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REPORT

“THE REGULATION OF POLITICAL PARTIES IN SPAIN”

by

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The regime of political parties in Spain was in its origin totally in line with the most tolerant ones in Europe, as expressed in the first law on political parties in 1978. After Franco dictatorship, political parties took the central role in political life which Francoism had denied to them. The authoritarian regime did not only prohibit parties but it also spread a negative perceptions: they were an unnecessary evil that contributed to divide society.

Parties performed an essential role in transition to democracy, channelling demands from civil society but also contributing to the creation of a climate of relative social peace that among other factors, created a peaceful transition in a moment in which de-stabilising forces threatened the fragile Spanish democracy.

Acknowledging this background, article 6 of the Spanish constitution emphasises the role of political parties as instruments for political participation and it merely points out that *their creation and the exercise of their activities are free in so far as they respect the Constitution and the law*. The 1978 law (previous to the Constitution) remained unchanged until 2002. What explains the permanence of the law? The post-transition context during the 1980s was one of extreme tolerance even towards political forces that held radical and extremist positions and even towards parties that explicitly supported terrorism. It would not be exaggerated to say that for many Spaniards, the defence of freedom of expression was taken to the most extreme position as a reaction to the excesses of Francoism.

Progressively, though, Spanish political landscape refined. Many of the radical and extremist forces that existed in the 1970s and 1980s vanished or become irrelevant. In parallel, Spanish society grew more assertive towards those who were seen as supporting terrorism. ETA kidnapping and eventual killing of Miguel Ángel Blanco, a young local representative of PP in 1997 provided a turning point in the mood of public opinion. The 11-S terrorist attacks contributed also to an even more restrictive attitude towards those endorsing terrorism

Whilst this provided the background, the second term of the PP in office (2000-2004), equipped with absolute majority and, hence, not relying on the support of Basque nationalists, provided the window of opportunity for a revision of the legislation on parties in a more restrictive sense. The Socialist party supported the reform and this allowed mustering a large support for the draft law despite the reluctance of regional parties.

Main features of the 2002 Law on Political Parties

The most important innovation of the 2002 law is, as the preamble itself recognises, the regulation of a judicial procedure for the dissolution of a political party that fits within the items listed in the law.

Competent organ

The competent organ for this decision is the Tribunal Supremo (Supreme Court) and the preamble of the law quotes a Sentence of the Constitutional which recognises that illegalization of a political party must happen within ordinary jurisdiction. A special chamber of the Supreme Court examines the proceedings for illegalization. This chamber is made of: the president of the Supreme Court, the presidents of each of the 5 chambers and the most senior and newer magistrate of the each of the chambers; in total, 16 persons.

The recourse to ordinary jurisdiction creates a difference in relation to systems in which Constitutional Courts has the competence to proceed with illegalization. However, in Spain, there is always the possibility of appeal to the Constitutional Court by means of the *recurso de amparo* (i.e. an appeal for the protection of fundamental rights and freedoms).

Procedure

The government by means of the state's attorney may submit a demand for initiating an illegalization procedure. Additionally, both chambers of the Spanish Cortes, the Congress or the Senate, may request, through the mechanism that their respective governing bodies (i.e. Mesas) determine, the government to submit a demand. The government is obliged to proceed. Both of these agents are, typically, political ones.

The Spanish system relies additionally on a third agent; the Fiscal Ministry (i.e. the Prosecutor Officer) which is also entitled to submit a demand for illegalization. The Prosecutor Office is said to have in Spain a more autonomous role than in other Western countries (Diez Picazo). *Prima facie*, this applies also to the chief prosecutor (i.e. the *Fiscal General del Estado*) which even though the government appoints him/her, it cannot cease him/her.

However, in practice, the application of this specific configuration to the issue in discussion, the illegalization of political parties, does show that in Spain, the performance of the chief prosecutor has closely mirrored the preferences of the incumbent government. The chief prosecutor has initiated the three cases that the Supreme Court has so far known. Moreover, in the period between 2004 and 2007, the main opposition party asked repeatedly the chief prosecutor to initiate proceedings against Basque political forces allegedly linked to the terrorist organization ETA. Since this request contradicted the criterion of the government, the chief prosecutor resisted these demands. Once the government changed its policy in 2007, the chief prosecutor was prepared to initiate to processes against these political parties.

Typified offences

See on this the summary prepared by the Secretariat

It must be added that the Law on Political Parties supplements the cases that the Spanish Criminal Code typifies as "illicit associations" (art, 515) and which apply to political parties. These cases are the following:

- Associations (i.e. including political parties) whose objective may be committing a crime or fault
- Armed bands and terrorist groups and associations
- Paramilitar organisations
- Those promoting discrimination, hate or violence appealing to ethnical, racial, gender, nationality, sexual orientation, family situations, sickness, handicapped condition, ideology, religion or beliefs grounds.

In relation to the criminal code and the former 1978 law, the current regulation perfects the definition of situations in which links may exist between political groups and terrorist organizations through a number of mechanisms.

Effects

A declaration of illegality implies:

- the dissolution of the political party and the embargo of all its properties.
- the cancellation of its inscription in the Register of Political Parties,
- the immediate cease of all its activities and the initiation of a process of liquidation of all its properties that revert to the Public Treasury.

Perhaps the most important effect of a sentence of illegalization is that translates the consideration of illegal to succeeding parties and/or groups which want to continue the activity of the one suspended. This is a mechanism for preventing that fraudulent parties may simply by-pass a sentence of illegalization and submitting the same

persons and/or programmes to successive elections. This special follow-up procedure is activated by the Home Affairs Ministry (the one with the competence to register parties), the Prosecutor office (Ministerio Fiscal) and the parties to the process. The special chamber of the Supreme Court remains the competent court for these demands.

Cases

Cases cover both illegalization and non-inscription of parties or candidatures, or cancellation of candidatures in application of the principle of imprecidence of succession or continuity of an illegal party.

1. Illegalization

There are three cases of illegalization:

On 17th April 2003, the Supreme Court ordered the dissolution of the Basque political groups *Herri Batasuna-Euskal Herritarrok* (HB-EH) and *Batasuna* because of their relation with ETA. The Constitutional Court rejected the appeal that HB submitted and the case is still pending in front of the ECHR. The effect of the illegalization did not extended to the HB members in the Basque regional parliament, who could keep their seats, even though the dissolution of the parliamentary group was ordered.

On 16th May 2008, the Supreme Court unanimously declared illegal (with the consequence of its dissolution) the Basque political party *Acción Nacionalista Vasca* (ANV). The demand was simultaneously presented by the government and the chief prosecutor. Representatives of the party in local councils could keep their seats and receive their salaries but their municipal groups could not receive subsidies and their locals would be closed.

On 18th September 2008, the Special Chamber decided once again unanimously the illegalization of the Basque political party *Partido Comunista de las Tierras Vascas* (PCTV). Again, the demand was simultaneously presented by the government and the chief prosecutor. Representatives in the Basque parliament adscribed to this party (9) could keep their seats but, again, their parliamentary group (*Ezker Abertzalea*) was ordered to dissolve.

2. Prohibition of inscription of political parties and candidatures

After the 2003 sentence, the special chamber of the Supreme Court had also prohibited the inscription of political groups such as *Herritarren Zerrenda* (HZ); *Auker Gutziak* (AG); *Abertzale Sozialistak* (AS) and *Abertzale Sozialisten Batasuna* (ASB).

On 3rd May 2003, the special chamber annulled 241 candidatures presented in the Basque Country and Navarre to the 25th May 2003 local elections. The court reasoned that these candidatures followed a strategy of succession of Batasuna.

On May 2004, the Court annulled the candidatures of *Herritarren Zerrenda* (HZ) to the EP elections.

On 200 the Court annulled the candidature of *Auker Gutziak* (AG) for the Basque regional elections on 17th April. Again, the court said that there was continuity with the activity and objectives of former illegalised parties (i.e.HB).

On 5th May 2007, the Court annulled all the candidatures that *Abertzale Sozialistak* (AS) presented for the local elections. However, independent candidatures which the government and the prosecutor challenged simultaneously on the grounds that they continued activity and objectives of HB were not annulled. On 6th May, the Court also annulled the candidatures presented by *Acción Nacionalista Vasca* (ANV).

A politically inspired use of the procedure

There is little doubt that political considerations have inspired whether to use or not the procedure of illegalization. The majoritarian PP government in 2003 demanded the first illegalization and, from this onwards, a pure application of the principle of improcedence of succeeding or continuing organisations allowing impeding the register of any other party connected to Batasuna.

In 2004, a new socialist government took office and after obtaining parliamentary endorsement, it became involved in conversations on the end of violence with the so-called environment of ETA. In this context, no cases were initiated either by the prosecutor or the government itself. The process came to an abrupt end the last day of 2006, when ETA bombed Madrid Barajas T4 terminal and killed two people. From then onwards, demands for and, hence, sentences annulling candidatures and declaring illegal certain parties resumed.