

Candidatures declared illegal in the Basque Country

In recent days we have witnessed frenzied legal action against Basque candidatures to posts in local and provincial elections, including the Parliament of Navarra, on the 27th of May of this year.

To summarise briefly, the State Prosecutor's Office and State Legal Service brought lawsuits against the electoral candidatures that had been presented collectively as ASB (*Abertzale Sozialisten Batasuna*). Their supporters had gathered 83,000 signatures, a requirement for inclusion on the ballots. An additional suit was brought against a legal party registered as such for a number of years, known as ANV-EAE- *Acción Nacionalista Vasca –Eusko Abertzale Ekintza*. In the ASB case, they allege that the banned party Batasuna is behind ASB working "the two-pronged strategy of terrorist and political activity adopted by ETA" and so they should be prohibited from elections. In the ANV case, most of their lists are "contaminated or infiltrated" by members of Batasuna, that is, "through the appearance of personal or individual participation, what has really been created is that the very party which was declared illegal is the one that is behind the contested candidature." Therefore, the State Prosecutor opted for a strange benchmark for measuring the "contamination" of the lists of the historical nationalist group ANV, and this happens because they include "at least three candidates with a direct and relevant affiliation with the illegal party, as candidates of that party in prior electoral processes or for holding or having held organic posts in their representation."

To obtain this information, the State Prosecutor's Office and State Legal Service availed of files of an ideological nature on 15,000 citizens according to some sources, and 19,000 according to others. These data were contrasted with the 11,700 candidates that would appear on the ASB's 246 and the ANV's 133 contested lists.

On 5 May, the Supreme Tribunal's Article 61 Special Court handed down a unanimous decision prohibiting all 246 electoral lists presented by ASB based on electoral legislation. The Supreme Tribunal took a different tack for the ANV, as the case gave rise to a legal debate on whether or not there was any basis for banning lists of a perfectly-legal party, and therefore their discussions were based on the Political Parties act. In the end, their decision forbade the registration of the ANV's 133 lists.

Spain's High Tribunal upholds the concept that individuals that have participated in illegal parties may not run for election. These parties include Herri Batasuna, Euskal Herritarrok and Batasuna, as part of the so-called "theory of fraudulent succession". But this criterion has also been extended to include participation in other candidatures or parties which over time have been declared illegal – AuB- Autodeterminazioaren Biltzarrak and the lists of candidates to municipal offices in 2003, Aukera Guztiak, Herritarren Zerrenda- as well as those who participated in the electoral process as proxies or representatives.

After the defence for ASB and ANV presented their appeals to the Constitutional Tribunal, considering that fundamental rights were being violated, the Supreme Tribunal's decision was left to stand and so all of the candidatures of the nationalist and socialist groupings, along with the ANV's 133 candidatures, were invalidated. In their unanimous decision, the Constitutional Tribunal concurred that the electoral lists presented together under the common denominator of *Abertzale Sozialistak* constituted a succession or continuity of previously-banned parties, while the rest were "infiltrated" by Batasuna, according to the Supreme Court's terminology.

In conclusion, this decision closes the process which denies the right to the electoral process of the ASB candidatures endorsed by over 83,000 signatures of Basque citizens, and 133 lists in the case of ANV, such that their candidatures will be present in fewer than half of Basque municipalities and only 15% of the citizenry may support them in provincial elections.

According to the representatives of the State, the annulment of thousands of candidates, many of whom had no relation with the illegal parties, is not a violation of rights.

On the contrary, we believe that there has been at the very least a violation of the right to privacy of those who were investigated due to their participation in prior electoral processes or for holding office in institutions, by virtue of other criteria that seem to have been used to fill out their files in the investigation. The citizenry is subjected to a suffocating degree of social control, as expressed by the European Democratic Lawyers in their declaration made on 21 April in Munich.

We also consider that whoever accepts in legal terms the language used by the State Prosecutor's Office and State Legal Service, i.e. "contamination", "infiltration", "invasion", participates in the discrimination of a sector of the citizenry in a persistent expansion of a policy that irreversibly precludes them from exercising their right to stand for election. Similarly, the lack of clarity, the ambiguity and the extent of the deeds that are considered "contaminating", along with the denial of access to those files, generates a sense of legal insecurity due to the complete lack of knowledge of whose political rights have been restricted and why, and whose have not.

Furthermore, resorting to the procedure derived from the Political Parties act or electoral legislation with the aim of hastening decisions for mere political purposes, disassociating this dispute with the electoral campaign period, has had a serious impact on the right to defence.

Finally, these decisions, in evidence of their utterly low legal standard, and on the contrary, the political determination that inspires them, has a serious impact on the voter's rights, denying Basque citizens of the right to vote for a political option with deep roots in society. The repeatedly-denounced criminalisation of politics, or conversely, the politicisation of justice has helped to generate, in this specific case, an insurmountable democratic deficit, which furthermore dashes the hopes of political normalisation of an absolute majority of Basque society.