, thirdly, of a violation of the presumption of innocence, submitting that the facts deemed to have been proven in the judgment of the Supreme Court had been based on a single press release and that Batasuna and its members had been deemed to have carried out acts attributable to another political organisation, namely EH. Moreover, they criticised the judgment of 27 March 2003 for having considered as established fact that Batasuna had been created on the basis of an agreement between the leaders of Herri Batasuna and ETA, and that Herri Batasuna,

EH and Batasuna were in fact one and the same organisation which had been assigned certain functions by ETA and which acted under the instructions of the latter, while those allegations had actually been based on documents having no probative value and on the statements of expert witnesses working for the Spanish government.

43. Fourthly, and lastly, the applicant parties considered that their right to freedom of expression, thought and association had been breached as a result of their dissolution.

44. By two unanimous judgments of 16 January 2004 the Constitutional Court dismissed the appeals.

45. In the judgment on Batasuna's *amparo* appeal, the Constitutional Court repeated the arguments contradicting the applicant parties' submissions concerning "militant democracy" set out in its judgment of 12 March 2003. It pointed out that "any project or objective [was] constitutional provided that it [was] not pursued by means of activities which breach[ed] democratic principles or the fundamental rights of citizens". It also pointed out that "the constitutionality of section 9 of the LOPP ha[d] been recognised by judgment 48/2003" and that "the answers to the objections raised by Batasuna as to the constitutionality [of the conduct described by the provisions of the Law at issue] could be found in the legal bases of that Law".

46. The Constitutional Court stated:

> "The refusal of a political party to condemn terrorist attacks can be seen, in certain cases, as '[...] tacit political support for terrorism' [section 9(3)(a) LOPP], or 'legitimising terrorist actions for political ends' [section 9(3)(a) LOPP], in so far as it may excuse terrorism or minimise the significance thereof ... The failure to condemn terrorist actions also constitutes a tacit or implicit manifestation of a certain attitude towards terror. ... Against a backdrop of terrorism that has been in place for over thirty years, with those responsible always legitimising terror by claiming equality between the types of forces fighting each other and by presenting it as the only possible solution to an allegedly historical conflict, the refusal of a party to condemn a specific terrorist attack, which undeniably reflects that party's wish to disassociate itself from the condemnatory stance taken by other parties in relation to such acts, is all the more significant since it reflects the position of a party which has sought to pass off the terrorist phenomenon as an inevitable reaction to the past and unjust aggression of a terrorised State. ... Furthermore, ... the refusal to condemn [terrorist acts], combined with serious and repeated acts and conduct, indicates an accommodation with terror which runs counter to organised coexistence in the context of a democratic State. ... It must therefore be concluded that it would not appear to be unreasonable or erroneous to take account of facts judicially established in proceedings having observed all the guarantees covering the grounds for dissolution laid down by the LOPP – whose unconstitutionality *in abstracto* was ruled out by Constitutional Court judgment no. 48/2003 – thus ruling out any possibility of a breach of Article 24 of the Constitution, and that no substantive fundamental right, such as the right of political association (Articles 22 and 6 of the Constitution), the right to freedom of conscience (Article 16 § 1 of the Constitution) and the right to freedom of expression (Article 20 § 1 (a) of the Constitution) has been breached."

47. Lastly, in the reasoning of its judgment the Constitutional Court pointed out that in its appeal, Batasuna had literally alleged that the effect of the LOPP "had been to deprive ideologies linked to terrorism and violence of any possibility of developing lawfully, in breach of the procedural definition of democracy", and had argued that the Law at issue declared unlawful "the mere fact of providing political and ideological support to the actions of terrorist organisations with the aim of overthrowing the constitutional order". It held that this "link with terrorism and violence" ... "fell outside the constitutionally legitimate scope of the exercise of freedom of association and freedom of expression and could therefore be prohibited by the democratic legislature".

48. As regards Herri Batasuna's *amparo* appeal, the Constitutional Court again referred to its judgment of 12 March 2003, in which it had indicated that the various causes of dissolution of parties could only be taken into account as of the entry into force of the Law, stating, however, that "for the purpose of determining the significance [of the activities listed by the Law] and assessing their importance having regard to the overall conduct of the party at issue (and for such purposes only, since to take account of conduct prior to the entry into force of the Law in order to justify a declaration of illegality [would have been] unconstitutional in that it [would have] breached the principle of non-retrospectivity enshrined in Article 9 § 3 of the Constitution), it [was] perfectly possible to take into consideration what the Law called the 'trajectory' (section 9(4)) of the party at issue which could encompass conduct prior to the entry into force of the Law, without it being possible in any circumstances to consider that to be a case of retrospective application prohibited by the Constitution". The Constitutional Court pointed out that the applicant party had not been dissolved because of acts pre-dating the entry into force of the Law or conduct attributable to other parties, but because it had been held that Batasuna, Herri Batasuna and EH "constituted 'successive units' of a single reality – namely a political organisation used as a tool by a terrorist group for unlawful purposes –, that the successive forms assumed by a single political party had *de facto* been dissolved, and that the dissolution pronounced by the Supreme Court had been based on subsequent facts stated as being entirely attributable to the applicant party on account of the fact that the Supreme Court had found the three dissolved parties to be materially identical".

49. Lastly, the Supreme Court dismissed the complaints of lack of impartiality and failure to comply with the principle of adversarial proceedings as lacking any constitutional basis.

5. Subsequent events

50. On 6 June 2007 ETA ended the ceasefire that it had declared on 24 March 2006. Since that date, several fatal attacks have been carried out in Spain.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. The Spanish Constitution

Article 6

"Political parties are the expression of political pluralism; they contribute to the formation and expression of the will of the people and are an essential instrument for political participation. Their creation and the exercise of their activities are free in so far as they respect the Constitution and the law. Their internal structure and their functioning must be democratic."

Article 22

"1. The right of association is recognised.

2. Associations which pursue ends or use means legally defined as criminal offences are illegal.

3. Associations set up on the basis of this section must be entered in a register for the sole purpose of public knowledge.

4. Associations may only be dissolved or have their activities suspended by virtue of a court order stating reasons.

5. Secret and paramilitary associations are prohibited."

B. Law no. 6/1985 of 1 July 1985 – "the LOPJ" (as amended by Institutional Law no. 6/2002 of 27 June 2002 on political parties)

Section 61

"1. A Chamber comprising the President of the Supreme Court, the different divisional presidents and the most senior and the most recently appointed judge of each division shall examine:

(i) applications for review of judgments ...;

(ii) challenges [to the President of the Supreme Court, the different divisional presidents, or more than two senior divisional judges];

(iii) civil liability claims against divisional presidents ...;

(iv) investigation and adjudication of claims against divisional presidents;

(v) allegations of judicial error imputed to a division of the Supreme Court;

(vi) procedures for a declaration of illegality and consequent dissolution of political parties, pursuant to Institutional Law no. 6/2002 of 27 June 2002 on political parties;

..."

C. Institutional Law no. 6/2002 of 27 June 2002 on political parties – "the LOPP"

Section 9

"1. Political parties may freely engage in their activities. In engaging in those activities, they shall respect the constitutional values expressed in democratic principles and human rights. They shall perform the functions attributed to them under the Constitution democratically and in full respect for pluralism.

2. A political party shall be declared illegal when, as a result of its activities, it infringes democratic principles, in particular when it seeks thereby to impair or to destroy the system of liberties, to hinder or to put an end to the democratic system, by repeatedly and seriously engaging in any of the conduct described below:

(a) systematically violating fundamental freedoms and rights by promoting, justifying or excusing attacks on the life or integrity of the person, or the exclusion or persecution of an individual by reason of ideology, religion, beliefs, nationality, race, sex or sexual orientation;

(b) fomenting, encouraging or legitimising violence to be used as a means to achieve political ends or as a means to undermine the conditions that make the exercise of democracy, pluralism and political freedoms possible;

(c) providing assistance and political support to the actions of terrorist organisations with the aim of overthrowing the constitutional order or seriously disturbing the public peace, subjecting the public authorities, certain persons or certain groups in society or the population in general to a climate of terror, or contributing to increasing the effects of terrorist violence and the resulting fear and intimidation.

3. The conditions described in the preceding paragraph shall be deemed to have been met where there has been a repetition or an accumulation, by the political party, of one or more of the following instances of behaviour:

(a) giving express or tacit political support to terrorism by legitimising the use of terrorist actions for political ends outside peaceful and democratic channels, or by excusing them or minimising their significance and the ensuing violation of human rights;

(b) accompanying violent action with programmes and activities promoting a culture of civil conflict and confrontation associated with the actions of terrorists or those who resort to intimidation; pressurising, neutralising or socially isolating anyone opposing that violent action, by forcing them to live with a daily threat of coercion, fear, exclusion or deprivation of freedom and depriving them in particular of their freedom to express their opinions and to participate freely and democratically in public affairs;

(c) including regularly in its directing bodies or on its lists of candidates for election persons who have been convicted of terrorist offences and who have not publicly renounced terrorist methods and aims, or maintaining among its membership a significant number of militants who are also members of organisations or bodies linked to a terrorist or violent group, except where it has taken disciplinary measures against them with a view to their exclusion;

(d) using as instruments of its activity, jointly with its own or in place thereof, symbols, slogans or items which represent or symbolise terrorism or violence and conduct associated with terrorism;

(e) conceding to terrorists or to any person collaborating with terrorists the rights and prerogatives which the legal system – and in particular electoral law – grants to political parties;

(f) collaborating habitually with entities or groups which systematically act jointly with a terrorist or violent organisation or which defend or support terrorism or terrorists;

(g) supporting, through government institutions, the entities referred to in the preceding paragraph through administrative, financial or any other measures;

(h) promoting or covering activities the object of which is to reward, pay tribute to or honour terrorist or violent actions or those who commit them or collaborate or participate in them;

(i) covering disruptive, intimidatory or socially coercive actions that are linked to terrorism or violence.

4. In assessing and evaluating the activities to which this section refers and the continuing nature or repetition thereof in the context of the trajectory of a political party, even if that party has changed its name, account will be taken of the party's decisions, documents and communiqués, its bodies and its parliamentary and municipal groups , the conduct of its public activities and the way in which it calls on citizens to mobilise, demonstrations, interventions and public engagements of its leaders and members of its parliamentary and municipal groups, the proposals formulated within or outside institutions as well as the significant repetition, by its members or candidates, of certain behaviour.

Account will also be taken of administrative penalties imposed on the political party or its members and any criminal convictions of its leaders, candidates, elected officials or members for the offences listed in Titles XXI to XXIV of the Spanish Criminal Code and which have not resulted in disciplinary measures leading to the exclusion of the parties concerned."

Section 10

"...

2. The judicial dissolution of a political party shall be decided by the relevant court in the following cases:

(a) where the party is considered to be an illegal association for the purposes of the Spanish Criminal Code;

(b) where it continuously, repeatedly and seriously breaches the obligation imposed by sections 7 and 8 of this Institutional Law to have a democratic internal structure and to operate democratically;

(c) where, as a result of its activities, it repeatedly and seriously infringes democratic principles or seeks to impair or to destroy the system of liberties or to hinder or to put an end to the democratic system by means of the conduct referred to in section 9.

...

5. The cases provided for in sub-paragraphs (b) and (c) of paragraph 2 of this section shall be examined by the special Chamber of the Supreme Court created by section 61 of the LOPJ, in accordance with the procedure laid down in the following section of this Institutional Law, which derogates from the LOPJ."

Section 11

"1. The government or the public prosecutor may trigger the procedure to have a political party declared illegal and to have it dissolved ...

...

7. No appeal shall lie against a judgment delivered by the special Chamber of the Supreme Court pronouncing dissolution or rejecting an application for dissolution save, as the case may be, an *amparo* appeal before the Constitutional Court ..."

Sole transitional provision

"...

2. For the purposes of application of the provisions of paragraph 4 of section 9 to activities subsequent to the entry into force of this Institutional Law, the constitution, on a date immediately prior or subsequent to that date of entry into force, of a political party carrying on the activities of another party or succeeding it with the aim of avoiding application to it of the provisions of this Law, shall be deemed to constitute a fraudulent evasion of statutory provisions. This will not constitute an obstacle to the application of this Law and sections 10 and 11 of this Institutional Law may be applied to the party concerned. The special Chamber of the Supreme Court shall be vested with power to assess continuation or succession and fraudulent intent."

D. European Union law

1. *Council Common Position 2003/402/PESC of 5 June 2003, updating Common Position 2001/931/PESC on the application of specific measures to combat terrorism*

Annex (list of persons, groups and entities referred to in Article 1)

" ... 7. *Euskadi Ta Askatasuna/Tierra Vasca y Libertad*/Basque Fatherland and Liberty (ETA) [The following organisations are part of the terrorist group ETA: *K.a.s., Xaki, Ekin, Jarrai-Haika-Segi, Gestoras pro-amnistía, Askatasuna, Batasuna (a.k.a. Herri Batasuna, a.k.a. Euskal Herritarrok*]."

E. Council of Europe law

1. *Resolution 1308 (2002) of the Parliamentary Assembly of the Council of Europe on restrictions on political parties in the Council of Europe member States*

"... 2. The Assembly considers that the issue of restrictions on political parties is by nature a very complex one. However, the tragic events which took place in New York on 11 September 2001 should encourage us to reflect still further on the threats to democracy and freedoms posed by extremism and fanaticism.

...

11. In conclusion and in the light of the foregoing, the Assembly calls on the governments of member States to comply with the following principles:

...

(ii) restrictions on or dissolution of political parties should be regarded as exceptional measures to be applied only in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country;

...

(v) a political party should be banned or dissolved only as a last resort, in conformity with the constitutional order of the country, and in accordance with the procedures which provide all the necessary guarantees to a fair trial;

..."

2. Council of Europe Convention on the Prevention of Terrorism, which entered into force on 1 June 2007, signed and ratified by Spain (entry into force on 1 June 2009)

Article 5 – Public provocation to commit a terrorist offence

"1. For the purposes of this Convention, 'public provocation to commit a terrorist offence' means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.

2. Each Party shall adopt such measures as may be necessary to establish public provocation to commit a terrorist offence, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law."

Article 9 – Ancillary offences

"1. Each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law: ...

(c) contributing to the commission of one or more offences as set forth in Articles 5 to 7 of this Convention by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in Articles 5 to 7 of this Convention; or

(ii) be made in the knowledge of the intention of the group to commit an offence as set forth in Articles 5 to 7 of this Convention.

..."

Article 10 – Liability of legal entities

"1. Each Party shall adopt such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal entities for participation in the offences set forth in Articles 5 to 7 and 9 of this Convention.

2. Subject to the legal principles of the Party, the liability of legal entities may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

51. The applicant parties alleged that their dissolution had entailed a violation of their right to freedom of association. Describing Institutional Law no. 6/2002 on political parties ("the LOPP") as an *ad hoc* law, they argued that it was neither accessible nor foreseeable and complained that it had been applied retrospectively. Stating that the purpose of their dissolution had been to eliminate political debate in the Basque Country, they complained that the measure had had no legitimate aim. They argued that it could not be considered necessary in a democratic society and considered it to be in violation of the principle of proportionality. The relevant parts of Article 11 provide:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association ...
>
> 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. ..."

A. Whether or not there was interference

52. The parties acknowledged that the dissolution of the applicant political parties amounted to interference in the exercise of their right to freedom of association. The Court shares that view.

B. Whether that interference was justified

53. 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.

1. "Prescribed by law"

(a) The parties' submissions

54. The applicant parties argued that the LOPP did not satisfy the criteria of foreseeability and stability required by the Court's case-law. They claimed that it had been applied retrospectively and had therefore been in breach of the principle of legal certainty.

55. The Government submitted that the dissolution of the applicant parties had been based on an existing, accessible and foreseeable law.

(b) The Court's assessment

56. The Court reiterates that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct (see, among other authorities, The Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, § 49, Series A no. 30). 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).

57. In the instant case, the Court notes that the Law at issue entered into force on 29 June 2002, the day after its publication in the Official Gazette of the State, and that the dissolution of the applicant political parties was pronounced on 27 March 2003. That Law defined sufficiently clearly the organisation and functioning of political parties and the conduct that could entail their dissolution or suspension by the courts of their activities (see Chapter III of the Law).

58. Turning to the complaint concerning the retrospective application of the Law, the Court finds at the outset that, although all the acts enumerated in the judgment of the Supreme Court having pronounced the dissolution at issue concerned Batasuna, the Supreme Court held Batasuna and Herri Batasuna to be "in reality a single entity ... hidden behind an apparent plurality of legal entities" (see paragraph 30 above). In those circumstances, the Court considers that the complaint concerns all the applicant parties.

59. As to the merits of the complaint, the Court reiterates that Article 7 § 1 of the Convention guarantees non-retrospectivity only in the context of criminal proceedings, and that the instant case does not concern criminal matters. In any event, the Court notes that the acts taken into account by the Supreme Court in order to pronounce the dissolution of the applicant parties were committed between 29 June and 23 August 2002, that is, after the date of entry into force of the LOPP. Moreover, the Convention contains no provision ruling out the possibility of relying on facts preceding enactment of the Law.

60. Consequently, the Court considers that the interference at issue was "in accordance with the law" and that the applicant parties' complaints concerning the impugned measure would be better examined from the viewpoint of the need for that interference.

2. "Legitimate aim"

(a) The parties' submissions

61. The applicant parties submitted that their dissolution had pursued an illegitimate aim in that it had sought to eliminate the Basque political independence movement from political and democratic life.

62. The Government submitted that the dissolution had been a means of preventing the applicant parties from acting against the democratic system and the fundamental freedoms of citizens by supporting violence and the activities of the terrorist organisation ETA. They argued that the applicant parties had constituted a threat to human rights, democracy and pluralism. They denied that the dissolution had been intended to eliminate political pluralism in Spain, and highlighted, as an example, the peaceful coexistence on Spanish territory of several political parties advocating nationalism or independence which engaged in their activities normally.

(b) The Court's assessment

63. The Court considers that the applicant parties have failed to show that their dissolution was motivated by reasons other than those advanced by the national courts. It cannot subscribe to the applicant parties' argument that, as far as the Government were concerned, the dissolution had been a means of eliminating any debate concerning the left-wing Basque independence movement. In that connection, it upholds the Government's observations set out in the preceding paragraph and points out that various so-called "separatist" parties coexist peacefully in several autonomous communities in Spain.

64. Having regard to the circumstances of the case, the Court considers that the dissolution pursued several of the legitimate aims referred to in Article 11, notably public safety, the prevention of disorder and the protection of the rights and freedoms of others.

3. "Necessary in a democratic society" and "proportionality of the measure"

(a) The parties' submissions

(i) The applicant parties

65. Arguing that a declaration of illegality was the only kind of interference provided for by the LOPP to sanction disparate conduct of varying degrees of seriousness, the applicant parties alleged that the Law at issue violated the principle of proportionality. That Law failed to take account of the case-law of the Strasbourg Court intended to ensure that the interference of public authorities in the exercise of the right to freedom of association was in proportion to the seriousness of the impugned conduct

and that dissolution be reserved for situations in which the activities of the political party at issue seriously endangered the very survival of the democratic system.

66. The first applicant party argued that, with the exception of its alleged "operational unity" with Batasuna and EH, no fact warranting its dissolution could be attributed to it.

67. The second applicant party criticised the Supreme Court's judgment of 27 March 2003 for having held that Batasuna's calls to violence were much more explicit than those made by the members of Refah Partisi (the Welfare Party), which had been declared illegal by Turkey (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II), and for having relied on that difference to justify the impugned dissolution measure. The second applicant party made the observations below as regards the facts deemed to constitute grounds for dissolution in the judgment in question.

– The fact that it had not appointed representatives to the Basque parliamentary committee responsible for examining the situation and needs of victims of terrorism had amounted to a manifestation of the right to freedom of thought and was not of the "particularly serious" nature required by the LOPP to dissolve a political party.

– A.O.'s statements in response to the judgment of central investigating judge no. 5 at the *Audiencia Nacional* having found the applicant party civilly responsible for acts of street violence (*kale borroka*) had merely amounted to a manifestation of the right to freedom of expression of the applicant political party, against which, moreover, the Spanish authorities had taken no criminal action.

– As regards A.O.'s participation in a tribute to Basque fighters who were victims of Fascism during the civil war, organised by Basque Nationalist Action, a legal political party, no such activity was listed among the grounds for dissolution provided for by the LOPP and it could not therefore be criticised by the Government, as they had done in their observations.

– The participation of a Batasuna mayor and councillor in a demonstration in support of ETA members resident in Venezuela could not be taken into account to justify the dissolution since that demonstration had not been banned by the Basque government. Furthermore, the criminal proceedings brought against the participants had resulted in their acquittal and the events had not even given rise to an administrative penalty.

– Although the statements of Batasuna's municipal spokesperson in San Sebastian had contained expressions which could be deemed "capable of offending, undermining or disrupting the State" they had been protected by the freedom of expression enjoyed by active members of a political party.

– The courts had interpreted the statements made by Batasuna's spokesperson in the municipality of Vitoria subjectively, whereas that

person's conduct should have been protected by the right to freedom of expression.

– The information establishing the refusal of elected members of Batasuna to condemn the threats received by certain leaders of other political organisations during a meeting of the council of the municipality of Amorebieta had been based on a press article and had not been checked against the minutes of the meeting. Therefore, that ground for illegality had been based on a mere presumption.

– As regards the press conference organised by the mayor and the chairman of the Ondarroa Human Rights Committee concerning the return to Spain of an ETA member convicted in France, in relation to which the Supreme Court had considered that explicit political support had been given to the ETA member in question, deemed to be a "victim of political reprisals", that information had been based exclusively on a press article and could not be taken into account. It had been based on a value judgment of the journalist who had written the article. The conference in question had not been organised by Batasuna and it was the sister of the ETA member concerned who had spoken. No statement could be attributed to the town's mayor. In any event, it had been a manifestation of ideological and political freedom which should not have been taken into account in the process of declaring a political party illegal.

– As regards Batasuna's refusal to condemn the fatal attack carried out by ETA at Santa Pola, the national courts, when examining that ground for illegality, had merely taken account of random expressions used in the applicant's speech without considering it as a whole and without carrying out an "acceptable assessment of the relevant facts", thus disregarding the Court's case-law (see *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, no. 25141/94, § 57, 10 December 2002). In that connection, it would appear that the judgment of the Supreme Court had concluded that there had been a "minimum standard", an implicit set of codes of behaviour requiring the applicant party to expressly condemn the attacks. However, since those codes had not been explicit, the applicant party's behaviour could at most have attracted social censure, but not a political sanction.

– As regards the use of the anagram of "Gestoras Pro-Amnistía" (an organisation appearing on the European list of terrorist organisations) in the municipalities run by Batasuna, the Government's argument that that could be "easily associated with the use of terrorist violence and those who engage in it" was debatable. The logos in question had contained no reference to ETA and it had merely amounted to a manifestation of ideological freedom.

– As regards the attitude of Batasuna's leaders during a demonstration in San Sebastian in 2002, the Government's allegations that the pro-ETA slogans had emanated from the leaders in question were unfounded. They had been off-the-cuff remarks that could not be deemed to be linked to terrorism and which, in any event, were not of the particular degree of

seriousness required by law to constitute a cause of dissolution. Furthermore, no criminal action had been taken against the organisers.

– As to displaying posters in support of terrorism on the facades of Batasuna-run town halls, the posters in question had been put up only in a minority of town halls. Consequently, that should not have been characterised as "repeated behaviour" for the purposes of the LOPP.

– A.O.'s statements during a Batasuna press conference in Bilbao had concerned a "political evaluation" of the judicial decision to trigger a procedure to suspend Batasuna's activities. The criticism of the State at that conference had been harsh and hostile. However, in accordance with the Court's case-law, those statements "could not in themselves constitute evidence that [a] party was equivalent to armed groups implicated in acts of violence" (see *Dicle for the Democratic Party (DEP) of Turkey*, cited above, §§ 59 and 60). Furthermore, A.O. had been acquitted of the criminal charge of making terrorist threats. Therefore, the impugned statements had been made in the context of a political leader exercising his freedom of expression in describing his particular vision of the Spanish State.

– Statements made by of one of Batasuna's leaders and published in a Basque newspaper had simply criticised the Government and had not gone beyond the bounds of freedom of expression.

– As regards the statements made by a Batasuna leader at a meeting organised by the party to protest against its dissolution, the leader in question had merely "done his duty in noting the concerns of the electorate" (ibid., § 60) faced with the seriousness of a potential declaration of illegality of the organisation of which he was a member. The criticisms had been made in the context of a political debate concerning a matter of general interest, namely, the declaration of illegality of a political organisation representing a large part of Basque society. Since the criminal proceedings brought on that occasion had been dropped, once again it had amounted to a manifestation of freedom of expression.

– The tributes to terrorists who had been made honorary citizens (*hijos predilectos*) had not been organised by Batasuna. Moreover, those events had occurred after 26 August 2002, the date on which the activities of Batasuna and Herri Batasuna had been suspended, and had amounted to a manifestation of freedom of expression.

– As regards the harassment of the municipal representatives of non-nationalist parties attributed to members of Batasuna in certain municipalities, the involvement of the applicant party in the events at issue had not been proved before the national courts.

– There was no evidence of the alleged existence of graffiti, posters and placards inciting militancy against the State in certain municipalities run by Batasuna. In any event, the texts and content of those items could not be considered to be referring to violence or terrorism but had to be seen as mere expressions of ideology.

68. An analysis of those eighteen incidents, separately or together, showed that they had not warranted a measure as severe as the dissolution of a political party. Furthermore, the dissolution measure had clearly been disproportionate to the aim pursued. As stated by the first applicant party, the dissolution of a political party was the only interference in the exercise of the right to freedom of association provided for by the LOPP, which made no provision for any intermediate sanction and did not allow for account to be taken of the seriousness of the alleged offences. Dissolution should be pronounced only where the activities of a party seriously jeopardised the survival of the democratic system.

69. In the light of the foregoing, the dissolution had amounted to interference in the exercise of the right to freedom of association that had not been prescribed by law. Moreover, that measure had not pursued a legitimate aim and had not been necessary in a democratic society.

70. In the alternative, the fact remained that the arguments submitted under Article 11 were also valid for Article 10 and that a violation of that provision should also be found.

(ii) The Government

71. The Government pointed out that section 9(2) of the LOPP provided that dissolution could only be pronounced in cases in which the conduct referred to therein was serious and repeated.

72. They submitted that the measure had been necessary to preserve democracy in Spanish society, and cited in that connection the Court's case-law according to which democracy was a fundamental feature of the European public order. They listed various factors which in their view warranted the adoption of such a serious measure, namely, the dissolved parties' explicit calls to violence, the high number of deaths from attacks carried out by ETA, the statements of the leaders of the dissolved parties, the use of certain symbols, the inclusion of individuals convicted of terrorist offences on the membership lists of the parties concerned and the acts and manifestations of support for terrorist activity. Moreover, the Government argued, having regard to the actual political nature of the parties in question, that the Supreme Court had struck a fair balance between the interests at stake in concluding that the applicant parties had constituted a threat to democracy.

73. In that connection, the Government stressed that the applicant parties had justified assassinations carried out by ETA, that they had legitimised violence as a means of achieving political objectives and that they had inflicted a climate of terror on citizens opposed to the demands of those who, like them, were part of the terrorist milieu (revolutionary tax). In that context, the Government referred to the case of *Gorzelik and Others v. Poland* ([GC], no. 44158/98, § 96, ECHR 2004-I) and pointed out that it was in the first place for the national authorities to assess whether there had

been a "pressing social need" to impose a restriction on the rights guaranteed by Articles 10 and 11, without prejudice to any supervision by the Court.

(b) The Court's assessment

(i) General principles

74. The Court observes at the outset that, notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy (see *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 44, ECHR 2005-I).

75. When it exercises its supervision in this regard, the Court's task is not to take the place of the competent national authorities but rather to review under Article 11 the decisions they delivered pursuant to their power of appreciation. This does not mean that the Court's supervision is limited to ascertaining whether a 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 in order to 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 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 v. Greece*, 10 July 1998, *Reports of Judgments and Decisions* 1998-IV; *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports* 1998-I; and *Partidul Comunistilor (Nepeceristi) and Ungureanu*, cited above, § 49).

76. According to a well-established principle of the Court's case-law, there can be no democracy without pluralism. The Court considers one of the principal characteristics of democracy to be the possibility it offers for debate through dialogue, without recourse to violence, of issues raised by various tides of political opinion, even when they are troubling or disturbing. Democracy thrives on freedom of expression. It is for that reason that freedom of expression as enshrined in Article 10 is applicable, subject to paragraph 2, not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see, among many other authorities, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24,

and *Jersild v. Denmark*, 23 September 1994, § 37, Series A no. 298). The fact that their activities form part of a collective exercise of freedom of expression in itself entitles political parties to seek the protection of Articles 10 and 11 of the Convention. (see *United Communist Party of Turkey and Others*, cited above, §§ 42 and 43).

77. The exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the 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*, cited above, § 40). That is especially so in relation to political parties in view of their essential role in "a democratic society" (see, for example, *United Communist Party of Turkey and Others*, cited above §§ 25, 43 and 46).

78. Moreover, it is well established in the Court's case-law that drastic measures, such as the dissolution of an entire political party, may only be taken in the most serious cases (see *Refah Partisi (the Welfare Party) and Others*, cited above; *United Communist Party of Turkey and Others*, cited above, § 46; *Socialist Party and Others v. Turkey*, 25 May 1998, § 50, *Reports* 1998-III; and *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 45, ECHR 1999-VIII). That is why the nature and severity of the interference is also a factor to be taken into account when assessing its proportionality (see, for example, *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 64, ECHR 1999-IV).

79. That said, the Court also reiterates that a political party may promote a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must in every respect be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds (see, *mutatis mutandis*, *Socialist Party and Others*, cited above, §§ 46 and 47; *Partidul Comunistilor (Nepeceristi) and Ungureanu*, cited above, § 46; *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 49, ECHR 2002-II; and *Refah Partisi (the Welfare Party) and Others*, cited above, § 98).

80. Admittedly, the Court has already considered that the constitution and programme of a political party cannot be taken into account as the sole criterion for determining its objectives and intentions. The content of the programme must be compared with the actions of the party's leaders and members and the positions they defend. Taken together, these acts and

stances may be relevant in proceedings for the dissolution of a political party, provided that as a whole they disclose its aims and intentions (see *United Communist Party of Turkey and Others*, cited above, § 58, and *Socialist Party and Others*, cited above, § 48).

81. The Court nevertheless considers that a State cannot be required to wait, before intervening, until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent. The Court accepts that where the presence of such a danger has been established by the national courts, after detailed scrutiny subjected to rigorous European supervision, a State may "reasonably forestall the execution of such a policy, which is incompatible with the Convention's provisions, before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime" (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 102).

82. The Court takes the view that such a power of preventive intervention on the State's part is also consistent with Contracting Parties' positive obligations under Article 1 of the Convention to secure the rights and freedoms of persons within their jurisdiction. Those obligations relate not only to any interference that may result from acts or omissions imputable to agents of the State or occurring in public establishments but also to interference imputable to private individuals within non-State entities. A Contracting State may be justified under its positive obligations in imposing on political parties, which are bodies whose *raison d'être* is to accede to power and direct the work of a considerable portion of the State apparatus, the duty to respect and safeguard the rights and freedoms guaranteed by the Convention and the obligation not to put forward a political programme in contradiction with the fundamental principles of democracy (ibid., § 103).

83. In this connection, the Court points out that the adjective "necessary", within the meaning of Article 11 § 2, implies a "pressing social need". Accordingly, the Court's overall examination of the question whether the dissolution of a political party on account of a risk of democratic principles being undermined met a "pressing social need" (see, for example, *Socialist Party and Others*, cited above, § 49) must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently and reasonably imminent; and (ii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a "democratic society" (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 104).

(ii) Application of these principles to the instant case

84. The Court will focus the first part of its examination on ascertaining whether the dissolution of the applicant parties met a "pressing social need". It will then assess, as appropriate, whether that measure was "proportionate to the legitimate aims pursued". In so doing, it will, like the Supreme Court, start from the premise (see paragraphs 30-33 above) that the two applicant parties constituted "a single entity". Accordingly, the reasoning set out below must be deemed to apply to both applicant parties.

(α) Pressing social need

85. The Court observes that in order to pronounce the impugned dissolution, the Supreme Court did not restrict itself to establishing that the applicant parties had not condemned the attacks committed by ETA, but described conduct enabling it to conclude that the parties concerned were instruments of ETA's terrorist strategy. It distinguishes two types of conduct in issue here, namely, conduct having encouraged a climate of social confrontation and conduct having implicitly supported ETA's terrorist activities. It notes, in particular, that during the demonstration organised by Batasuna in San Sebastian on 11 August 2002 and led by A.O., J.P. and J.A., the party leaders, not only had slogans in support of ETA prisoners been heard, but also threatening expressions such as "*borroka da bide bakarra*" (struggle is the only way), "*zuek faxistak zarete terroristak*" (you, the Fascists, are the real terrorists) or "*gora ETA militarra*" (long live ETA military). The Court notes further that in an interview with the newspaper *Egunkaria* on 23 August 2002, a Batasuna representative in the Basque parliament had stated that "ETA [did] not support armed struggle for the fun of it, but that [it was] an organisation conscious of the need to use every means possible to confront the State". Lastly, the Court notes the attendance of a Batasuna councillor at a pro-ETA demonstration, the fact that ETA terrorists had been made honorary citizens of towns run by the applicant parties and that the anagram of the organisation "Gestoras Pro-Amnistía", declared illegal by central investigating judge no. 5 at the *Audiencia Nacional* and included on the European list of terrorist organisations (Council Common Position 2001/931/PESC), had been posted on the website of the second applicant party.

86. As found by the national courts, such conduct bears a strong resemblance to explicit support for violence and the commendation of people seemingly linked to terrorism. It can also be considered to be capable of provoking social conflict between supporters of the applicant parties and other political organisations, in particular those of the Basque country. In that connection, the Court reiterates that in the actions and speeches to which the Supreme Court referred, the members and leaders of the applicant parties had not ruled out the use of force with a view to achieving their

aims. In those circumstances, the Court considers that the national courts sufficiently established that the climate of confrontation created by the applicant parties risked provoking intense reactions in society capable of disrupting public order, as has been the case in the past.

87. The Court cannot subscribe to the applicant parties' arguments that none of the conduct taken into account by the Supreme Court corresponded to any of the grounds for dissolution of a political party provided for by the LOPP. It considers, in fact, that the actions in question must be considered in their entirety as being part of a strategy adopted by the applicant parties to achieve a political aim essentially in breach of the democratic principles enshrined in the Spanish Constitution, and that they therefore corresponded to the ground for dissolution defined in section 9(2)(c) of the LOPP, that is, providing assistance and political support to the actions of terrorist organisations with the aim of overthrowing the constitutional order or seriously disturbing the public peace. Moreover, the Court cannot consider that the impugned conduct was covered by the protection afforded to freedom of expression, as claimed by the applicant parties, since the methods used fell outside the bounds set by the Court's case-law, namely the lawfulness of the means used to exercise that right and their compatibility with fundamental democratic principles.

88. The Court agrees with the grounds on which the Constitutional Court ruled that the refusal to condemn violence against a backdrop of terrorism that had been in place for more than thirty years and condemned by all the other political parties amounted to tacit support for terrorism. Although the applicant parties submitted that their dissolution had been based exclusively on that failure to condemn violent actions, the Court considers that this factor was not the sole basis for the impugned measure, noting in that connection that the Constitutional Court found that it was part of a series of serious and repeated acts and conduct, making it possible to conclude that there had been an accommodation with terror going against organised coexistence in the framework of a democratic State. In any event, the Court points out that merely because the dissolution was partly based on failure to condemn did not make it incompatible with the Convention. A politician's conduct usually includes not only his or her actions or speeches but also, in some circumstances, omissions or a lack of response, which can constitute acts indicating that politician's stance and be just as telling as any overtly supportive action (see, *mutatis mutandis*, *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 123 and 130, ECHR 2006-IV).

89. The Court considers that in the instant case the national courts arrived at reasonable conclusions after a detailed study of the evidence before them and sees no reason to depart from the reasoning of the Supreme Court concluding that there was a link between the applicant parties and ETA. Moreover, in view of the situation that has existed in Spain for many years with regard to terrorist attacks, more particularly in the "politically sensitive region" of the Basque Country (see, *mutatis mutandis*, *Leroy v. France*, no. 36109/03, § 45, 2 October 2008), that link may objectively be considered to constitute a threat to democracy.

90. The Court considers, furthermore, that the findings of the Supreme Court respond to the concern to universally condemn justification for terrorism, as evidenced at European level by the European Council framework decision on combating terrorism, Article 4 of which refers to incitement to terrorism; Council Common Position of 27 December 2001 on the fight against terrorism – adopted soon after the attacks of 11 September 2001, it obliges States to take measures to suppress "active and passive support" to terrorist organisations and individuals; Resolution 1308 (2002) of the Parliamentary Assembly of the Council of Europe on restrictions on political parties in the Council of Europe member States; and the Council of Europe Convention for the Prevention of Terrorism, which came into force on 1 June 2007 and was signed and ratified by Spain. Article 5 of that Convention provides for "public provocation to commit a terrorist offence" to be defined as an offence. Furthermore, Article 10 recognises the responsibility of legal entities which participate in terrorist offences defined by the Convention and establishes as an offence, under Article 9, participation in the commission of the offences in question.

91. Having regard to the foregoing, the Court accepts the findings of the Supreme Court and the Constitutional Court and considers that the actions and speeches imputable to the applicant political parties, taken together, give a clear picture of a model of society conceived and advocated by them, which is incompatible with the concept of a "democratic society" (see, conversely, *Partidul Comunistilor (Nepeceristi) and Ungureanu*, cited above, §§ 58-60). Accordingly, the penalty imposed on the applicant parties by the Supreme Court and upheld by the Constitutional Court can reasonably be considered, even in the context of the narrower margin of appreciation enjoyed by the States, as meeting a "pressing social need".

(β) Proportionality of the impugned measure

92. It remains to be determined whether the interference complained of was proportionate to the legitimate aim pursued.

93. In this regard, the Court has found that the interference in question met a "pressing social need". Since the applicant parties' political plans were incompatible with the concept of a "democratic society" and entailed a considerable threat to Spanish democracy, the sanction imposed on the

applicant parties was proportionate to the legitimate aim pursued, within the meaning of Article 11 § 2 (see *Refah Partisi (the Welfare Party) and Others*, cited above, §§ 133 and 134).

C. Conclusion of the Court as to Article 11

94. After having ascertained, from the information available to it, that there were convincing and compelling reasons to justify the dissolution of the applicant political parties, the Court has held that that interference corresponded to a "pressing social need" and was "proportionate to the aim pursued". The dissolution can therefore be deemed to be "necessary in a democratic society", notably in the interest of public safety, for the prevention of disorder and the protection of the rights and freedoms of others, within the meaning of Article 11 § 2.

95. In the light of the foregoing, the Court concludes that there has been no violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

96. The applicant parties also relied on Article 10 of the Convention, the relevant parts of which provide:

> "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. ...
>
> 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."

97. The Court considers that the questions raised by the applicant parties under this Article concern the same facts as those raised under Article 11 of the Convention. Consequently, it does not find it necessary to examine them separately.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 11 of the Convention;

2. *Holds* that it is not necessary to examine separately the complaints under Article 10 of the Convention.

Done in French, and notified in writing on 30 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President