

**ALL IDEOLOGIES AND POLITICAL PROJECTS ARE NOT LEGITIMATE.**  
Political Parties that Feed off or Use Terrorism to Achieve Political Goals

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**Summary**

The premise that all ideologies and political projects are legitimate merits consideration. Can one defend the legitimacy of political projects which foment racism, xenophobia, genocide, discrimination, fascism, Nazism, totalitarianisms of any kind, or that feed off or use terrorism to achieve their ends?

In Spain this issue is regulated by the Constitutional Law for Political Parties 6/ 2002. In due application of the Law for Political Parties the Supreme Court illegalised Batasuna. On 22 June 2003, Batasuna filed an appeal for protection before the Constitutional Court. The Constitutional Court rejected Batasuna's claim as it deemed credited that Batasuna had violated democratic principles looking to cause deterioration or destruction of the regime of liberties by "systematically promoting, justifying or exonerating attacks against the life or integrity of persons or the exclusion or persecution of people because of their ideologies"; "promoting, facilitating or legitimising violence as a means for attaining political objectives or for getting rid of the conditions necessary for the exercise of democracy, of pluralism and of public liberties"; "complementing or politically supporting the actions of terrorist organisations".

## The Spanish Constitutional Law for Political Parties

As is well known, in Spain the question of whether any idea or political project is legitimate derives from the preparation of what would in the end be Constitutional Law for Political Parties 6/ 2002 of 27 June, within the framework of which the illegalisation of Batasuna was undertaken. This Law, we should not forget, was approved on 4 June 2002 by the General Courts with an overwhelming majority: 304 votes in favour (PP, PSOE, CiU, CC and PA) and 16 votes against (IU, PNV, EA and BNG).

As set out in the corresponding Statement of Reasons, the objective of this Law is to “guarantee the functioning of the democratic system and the essential liberties of citizens, impeding a political party from, in a reiterated and serious manner, attacking that democratic regime of liberties, justifying racism or xenophobia or politically supporting the violence and activities of terrorist groups.” Especially “if we consider that, because of terrorist activities, it is absolutely necessary to identify and differentiate with complete clarity those organisations which defend and promote their ideas and programmes, whatever they may be, even those which are looking to revise the institutional framework, while scrupulously respecting democratic methods and principles from those others which base their political actions on connivance with violence, terror, discrimination, exclusion and the violation of rights and liberties.

On 22 June 2003, Batasuna filed an appeal for protection before the Constitutional Court with regard to the Supreme Court Sentence which illegalised that party. The Constitutional Court, in the Court Order of 25 July denied the request for suspension of the aforementioned Sentence requested by Batasuna. The Constitutional Court retains that, in said Sentence of 27 March 2003, the Court deemed as accredited

“after evaluation of the Evidence presented during the proceedings, that the political parties referred to and, specifically, in what is of interest to the matter at hand, the political party Batasuna, through their activities have violated democratic principles, after the entry into force of the LOPP – Constitutional Law for Political Parties – thereby looking to cause the deterioration or destruction of the regime of liberties by carrying out, on a serious, systematic and reiterated basis, the conducts, inter alia, set out in article 9.2, a), b) and c) of the LOPP”<sup>2</sup>

<sup>2</sup> That is, respectively, “systematically violating fundamental liberties and rights, promoting, justifying or exonerating attacks against the life or integrity of persons or the exclusion or persecution of people because of their ideologies”; “promoting, facilitating or legitimising violence as a means for attaining political objectives or for getting rid of the conditions necessary for the exercise of democracy, of pluralism and of public liberties”; “complementing or politically supporting the actions of terrorist organisations in order to obtain their goals of subverting the constitutional order or seriously altering public peace, looking to subject the public powers, certain persons and groups in society or the general populace to a climate of terror, or contributing to multiply the effects of terrorist violence and of the fear and intimidation generated thereby”.

Additionally, the Constitutional Court highlights that the concurrence of the above mentioned conducts in the activities of illegalised and dissolved political parties was also observed by the Supreme Court, which considered duly accredited the repetition and accumulation of, inter alia, the following conducts, which are specifications of those described previously:

“giving express or tacit support to terrorism, legitimating terrorist actions in order to achieve political goals outside of pacific and democratic means, or exonerating and minimising their significance and the violation of fundamental rights such actions represent” [article 13.a) LOPP]; “accompanying the action of violence with programmes and acts that promote a culture of hostility and civil confrontation linked to the activities of terrorists, or which are aimed at intimidating those who oppose such violence, making them desist, neutralising or socially isolating them and forcing them to live in an environment of coercion, fear, exclusion or in which they are stripped of their basic liberties, in particular, of the liberty to voice their opinions and to participate freely and democratically in public affairs” [article 13.b) LOPP]; “using as instruments of party activities, together with their own or in substitution thereof, symbols, messages or elements which represent or are identified with terrorism or violence and with the conducts associated therewith” [article 13.d) LOPP]; “habitually collaborating with entities or groups that systematically act in accordance with a terrorist or violent organisation, or that protect or support terrorism or terrorists” [article 13.f) LOPP]; and, finally “promoting, giving coverage for or participating in activities which are aimed at rewarding, giving homage to or celebrating terrorist or violent actions or those who commit or collaborate in such actions” [article 13.h) LOPP].

### **Political Parties or Ideologies not compatible with Democracy**

The concept that all ideologies and political projects are legitimate and, as a result, must be able to publicly defend themselves (especially if they have support from the citizens) merits consideration. First of all, common sense tells us that certain ideologies and certain political projects should not be tolerated, not even in democratic systems. Can the legitimacy of political projects which, for example, foment racism, xenophobia, genocide, extermination, discrimination, fascism, Nazism, totalitarianisms of any kind, or that feed off or use terrorism to achieve their ends, be defended? Should democracy give such ideas and projects channels for expression? As stated above, common sense would say no. But, what is more, prevailing Law would indicate the same. Good evidence of this, for example, are the international treaties which expressly prohibit some of these conducts, as well as the legislation of certain States which, also expressly,

not only prohibits certain ideas and political projects, but which also typifies them as crimes in their Penal Codes<sup>58</sup>.

In conclusion, experience and the practice on which it is based, bring to light the fact that while democracy is the most satisfactory political regime for peaceful and free coexistence, it is also fragile. Consequently, as it subject to being attacked and destroyed, democracy also has the right – and the obligation – to defend itself. This issue, which could have been considered to be merely a theoretical question in Europe, has taken on importance. What is more, it has proven to be absolutely real.

### Jurisprudence from the European Court of Human Rights (ECHR)

The ECHR has been taking on this issue for some time in relation to the measures to dissolve or illegalise political parties adopted by different governments in Turkey, but it wasn't until the Sentence of 31 July 2001, set forth in the case of Refah Partisi (The Welfare Party c. Turkey) and confirmed by the Grand Chamber of the ECHR in its Sentence on 13 February 2003, that this judicial body first issued a sentence declaring that a national measure for illegalisation or dissolution was in conformity with the European Convention.

This jurisprudence, apart from making it clear that not all political parties nor all ideologies are compatible with the democracy that serves as inspiration for the European Convention on Human Rights and do not merit protection under that Convention, acquires additional relevance from the perspective of Spain where, since 2002, the political branch of a terrorist organisation was able not only to participate in political activities, but even to govern certain institutions (on its own or in coalition with other nationalist Basque parties).

These circumstances and the consequences deriving from this situation were clearly described by the Council of Europe Commissioner for Human Rights in the Report resulting from his visit to Spain, and in particular to the Basque Country, from 5 to 8 February 2001. This can be summarised in the fact that in the Basque Country all members of the opposition in the Basque Parliament and all non-nationalist mayors and local representatives, as well as many citizens of all kinds have police protection on a daily basis or are persecuted for their ideas. Although it came late, the Law for Political Parties permitted the illegalisation of Batasuna and of the formations preceding it, many of the members of which have been condemned in the criminal courts for forming part – directly or indirectly - of the terrorist organisation.

<sup>58</sup>- This is the case for the Spanish Penal Code which, for example, typifies the approval of terrorism, incitation to genocide and xenophobia as crimes.

In response to the argument set forth by the Basque nationalist parties and by the Basque government itself, that this Law persecutes ideas and that all political projects are legitimate, jurisprudence from the ECHR says just the opposite: that not all political projects or all ideologies are legitimate. What is more, some should be prohibited. In this case, additionally, with the guarantee that there is an international judicial body with obligatory jurisdiction which will ultimately be responsible for evaluating and determining whether or not the national measure for illegalisation or dissolution is in compliance with the international obligations set out in the European Convention on Human Rights.

However, Basque nationalists refuse to accept this and at the same time reiterate their opposition to the Law for political parties and demand that it be repealed<sup>59</sup>.

<sup>59</sup>- A final example of this attitude was the No to the Law Proposition presented and defended on 5 October 2004 by the Congressional Representative for Eusko Alkartasuna, Begoña Lasagabaster, which called for the repeal of the aforementioned Law, and contained a Motion requesting that ETA prisoners be moved to prisons near their place of origin. Both initiatives were rejected with the votes of PSOE, PP and CC. EA, PNV, CiU, ERC and Izquierda Verde voted in favour (*El País*, 6 October 2004, pg 18). The same scenario arose in the context of the debate on the state of the Nation in 2006