

MEDIA SEMINAR  
GENERAL CONCLUSIONS FROM THE DEBATE ON  
CLOSURE OF BASQUE MEDIA

I.

Freedom of speech is the keystone for a democratic society. As a fundamental individual and collective right, the right to receive any information and to find out other people's opinions is included within the essential content of the right to free speech and this is how it is recognised in article 10 of the European Convention on Human Rights (ECHR) and in article 20 of the Spanish Constitution (SC).

II.

The right to free speech is not an absolute right and it must be coordinated with recognising and exercising other fundamental rights. The transcendence of free speech in a democratic society leads to the situation where international and European law generally recognises freedom of speech, but they only authorise it to be restricted exceptionally, for very serious reasons, always abiding strictly not only with legal principles but also regarding need and proportionality (arts. 10,2 and 15 ECHR and art. 20 SC).

III.

Within the framework of these exceptions and strictly abiding by the same principles, preventive or cautionary interventions are not incompatible with recognising fundamental rights, but, due to their very nature, how far they are applied and setting their boundaries are strictly supervised by the highest courts. This should be emphasised particularly in the case of the media and publications, for which prior censoring constitutes a particularly intolerable attack on freedom of speech, and is thereby forbidden in article 20 of the Spanish Constitution.

Governing criteria for this action for the European Court of Human Rights include:

- Legality: the law must clearly authorise the measure and indicate precisely when and how it is possible to limit rights in terms of prevention or

precaution, so that citizens can have prior knowledge not only regarding how to apply this measure of caution but also how far it reaches.

- Needs: the measure should not only be suitable to prevent the continuation or perpetration of criminal facts but it should be the least restrictive of the fundamental rights among all possible rights.
- Proportionality: with a view to the previous consideration, the measure to be adopted should be completely weighted in favour of the rights and interests at stake.

#### IV.

In the event that we are put under scrutiny – closing down the Egin, Egin Irratia and Euskaldunon Egunkaria media organisation -, problems occur due to closing down the media as a result of applying the accessory consequence as a precautionary measure given in art. 129 CP.

Dispensing with other possible legal considerations, the cautionary measure to close down a media organisation represents sacrificing the fundamental right to free speech, both in its individual aspect and from the collective point of view, or in other words the right to receive any type of information and learn about other people's opinions.

The lack of necessity for this measure was already debatable when it was imposed, when there were alternative precautionary ways of intervening which would not lead to interrupting media activity.

Regarding the cautionary measure's lack of proportionality, although it is theoretically temporary, in practice it represents (not only due to its disproportionate duration) a definitive negation of the constitutional right to free speech, which constitutes a violation of art. 10 and 15 of the ECHR and art. 20 of the Spanish Constitution.

If that was not enough, lack of constitutional support for the application of article 129.2 SC to some media should be highlighted. The 1978 Constitution, offering more guarantees on this point than the European Convention on Human Rights, only permits the right to freedom to information and speech to be withheld in a state of emergency or state of siege (art. 55.1) and not in cases of terrorism (art. 55.2). The lack of constitutional permission to close down the media has already been ratified by the Constitutional Court in sentence 199/1987, which

understood that the measure of provisionally closing a broadcasting medium given in L.O.9/1984 for cases of terrorism would represent a limitation of the essential contents of the rights recognised in art. 20 of the Constitution, or cancellation of these contents, which according the legislator was not permitted by art. 55.2 of the Constitution.

*For this reason, the application of article 129.2 of the SC for the precautionary closure of the Egin, Egin Irratia and Euskaldunon Egunkaria media organisations:*

- 1. Violates art. 20 of the Constitution due to implicating, as a practical consequence, an authentic suspension of the fundamental right to the freedom of the press, a right which cannot be suspended except in states of emergency or siege (art. 55.1 of the Constitution).*
- 2. It violates articles 10 and 15 of the European Convention on Human Rights due to its disproportionate nature, as other less oppressive measures exist, and in practice it means that some media will cease to exist as they will not be able to reopen regardless of the final results of the penal processes which the measure has adopted.*

*This is concluded without affecting any respect due to judicial decisions and the necessary defence of citizens by the State against terrorism within a democratic constitutional framework.*

San Sebastian, 5<sup>th</sup> November 2007.