Constitutional Court Judgment No. 126/2009, of May 21 (Unofficial translation)

The Second Chamber of the Constitutional Court comprising the Senior Judges Guillermo Jiménez Sánchez, President, Vicente Conde Martín de Hijas, Elisa Pérez Vera, Eugeni Gay Montalvo, Ramón Rodríguez Arribas and Pascual Sala Sánchez, has delivered

IN THE NAME OF THE KING

the following

J U D G M E N T

In the appeal for protection of fundamental rights number 4630-2009, lodged by the electoral coalition "Iniciativa internacionalista - La solidaridad entre los pueblos", represented by the Court Agent (procurador) Federico Pinilla Romeo and assisted by Legal Counsel Doris María Benegas Haddad, against the Order of 16 May 2009 issued by the Special Chamber of the Supreme Court as referred to in art. 61 of the Organic Law of the Judiciary, in accumulated proceedings nos. 5-2009 and 6-2009, as part of the incidental evidence of enforcement procedure number 1-2003, deriving from accumulated proceedings nos. 6-2002 and 7-2002, on the outlawing of political parties. The State Attorney entered an appearance. The Public Prosecutor entered an appearance. The Rapporteur was the Senior Judge Eugeni Gay Montalvo, who expressed the opinion of the Chamber.

II Legal Findings

1. This claim for protection of fundamental rights is lodged against the Order of the Special Chamber of the Supreme Court referred to in art. 61 of the Organic Law on the Judiciary (OLJ) of 16 May 2009, issued in the accumulated proceedings nos. 5/2009 and 6/2009, arising from the cases of enforcement nos. 1/2003 and 2/2008 of the Judgments of the same Chamber 27 of March 2003 and 22 September 2008, cancelling the Decision of the Central Electoral Board of 11 May 2009 with respect to its declaration on the candidature of the electoral Coalition "Iniciativa Internacionalista-La solidaridad entre los Pueblos" for the European Parliament, convened pursuant to Royal Decree 428/2009 of 3 April which was declared to be unlawful.

The electoral coalition lodging the petition for protection accuses the appealed Order of infringement on various grounds, and violation of various fundamental rights, a full and detailed explanation of which is contained in the background to this Judgment. These complaints for the sake of order and brevity herein may be synthesised, without prejudice to the details and specifications addressed when studying them further, as consisting of two parts, namely, those which are eminently procedural and those with substantive content. The aforementioned infringement of the principle of legality and legal security (art. 9 SC) in respect of arts. 44, 49.5 of Organic Law 5/1985 of 19 June on general electoral system (OLGES) and 12.1 B) and 3 and transitory provision section two of Organic Law 6/2002 of 27 June on political parties (OLPP), due to the inadequacy of the procedure followed for the declaration of cancelling the proclamation of their candidacy, thus the infringement claimed of the right to a public trial without delays and with all the guarantees (art. 24.2 SC) in respect of the right to effective judicial protection without this under any circumstances leading to a lack of defence (art. 24.1 SC) and with the right to the means of proof pertinent to their defence (art. 24.2 SC) due to the brevity of the term granted to examine the claim, formulate allegations and propose evidence, and also for the Chamber's use as a base for evidence, reports of the National Police and the Guardia Civil. With respect to the substantive complaints, the electoral coalition, having invoked the right to participate in public matters (art. 23 SC) in relation to articles 6 and 22.1 SC alleges in summary that the appealed Order, based on an arbitrary and illogical evaluation of the

evidence submitted, has deprived it from presenting its candidacy to the European Parliamentary Elections, promoted by two legal political parties, neither of which form part of the so called “Batasuna complex” nor do they maintain organic relations or functional dependence on ETA, and have stated furthermore their clear and marked repudiation of violence, and the leaders and associates of which have not been found guilty of any crimes of terrorism. Finally, the violation of ideological freedom is claimed (Art 16.1 SC) in respect of the prohibition of discrimination in art. 14 SC, as the coalition has been prevented from participating in the European Parliament Elections, despite the fact that no link has been attested between the appellant coalition and any dissolved political parties rendered illegal through the Courts.

The State Attorney and the Public Prosecutor’s Office, on the grounds explained in the background to this Judgment, are opposed to acceptance of the petition for protection.

2. The claimant coalition has not qualified its appeal for protection of fundamental rights as electoral, in accordance with the nature of the judicial proceedings through which the actions giving rise to the Order of the Special Chamber of the Supreme Court referred to in art. 61 OLJ which was simply the source of enforcement of the Judgment on the illegality of specific political parties of 27 March 2003 and 22 September 2008. That is, a procedure heard in the context of the terms of art. 12.3 OLPP and outside therefore, that specifically considered in at. 49 OLREG.

Nevertheless, this appeal procedure was held in accordance with the terms of aforementioned art. 49.4 and 5 OLREG for the reasons expressed in JSC 112/2007 of 10 May (LF2) and 43/2009 of 12 February (LF2).

We stated at the time and we reiterate herein that “since, in order to characterise and qualify the constitutional process in question here, both the definition and circumstances of the judicial procedure which preceded it and the interpretation which the claim for protection makes of that characterisation and qualification, neither definition, albeit the former jurisdictional or the latter the party’s -determine absolutely, in this case or in any other similar proceedings, the final decision which, under law, in observance of the Constitution and its Organic Law (art.1.1) this Court is required to take, as it is quite clear that the consideration by the parties of the procedure to be followed, is not, insofar as the constitutive elements of the action filed are not altered, binding for this jurisdiction, as nor should be, in another area, the prior definition given by the Supreme Court, in this case, to the proceedings it had heard, as the constitutional jurisdiction (...) has its own legality - constitutional and ordinary by which it is governed, and indeclinable powers of interpretation and, if necessary, of integration in that Constitution which, moreover, is the sole legislation binding on this Court" (ibidem).

For the reasons thus expressed at the time, we must now conclude as then, that this time, that this claim for protection of rights "despite the singularity of the previous judicial channel, has as an adequate source of procedure that which is described in sections 3 and 4 of art. 49 OLGES”. In effect, "[the "specific mode of appeal for protection of fundamental rights (JSC71/1986, of 31 May, and 1/1988, of 13 January) as described in the Organic Law on General Electoral Systems which provides expressly as a source of protection against judgments heard or delivered by the Contentious-Administrative Courts in appeals against the proclamation of candidacies and candidates (art. 49.3 and 4 OLGES) or also through explicit remission against judgments delivered by the Chamber of the Supreme Court regulated in art . 61 OLJ when it is a question of appealing against the proclamation or exclusion of candidacies presented by groups of electors referred to in art. 44.4 of the Organic Law on general electoral systems (that is, pursuant to this last precept, those who continue or pursue the activity of a political party declared judicially illegal, and dissolved or suspended). Thus, the Decision of the Plenary Session of the Constitutional Court of 20 January 2000, which approved the regulations on processing appeals for protection of human rights referred to in the Organic Law 5/1985, of 19 June, on general electoral systems, states in its art. 1 that "Appeals for protection as referred to in articles 49, sections 3 and 4, and 114, section 2, of the Organic Law 5/1985, of 19 June, on the general

electoral system, shall be lodged and processed in accordance with the requirements established in articles 49 and 81 of the Organic Law 2/1979, of the Constitutional Court, and according to the terms of this Agreement", with art. 2 indicating specific "rules for filing and procedure" and a term of two days for filing "if the application for an appeal for protection were lodged against the decisions of Electoral Boards on proclamation of candidacies and candidates (arts. 47.3 and 49 of the Organic Law 5/1985, of the general electoral systeml)"" (JCC 112/2007, of 10 May, LF 2; doctrine which is reiterated in JCC 43/2009, of 12 February, LF 2).

In this case the application for protection of rights concludes with the petition that, having recognised the infringement of specific fundamental rights, the “iniativa internacionalista- La solidaridad entre los pueblos” candidacy announcement made by the Central Electoral Board should be confirmed for the European Parliament Elections. This is, in short, a “petition for protection of fundamental rights referring directly and unequivocally to the decisions on the proclamation of candidacies and which, as a result, this Court is required to proceed according the rules of its Decision of 20 January 2000" (JCC 112/2007, of 10 May LF 2; in the same sense JCC 43/2009, of 12 February LF 2), as the positive result of the claim to permit the candidacy in question to participate in the next election would only be feasible if the appeal were successful, if this is filed through the channels of protection of electoral rights. Certainly, the ordinary protection proceedings would also permit that participation if, having admitted the case to appeal, the appealed order were to be suspended. Additionally, nothing would prevent, even were this cautionary measure not to be adopted, and the elections were held without the presence of the candidacy whose opposition is discussed here, and the claim were to be accepted, the effect of cancelling said elections with the requirement to repeat them. In both cases, however, in addition to the serious institutional and political disturbance inherent in the cancellation of an electoral procedure, would lead to uncertainty on the outcome of the representational mandates of those persons included in the affected institutions, in that this may implicate detriment to democratic authority and legitimacy, with these effects indubitably being clearly disturbing and undesirable, which the specific regulation of the procedure for protection of rights attempts to avoid in the case of appeals against the proclamation of electoral candidacies, and for this reason it is appropriate to channel the claim of the appellant coalition for processing the case through the specific procedure contained in art. 49 OLGES, designed, ultimately to assess judgments which are potentially damaging to the rights, the exercise of which are specified in the proclamation of electoral candidacies, that is, precisely judgments of the kind which is appealed herein (JCC 112/2007, of 10 May, LF 2; 43/2009, of 12 February, LF 2).

In the interests, in short, of the nature, content and scope of the contested judgment, the claim put before this Court and the terms in which, if appropriate, its perfect satisfaction would be feasible without prejudice to other rights and interests, it would be appropriate to hear this appeal for protection of fundamental rights according to art. 49 OLGES, which, as has been stated on previous occasions, has only had the effect of reducing terms, which is inevitable for achieving effective protection of the rights claimed in this appeal for protection, however not, as has also been indicated, deprivation of the guarantees inherent in the constitutional process of protection of rights (JCC 112/2007, of 10 May, LF 2; 43/2009, of12 February, LF 2).

The previous statements, which dispense with the fact of the appellant having been in any way deprived of its guarantees and assurances, do not preclude further reiteration that the contentious electoral appeal is conceived initially for less complex cases than those included in art. 44.4 OLGES, and therefore, we repeat once more, there is a pressing need for legislation to make every endeavour to achieve a better procedural system which will combine the procedural guarantees of art. 24 SC with notions of speed, peremptoriness, preclusion of terms and concentration of the stages of allegations and evidence proper to the aforementioned procedure

(JCC 85/2003, of 8 May, LF 9; 68/2005, of 31 March, LF 4; and 110/2007, of 10 May , LF 3; 49/2003, of 12 February, LF 2).

3. Prior to examining the claimant's complaints, several specific comments are appropriate in order to adequately define the object of this appeal.

a) It is appropriate to point out, as the State Attorney has pointed out in his brief of allegations that, even when a claim for protection invokes the infringement of various precepts of the European Convention on Human Rights and other international texts, it is not this Court's remit when hearing the appeal to examine whether or not the international texts which bind Spain in matters of human rights are or are not observed per se, but to ascertain the observance or the infringement of constitutional precepts which recognise the fundamental rights and public freedoms protected by the Constitution (arts. 53.2 SC and 41.1 OLCC), without prejudice to the fact that, due to the mandate of art. 10.2 SC, such precepts should be interpreted in conformance with the Universal Declaration of Human Rights and International Agreements and Treaties on the same issue ratified by Spain (for all references see, JCC 85/2003, of 8 May, LF 6; 99/2004, of 27 May, LF 3; 68/2005, of 31 March, LF 2; 44/2009, of 12 February, LF 2).

b) In addition, it should be recalled once again, that it is in the claim for protection that the object of the proceedings is established, defining and delimiting its intentions, both in terms of individualisation of the act or the provision, the invalidity of which is claimed, and with respect to the reasons for petition or causa petendi without alterations introduced in subsequent allegations designed to complete and, if appropriate, reinforce the basis of the appeal, rather than it being viable to amplify or vary it substantially (JCC 224/2007, of 22 October, LF 2; 163/2008, of 15 December, LF 1). The invocation of the right to presumption of innocence made by the appellant in its brief of allegations of 20 May 2009, the violation of which was not raised in the claim for protection, should be dismissed without further argument. However, it should be pointed out furthermore, that the judicial procedure of dissolving political parties and making them illegal as established in the OLPP (and the same may be said of the incident of enforcement included in art. 12.3 OLPP), is neither criminal or penalising in nature (JCC 5/2004, of 16 January, LF 17), the only areas in which the aforesaid fundamental right is effectively deployed.

4. The electoral coalition appealing in this case considers primarily, that the principles of legality and legal security have been infringed (art. 9.3 SC, in relation to arts. 44.4 and 49.5 OLGES and 12.1.b) and 3 and transitory provision, section two OLPP), as the claims of the State Attorney and the Public Prosecutor were processed through a motion for enforcement of the Judgments declaring the illegal nature and dissolution of specific political parties, since according to electoral legislation the Special Chamber of the Supreme Court as referred to in art. 61 OLJ, is not authorised to declare on the proclamation of candidacies submitted by political parties and electoral coalitions.

The principles of legality and legal security contained in art. 9.3 SC, on which the claimant bases its complaint are not subject to protection through an appeal for protection of human rights, in accordance with reiterated constitutional theory and case law, and in terms of the question at issue here, nor by means of the specific mode of an electoral appeal for protection, circumscribed also to the protection of fundamental rights and freedoms mentioned in articles 53.2 SC and 41.1 OLCC (for all references see, JCC 71/1987, of 23 May, Sole LF). Although the reason explained would in itself be sufficient to dismiss the first ground of the appeal, as it is not the task of this Constitutional Court to formally reconstruct appeals for protection of fundamental rights, it is also true that in the light of the specific allegations of the appellant, its complaint could be subsumed, either in the right to effective judicial protection without under any circumstances causing defencelessness (art. 24.1 SC), or in the right to a trial with all guarantees (art. 24.2 SC).

From the consideration of both fundamental rights, this Constitutional Court has estimated the question raised herein in relation to the contesting and declaration of invalidity of the

proclamation, albeit on the part of the candidacies presented by a political party(JCC 112/2007, of 10 May, LF 5), or of all the candidacies of a single political party (JCC 43/2009, of 12 February, LF 3), in these parties continuing or succeeding those activities of political parties which have been outlawed and dissolved by the courts. Constitutional doctrine laid down in relation to these cases is fully applicable to the case of candidacies presented by an electoral coalition involved in the same fraudulent action, as the grounds for decision are the same in both cases, since electoral coalitions consist of political parties, so that the question to be decided here, and which merits our attention is whether, by means of the candidacy presented by the appellant for the next electoral procedure, an attempt is being made to continue or succeed the activity of political parties which have been judged unlawful and dissolved.

We have mentioned (in the aforementioned Judgments) that with the perspective of control corresponding to this Court, the right to effective judicial protection and the right to a trial with all guarantees cannot be deemed to have been violated as a result of the processing of the claims submitted by the State Attorney and the State Prosecution through the channel of a motion for enforcement of art. 12 OLPP, "as the interpretation made by the Supreme Court in this case of procedural legality may not be deemed to be arbitrary, erroneous or disproportionate, and in virtue of which the procedural channel for enforcement of Art. 12. OLPP was deemed adequate in order to oppose candidacies presented by a political party with the intention of defrauding the effects of the declaration outlawing another political party, that is, for the abusive purpose of continuing that illegal party's activity, breaching the Judgment of unlawfulness, with, as a result, the Chamber established in art. 61 OLJ being competent to decide, if appropriate, on the continuance or succession of one party which had been deemed unlawful or had been dissolved, by another legal party. It is necessary to take into account in this respect that art 12 OLPP, in determining the effects of the judicial dissolution of a political party, considers the acts carried out by an already registered political party to be fraudulent or abusive when they attempt to succeed or continue the activities of a political party which has been declared illegal and dissolved [art. 12.1.b) OLPP] and that the motion of enforcement established in section 3 of that article in no way prevents the declaration of inadmissibility of those fraudulent or abusive acts, with it being reasonable to consider that this should not in any case of necessity presuppose as condition of the declaration of inadmissibility of said actions, the declaration of unlawfulness and dissolution at the same procedural moment, of that political party which attempts to succeed or continue the activity of a political party which has been outlawed and dissolved judicially" (JCC 43/2009, of 12 February , LF 3; and in the same sense JCC 112/2007, of 10 May, LF 6).

In this line of argument it was stated in JCC 43/2009 that "the invalidity of the "fraudulent acts or those which abuse legal personality shall not prevent the due application "of the consequences inherent in the Judgment dissolving a political party, as prescribed in art. 12.1 b) OLPP, so that if the fraudulent acts in question took the form of candidacies which, assuming the mantle of the personality of a third party, were presented in order to continue the life of an unlawful party and therefore abusing that personality, which is formally proper and distinct, it is not unreasonable that when enforcing the Judgment of Dissolution, the Chamber of art. 61 OLJ should order the invalidity of the fraudulent candidacies". And the Judgment concludes by stating that "in short, in order to preserve the full effectiveness of the judicial dissolution of a political party, art. 12 OLPP introduces, together with other preventions, the possibility of seeking from the deciding Chamber, as has been done here, the prohibition on "using another (party) already registered in the Register which continues or succeeds the activity of a party declared illegal or dissolved" [art. 12.1.b)]. It is therefore reasonable to suppose that this possibility permits, as stated, opposition of the "use" of the successive party for the purpose of presenting electoral candidacies which would fraudulently continue, flouting the judgment, the action of the party which had been dissolved" " (ibídem).

In accordance with the constitutional case law illustrated above, fully applicable to political parties which make up an electoral coalition and, in particular, the candidacy or candidacies presented by the appellant in this case, the first ground of the appeal should be dismissed as, without prejudice to an examination of the specific complaints of the claimant relating to the possible damage to its power of defence in the aforementioned enforcement plea, it may be concluded in the light of the legal grounds for the appealed Order, that the Supreme Court, when applying the procedural channel established under law for processing claims of the State Attorney and the Public Prosecution, has made an interpretation of procedural legality which exceeds constitutional requirements regarding the restriction of any fundamental right.

5. Secondly, the coalition claiming protection of rights under the joint invocation of the right to effective judicial protection without being left defenceless at any time (art. 24.1 SC) and the right to a trial with all guarantees (art. 24.2 SC) claims that a reasonable term was not made available within which to adequately exercise, in conditions of equality, its right to defence, given the insufficiency of the term conferred for analysis of the documentation provided, and in order to formulate allegations.

With respect to processing the formality of enforcement established in art. 12.3 OLPP we considered constitutional case law on brevity of terms in respect of the right to defence to be applicable to this case (JCC 85/2003, of 8 May, LF 9; 99/2004, of 27 May, FLFJ 4 and 5; 68/2005, of 31 March, LF4; and 110/2007, 10 May, LF3) when the purpose of said motion is to contest electoral candidacies which intend to continue the activities of illegal dissolved political parties. To this effect, we have stated in the aforementioned JCC 43/2009, of 12 February, that said constitutional doctrine "even though it was laid down in respect of the electoral contentious appeal on the proclamation of candidacies and candidates, is applicable to the case in question here, as the brevity of terms agreed by the Chamber for the political party claiming protection of its fundamental rights is applicable to the case which concerns us here, as the brevity of terms accorded by the Chamber for the claimant political party to appear in proceedings and make all those allegations and contributory evidence it deems appropriate in defence of its rights and interests, is a response to a constitutionally reasonable and justified and adequate need to reconcile the right to effective judicial protection of parties with the phases of the electoral procedure, so as to avoid impeding their progress. It is not apposite to oppose the conclusion reached by alleging that in this case the claimants' intentions were processed by the motion of enforcement pursuant to art. 12.3 OLPP, as in this case the object of the petition was not materially different from the electoral contentious appeal in the case of art. 49.5 OLGES, since through this channel the decisions proclaiming the candidacies of the political party now seeking protection of their rights, were contested, as that party was continuing or succeeding the activity of political parties which had been outlawed and dissolved, and despite the conceptual difference between political parties and groups of electors, the legally established criteria in arts. 44.4 OLREEG and 12. 3 OLPP when observing the continuance or succession of those by political parties which had been judicially dissolved and made illegal are substantially similar " (LF 4)

In application of the case law expressed, the appellants' complaint should be dismissed. As results from the factual information of the appealed Order and from the claim for protection of fundamental rights, the claimant coalition had from 22.55 hours on 14 May 2009 until 22:00 hours on 15 May to make an appearance in the proceedings, formulate allegations and submit evidence as appropriate. The brevity of the term which the appellant did in fact, comply with as its brief of allegations and evidence was submitted at 20:58 hours on 15 May 2009, was undoubtedly determined as the Chamber has argued, for the purpose of mitigating the duration of the motion for the enforcement of the Judgments of unlawfulness with the periods of the electoral procedure without, in principle, due to the mere circumstance of the duration of the term granted being able to note the infringement of the right to defence nor the procedural equality of arms because the State Attorney and the Public Prosecutor provided the term of the

next two days for contesting the Decision of the Central Electoral Board (JCC 68/2005 of 31 March LF 5; 43/2009 of 12 February, LF 5).

From the perspective of control corresponding to this Court, what is relevant to this case is the fact that the appellant had been able to contest, within the term granted, and effectively it did so, the claims of the State Attorney and the Public Prosecutor formulating, irrespective of its success or failure in judicial channels, as many allegations as deemed appropriate and proposing the means of evidence deemed apposite in defence of its rights and interests on the fundamental question raised in the claims, that is, whether or not the candidacy presented were attempting to elude the Judgments of unlawfulness and dissolution of specific political parties. In this respect it should be underlined that the claim for protection of rights does not justify or attest to any damage to the guarantees of defence which might be inferred from a situation of constitutionally relevant defencelessness, with the appellant having been effectively heard, prior to having adopted in the Order of 16 May 2009 the decision to annul its candidacy. In the claim for protection, at no point is it explained, indicated, referred to, or even noted which specific data, allegations or evidence it had proposed to submit to the proceedings, but had been prevented from doing so due to the brevity of the term granted by the court to enter an appearance, formulate allegations and provide evidence and therefore, the complaint of defencelessness due to the brevity of the term granted is merely a formality, therefore lacking constitutional relevance in accordance with reiterated case law of this Court.

Furthermore, in the case of electoral protection appeals lodged by electoral groups whose candidacies had been cancelled, due to infringement of the terms of art. 44.4 OLGES, this Court has rejected complaints of defencelessness just as that raised herein, on the grounds of similar terms allocated, or similar to the period granted in this case to the appellant seeking protection in order to appear in proceedings, and provide any evidence it deems appropriate (JCC 85/2003, of 8 May, LF 11 and 12; 99/2004, of 27 May, LF 6; 68/2005, of 31 March , LF 5; 110/2007, of 10 May, LF 6). As a result, the complaint lodged by the claimant for protection of fundamental rights should be dismissed, as in this case it was accorded a term within which it had time to contest, and it effectively did so, the claims of the State Attorney and the Public Prosecutor being, furthermore, an electoral coalition comprising political parties which, logically, due to their nature and minimum structure, which requires that the task of constitutional functions conferred on them by art. 6 SC should presuppose, in principle, that, as opposed to the electoral groups they are able to call on sufficient means for putting forward their defence (JCC 85/2003 of 8 May, LF 25; 43/2009 of 12 February LF 5).

All of which is without prejudice to recalling, as this Court has pointed out on occasion, the special nature of the electoral protection process, a source through which, as we have mentioned the claimant's coalition appeal has been processed, as it opens up a new possibility for jurisdictional guarantee of the fundamental rights in play, giving the opportunity for new allegations and evidence, with full knowledge of the questions raised in the ordinary proceedings (JCC 85/2003, of 8 May LF 13; 99/2004, of 27 May, LF 6; 43/2009, of 12 February, LF 5; 44/2009, of 12 February, LF 9. In this respect it should be pointed out that in the present protection proceedings, despite it not being a legally established formality, in order to mitigate as far as possible the restrictions deriving from the right to defence, given the brevity of the terms of the preceding judicial process, a new formality for submitting allegations was conferred on the claimant, subsequent to admission of its appeal for protection.

6. Subsequently, the appellant coalition, having invoked the right to evidence (art. 24.2 SC) questions the validity of the police reports submitted by the claimants in the procedure a quo, as they had not been ratified or subjected to contradiction, as well as that of other documents, press releases and photographs which accompany those reports, without in many cases there being any manifestation as to their origin, authorship and dates.

The examination of the appellant's complaints necessitates redoubled precision in order to adequately define the claim, in addition to the scope of our control function. Firstly, it is not the right to evidence which could provide cover to the grounds for protection alleged by the appellant, and if appropriate, be infringed, as the content of that right is to guarantee the parties in any type of proceedings the possibility of promoting evidence in accordance with its interests (JCC 173/2002, of February , LF 6; 43/2003, of 3 March, LF 2 Said complaint, referring to the opposition to the evidence proposed by the claimant in the a quo proceedings, should be examined, therefore, from the perspective of the right to a trial with all guarantees (art. 24.2 SC) thus our "our judgmental task should be reduced to estimating from the perspective of the fundamental right in question the judicial response to the faculty exercised by the respondent party in the a quo proceedings of contesting the admission of the evidence proposed by the other party. Secondly, it should be recalled furthermore, that the process giving rise to the appeal against the proclamation of candidacies and candidates regulated in art. 49 OLGES is not a criminal or punishable process (JCC 85/2003, of 8 May, LF12 and 22), thus it is neither pertinent or appropriate to transfer to said case the requirements of proceedings of a punitive nature for the valid hearing of the evidence " (JCC 99/2004, of 27 May, LF 10; case law reiterated in JCC 44/2009, of 12 February, LF 10).

Therefore, in relation to the value and effectiveness of the reports of the State Security Forces provided in the proceedings, the Special Chamber of the Supreme Court referred to in art. 61 OLJ having reproduced the case law of this Court contained in, among other judgments, those of JCC 85/2003, of 8 May (LF 17), and 99/2004, of 27 May (LF 12), indicates, in summary, that it is "specific to extract from the aforementioned reports the documents and objective data incorporated therein, leaving aside the possible subjective opinions which the Members of the aforementioned Bodies might have made therein" without there being any "doubt regarding the impartiality of the police service functionaries who have drafted the aforementioned reports".

On the plane of constitutional opinion which corresponds to this Court, the complaint has been rejected, as we have stated in previous similar complaints, since it was noted, in accordance with the constitutional case law contained in the aforementioned JCC 99/2004, of 27 May (LF 12) the Chamber issuing the judgment distinguishes the objective documents and data contained or incorporated in the reports from the mere opinions or value judgments issued by civil servants who have written them, according the value of evidence solely to the former, and reasoning with caution with regard to their efficacy. Thus we are obliged to conclude, as we also did in the aforementioned Judgment and we reiterated in subsequent JCC 110/2007, of 10 May (LF 8), 43/2009, of 12 February (LF 9), and 44/2009, of 12 February (10), which "with respect to [...] the Court takes into consideration not the opinions of the agents but objective documents and data contained in JCC 5/2004 of 16 January in which no constitutional infringement was accepted due to the use of police reports as a means of evidence , as it was considered that "the (police) report examined, irrespective of whether it does or does not consist of an authentic piece of expert evidence, did not have therefore any more evidential importance than that which the Chamber granted to informative material contained therein, having reviewed its content and contrasted it with other evidence submitted during the proceedings. As a result the court has deliberated that the credibility of that material, with no abstraction of the circumstance that was included in a report drawn up by persons whose impartiality had been questioned by the party, but on the contrary, aware of the suspicions raised by these allegations , it contrasted its content with other evidence and confined the scope of the expert evidence examined to merely addressing the information overall, the truth of which has been verified in itself by the Chamber" (LF 14)" (JCC 99/2004, of 27 May, LF 12.

Furthermore, the general nature characterising the appellant's complaint regarding the other documents, press releases, and photographs submitted to the process a quo by the claimant parties, which is lacking in the minimum accuracy and substance, makes it unviable.

Notwithstanding this fact, it is appropriate to recall, as the State Attorney advises, that “the presentation of documents may be made with a simple copy or photocopy, and it is only necessary to contrast it with the original document, if the authenticity thereof is questioned by the other party (arts. 267, 268.2 and 334.1 LEC)" [JCC 99/2004, of 27 May, LF 12; 44/2009, of 12 February, LF 11], contested , clearly, with a minimum accuracy and substance, which the appellant has not done in its briefs of allegations submitted to the Supreme Court, nor does it do so now.

7. Having set aside the procedural damage alleged by the appellant coalition, the complaints referring to the supposed infringement of a substantive nature should now be examined, that is, the alleged infringement of the right to participate in public affairs (art. 23 SC) in relation to the right to ideological freedom (art. 16.1 SC) and with the principle of equality (art. 14 SC). The claimant requesting protection maintains in its appeal that the Order contested here does not conform to the constitutional case law established on the entity, nature, and quality of the indications which legitimately permit the deduction in constitutionally acceptable terms, of the intention to defraud the judicial judgment of a political party through the instrument of electoral candidacies designed to ensure the factual presence of the dissolved party in public institutions. Conversely, in its opinion, the Supreme Court would have based cancellation of the candidacy presented by the appellant on evidence deriving from the assumption of a political ideology, however, under no circumstances, a conspiracy to defraud in the service of a terrorist organisation or with political formation linked to terror. This would, in short, have infringed the right to political participation and ideological freedom, illegally truncating the political pluralism on which the same constitutional system is based.
As we recalled in JCC 43/2009 of 12 February, LF11, citing JCC 112/2007 of 10 May LF 10 the perspective of the judgment to which we should confine ourselves is that which is restricted to "examining whether the conviction reached by the Special Chamber of art. 61. OLJ of the Supreme Court, has infringed the right of the appellant to participate in public affairs” on the understanding that “as we have declared in JCC 85/2003 of 8 May (LF 29) and we reiterate in JCC 68/2005 of 21 March (LF 11) "we only need to revise the comment of the Chamber on Art. 61 OLJ in those cases in which from the proper interpretative criteria assumed by the Supreme Court, the conviction reached conflicts with a constitutionally relevant right; in the case of the right to vote. In short, since the effectiveness of the exercise of the fundamental right is in play, this Constitutional Court pondering its individual rights in the presence and general interest of the System, in the subjection of those electoral procedures to the principle of legality, should verify that revision in accordance with a decisive standard, the content of which should depend on the joint observance of a plurality of magnitudes and references which permit inference, in a reasonable and non arbitrary mode, (that the candidacies excluded from the) electoral procedure have acted, in fact, as entities continuing the activity of the outlawed parties” .
In any case, it is appropriate to point out that the overall observance of the evidence should be based on elements which in themselves merit the value of valid evidence, either because they are so directly, or because together with other elements of evidence, they may attain that value. In this way, if it is not possible to attribute the value of evidence to the various basic elements, the sum of elements lacking this virtuality means that overall, a value of evidence cannot be attributed thereto.
.
Furthermore, the actual judgment on the evidential value of a specific element should be respectful of fundamental rights, which prohibits the attribution of the value of evidence of a fraudulent manoeuvre to something which is simply a manifestation of a fundamental right. At the same time, the attribution of the value of evidence to a specific element of fact cannot be established in an evaluative inference which is excessively open.

In summary, it may thus be affirmed, and specifically in the interests of this process, that the effectiveness of the exercise of the right to vote, imposes, when contemplating the reasonability of inferring that there has been fraudulent instrumentation of the candidacy presented by the appellant coalition, such inference should be solid and not excessively open (JCC 83/2005 of 8 May , LF 29; 99/2004 of 27 May LF 17; 112/2007 of 10 May , LF 9: 44/2009 of 12 February, LF 14), a fact which we should take into account in order to affirm the fraudulent instrumentation of the candidacy presented by the appellant coalition.

8. In accordance with the line of case law which, initiated with JCC 85/2003 of 8 May, has been consolidated with the various declarations issued by this Court in relation to the proclamation of electoral candidacies instrumented in the service of material continuity of political parties dissolved as a result of their links to a terrorist organisation (JCC 99/2004 of 27 May; 68/2005 of 31 March; 110/2007 of 10 May; 112/2007 of 10 May 43/2009 of 12 February; and 44 /2009 of 12 February), the legal and constitutionally prohibited continuity between a political party dissolved in the courts and a political party which has not been outlawed but which aims to succeed it, or electoral candidacies which pursue its assured presence in the democratic institutions, may only be taken as duly accredited in conformance with the current law (art. 12 OLPP and art. 44.4 OLGES), if “various substantial similarities [...] are present: a) Firstly, substantial similarity of the “structures, organisation and operation” b) In addition, the substantial similarity of “persons who make up, govern, represent or administer candidacies" ; c) Thirdly the similarity of the “origin of the means for funding or materials” d) Finally “any other relevant circumstances which like their disposal to support violence or terrorism permit consideration of that continuity or succession". (JCC 85/2003, of 8 May, LF 25).

We had already pointed out in the same JCC 85/2003 “in the case of attesting to a conspiracy to defraud, it is clear that judicial conviction of its existence should arise from the basis of various aspects of evidence which should be employed in each case in order to discern whether it sufficient with demonstration of an element of financial continuity, or whether it imposes the concurrence of an element of personal continuity which furthermore, should be significant in number or quality. What is decisive in any case is that the criteria for accreditation used lead to the substantiated conviction that the electoral groups denied proclamation operate materially, as components of a party de facto and not like real instruments of political participation which exhaust their purpose in updating the exercise of the right to vote by private individuals grouped therein” (JCC 85/2003, of 8 May, LF 26; similarly, JCC 99/2004, of 27 May, LF 16; 68/2005, of 31 March, LF 11; and 110/2007, LF 12). Such considerations with equal conceptual basis are applicable to the case of the material continuity of a dissolved party attempted by instrumentation of candidacies formalised by one or various legal political parties.

In any case, it would not be sufficient to have proof of existence of a fraudulent intention but rather, in the words of the JCC 68/2005 of 31 March, “ evidence of the intention to defraud is not, however, sufficient to be certain of that continuity” between dissolved parties and electoral groups or, in this case the coalition of appellant parties, with it therefore being necessary “for the evidence in the proceedings to also illustrate the fact that this intention was actually materialised” that is, that it has culminated in the articulation of a candidacy instrumented in the service of the electoral interests of the outlawed political party.

9. In contrast to the case raised in the reiterated JCC 43/2009 of 12 February , it cannot now be sustained that the appeal for protection is restricted to a “mere general disqualification, based on principle” of the judicial valuation of sufficient evidence, or that the appeal “achieves nothing more than the pure and simple expression of the personal discrepancy of the appellant with a motivated and reasonable evaluation, based on evidence verified in the proceedings with all due guarantees".

In this case analysed herein, the Special Chamber of art. 61 of the OLJ of the Supreme Court has based the conviction which led to the cancellation of the candidacy presented by the appellant

coalition on evidence from which it was deduced that a) there was an intent to defraud attributable to ETA, and to the outlawed party Batasuna, a series of objective (B) and subjective (C) elements allegedly attesting to the materialisation of that wish and finally (D) the lack of statements rejecting terrorist violence which would be able to counteract the opinion which, for the Chamber, is reasonably deduced from the evidence.

Given the position of the contested Order, we should examine whether the items of proof taken into consideration in the aforementioned decision may have in constitutional terms the evidential value attributed to them; that is, if they have the substance required to sustain a conviction that such serious harm derives from this to the right to participate in a political party ensured in art. 23 SC and, with this for the value of political pluralism on which the constitutional order of the democratic State is based. We should once again repeat that, as we have mentioned in JCC 85/2003, of 8 May, LF 23 “the dissolution of a political party does not entail the deprivation of the right to vote or to stand for election of those who were its promoters, leaders or members. Such a consequence may only derive from a judicial procedure which is specifically centred on the conduct or the circumstances of physical persons who, in the terms established under law, may only be seen to be deprived of the exercise of the fundamental right recognised in art. 23,1 SC, if the grounds which are also strictly established in art. 6 of the electoral law do not include the link with a dissolved party in application of Organic Law 6/2002". And in any case, no dissolution of parties is admissible in our System unless it is of the type that, by denaturalising its task as privileged instruments of political participation in democratic institutions, becomes an adjunct to terrorist organisations when in an abstraction created from the ideology they seek to defend, they articulate that defence through violence and therefore, beyond the boundaries of democratic procedures and pacific means of participation in organised coexistence.

Therefore, based on the principle that in our constitutional system “any project is compatible with the Constitution, provided that it is not defended through an activity which infringes democratic principles or fundamental rights “ with the assertion being true up to this point that “the Constitution is a framework of coincidences sufficiently broad to encompass political options of a widely differing spectrum “ (JCC 11/1981, of 8 April, LF 7)" (JCC 48/2003, of 12 March, LF 7), it is necessary to be extremely rigorous when assuming proof of the reality of defrauding a Judgment dissolving political parties in order to mitigate the risk that eventually and precisely the ideological plurality promoted and protected by the Constitution as a fundamental value of the System will be damaged. The risk, in short, would be that of confusing the ideology professed by a party and the means defended or used to promote it, which ends up being detrimental to whoever shares that same ideology, even when it cannot be demonstrated that it defends it through violent means, or that it does so as a pure instrument of those who make terrorist violence their natural sphere of action. This risk is entailed in this case when the connections noted are established with a single reference to the Izquierda abertzale. And the fact is that our System does not exclude any ideology, either for its content or its basis, nor through the means used of those who ultimately wish to defend it. Said means, however, if they are violent, shall be unacceptable as such, however without any prejudice to the ideology which they seek to serve.

10. The contested Order in these proceedings considered that ETA and the outlawed political party Batasuna's intention to defraud was attested on the basis of a series of documents submitted to the proceedings a quo, and indicated in legal finding seven pages 51 to 55. These confirm that the ETA terrorist group in the framework of a so-called “Reflection on the electoral institutional front”, which is not dated, considers it “essential to create another institutional and political reference in the abertzalismo and in the basis of the Izquierda Abertzale” which would need to establish a “position” “before all the elections” including the European elections. In addition, a document on the Batasuna National Platform entitled “Planning for the political

season 2007-2008" in which for the coming European elections it is stated that the "Izquierda Abertzale shall address the need to act as a People" and shall "make a political interpretation of the need to act in favour of Euskal Herria and its rights", advancing the fact that "only Izquierda Abertzale will defend the interests of our People in the elections". In another similar document, but one which refers to the "political season 2008-2009" it persists in highlighting the need to make the most of the elections "to show ourselves a people". To the foregoing is added the reference to a neighbourhood assembly held in Pamplona in order to address the themes: "Political situation: General Strike of 21 May and European Elections", without there being any indication of the content or development of that assembly. Finally, a series of documents seized from Batasuna insist on the appropriateness of "beginning to work on the perspective with a view to the elections to be held on 7 June" which "provide us with the opportunity of a loudspeaker, so that Europe will hear our claims" and which mention the need for "an accumulation of forces to develop initiatives in the most effective manner possible". On the basis of the foregoing it may be reasonably supposed that, in effect, ETA and the outlawed political party grant certain relevance to the European elections; including the fact that they intend in some way to use this opportunity for their purposes. However, that this may be achieved by means of creating the appellant coalition currently requesting protection is a conclusion which cannot be reached merely on that basis, so that it is constitutionally required in order to restrict the right of political participation that is under scrutiny in the present appeal for protection. Not just because at no time is reference made, even remotely, to the appellant coalition but because however, it expressly appears to reject the possibility of using a political formation which cannot be enshrined in the so called "Izquierda Abertzale" which, according to Batasuna, would in any case be, "that which defends the interests of our People in the election", as the joint parties appealing are both Castilian.

The various allusions which in general are made in the appealed Order to Izquierda Abertzale could bring the scope of the "judicial control to the terrain of ideology and personal convictions which are totally prohibited in an electoral procedure and in any others in our system". Once again we should insist that Izquierda Abertzale as the ideological expression "has not been proscribed in our system nor could it be so without infringing pluralist principles and associated fundamental rights" and that "the ideologies are in the Spanish constitutional system absolutely free, and should find in the public authority the "first guarantee of their indemnity, to which, however, those who serve to promote and defend illegal or violent means and use terrorist intimidation in order to achieve their ends cannot aspire ". In short, "it is these means and not the ideas or political objectives peaceably pursued to which the reaction of public power is addressed in defence of the framework of peaceful coexistence designed by the constitution so that all ideas are provided for therein" (JCC 99/2004, of 27 May, LF 18, citing JCC 48/2003, of 12 March, 85/2003, of 8 May and 5 and 6/2004, of 16 January).

11. Even were we to admit the hypothesis that the fraudulent purpose of ETA and Batasuna had led them to seek to orchestrate an electoral candidacy in their service, it is clear that none of the objective and subjective elements used by the Chamber support, in terms required by the constitution, the idea that this purpose has materialised precisely with the candidacy presented by the appellant coalition.

In contrast to what has occurred in similar previous cases (JCC 85/2003, 99/2004, 68/2005, 110/2007, 112/2007, 43/2009 and 44/2009), in this case there are no elements which attest to the existence of links of a financial kind or material support between ETA and the outlawed Batasuna party and the coalition appealing herein, which was relevant in those cases. Furthermore, the elements of evidence relating to the act of presentation of the coalition and the news on the presentation of its candidacy (legal finding seven) on which the Order confers the value of evidence only shows that the same is promoted by "groups with left wing independent and sovereign sympathies" and which "aims to group together in a communal project leftist

political groups of both “sovereign/independent leanings” and “national and internationalist” with the “basic axes of the candidacy” being a commitment to the right of self determination. In turn, the news disseminated on presentation of the candidacy tend towards the former, consigning to the contested Order the fact that two militants of two parties unconnected to the coalition were indicated at the head of the lists as appropriate successor of two European parliaments of Batasuna.

The foregoing, together with the information of the noted “scant significance of political activity of the coalition parties” which could hardly encourage the suspicion of its suitability as an instrument propitious for the fraudulent interests considered by the Chamber, it is clear that it demonstrates no more than the ideological coincidence between the claimant for protection and ETA and Batasuna, however it does not make clear the concerted wishes between these and that body, and even less so the assumption by the appellant of violent methods as an instrument of action in public life.

12. In the case of elements of a subjective order, the appealed Order has placed special relevance on the guarantors of the candidacy, proclamation of which was invalidated by the Supreme Court, as well as the personalities and candidates on the electoral list.

In relation to the guarantors we have affirmed that “the personal history (political social or judicial) of simple guarantors of a group cannot be assumed to be an indication of that succession or continuity for the sole and evident reason that it is embedded in the electoral group, as a form of political participation, the opening without any possible control or mediation of any kind to subscription of any electors within the framework in question, subscription which de iure simply expresses support for a specific candidacy to gain electoral authority. In other words it is not possible to project onto the group (on its members) suspicions based on appearances or indications which arise, in turn, from conduct (signature of guarantees) over which the group lacks control and which are formally unconnected. In an extreme case, a significant presence among guarantors, of persons who had been linked to the dissolved parties would only permit reinforcement that said persons place their confidence in the candidacy of the group, however on the basis of this conjecture evidence cannot be constructed here. Perhaps in electoral law it may be possible to become, as an exception, “liable” in some cases due to confidence and trust of others; at least politically that liability may certainly come to be noticed by citizens or its representatives. However to take a further step and propose an improper legal liability, due solely to the adherence of third parties (with the consequent burden of repudiating that support, or failing this, supporting an adverse consequence) is an extremely delicate issue which could only be accepted if said adherence were, in itself, due to its subject (the terrorist organisation) or its content (“self recognition” in the grouping by the spokespersons of a dissolved organisation) which would be unlawful in the light of the parties’ legislation. It is clear that none of these circumstances are present due to the mere fact that the guarantors, along with many other fellow citizens, are persons who have had some relation in the past , either with the actual terrorist organisation or with the dissolved parties “(JCC 68/2005, of 31 March, LF 15). Things may be different, according to the Supreme Court, when, as in this case the guarantors hold elected office, and their reduced number would permit the assumption of a certain level of knowledge of the political link assumed with support of the candidacy. Nevertheless, it is certain that the fact of being in possession of the faculty to guarantee candidacies of parties, federations and coalitions for presentation to the European Parliament is not conferred ex lege on political parties, but to those elected public offices expressly mentioned in art. 229.4 OLGES, so that when they provide their signature for presentation of a candidacy they are exercising a faculty conferred by law, which is part of the status of the office held, independent of the political entity, parties, federations, coalitions or groups which had presented the electoral list in which they were elected. In other words, the outlawing of a political party does not deprive those selected in the lists presented by that party of the entitlement to the public office to which they

have gained access as an expression of the wishes of the electorate, nor as a result of the exercise of the powers proper to that office.
However this may be, moreover, the number of guarantors relevant for the purposes of attesting to the continuance of the attempted fraud are six out of a total of 64. Of these 6 guarantors, in addition to underlining in some cases their condition of candidates in the elections held in 1999, and agents in election meetings in 2001, their participation in subsequent elections is notable, always in the sphere of parties or candidacies which have been outlawed or cancelled. And in particular, the Supreme Court places special emphasis on the fact that its guarantees were obtained at the last minute and as a result of the need to substitute the support of guarantors who felt "manipulated" when they discovered the alleged active coalition link with ETA and Batasuna associates. To infer from the quality of those 6 specific guarantees, and in particular from their quantitative entity in the guarantees obtained overall, the evidence of a personal, organisational and functional link with said environment and the cancelled candidacy is not a result which may be based on the constitutionally required form. In any case, the scant evidential consistency of that fact could attain the significance of evidence and lead to forming the Chamber's conviction that it had been presented along with other elements which led to the line of opinion finally taken up by the Supreme Court. However, it so happens that those elements having value as evidence are not present.
13. In particular, the elements of evidence considered by the Chamber to relate to the personality of the promoters and candidates of the list presented by the coalition appealing for protection herein cannot be considered to attain the value of evidence In effect, the data referring to Ms Maestro Martin cannot be admitted as constitutionally relevant, namely, her participation in a march in support of an Abertzale candidacy (2004) the presentation with Batasuna leaders of the so called “Anoeta Proposal” (2004), soliciting votes for a party which was subsequently outlawed (2005) the signature of a manifesto calling for the release of a Batasuna leader (2007), the statement that members of a specific party “form part of Izquierda Abertzale (2004) her role as leader of an embryonic formation which was later to be an outlawed party and which demonstrated her support for Batasuna leaders imprisoned for their support of ETA (2007). Similarly, relevance required for the purposes of cancelling the candidacy of the appellant cannot be considered to be the fact that Ms Benegas Haddad had participated in a Herri Batasuna meeting (1984) and coincided with Ms Maestro Martín in supporting an Abertzale candidacy (2004), or in presenting the “Anoeta Proposal” (2004) or gave talks for “Peace, dialogue and democratisation of the Basque Country “ (2004) or participated in an act in which the Batasuna leaders demanded self determination for the Basques and legalisation of that party (2007). Nor can it be accepted in respect of the the third promoter examined by the Chamber that sufficiently relevant indications are given in the fact that Belarra Laguera was a candidate for Euskal Herritarok in 1999, assuming representation of a formation said to be an nascent version of a party which was later dissolved, and the fact that he was a substitute candidate in 2007 for another party, also finally dissolved. All this data, details and circumstances only serve to attest, in principle, to an ideological inclination which can in no way merit censure in our democratic constitutional system, however much it may possibly be shared by those who attempt to give it relevance through violence, a fact which has not been proven in the case of the promoters and leaders of the coalition requesting protection in this case.
Similarly, in these considerations, there is nothing which attests to the fact that the leaders of the parties which make up the claimant coalition are implicated in a conspiracy to defraud any of the outlawing Judgments the effects of which the Chamber of art. 61 OLJ had wished to preserve. Therefore, it is not sufficiently relevant that Mr. Ocampo Pereira made journalistic declarations recognising meetings and contacts with Izquierda Abertzale and stating that only the Spanish state was called to account, as it was the state and not ETA which taxed him (2000(, since it is obvious that, in ideological terms, the so called Izquierda Abertzale cannot be confused or

reduced to parties which propose a leftist and nationalistic ideology through violence, nor is the critical position in respect of the State fatally reconciled with terrorist violence. Similarly, it cannot be considered relevant for our purposes the fact that a youth organisation linked to one of the coalition parties in this appeal allegedly frequently took part in acts organised by outlawed groups, such as the integration of one of its leaders in a platform supporting a group of accused in a trial, signature of a manifesto supporting members of IZquierda Abertzale on trial for supporting ETA (2006) or the call and participation in a youth march.

In short, in the present case from the considerations raised in respect of the three first candidates in the electoral list, namely Mr Alfonso Sastre Ms Doris Benegas and Ms Angeles Maestro, all that can be deduced is an ideological orientation which cannot result in prejudice of their rights to political participation. It is not pertinent therefore to accord relevance to the fact that Mr Sastre claimed in 1987 the vote for Herri Batasuna, or that he was its candidate in 1989 or that he signed a manifesto in support of "Basque political prisoners" (2000) or against outlawing Batasuna (2002), or that he wrote an article entitled "Why Batasuna cannot condemn ETA's violence" (2003) or that he was promoter of a cancelled candidacy (2004) and candidate in a list which was also cancelled (2009) or that he took part in a debate with a Batasuna leader (2008). In the same manner all the circumstances mentioned by the claimants in the proceedings a quo and addressed by the Chamber of article 61 OLJ in respect of Ms Benegas and Ms Maestro, that is, only expressing a political and ideological credo which shows nothing in line with the alleged instrumentation of the cancelled candidacy in the service of ETA and Batasuna.

In particular, the thesis of "contamination by contact" is not constitutionally acceptable which is what, in the Supreme court's opinion, those who without themselves being grounds for the outlawing of a candidacy would figure as candidates in an outlawed list would be (Legal finding Eight) as the legal effect of this cannot under any circumstance be the consequence of dissolution of a party which, as we have reiterated, does not presuppose deprivation of the right to vote of its leaders, affiliates, sympathisers or voters.

Similarly it is necessary to reject the idea that mobilisation of the vote which would have corresponded to the outlawed formation is a purpose open to objection to the point of placing in it the suspicious consideration attributed in the appeal Order to the presence of Mr Sastre as head of the list. It is sufficient to state, as is evident, that vote is as legitimate as it may be in any democratic system in which all ideas are accommodated. Not to consider it as such would seriously restrict political pluralism, a fundamental value of the democratic constitutional state, which, since it is legitimately able to defend the indemnity of a system of freedoms against those who seek its destruction through violent means, cannot in any way be articulated by any means other than those legally established, and on the basis of certainties based on facts and information which have been duly attested (as has always been the case in those situations in which this Court has considered it correct to cancel specific candidacies whose link with terrorist organisations was deemed to have been sufficiently demonstrated), never on the basis of suspicions and convictions which, however reasonable they may be in political terms, should be set aside as an element of conformation of the wishes of the public. This is for its critics the most serious and dangerous weakness of the State of Law. In reality on the contrary, it is a legitimising force and its true greatness.

14. The insufficient proof of the evidence assessed by the Supreme Court cannot justify the sacrifice of the fundamental rights of political participation in terms of equality and free defence and promotion of the actual ideology. For this reason it is not necessary to oppose them with any contraindication, that is, to discredit them with the unequivocal condemnation of terrorism on the part of the political formation suspected of conniving with a terrorist organisation. In accordance with our case law "the refusal to expressly condemn terrorism is not therefore, sufficient indication to accredit per se an intention to defraud, such as that contained in art. 44.4 OLGES. It is rather the contrary, that is, unequivocal condemnation constitutes a contraindication

which discredits the reality of a willingness of that aspect deduced on the basis of sufficient evidence". (STC 68/2005, of 31 March, LF 15).
It is not necessary in this case to oppose the evidence addressed, given its insufficiency as proof, the contraindication of condemnation of terrorism; however it is appropriate to point out that said condemnation was verified in the appeal for protection of fundamental rights –information which the Supreme court was unable to hear – in the following terms: "this party wishes to clearly state and without ambiguity that the electoral coalition 'Iniciativa Internacionalista –La Solidaridad entre los Pueblos' as well as the parties involved in that organisation Izquierda Castellana and Comuner@s have never used means which were not strictly political in order to obtain their programmatic objectives, with the use of violence being totally contrary to their mode of action and political culture, therefore they express an outright rejection and condemnation of the use of violence in order to obtain the political objectives within the framework of the democratic State".

RULING

In respect of the foregoing, the Constitutional Court WITH THE AUTHORITY CONFERRED ON THAT BODY BY THE CONSTITUTION OF THE SPANISH NATION,
has decided

to uphold the claim for protection of fundamental rights lodged by the electoral coalition 'Iniciativa internacionalista – La solidaridad entre los pueblos' and as a result;
1. to declare the right of the appellant seeking protection of the fundamental right to access public office in equal conditions with the requisites indicated in the laws (art. 23.2 SC).
2.- To re-establish the right of the appellant, and to this effect to declare null and void the Order of the Special Chamber of the Supreme Court referred to in art. 61 OLJ of 16 May 2009 handed down in accumulated proceedings numbers 5/2009 and 6/2009 arising from the incidents of enforcement nos. 1/2003 and 2/2008 of the Judgments of the same Chamber of 27 March 2003 and 22 September 2008 declaring that it was not in conformance with the law and cancelling the Decision of the Central Electoral board of 11 May 2009 in respect of the proclamation of the candidacy submitted by the appellant coalition to the elections of Deputy of the European Parliament convened by Royal Decree 428/2009 of 3 April.
This judgment shall be published in the Official State Gazette ("Boletín Oficial del Estado".)
Given in Madrid on the twenty first of May 2009