



Office for Democratic Institutions and Human Rights

SPAIN

EARLY PARLIAMENTARY ELECTIONS

20 November 2011

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

10-13 October 2011



Warsaw
31 October 2011

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I. INTRODUCTION

On 27 September, the Permanent Mission of Spain to the OSCE invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 20 November early parliamentary elections. The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to Spain from 10 to 13 October 2011. The OSCE/ODIHR NAM included Beata Martin-Rozumilowicz, Head of the OSCE/ODIHR Election Department, Armin Rabitsch, an OSCE/ODIHR Senior Election Adviser, and Lusine Badalyan, an OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the early parliamentary elections. Based on this assessment, the NAM was to recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions, the election administration, and the judiciary, as well as with representatives of political parties and media. A list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs for the assistance and co-operation in organizing the visit. The OSCE/ODIHR would also like to thank all of its interlocutors for having taken the time to meet with the mission and sharing their views.

II. EXECUTIVE SUMMARY

Early parliamentary elections were called for 20 November 2011 after the prime minister dissolved parliament four months before the end of its term. Parliament consists of a 350-member Chamber of Deputies directly elected under a proportional system. In the Senate, 208 deputies will be directly elected under a majoritarian system, while 58 are appointed by autonomous communities.

A number of changes were introduced to the election law at the beginning of 2011. The changes primarily affect such aspects of the electoral process as voter lists, voting from abroad, campaign financing, the electoral campaign, and coverage of the campaign by mass media. The law does not provide access to the election process for domestic or international observers who are not nominated by political parties, which remains a long-standing OSCE/ODIHR recommendation.

The election administration for parliamentary elections operates at four levels. The Central Election Commission (CEC) and provincial and district-level commissions are largely drawn from the judiciary. Electoral boards are established for the conduct of voting and counting and are selected by lottery from amongst voters of the relevant electoral section. Service on an electoral board is a mandatory civic obligation. The Ministry of Interior is responsible for the technical and logistical organization of elections, while the CEC supervises the implementation

of election legislation and specifies this legislation through its decisions. CEC sessions are not open to the public.

Voter registration is conducted by the Electoral Census Office under CEC supervision. Information regarding the registration of citizens is provided by municipal councils and, for Spanish citizens residing abroad, by consulates. Voter lists are updated each month and once elections are called, the lists are closed. The total number of voters included currently is some 35,000,000. Postal voting is available for voters in Spain and abroad. Provisions for Braille voting are also in place.

Candidate lists may be presented by political parties, coalitions, and groups of citizens. The nomination process lasted from 12 to 17 October. Candidate lists are to promote equal conditions for men and women; each gender must comprise at least 40 per cent. Legislation allows for the suspension or dissolution of political parties that support terrorism or have links with terrorist organizations, based on a court decision. Recent changes to the law allow for parties to be banned after elections, with their elected delegates losing their seats in parliament.

Elections are taking place in the context of a significant economic crisis. The official campaign period lasts for 15 days, but a 'pre-election period' allows parties to communicate their platforms to voters, although they may not ask citizens for their vote. According to recent legal changes, during this pre-election period, the use of posters and advertisements in media is not permitted.

The state subsidizes the electoral campaigns of contestants with legally set amounts for each vote and seat garnered. The Court of Audits oversees campaign financing. Some OSCE/ODIHR NAM interlocutors voiced concern about delayed and too general information made available by the Court and that foundations and associations linked to parties are not required to report expenditures.

A vibrant and diverse media landscape of audiovisual and print media offers a wide variety of opinions and information to voters. Public media and private TV are not allowed to carry paid advertisement. However, contestants have the right to free spots on public TV and radio. While there are no legal provisions on televised political debates, the OSCE/ODIHR NAM was informed that the two main parties usually agree on the format of the televised debates.

The electoral administration appears to enjoy overall confidence across the political spectrum. However, some smaller parties expressed concern regarding the work of PECs and DECAs. Despite some limited concerns expressed with regard to the legal framework, important safeguards for the conduct of democratic elections are included. Many OSCE/ODIHR NAM interlocutors indicated they would welcome an OSCE/ODIHR election-related activity and considered that such an activity could bring added value. In such circumstances, the OSCE/ODIHR NAM recommends deploying an Election Assessment Mission (EAM), in particular, to assess the implementation of the new legal provisions on postal voting, media coverage of the campaign, campaign finance, and access to observers. EAM members would also visit areas outside the capital to assess the campaign and electoral preparations at the provincial level.

III. FINDINGS

A. BACKGROUND

On 26 September, Prime Minister Jose Luis Rodriguez Zapatero dissolved parliament, four months before the end of its term. Early parliamentary elections were announced by royal decree on the same day, setting the date for 20 November 2011.

Spain is a decentralized state comprising 17 autonomous communities and two cities with special status (Ceuta and Melilla). Each autonomous community is composed of one or more provinces. Historically, Spanish politics has been dominated by two political parties, the Spanish Socialist Workers' Party (*PSOE*) and the People's Party (*PP*). *PSOE* has been in government since the 2004 elections. Ten political parties were elected to the Chamber of Deputies (lower house) in the 2008 parliamentary elections, with the two largest parties, *PSOE* and *PP*, getting the most mandates and the winning *PSOE* going on to form a government. *PSOE* will be led in the upcoming elections by former Deputy Prime Minister and Interior Minister Alfredo Pérez Rubalcaba following Prime Minister Zapatero's retirement. *PP* has been headed by Mariano Rajoy since 2004. Other political parties represented in the outgoing parliament that intend to compete in more than one province are the United Left Party (*IU*) and the Union, Progress and Democracy Party.

Spain has also a number of regional parties, such as the Convergence and Union (*CiU*) in Catalonia, the Basque Nationalist Party (*EAJ-PNV*), the Canarian Coalition (*CC-PNC*), and the Galician Nationalist Bloc (*BNG*). For the upcoming elections, a coalition of nationalist centre-left Basque parties named *Amaiur* has been registered to run. The upcoming elections will be taking place in the context of a significant economic crisis in the country, which is considered to have eroded the *PSOE*'s support base.

The OSCE/ODIHR deployed Election Assessment Missions for the 2004 and 2008 parliamentary elections in Spain. The Election Assessment Mission for the 2008 parliamentary elections concluded that "the elections were conducted in a manner which reflected Spain's established democratic tradition and a high level of public confidence in the overall process. The Spanish electoral system encourages political diversity and pluralism, offering voters a wide and genuine choice."¹ The mission also mentioned that "some aspects of legislation and practice could benefit from a review, including allocation of seats among constituencies for the Chamber of Deputies to enhance the equality of the vote and polling station procedures to fully ensure the secrecy of the vote."

B. LEGISLATIVE FRAMEWORK AND ELECTORAL SYSTEM

The legal framework regulating parliamentary elections includes the 1978 Constitution, the Organic Law on General Election Regime (hereinafter, election law), the law on political parties, royal decrees, and decisions of the Central Election Commission (CEC). Since the previous parliamentary elections in 2008, there have been a few changes to the legislation, most recently in January 2011. The changes primarily affect such aspects as the composition of the voter lists, conditions for voting from abroad, campaign finance regulations, elements of the

¹ OSCE/ODIHR election assessment mission reports can be found at: <http://www.osce.org/odihr/elections/spain>.

electoral campaign and campaign coverage by mass media. A number of technical changes were also introduced.

The legislature, the *Cortes Generales* (parliament), consists of a lower house, the Chamber of Deputies (*Congreso de los Diputados*), and an upper house, the Senate. Although legislative initiative belongs to both the lower and upper houses (as well as to government), the Chamber has greater legislative powers.

The Chamber of Deputies is composed of 350 members directly elected on the basis of proportional representation in a closed list system. Each of Spain's 50 provinces is a separate constituency and is entitled to an initial minimum of 2 seats; the cities of Ceuta and Melilla elect one member each. The remaining 248 seats are allocated among the 50 provinces in proportion to their population size. The decree announcing elections is to specify the number of deputies to be elected in each constituency.² There is a three per cent threshold of all valid votes cast for mandate allocations. However, there are also constituencies with higher 'natural' thresholds due to the fact that they elect a low number of deputies. In such constituencies, proportionality is somewhat distorted in favour of larger parties.

The Senate is composed of 208 directly elected senators. In each province, four senators are elected directly on the basis of a majoritarian system, while islands elect three or fewer senators each. Voters can choose up to three candidates from any of the parties on the ballot. In addition, the legislative assemblies of autonomous communities are entitled to appoint at least one senator each, as well as one senator for each million inhabitants living on their territory; this results in a total of 266 senators to be elected to the next parliament.³

The 2008 OSCE/ODIHR Election Assessment Mission indicated that given the fact that a sizable discrepancy exists in the value of each vote for elections to the lower chamber, "consideration could be given to further enhancing the guarantees for equality of suffrage for the election of deputies". Most of the OSCE/ODIHR NAM's interlocutors raised this issue of proportionality, but acknowledged that electoral system changes would require relevant changes to the Constitution.

C. ELECTION ADMINISTRATION

The election administration for parliamentary elections operates at four levels: the CEC, 50 Provincial Election Commissions (PEC), 303 District or Zone Election Commissions (DEC) and over 59,000 Electoral Boards at polling station level. The CEC is a permanent body composed of thirteen members, of whom eight are judges of the Supreme Court and five are university professors of law, political sciences, or sociology. They are nominated jointly by parliamentary parties and coalitions and selected by lottery.

The Ministry of Interior is responsible for the technical and logistical organization of the elections. It outsources many aspects of this process, such as the tabulation and announcement of preliminary results, to a private company. The CEC with its small secretariat supervises the implementation of election legislation and specifies the legislation through decisions. CEC sessions are not open to the public. In 2008, the OSCE/ODIHR recommended that the CEC and lower-level commissions should consider meeting in open sessions to enhance transparency.

² See Royal Decree 1329/2011 of 26 September 2011.

³ In the last convocation, there were 264 senators.

PECs are formed for parliamentary elections in each of the 50 provinces and are composed of 3 judges of the relevant provincial court and 2 professors who are residents of the province. DECJs are formed in each of the 303 judicial administrative districts and mirror the composition of the PECs. For the purpose of conducting voting, constituencies are divided into electoral sections, which include between 500 and 2,000 voters. In each section, one or more electoral boards are established, consisting of a president and two members, who are selected by lottery from amongst the registered voters of the relevant electoral section. Service in the electoral board is obligatory.

OSCE/ODIHR interlocutors expressed general confidence in the professionalism and impartiality of the election administration. Some representatives of smaller parties, however, expressed certain concerns regarding the impartiality of PECs and DECJs judiciary members, as these justices tend to be appointed by the two largest parties.

D. VOTER REGISTRATION

Any Spanish citizen aged 18 or older who has an active suffrage right is eligible to vote. Individuals sentenced by a court to forfeiture of their right to vote and those declared incapable by a valid judicial sentence are deprived of this right. Voter lists are comprised of voters resident in Spain and of absent resident voters living abroad.

Voter registration is conducted by the Electoral Census Office, which is part of the National Institute of Statistics. However, the CEC directs and supervises the operation of the Electoral Census Office. Information regarding the registration of citizens is provided by municipal councils and, for Spanish citizens residing abroad, by consulates.

Registration of voters is the responsibility of the state. Voter lists should be updated on the first day of each month. Once elections are called, voter lists are closed; thus, the lists updated in July will be used for the upcoming elections.⁴ Six days after the setting of the election day, relevant authorities conduct an eight-day inspection of lists. Initially, a voter can request corrections at the provincial office of the Electoral Census Office; if denied, they can appeal to a court. After this period, the Electoral Census Office is required to send a voter list card to each voter. The card is to indicate the voter's registration, the applicable section and electoral board, including the address of the latter. The total number of voters included in voter lists is some 35,000,000.⁵

E. METHODS OF VOTING

Ballot papers in Spain are not controlled until they are cast. For lower house elections, there is a separate ballot paper for each candidate list and each voter chooses one ballot, placing it in an envelope. For senate elections, all candidate lists appear on the same ballot. The voter marks this ballot with his or her choice of up to three candidates from any candidate list and again places the ballot in an envelope. Both ballots and envelopes may also be produced by political parties and mailed to voters prior to election day. Voters may, therefore, choose to put the ballot in the envelope at home and bring it with them to the polling station. In the past, each voter had

⁴ According to the law, the lists of the second month prior to calling the elections are used.

⁵ According to the information provided by the Ministry of Interior, see at: http://elecciones.mir.es/generales2011/Las_elecciones_en_cifras/Las_elecciones_en_cifras.htm.

to pass the envelope to the electoral board president, who then cast it in the ballot box. After the 2011 changes to the election law, this right now belongs exclusively to the voter.

Electoral legislation provides voters with the possibility to vote by post. Postal voting is available to Spanish citizens residing in Spain; residing in Spain but living temporarily abroad; and residing permanently abroad. With the 2011 electoral amendments, significant changes were introduced in the way that postal voting is organized abroad. Previously, the Electoral Census Office was obliged to send ballots and other documents to all voters in the voter lists residing abroad. For the 2011 elections, voters have to submit requests for voting in order to receive postal ballots. Those voters abroad who decide to vote have to send their ballots by post to the relevant consular section of the diplomatic mission or personally deliver the ballots to the respective consulate. Consulates then mail all envelopes received to the Ministry of Foreign Affairs, which sends the envelopes to the relevant election commissions. Previously, voters could post materials directly to Spain. The provisions were already used during the May 2011 municipal elections; according to OSCE/ODIHR NAM interlocutors, this may have decreased the number of votes cast from abroad.

Spain has signed and ratified the United Nations Convention on Rights of People Living with Disabilities. Visually impaired voters will have the possibility to apply for a special voting system at polling stations on election day. The Ministry of Interior informed the OSCE/ODIHR NAM that special templates have been prepared to permit voting by Braille upon request.

F. REGISTRATION OF CANDIDATES

Candidate lists may be presented by political parties, coalitions, and groups of citizens. The nomination process lasted from 12 to 17 October. Nominations of parliamentary candidates are made to the relevant PEC. Candidates are nominated in lists, which are to include as many candidates as the number of mandates in the corresponding constituency. Lists can also contain up to ten substitute nominees. No candidate may appear in more than one constituency nor be included in more than one list. To promote gender equality, the candidate lists for the lower house are to contain at least 40 per cent of each gender. In addition, the legal provisions stipulate that each bloc of five candidates on the list should include 40 per cent of each gender.

Where candidates are nominated by groups of citizens, the nomination must be supported by the signatures of at least one per cent of voters in the voter lists of a relevant constituency. According to recent electoral amendments, parties and coalitions that did not gain a parliamentary seat in the last elections are to submit the signatures of at least 0.1 per cent of the voters in the voter lists of the relevant constituency. Voters can only sign in support of one list.

The law on political parties adopted in 2002 allows the suspension or dissolution of political parties by a court decision for supporting terrorism or having links with known terrorist organizations. In 2003, the Supreme Court dissolved three political parties: *Herri Batasuna*, *Euskal Herritarrok* and *Batasuna*. Their decision was appealed to the European Court of Human Rights (ECHR) and in 2009, the ECHR ruled that the initial judgement was proportionate to the legitimate aim pursued, and that, in the absence of any element of arbitrariness, it had not infringed upon the free expression of the opinion of the people.⁶

⁶ ECHR judgments are accessible at <http://www.echr.coe.int>.

The 2011 changes to the election law include a number of amendments regulating the banning of political parties; they include the possibility of banning political parties after they have been elected, with respective delegates then losing their seats in the parliament. Currently, there are over 3,300 political parties registered in Spain. The registration of a political party is generally an easy process. However, certain issues of conflict could arise since each new party needs a distinct name, symbol and acronym from those already registered.

G. THE CAMPAIGN AND CAMPAIGN FINANCING

Prior to election day and before the start of the official campaign, which lasts for 15 days, political contenders may circulate information about their platforms, but may not ask voters for their support. On the basis of recent changes to the election law, during pre-election period⁷ it is prohibited to post posters and place advertisements in the media that are not part of a political party's 'regular activity'. Five days prior to election day, no public opinion polls are permitted, a legal provision that has been circumvented in the past on the Internet or in sister publications abroad.

OSCE/ODIHR NAM interlocutors stated that there is a high level of political dissatisfaction among the electorate that has been also voiced through the so called 15-M (15 May) movement. Before the local elections in May, tens of thousands of demonstrators protested across Spain against the political establishment, which they blame for the country's prolonged economic crisis.

According to political parties, social media increasingly plays a role in their campaign to directly communicate with voters and as one of several communication channels to deliver their campaign messages. In addition, municipal councils provide locations free-of-charge to post posters. While political parties voiced few concerns regarding the general campaign environment, some noted issues about their ability to campaign freely in the Basque country due to current circumstances.

The state subsidizes contestants' campaigns with legally set amounts for each seat obtained in the parliament (21,167 Euro) and each vote received for the Chamber of Deputies (81 cents) and Senate (32 cents). In addition, parties that form a parliamentary group in either house receive 22 cents for each voter (to cover ballot costs). Advances of up to 30 per cent are paid to parliamentary parties on the basis of their previous electoral result. Foreign donations are prohibited and no individual or legal entity can contribute more than 10,000 Euro to any one political contestant. The overall campaign spending ceiling is calculated by multiplying the total number of inhabitants of the constituency in which they are standing by 32 cents and so varies from location to location.

To oversee campaign finance regulations, the law empowers the Court of Auditors to review the campaign income and expenditure accounts of those entitled to receive advances or refunds. Parties' campaign finance managers are accountable to the Court of Auditors and some have been investigated in the past. The lack of specific regulation on the terms and conditions for commercial loans to parties for campaign funding purposes has been criticized.⁸ Some

⁷ This is how the period between calling the elections and until the official start of the campaign is referred to.

⁸ See Group of States against corruption Compliance Report on Spain adopted by GRECO at its 50th Plenary Meeting, 28 March – 1 April 2011, Strasbourg, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)5_Spain_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)5_Spain_EN.pdf).

OSCE/ODIHR NAM interlocutors voiced concern about the delayed and too general information made available by the Court of Auditors. They also note that foundations and associations linked to political parties are not required to report on their expenses.

H. MEDIA

A vibrant and diverse media landscape offers a wide variety of opinions and information to citizens. At the national level, there are two public TV channels (under *Radiotelevisión Española -RTVE*) and four major private TV broadcasters. There are nearly a dozen public TV broadcasters at the regional level. While newspaper readership has been historically lower, a majority of the population uses the internet for news purposes.⁹ The election law regulates campaign coverage in the public and private media. There are no specific regulations for internet.

Electoral contestants may use up to 20 per cent of their total campaign expenses to advertise in the press and on private radio stations. Public media and private TV are not allowed to carry paid advertisement. However, contestants are legally allotted free campaign spots on each public medium during the 15 day campaign period: new contestants and those that did not gain seats during the last elections receive a total of 10 minutes; contestants represented in parliament and those that got under five per cent during the last elections receive 15 minutes; those between 5 and 20 per cent receive 30 minutes; and those above 20 per cent receive 45 minutes.

A Radio and Television Committee under the direction of the CEC undertakes the allocation of free air time by a widely accepted formula. The CEC bears final responsibility and can further request PECs to oversee the allocation of free air time in regional and local public media programmes. The law foresees that public media respects political and social pluralism as well as equality, proportionality and neutrality of information.

Similarly, by law, all private media are to respect the principles of pluralism and equality during the campaign period and to cover debates and interviews neutrally and proportionally. However, the OSCE/ODIHR NAM was informed that with regard to televised debates, the two main political parties usually agree whether and in what format these are conducted. Reportedly, *PSOE* and *PP* have agreed to one live televised debate between their two leaders. Additionally, a televised debate for all contending parties is reportedly scheduled with *PSOE* and *PP* representatives being present.

The OSCE Representative on the Freedom of the Media has pointed out that laws still foresee defamation of public figures and laws relating to criminal libel; she welcomed, however, court rulings recognizing the important role of investigative journalism in revealing information of public interest.¹⁰ In 2008, OSCE/ODIHR recommended that interpretation and application of media provisions could merit a review to guarantee equitable coverage for political parties and enhanced ability for public broadcasters to cover the campaign in line with their editorial criteria.

⁹ See also European Commission background information report on Spain, October 2010, <http://www.mediadem.eliamep.gr/wp-content/uploads/2010/05/Spain.pdf>.

¹⁰ OSCE Representative on Freedom of the Media Regular Report to the Permanent Council on 29 July 2010, <http://www.osce.org/fom/70956>.

I. ELECTION OBSERVATION

Parties can be represented in election commissions through representatives, proxies, inspectors and electoral administrators. The election law provides for the presence of political party observers in polling stations on election day. It does not foresee access by domestic or international observers not nominated by parties. In 2004 and in 2008, OSCE/ODIHR recommended that legal provisions be adopted to permit non-party domestic and international observers to monitor elections, in order to bring the law into full compliance with OSCE commitments.

IV. CONCLUSION AND RECOMMENDATION

The electoral administration appears to enjoy overall confidence across the political spectrum. However, some smaller parties expressed concern regarding the work of PECs and DECAs. Despite some limited concerns expressed with regard to the legal framework, important safeguards for the conduct of democratic elections are included. Many OSCE/ODIHR NAM interlocutors indicated they would welcome an OSCE/ODIHR election-related activity and considered that such an activity could bring added value. In such circumstances, the OSCE/ODIHR NAM recommends deploying an Election Assessment Mission (EAM), in particular, to assess the implementation of the new legal provisions on postal voting, media coverage of the campaign, campaign finance, and access to observers. EAM members would also visit areas outside the capital to assess the campaign and electoral preparations at the provincial level.

ANNEX: LIST OF MEETINGS

State and Electoral Authorities

Ministry of Foreign Affairs

Santiago Cabanas, Director General for Foreign Affairs, Europe and Security
Juan Armando Andrada-Vanderwilde, Head of the Council of Europe and OSCE Division

Ministry of Interior

Ana Cristina Lopez Lopez, Head of Electoral Co-operation Unit, Deputy Directorate General of Internal Policy and Electoral processes

Central Election Commission

Manuel Delgado, Head of the Secretariat of the CEC
Fernando Galindo Elola-Olaso, Lawyer

Electoral Census Office

Jose Luis Viedma, Deputy General Director of the Electoral Census Office

Supreme Court

Fernando Roman Garcia, Head of the Court's President Office

Court of Audit

Gregorio Cunado Ausin, Technical Director
Guillermo Castro, Deputy Director
Maria Jose de la Fuente, Head of International Relations

Political Parties

Basque Nationalist Party (EAJ-PNV)

Emilio Olavarría, Member of Parliament

Convergence and Union (CiU)

Marc Gafarot, Adviser of the International Department

People's Party (PP)

Eduardo Gutiérrez, Deputy Head of International Relations
Rafael Rubio, Adviser of the International Department

Spanish Socialist Workers' Party (PSOE)

Jose Benegas, Member of Parliament, First Vice-President of the Committee of External Affairs of the Chamber of Deputies

United Left (IU)

Willy Meyer, Head of International Department
Ramon Luque Porrino, Electoral Politics Secretary
Lola Sanchez Tudela, Federal Co-ordinator

Media

Public Corporation of Radio and Television (RTVE)

Francisco Javier Perez Martinez, Director of Institutional Relations

Marta Abad Vitoria, Director of International Relations

ABC Newspaper

Ramon Perez-Maura, Deputy Director

El Mundo Newspaper

Iñaki Gil, Deputy Director

El País Newspaper

Fernando Garea, Reporter

Think Tanks

Centre for Political and Constitutional Studies (CEPC)

Luis Delgado del Rincon, Deputy Director for Publications

Clara Mapelli Marchena, Deputy Director for Studies and Research

Foundation for International Relations and Foreign Dialogue (FRIDE)

Cristina Manzano, Deputy Director General