



Office for Democratic Institutions and Human Rights

## SPAIN

### PARLIAMENTARY ELECTIONS

20 December 2015

OSCE/ODIHR Election Assessment Mission  
Final Report



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## TABLE OF CONTENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>II.</b>	<b>INTRODUCTION AND ACKNOWLEDGMENTS .....</b>	<b>2</b>
<b>III.</b>	<b>BACKGROUND AND POLITICAL CONTEXT .....</b>	<b>3</b>
<b>IV.</b>	<b>LEGAL FRAMEWORK.....</b>	<b>4</b>
<b>V.</b>	<b>ELECTORAL SYSTEM.....</b>	<b>4</b>
<b>VI.</b>	<b>ELECTION ADMINISTRATION.....</b>	<b>6</b>
<b>VII.</b>	<b>VOTER REGISTRATION.....</b>	<b>7</b>
<b>VIII.</b>	<b>POSTAL VOTING.....</b>	<b>8</b>
	A. POSTAL VOTING IN SPAIN .....	8
	B. POSTAL VOTING FOR CITIZENS TEMPORARILY ABROAD.....	8
	C. POSTAL VOTING FOR CITIZENS PERMANENTLY ABROAD .....	9
<b>IX.</b>	<b>CANDIDATE REGISTRATION.....</b>	<b>9</b>
<b>X.</b>	<b>ELECTION CAMPAIGN.....</b>	<b>11</b>
<b>XI.</b>	<b>POLITICAL PARTY AND CAMPAIGN FINANCE.....</b>	<b>12</b>
	A. FUNDING SOURCES AND CAMPAIGN EXPENDITURE .....	12
	B. DISCLOSURE AND REPORTING .....	13
	C. OVERSIGHT.....	14
<b>XII.</b>	<b>MEDIA .....</b>	<b>14</b>
	A. MEDIA ENVIRONMENT .....	14
	B. LEGAL FRAMEWORK .....	15
	C. COVERAGE OF THE ELECTIONS .....	17
<b>XIII.</b>	<b>COMPLAINTS AND APPEALS .....</b>	<b>17</b>
<b>XIV.</b>	<b>CITIZEN AND INTERNATIONAL OBSERVERS .....</b>	<b>18</b>
<b>XV.</b>	<b>ELECTION DAY .....</b>	<b>19</b>
<b>XVI.</b>	<b>RECOMMENDATIONS .....</b>	<b>20</b>
	A. PRIORITY RECOMMENDATIONS.....	20
	B. OTHER RECOMMENDATIONS.....	21
	<b>ANNEX I: ELECTION RESULTS.....</b>	<b>23</b>
	<b>ABOUT THE OSCE/ODIHR.....</b>	<b>24</b>

**SPAIN**  
**PARLIAMENTARY ELECTIONS**  
**20 December 2015**

**OSCE/ODIHR Election Assessment Mission Final Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation by the Permanent Mission of Spain to the Organization for Security and Co-operation in Europe (OSCE), the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Assessment Mission (EAM) to observe the 20 December parliamentary elections.

The elections were held in a professional, efficient and generally transparent manner, and electoral stakeholders expressed confidence in most stages of the process. Voters had an opportunity to make an informed choice in a highly competitive electoral environment that included several recent political formations, including those emerging from social movements and public protest. In pre-election public discourse and in the media, the elections were described as the most significant since the start of the country's transition to democracy in the late 1970s.

The elections took place against the backdrop of an economic crisis, discussions about austerity measures, corruption scandals and the rising pro-independence rhetoric in Catalonia. The electoral system, in place for over thirty years, has itself become a campaign topic and subject to calls for reform from many political forces and the public. The campaign was characterized by growing demands for systemic changes to accommodate a more pluralistic political landscape.

Elections were held for both houses of parliament, the Chamber of Deputies and the Senate. The Chamber of Deputies comprises 350 representatives, elected on the basis of a closed list proportional representation, while partial bloc voting is used to elect 208 of 266 Senators. The system does not ensure the equality of the vote for either of the two chambers, contravening paragraph 7.3 of the 1990 OSCE Copenhagen Document.

The legal framework, largely unchanged since 2011, provides a basis for the conduct of genuinely democratic elections. However, concerns were raised about legislation regulating the freedoms of expression, association and assembly, especially the 2002 Organic Law on Political Parties and the 2011 amendments to the 1985 Organic Law on General Election Regime that permit outlawing parties that peacefully pursue political objectives similar to those of, or have any links with, terrorist groups. Leaders of most parties have pledged to work towards repealing the controversial 2015 Citizens' Security Law, which they see as suppressing the right to exercise basic freedoms.

The elections were administered by a four-tiered system of election commissions headed by the Central Elections Commission (CEC), and the Ministry of Interior. While the election administration enjoys a high level of public confidence, the transparency of its work was diminished by the fact that commission sessions are closed to the public, communication with party proxies is in written form only, and there is no obligation to publish decisions. Similarly, the commissions consider complaints solely through a written procedure, and their decisions do not include reasoning, thus potentially limiting the right to an effective remedy provided for by paragraphs 5.10 and 5.11 of the 1990 OSCE Copenhagen Document.

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<sup>1</sup> The English version of this report is the only official document. An unofficial translation is available in Spanish.

Voter lists were compiled and administered by the Electoral Census Office under CEC supervision, and enjoyed stakeholders' confidence. All OSCE/ODIHR interlocutors expressed dissatisfaction with the significant decrease in out-of-country turnout following the 2011 amendments that introduced active registration requirement for voters from abroad.

The election campaign was vibrant, and although it was dominated by four political forces running candidate lists in all constituencies, regional parties enjoyed equal or greater visibility in some areas. The campaign rhetoric was sometimes antagonistic and personal, with accusations of corruption and appeals to return to decency in political life featuring prominently in candidate speeches and debates. The campaign was to an unprecedented degree conducted in the social media.

The legal framework provides for a comprehensive system of political and campaign finance. Recent amendments banned corporate donations, introduced gradual sanctions in case of excessive spending, and criminalized illegal donations. While the financing of political parties and campaigns is closely regulated, concerns over potential circumventions of donation regulations by foundations and associations remain.

The media environment is pluralistic with a variety of commercial and public broadcast and print outlets. However, significant concerns were raised to the OSCE/ODIHR EAM about growing commercial and political pressures diminishing media outlets' editorial independence and credibility. Official campaign coverage is highly regulated, according to some stakeholders to the detriment of the quality of information provided to voters. The format of televised debates came under criticism for not ensuring a level playing field.

The election law provides that each bloc of five candidates in every list for the Chamber of Deputies contains at least two candidates of the other gender, and that lists for the Senate have as close as possible to equal numbers of women and men. Women candidates comprised 48 per cent of candidates for the lower chamber and 43 per cent for the Senate. There are no official statistics regarding the participation of women in the election administration. Within the CEC, only 2 of 13 members are women.

The law does not provide for non-party citizen and international observation, thus falling short of meeting the commitment under paragraph 8 of the 1990 OSCE Copenhagen Document. The OSCE/ODIHR EAM was able to conduct its assessment in an unhindered manner, however, and enjoyed all the necessary support from the CEC.

In line with OSCE/ODIHR's methodology, the EAM did not observe election day proceedings in a systematic and comprehensive manner. However, mission members visited a limited number of polling stations. In the polling stations observed, voting was calm and efficient, but the secrecy of the vote was not always ensured. The lack of training of Electoral Boards was noted as a possible source of an uneven application of procedures during the counting.

## **II. INTRODUCTION AND ACKNOWLEDGMENTS**

On 3 November 2015, the Permanent Mission of Spain to the Organization for Security and Co-operation in Europe (OSCE) invited the Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 20 December parliamentary elections. Based on OSCE/ODIHR Needs Assessment Mission recommendation, the OSCE/ODIHR deployed an Election Assessment Mission

(EAM) from 7 to 23 December.<sup>2</sup> The OSCE/ODIHR EAM was headed by Ambassador Audrey Glover and included seven experts, drawn from seven OSCE participating States. The OSCE/ODIHR EAM was based in Madrid, but also visited Barcelona, Bilbao, Seville, Toledo, Valladolid and Valencia.

The elections were assessed for their compliance with OSCE commitments, other international obligations and standards for democratic elections, as well as with national legislation. In line with the OSCE/ODIHR's methodology, the OSCE/ODIHR EAM did not undertake systematic or comprehensive observation of election day proceedings. However, the mission followed voting on election day in a limited number of polling stations in Madrid, Valencia, Valladolid and Toledo, and observed the counting of ballots in a small number of polling stations in the capital.

The OSCE/ODIHR EAM wishes to thank the authorities of Spain for the invitation to observe the elections, and the Ministry of Foreign Affairs and Cooperation (MFAC), the Ministry of Interior (MoI), the Central Election Commission (CEC), the election administration at all levels, and other national and regional state institutions for their support and co-operation. The OSCE/ODIHR EAM also wishes to express gratitude to the representatives of political parties, media, civil society organizations and other interlocutors for sharing their views.

### III. BACKGROUND AND POLITICAL CONTEXT

Following the dissolution of parliament (*Cortes Generales*) by Prime Minister Mariano Rajoy on 26 October, the parliamentary elections were called for 20 December. The elections were held in an environment dominated by debates about the economic crisis, disagreements over austerity measures and recovery, corruption scandals, growing social discontent, calls for constitutional and electoral system reforms, and the strengthening of pro-independence political forces in Catalonia.

Following the 2011 elections, 13 parties and coalitions were represented in the Chamber of Deputies (*Congreso de los Diputados*, the lower chamber of parliament), which votes in the Prime Minister. As in most previous legislatures since the start of the country's democratic transition in the late 1970s, the 350-seat lower chamber was dominated by two main political forces: the governing Popular Party (*Partido Popular – PP*) with 186 seats and the Spanish Socialist Workers' Party (*Partido Socialista Obrero Español – PSOE*) with 110 seats. Eleven smaller parties and coalitions held the remainder 54 seats.<sup>3</sup> Of the 208 directly elected seats in the Senate (*Senado*, the upper chamber), *PP* held 136 and *PSOE* – 48.

The emergence of new political parties with roots in social movements, including *Podemos* and *Ciudadanos* (*C's*), and their recent successes in the European Parliament elections in May 2014 and local elections in May 2015, fuelled expectations that the 2015 parliamentary elections could usher in an end of a bipartisan political system (*bipartidismo*) at the national level. The strong electoral performance of regional parties and coalitions, such as *Bildu* in the Basque Country and *Compromís* in Valencia, contributed to an atmosphere of political change and intensified electoral competition in several parts of the country. In pre-election public discourse and in the media, the elections were described as the most significant in Spain's recent history.

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<sup>2</sup> See all [previous OSCE/ODIHR reports on Spain](#).

<sup>3</sup> These were Convergence and Union (*CiU*), United Left-Greens (*IU-UV*), *AMAIUR*, Progress and Democracy Union (*UPyD*), Basque Nationalist Party (*EAJ-PNV*), Republican Left of Catalonia (*ERC*), Galician Nationalist Bloc (*BNG*), Canaries Coalition – New Canary, Canaries Nationalist Party (*CC-NC-PNC*), Coalition Compromise (*Compromís-Q*), Citizens Forum (*FAC*) and Yes to the Future (*GBAI*).

#### IV. LEGAL FRAMEWORK

The legal framework provides a basis for the conduct of genuinely democratic elections, but has increasingly become subject to calls for reform from some political forces and the public. Parliamentary elections are regulated by the 1978 Constitution, the 1985 Organic Law on General Election Regime (last amended in 2015, hereinafter, election law), the 2002 Organic Law on Political Parties (last amended in 2015, hereinafter, law on political parties), the 2007 Organic Law on Financing of Political Parties (last amended in 2015, hereinafter, law on financing political parties), decisions and instructions of the CEC, state decrees signed by the King, and elements of administrative and penal laws. Most amendments introduced into the legal framework in 2015 concerned campaign finance and the financing of political parties (see Political Party and Campaign Finance section).

Concerns were raised by some stakeholders in relation to the legislation regulating the freedoms of expression, association and assembly. The law on political parties provides for the suspension or dissolution of political parties that support terrorism or the use of violence. Its provisions can be interpreted as including parties which through peaceful means pursue political objectives that could be perceived as similar to those of terrorist groups.<sup>4</sup> Amendments to the election law introduced in 2011 permit the outlawing of parties with any links to such groups. The Citizens' Security Law that came into force in July 2015 and some amendments to the Criminal Code raise additional concerns about their effect on basic freedoms.<sup>5</sup>

*The authorities should ensure the full enjoyment of the rights of freedom of expression, association and peaceful assembly, and that any restrictions on the exercise of these rights are proportional and minimal, in accordance with international standards.*

The 2011 amendments to the election law also provide for the removal from office of elected representatives on the basis of so-called "incompatibility".<sup>6</sup> Some aspects of the procedure contravene paragraph 7.9 of the Copenhagen Document, and their review was previously recommended by the OSCE/ODIHR.<sup>7</sup>

#### V. ELECTORAL SYSTEM

The parliament consists of a Chamber of Deputies and a Senate, both elected for concurrent four-year terms. A candidate list participates in the distribution of mandates provided that it receives at least three per cent of valid votes cast in a respective constituency.

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<sup>4</sup> Article 9 (2) (c) of the law on political parties prohibits "supplementing and politically supporting the work of terrorist organisations in order to secure their objectives of subverting constitutional order or seriously altering public peace by trying to subject the authorities, specific people or groups within society or the population in general to a climate of terror".

<sup>5</sup> These include excessive fines (e.g. the organisers of public protests can be fined up to EUR 600,000), the use of administrative sanctions without judicial guarantees, an ambiguous definition of an "organiser" of public events, and a prohibition on the use of images of or data on law enforcement officers.

<sup>6</sup> According to Article 6.4 of the election law, "incompatibility" is established by the illegalisation by final court decision of the party, federation or coalition which presented the candidate. In the event that a candidate was presented by a group of electors, "incompatibility" can be established by a court declaration of a link between that group of electors and an illegalised party.

<sup>7</sup> Paragraph 7.9 of the [1990 OSCE Copenhagen Document](#) states that OSCE participating States should "ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures".

The Chamber of Deputies is composed of 350 members elected from 52 constituencies, by a closed list proportional system.<sup>8</sup> The 52 constituencies are the 50 provinces (each entitled to an initial minimum of two seats), plus the autonomous cities of Ceuta and Melilla (each entitled to one seat). The remaining 248 seats are allocated among the 50 provinces in proportion to their population size.

The members of the Senate are elected from 59 constituencies: 47 continental provinces, the two autonomous cities and 10 Senate constituencies obtained by subdividing the three insular provinces. The number of Senators can vary: 208 were directly elected in the constituencies under a majoritarian system of open lists on 20 December.<sup>9</sup> The remaining Senators are elected in a staggered manner by the incoming legislative assemblies of the 17 autonomous regions, one for each, plus an additional one for each one million registered voters. For the incoming legislative period, the Senate includes 266 members.

As previously noted by the OSCE/ODIHR, the principle of the equality of the vote, measured by the number of votes required to obtain a seat, is challenged in numerous constituencies, for both chambers. Of the 52 Chamber of Deputies' constituencies, 37 deviate by more than 15 per cent from the average, while another 3 deviate by more than 10 per cent.<sup>10</sup> Of the 59 Senate constituencies which directly elect 208 Senators, 56 deviate by more than 15 per cent from the average.<sup>11</sup> These deviations contradict the principle of equality of the vote, as guaranteed by the Constitution, as well as OSCE commitments and other international obligations and standards.<sup>12</sup>

Most OSCE/ODIHR interlocutors, including the CEC, state authorities and most political parties, stated that the electoral system designed in 1985 requires reforms in order to address the inequality of the vote and the number of lost votes, and to change the seat allocation system, as well as the role and the functions of the Senate.<sup>13</sup>

*The principle of equality of the vote should be upheld, in accordance with the Constitution, OSCE commitments, other international obligations and standards and good international practice.*

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<sup>8</sup> Article 68.1 of the Constitution states that the "Congress consists of a minimum of three hundred and a maximum of four hundred Deputies".

<sup>9</sup> Voters can choose up to three candidates from any list in the provinces; up to two in Ceuta and Melilla; up to three in three of the insular constituencies and one in the other seven.

<sup>10</sup> Section 2.2.iv of the [2002 Code of Good Practice in Electoral Matters of the Council of Europe's Commission for Democracy through Law \(Venice Commission\)](#) recommends that "the permissible departure from the norm should not be more than 10% and should certainly not exceed 15%, except in special circumstances". Most underrepresented in the Chamber of Deputies are Madrid (where the number of votes required to win a seat deviates from the average by 31 per cent), Coruna (30 per cent) and Barcelona (28 per cent), while most overrepresented are Teruel (where number of votes required to win a seat deviates from the average by 65 per cent), Soria (63 per cent) and Segovia (61 per cent). Article 68.1 of the Constitution states that the Deputies are elected by "universal, free, equal, direct and secret suffrage, under the terms established by law."

<sup>11</sup> Most underrepresented in the Senate are Madrid (where the number of votes required to win a seat deviates from the average by 600 per cent), Barcelona (488 per cent) and Valencia (177 per cent), and most overrepresented are Hierro (94 per cent), Soria (89 per cent) and Gomera (86 per cent). Article 69 of the Constitution stipulates that "the Senate is the House of territorial representation", and article 69.2 that "in each province, four Senators shall be elected by the voters thereof by universal, free, equal, direct and secret suffrage".

<sup>12</sup> Paragraph 7.3 of the [1990 OSCE Copenhagen Document](#) provides that participating States will "guarantee universal and equal suffrage to adult citizens". Paragraph 21 of the [1996 General Comment No. 25](#) to Article 25 of the International Covenant on Civil and Political Rights ([ICCPR](#)) provides that "the principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another".

<sup>13</sup> The Venice Commission [Code of Good Practice in Electoral Matters](#) paragraph 2.2.v. provides that "in order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods". Since the 2011 elections, one seat was reallocated from Jaen to Cadiz.

## VI. ELECTION ADMINISTRATION

The parliamentary elections were administered by a four-tiered election administration, comprising the CEC, 50 Provincial Election Commissions (PECs), 1,303 District Election Commissions (DECs) and 57,486 Electoral Boards (EBs) (grouped in 22,951 polling centres), and the MoI. Electoral deadlines were respected, and the election administration enjoyed the confidence of most stakeholders.

The CEC is a permanent body composed of 13 members: 8 judges drawn from the Supreme Court by lottery and 5 university professors appointed by the parliament. It oversees the implementation of the election legislation and provides clarifications through decisions. The CEC also supervises the Electoral Census Office (ECO), responsible for creating and updating the voter registry.

The PECs and DECs were formed by 8 October and included five members each: three judges and two professors of law, political sciences or sociology. The PECs' responsibilities included the registration of candidates and the tabulation and publication of constituency results. The DECs had limited responsibilities, mainly related to the setting up of polling stations.

The EBs were formed by 25 November and included a chairperson and two members who were selected by lottery from among the registered voters from each precinct.<sup>14</sup> There is no legal prohibition for persons with disabilities to become members of election commissions, but in practice they do not receive additional support to fulfil the duties of commission members.<sup>15</sup>

There are no official statistics regarding the participation of women in the election administration. Within the CEC, only 2 of 13 members are women.

*As previously recommended, given the low representation of women in the CEC, consideration should be given to promoting gender balance in the nomination process of its members.*

The transparency of the work of the election administration was diminished by several factors.<sup>16</sup> While the election law provides for the electoral contestants to be represented at the CEC and the PECs, their sessions are closed to the public. The OSCE/ODIHR EAM was exceptionally invited to observe one CEC session on election day.<sup>17</sup> Communication between political party proxies and other stakeholders and commissions is in written form only.

The election law does not require the publication of agendas of sessions in advance, nor does it provide for the presence at deliberations of stakeholders directly affected by a decision. It also does not require the publication of all CEC or PEC decisions.<sup>18</sup> Commendably, the CEC published all its

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<sup>14</sup> Service in the EBs is compulsory, unless a legally-permissible justification is provided or the person is above 65 years of age. An EB serves a polling station which has between 500-2,000 registered voters.

<sup>15</sup> Decree 422/2011 On the Conditions for the Participations of Persons with Disabilities in Political and Electoral Process only prescribes free sign language interpretation to members of polling stations. This contravenes the UN Convention on the Rights of Persons with Disabilities that prescribes non-discrimination (Article 5) and reasonable accommodation (Article 2) for people with disabilities.

<sup>16</sup> Article 7.a of the Law on Transparency, Access to Public Information, and Good Governance states that public administration will publish "guidelines, instructions, agreements, circulars or replies to queries from individuals or other bodies, to the extent that they constitute an interpretation of the law or have legal effect."

<sup>17</sup> The CEC held six sessions during the OSCE/ODIHR EAM presence.

<sup>18</sup> Article 18.6 of the election law states that "Electoral Commissions, under instructions from their Presidents, shall proceed with the publication of their resolutions or the content of their discussions when their general nature makes it advisable."

decisions on its website within days of their adoption, but generally without their reasoning. The PECs that the OSCE/ODIHR EAM met with stated that they published their decisions on candidate registration and election results in provincial gazettes.

*The legal framework should be reviewed to increase the transparency of the work of the election administration. In particular, the commissions should conduct their meetings in sessions open to observers and media representatives, and all their decisions should be published.*

The MoI is responsible for the operational aspects of organising elections. It is also charged with designing and developing strategies aiming to improve electoral management and running pilot projects with prior CEC authorisation.<sup>19</sup> It also organized the collection of data from EBs on election day, including voter turnout and preliminary results, and their publication, contracting a private company.

The MoI conducted a large-scale voter education campaign in all official languages in the media, including on topics such as postal voting, secrecy of the vote, and voting procedures. The Ministry printed some 400 million ballots (separate ones for each deputies' list and a single one for each Senate constituency), which were distributed to polling stations. In addition, political parties printed ballots following an official template, and could mail them to voters at a reduced rate.<sup>20</sup>

## VII. VOTER REGISTRATION

Citizens who have reached the age of 18 and are in the voter register are eligible to vote, except those sentenced by a final court judgment to forfeit their right to vote, declared incapable by a court decision, or committed to a psychiatric hospital with a declaration on their inability to exercise the right to vote. The latter limitation is contrary to the UN Convention on the Rights of Persons with Disabilities.<sup>21</sup> As informed by interlocutors, the current practice is that citizens deprived of their legal capacity are usually automatically deprived of voting rights, while the election law prescribes that a court, while deciding on incapability, should decide on voting rights separately.

*Further consideration should be given to amend the election law in order to extend the right to vote to all persons with disabilities.*

Voter registration is passive in-country and active out-of-country.<sup>22</sup> The ECO is responsible for the compilation of the voter register, under CEC supervision. Voter lists are drawn up from the electronic voter register based on the residence of voters. The register is based on information from the Civil

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<sup>19</sup> For instance, it supported the electronic management of all 3,305 polling stations in Madrid. These EBs could identify the voter in the voter list and fill in the EB paperwork electronically, and were equipped with laptops, electronic ID readers, barcode readers, printers and SD cards containing the voter lists.

<sup>20</sup> The Senate elections ballots mailed to voters by political parties were generally sent already pre-marked. Voters could still obtain blank ballots at polling stations on election day.

<sup>21</sup> Article 29 of the [Convention](#) provides that “states parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.” Paragraph 49 of General Comment No 1 of the Committee on the Rights of Persons with Disabilities mentions: “States parties have an obligation to protect and promote the right of persons with disabilities to access the support of their choice in voting by secret ballot, and to participate in all elections and referendums without discrimination. The Committee further recommends that States parties guarantee the right of persons with disabilities to stand for election, to hold office effectively and to perform all public functions at all levels of government, with reasonable accommodation and support, where desired, in the exercise of their legal capacity.”

<sup>22</sup> According to the CEC, the MoI and the MFAC, the requirement for active registration out-of-country prior to each election was introduced to ensure a consistent verification of voter's identity.

Registration Office, Ministry of Justice and the MFAC, and is updated electronically on a monthly basis.

The deadlines for voter registration were respected. Provisional voter lists were available for checking by voters at Municipal Council Offices and Spanish consulates abroad, as well as online by electronic certificate, between 3 and 10 October.<sup>23</sup> During this period, 9,214 requests for changes were submitted, of which nearly half were from outside Spain; 9,040 were accepted, most relating to voters changing their place of residence. The final voter lists were published at EBs and online ten days prior to election day, and included 34,631,581 registered voters in country. Of the 1,880,849 citizens living abroad permanently, only 151,061 (or 8.03 per cent) registered to vote by mail.<sup>24</sup>

Electoral contestants may receive copies of the voter lists upon request, and could challenge any entries on them. According to the information available to the OSCE/ODIHR EAM, the main political parties requested the lists at the national level, and no complaints were submitted, confirming the stakeholders' confidence in the integrity of the voter lists.

## VIII. POSTAL VOTING

Citizens residing in Spain can choose to vote by mail, a right granted without a need for justification. Citizens temporarily abroad on election day can vote by mail only, while a voter residing abroad permanently can vote by mail, or deliver his/her ballot to a Spanish consulate.<sup>25</sup>

### A. POSTAL VOTING IN SPAIN

Voters resident in Spain could apply for postal voting to the ECO via a post office between 27 October and 11 December. The ECO issued them a certificate of registration, and ballots were mailed to them between 30 November and 14 December. Initially, voters were to mail their ballots and registration certificates to the EBs between 30 November and 16 December, but the CEC extended the deadline to 14:00 hrs. on 18 December because of the Christmas holiday, delays related to formal complaints against certain candidate lists, as well as the post office's internal elections held on 17 December. The post delivered the envelopes to the EBs by the closure of the polls.

Of the 34,631,581 voters resident in Spain, 787,812 (2.27 per cent) requested to vote by mail. A total of 783,224 requests were approved. According to the ECO, all these voters were mailed ballots and 728,719 of them voted. As of 20 January 2016, 1,482 ballots arrived after the deadline and were therefore not counted.

### B. POSTAL VOTING FOR CITIZENS TEMPORARILY ABROAD

Citizens who were temporarily abroad on election day were obliged to request or download online application form and deliver it in person to a relevant consulate between 27 October and 21 November. Out of 11,557 such requests, 11,250 were approved. According to the ECO, ballots and

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<sup>23</sup> An electronic certificate is an individual card used for online identification and for electronic signature; it is issued free of charge, and must be supported by a card-reader. Some 20 million citizens own such card, but significantly fewer use it. Its data can also be stored on the electronic national ID.

<sup>24</sup> This represents an increase of 25 per cent as compared to the 2011 elections. According to OSCE/ODIHR EAM interlocutors, the increase was driven mainly by the new Law on Historical Memory which facilitates the process of obtaining Spanish citizenship by those of Spanish origins, and by growing emigration.

<sup>25</sup> Decree 3425/2000 establishes one year as the maximum period for temporary registration, a limit not prescribed in the law.

registration certificates were mailed to these voters between 24 and 30 November.<sup>26</sup> Voters could mail their marked ballots and registration certificates to the PECs between 24 November and 16 December. In total, 5,378 voters temporarily abroad voted, but no information is available as to how many ballots arrived after the deadline and were therefore not counted.

### C. POSTAL VOTING FOR CITIZENS PERMANENTLY ABROAD

For the first time, voters residing permanently abroad could submit their requests and supporting documents online. Postal deadlines for them were the same as for those staying abroad temporarily, except that they mailed their ballots and registration certificates to a local consulate (where they could also deposit them in person) until 15 December. The CEC extended this deadline to 20:00 hrs. on 20 December, i.e. the close of polls in Spain, because of operational delays by some of the host-country postal services.<sup>27</sup> Of the 1,880,849 citizens residing abroad, only 161,228 (or 8.57 per cent) registered to vote by mail. A total of 151,061 requests were approved.<sup>28</sup> According to the ECO, ballots were mailed to all these citizens, and some 88,900 voted. As above, the authorities have no information as to how many ballots arrived late and were therefore not counted.

All OSCE/ODIHR interlocutors, including the CEC, expressed their dissatisfaction with the significant reduction of the number of votes from abroad following the 2011 amendments to the election law.<sup>29</sup> A number of civil society organizations blamed the authorities for failing to remedy the significant decrease of out-of-country voter turnout during the 2011 elections, when it was first noted. The decrease appears to have been caused by several factors, including the introduction of the in-person registration requirement, but also exceedingly tight deadlines, host-country postal service disruptions, and an ineffective voter information campaign.<sup>30</sup> The OSCE/ODIHR EAM was informed of several instances of voters abroad claiming that they never received their ballots.

*The authorities should address the shortcomings of the postal voting system, and take steps to ensure that all voters benefit from equal voting opportunities to the maximum extent possible.*

## IX. CANDIDATE REGISTRATION

Citizens who have the right to vote also have the right to stand, with some exceptions. These include citizens sentenced by a final court decision that explicitly bans them from holding a public office, and those in professional and reserve military service. Additionally, those convicted at first instance of rebellion, terrorism and offences against the state (without a final decision) are also not eligible to run,

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<sup>26</sup> The deadline was 8 December in case of complaints against lists of candidates. The OSCE/ODIHR EAM is aware of a number of such complaints, but this data is not collected at the national level. For example, in Barcelona, the ballots were mailed on 4 December.

<sup>27</sup> For example, some 2,000 ballots arrived after the deadline due to a strike of the Chilean post.

<sup>28</sup> The countries with the largest Spanish diaspora are Argentina (4.4 per cent registered to vote out of 392,943), France (12.7 per cent of 194,937), Venezuela (2.3 per cent of 159,014), and Cuba (2.1 per cent of 116,626). The highest rate of voter registration in countries with over 10,000 Spanish citizens was recorded in Italy (20 per cent), United Kingdom (17.4 per cent) and Germany (15.2 per cent). The lowest rate of registration was in Cuba, Venezuela, and Brazil (3.2 per cent).

<sup>29</sup> In the 2011 elections, out of 1,482,786 eligible voters, a total of 149,606 registered (9.3 per cent, including 13,226 temporarily and 136,380 permanently abroad) but only 73,361 cast their ballot (5 per cent). In 2007, when prior registration was not required, 382,568 of 1,205,329 eligible voters cast the ballot (32 per cent).

<sup>30</sup> The Venice Commission [Code of Good Practice in Electoral Matters](#) paragraph 3.2.iii provides that “postal voting should be allowed only where the postal service is safe and reliable”.

as these crimes disqualify them from holding high level state or public functions. Such limitations are at odds with OSCE commitments and other international obligations and standards.<sup>31</sup>

*Limitations on the right to stand should be reviewed to further enhance full compliance with OSCE commitments and other international obligations and standards. Any restriction on the right to stand for an election must be justifiable on objective and reasonable criteria. The withdrawal of individual franchise in case of a criminal conviction without a final court decision should be reconsidered.*

The right to nominate candidate lists is granted to political parties, party coalitions and groups of voters (contestants).<sup>32</sup> Each list had to include as many nominations as the number of seats plus up to 10 substitutes. A candidate could only be on one list. Independent candidates cannot stand, contrary to OSCE commitments and other international obligations and standards.<sup>33</sup>

*The legislation should be amended to allow individual citizens to run as independent candidates, in accordance with OSCE commitments and other international obligations and standards.*

Lists proposed by groups of citizens require the support of 1 per cent of voters from a respective constituency. Lists proposed by non-parliamentary parties and coalitions have to submit at least 0.1 per cent of signatures of voters from the respective constituency. While these percentages are in line with good electoral practice, the different requirements are discriminatory to the nominees of groups of citizens,<sup>34</sup> and are at odds with OSCE commitments and other international obligations and standards for democratic elections.<sup>35</sup>

*As previously recommended, consideration should be given to establishing equal conditions for the nomination of candidates by non-parliamentary parties and groups of citizens.*

The contestants had 20 days to collect the required signatures. Within two days, the provincial ECO verified the signature lists with respect to three criteria: that all fields are completed; that the voters who signed were registered in the respective constituency; and against multiple signatures from the same voter. If the necessary number of entries was not reached or the documents contained errors, prospective contestants had two days to add missing signatures or data. The provincial ECO had one day to verify the new signatures, a deadline described as too tight by its representatives. While this process was not open to observers, stakeholders met by the OSCE/ODIHR EAM expressed confidence in the signature verification.

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<sup>31</sup> Paragraph 7.3 of the [1990 OSCE Copenhagen Document](#) provides that participating States will “guarantee universal and equal suffrage to adult citizens”; paragraph 58 of the [Council of Europe recommendation \(2010\)4](#) states that “Any restrictions on the electoral rights of members of the armed forces which are no longer necessary and proportionate in pursuit of a legitimate aim should be removed”.

<sup>32</sup> Some 4,000 political parties are registered, but many are inactive. As of March 2015, political parties that did not make financial reports for three consecutive years or four years in total will be automatically deregistered.

<sup>33</sup> Paragraph 7.5 of the [1990 OSCE Copenhagen Document](#) provides that participating States will “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organisations, without discrimination”. Paragraph 15 of the [1996 General Comment No. 25 to Article 25](#) of the ICCPR provides that “...Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation”.

<sup>34</sup> Article 23 of the Constitution stipulates that “Citizens (...) have the right to access on equal terms to public office, in accordance with the requirements determined by law.”

<sup>35</sup> Paragraph 7.5 of the [1990 OSCE Copenhagen Document](#) states that participating States will “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organisations, without discrimination”.

Voters can sign in support of only one list, which constitutes an unnecessary restriction that challenges political pluralism and is at odds with paragraph 3 of the 1990 OSCE Copenhagen Document and international good practice.<sup>36</sup>

*The authorities should reconsider the restriction that citizens may sign in support of only one candidate list. The process would be more open and inclusive if citizens could sign for as many lists as they choose.*

In an inclusive process, candidate registration ended on 16 November. In total, 625 lists were registered for the Chamber of Deputies and 673 for the Senate. The number of candidates for the lower chamber was 4,353 (48 per cent women), and 1,543 for the Senate (43 per cent women).<sup>37</sup> The election law provides that each bloc of five candidates in every list for the Chamber of Deputies contains at least two candidates of the other gender, and that lists for the Senate have as close as possible to equal numbers of women and men.

## X. ELECTION CAMPAIGN

The official election campaign period starts 15 days and ends one day before the election day. However, political parties are permitted to conduct outreach activities other than explicitly seeking voter support during the so-called ‘pre-election period’ between the time when the elections are called and the start of the campaign.

The elections were highly competitive, with the campaign largely dominated by four leading political parties that ran lists in all the constituencies, including the governing *PP* and its traditional rival *PSOE*, as well as the newcomers *Podemos* and *C’s*. The *Unidad Popular* (formerly, *IU – Izquierda Unida*) also ran in most provinces, while the formerly nationwide parliamentary group (*UPyD*) concentrated its campaigning efforts on the area in and around the capital city. The Catalanian *Democracia i Libertat* (formerly, *CiU*), the *ERC*, the Basque *EAJ-PNV*, *Bildu* coalition, the Galician *En Marea*, the Valencian *Compromis*, and the Canarian *Coalición Canaria (CC-PNC)* were amongst the most visible regional parties and coalitions in respective autonomous regions.

Political parties used diverse methods of reaching out to voters. While billboards and banners of the *PP*, *PSOE* and *C’s* were highly visible in the country’s largest cities visited by the OSCE/ODIHR EAM, many of the other contestants resorted to smaller scale canvassing through posters and campaign stands. Most OSCE/ODIHR EAM interlocutors agreed that the campaign was to an unprecedented level conducted online, predominantly on social media such as Facebook and Twitter.

The main campaign issues discussed by representatives of political parties during the televised debates and at rallies included the economic crisis, austerity measures and the persistently high unemployment, especially among the country’s youth, a series of corruption scandals involving some political parties, as well as issues of devolution and the rising popularity of pro-independence political forces in Catalonia. Constitutional and electoral reforms were also discussed by many candidates, especially with a view to an anticipated demise of the *de facto* two-party political system in existence since the start of the country’s democratic transition.

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<sup>36</sup> Paragraph 3 states that participating States “recognise the importance of pluralism with regard to political organisations”. Paragraph 77 of the [2010 OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulations](#) state that “in order to enhance pluralism and freedom of association, legislation should not limit a citizen to signing a supporting list for only one party”.

<sup>37</sup> During the last legislative period, Spain ranked 11<sup>th</sup> in the [Inter-Parliamentary Union’s classification](#) of women’s representation in the lower chambers of parliaments.

The campaign rhetoric was at times antagonistic, with accusations of corruption and appeals for a return to decency on the part of the political establishment featuring prominently in campaign speeches and in the debates. Leaders of most political parties made public pledges to work towards repealing the controversial Citizens' Security Law, which many see as unduly suppressing the right of the exercise of basic freedoms (see Legal Framework and Media sections).

The OSCE/ODIHR EAM interlocutors representing some of the smaller parties and coalitions also raised concerns about conditions that they believe did not allow for a level playing field. They complained about the largest parties and some new political forces receiving greater coverage in public and private media.<sup>38</sup> They also pointed to the dominant actors' advantage in financing their campaigns, often through practices that in their view circumvented the law (see Media and Political Party and Campaign Finance sections).

## **XI. POLITICAL PARTY AND CAMPAIGN FINANCE**

Campaign finance is regulated by the election law, while the law on financing political parties governs party financing. The latter was amended in 2012 and 2015 to increase the transparency of political finance and to incorporate some of the recommendations made by the Group of States against Corruption of the Council of Europe (GRECO).<sup>39</sup>

### **A. FUNDING SOURCES AND CAMPAIGN EXPENDITURE**

The law on financing political parties provides for a mixed system of financing. Political parties may receive membership fees, income from party property and activities, cash and in-kind donations from physical persons (including foreigners), bequests and take out bank loans.<sup>40</sup> Donations from individuals are capped at EUR 50,000 annually and anonymous donations and donations from legal entities are prohibited. Political parties are also entitled to annual support from the state on the basis of votes and seats gained in the last elections to the Chamber of Deputies. In 2013, the total state financing to all political parties amounted to almost EUR 200 million, of which some EUR 71 million were allocated to parliamentary parties.

Election campaigns of the contestants can be financed by donations from individuals – capped at EUR 10,000, and loans. The state reimburses eligible contestants' campaign expenditures in the amounts defined per each seat obtained in the parliament (EUR 21,167) and each vote received in the elections to the Chamber of Deputies and the Senate (EUR 0.81 and EUR 0.32, respectively).

Each contestant must appoint an electoral manager responsible for opening a special bank account and notifying the CEC and/or the respective PECs of the opening of the account, collecting funds and

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<sup>38</sup> According to an April 2015 CEC instruction, "significant political groups", defined as electoral contestants not represented in parliament that received at least five per cent of the vote in "recent electoral procedures", are entitled to media coverage, which is neither equal nor greater than that allotted to parties represented in parliament. In meetings with OSCE/ODIHR EAM, the representatives of several parties represented in parliament (e.g. *UPyD*, *Izquierda Unida*, *EAJ-PNV* and *Bildu* coalition), claimed that they received less media coverage than several other parties, including those that held no seats in the outgoing legislature.

<sup>39</sup> See Third Evaluation Round GRECO reports on Transparency of Party Funding in Spain, including the [Evaluation Report](#), the [Compliance Report](#), the [Second Compliance Report](#), and an [Addendum](#).

<sup>40</sup> Indebtedness of political parties was a matter of controversy in the past, since loans were commonly written off, or credits were granted on preferential terms, thus raising concerns about parties' dependence on their benefactors. The 2015 amendments to the law on financing political parties outlawed cancellation of loans to political parties/electoral contestants.

incurring and paying for electoral expenses.<sup>41</sup> Contestants can request advances of up to 30 per cent, calculated on the basis of their previous election results. No later than 30 days after the submission of contestants' financial reports, the state has to reimburse 90 per cent of the amount of subsidies to which they are entitled, according to the official results of the elections, after deducting any advance payment.

The campaign spending limit is calculated on the basis of an allotment of EUR 0.37 per voter in each constituency where a party, a coalition or a group of citizens stands for an election. The limit applies only during the two weeks of the official campaign period. According to the law, up to 20 per cent of the funds can be spent on advertising. Moreover, only expenses mentioned in Article 130 of the election law are deemed electoral and therefore eligible for reimbursement. The overall spending limit that applies to contestants putting forward lists in more than one constituency corresponds to the total sum of the spending limits of all those constituencies. Thus, parties, coalitions and groups of citizens that registered candidate lists for the Chamber of Deputies and the Senate in all constituencies could spend up to EUR 27 million during the official campaign period.

## **B. DISCLOSURE AND REPORTING**

Political parties must submit consolidated annual reports to the Court of Audit by 30 June of each year and publish them on their websites within one month from the date of submission. In case of non-compliance, political parties are subject to the withholding of public funds.

Some OSCE/ODIHR EAM interlocutors raised concerns over potential circumventions of campaign finance regulations by foundations and associations, especially in the wake of scandals involving illegal financing of several political parties. According to the law, foundations and associations can receive unlimited donations from legal entities, but only those formally connected to political parties and thus eligible for public funds, must report to the Court of Audit on their contributions. They are not obliged to report on their expenses, allowing them to pay for parties' routine activities or provide them in-kind services without having to report them. Several OSCE/ODIHR EAM interlocutors alleged that some political parties' campaigns enjoyed the support of foundations and associations which can receive unlimited donations, including from legal entities.

*Consideration should be given to making the donation limit and the prohibition provisions apply to all foundations and associations affiliated with political parties, and to obliging them to also report their expenditures.*

Electoral managers must submit a financial report to the Court of Audit between 100 and 125 days following the election. The reports must detail the income and expenses of the election campaign backed by supporting evidence. However, they are not made public.

*Consideration should be given to requiring the publication of financial reports by electoral contestants in a timely manner and accompanied by all supporting materials to allow for public scrutiny.*

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<sup>41</sup> Those refer specifically to expenses listed in Article 130 of the election law, including the renting of premises for holding electoral rallies, remuneration of campaign staff, transport costs or interests incurred on loans taken to finance election campaigns. But they do not include the mailing of campaign materials, for instance.

## C. OVERSIGHT

The Court of Audit is the oversight body in charge of auditing political parties and electoral contestants' financial reports.<sup>42</sup> It is composed of 12 members who are appointed by parliament, a method which some OSCE/ODIHR EAM interlocutors considered to be politicized. The law vests the Court of Audit with wide investigative powers; it can carry out investigations both *ex officio* and upon complaint. However, there is no campaign finance supervision during the campaign or before the submission of contestants' financial reports. Within 200 days after the election, the Court of Audit has to pronounce on the correctness of the contestants' financial reports.

The Court of Audit is also required to issue an annual report on political party financing within six months of the submission of the political parties' financial reports.<sup>43</sup> In line with a previous OSCE/ODIHR recommendation, this report is made public upon its validation by the Court and is then submitted to the Joint Parliamentary Committee for relations with the Court of Audit.

The Court of Audit may impose financial sanctions (withholding or reducing public subsidies) and turn to law enforcement agencies in case of criminal infringements of regulations. Recent amendments to the law on financing political parties introduced a graduated system of sanctions in cases of overspending, and made receiving unlawful donations a criminal offence. The amended law further clarified internal mechanisms of the Court of Audit's decision-making process. Its decisions can be appealed to the Supreme Court, and the appeal temporarily suspends their enforcement. However, some infringements foreseen in the law, such as non-submission of reports to the Court of Audit by foundations and associations, or the failure to open a specific bank account to collect donations, are not sanctioned, which is not in line with international standards.<sup>44</sup>

*Consideration should be given to ensuring that all infringements of political finance rules entail effective, proportionate and dissuasive sanctions.*

## XII. MEDIA

### A. MEDIA ENVIRONMENT

The media environment is pluralistic with a variety of commercial and public television and radio channels, as well as newspapers and Internet portals. Television is considered the main source of information. The most-watched channels include the privately owned *Telecinco*, *La Sexta* and *Antena 3*, as well as *La1*, the flagship station of the public broadcaster *RTVE*.<sup>45</sup> Prominent news websites include those of the main print newspapers such as *El País* and *El Mundo*, but also *El Confidencial*, *ElDiario.es*, *Público* and *El Español*. Some 75 per cent of the population has Internet access.

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<sup>42</sup> The Court audits the financial reports of all publicly funded parties and only a random sample of reports submitted by other parties. In addition, it audits the financial reports of only those electoral contestants that are eligible for reimbursement of their electoral expenses.

<sup>43</sup> The report contains remarks and findings regarding the monitoring of financial reports, and an aggregated summary of political parties' annual financial reports, comprising information about operational activities and a simplified summary of electoral contestants' reports.

<sup>44</sup> See Article 16 of Recommendation Rec(2003)4 of the Council of Europe's Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, which stipulates that "States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions".

<sup>45</sup> *Radiotelevisión Española* has four other channels: *La2*, *24 horas*, *Clan* and *Teledporte*.

The economic crisis has taken a severe toll on the print media environment, leading to many job losses and prompting a series of takeovers.<sup>46</sup> A number of OSCE/ODIHR EAM interlocutors also expressed concerns about a growing concentration of media ownership in the broadcast sector.<sup>47</sup> Some claimed that commercial pressures had led to cases of self-censorship among journalists, diminishing the editorial independence and credibility of some of the country's most influential outlets.<sup>48</sup>

According to most OSCE/ODIHR EAM interlocutors, editorial independence has also come under political pressure. Many argued that the impartiality of the public broadcaster had been damaged following a 2012 decree abolishing the qualified majority requirement when parliament appoints members of its executive board. The Newsroom Committee, an internal self-regulatory body representing journalists at *RTVE*, informed the OSCE/ODIHR EAM that the tone of news coverage of the elections was influenced by editors appointed because of their political allegiance, rather than on merit.<sup>49</sup>

*Consideration should be given to reviewing the method of selecting the members of RTVE's executive board with a view to protecting the public broadcaster from political interference and ensuring standards of professionalism and editorial independence.*

## B. LEGAL FRAMEWORK

Freedom of expression is guaranteed by the Constitution, but some OSCE/ODIHR EAM interlocutors argued that recent legislative changes introduced significant limitations to the right of its exercise. The Citizens' Security Law imposes steep fines for unauthorized use of images of and failure to show respect to law enforcement officers.<sup>50</sup> Editors of several leading outlets argued that the law, which gives police broad powers to suppress demonstrations, has had a deterrent effect on media covering public protests.<sup>51</sup> On 22 December 2015, groups of journalists filed applications with the European Court of Human Rights, arguing that the law promotes self-censorship and diminishes police

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<sup>46</sup> According to the Press Association of Madrid, 11,875 journalists, the majority from newspapers, lost their jobs between 2008 and 2014.

<sup>47</sup> Two media groups dominate the sector: *AtresMedia* (owner of TV channels *Antena 3*, *La Sexta*, *Neox*, *Nova* and *Gol*, as well as the *Onda Cero* and *Europa FM* radio channels, among others) and *Mediaset* (*Telecinco*, *La Cuatro*, *Divinity*, *Boing* TV channels).

<sup>48</sup> Among others, it was reported to the OSCE/ODIHR EAM that several journalists had resigned from *El País*, the country's highest-circulation newspaper, over recently introduced editorial practices, and that journalists at *El Mundo* widely believe that the dismissal of the newspaper's editor in 2014 was triggered by its coverage of the so-called *Bárceñas* affair, in which funds were amassed in offshore accounts by the former *PP* treasurer.

<sup>49</sup> In January 2013, in a [report on press freedom in Europe](#), the Council of Europe raised concerns about the independence of public broadcasting bodies across six countries, including Spain. In April 2015, the Newsroom Committee filed a complaint with the European Parliament's Committee on Civil Liberties, Justice and Home Affairs stating that the public broadcaster was becoming "a propaganda tool in the service of government" and its professional guidelines were "systematically breached". *RTVE* management informed the OSCE/ODIHR EAM that it could provide no interlocutor to discuss the Newsroom Committee's claims.

<sup>50</sup> The law imposes fines of up to EUR 30,000 for "unauthorised use of images or personal data that could endanger the personal or family safety of [public security officers]". Several cases of citizens prosecuted for posting photographs of police officers are currently pending. The law has drawn international criticism from press freedom organisations. See, for example, the [International Press Institute's report: Spain: Press Freedom in a Time of Change](#).

<sup>51</sup> In 2014, the [OSCE Representative on Freedom of the Media \(RFoM\)](#) criticised police violence and intimidation of journalists covering demonstrations.

accountability.<sup>52</sup> Contrary to international standards, defamation and insult remain criminal offences.<sup>53</sup>

Spain has no independent national broadcast authority despite provisions to establish one having been originally included in the 2010 National Broadcasting Act.<sup>54</sup> A number of OSCE/ODIHR EAM interlocutors argued that an independent regulator could play a crucial watchdog role in ensuring the editorial independence of the public broadcaster and overseeing the broadcast media, including during elections. Some also criticised what they described as a politicised nature of the licensing process, overseen by the Ministry of Industry, Energy and Tourism.<sup>55</sup>

*Consideration could be given to establishing an independent broadcasting authority in order to ensure transparency and pluralism in the broadcast sector, issue licenses, conduct media monitoring, including during electoral campaigns, and adjudicate complaints.*

The CEC is the primary regulator of broadcast media during the 15-day campaign, and its instructions and decisions establish the rules for coverage of election-related content. The law instructs public and private broadcast media to respect the principles of pluralism, equity, proportionality and neutrality in their coverage of the elections. Paid campaign advertising on public and private television is prohibited. Print media are unregulated with respect to electoral coverage, except for an obligation to guarantee the same rate for commercial and political advertising. In addition, there is a ban on the publication of opinion poll results during the last five days of the campaign, which most OSCE/ODIHR EAM interlocutors found outdated in the Internet age. There are no specific rules for campaign coverage on the Internet.

Public media outlets are obliged to provide free airtime to electoral contestants, the duration of which is calculated according to a formula based on the results from the last parliamentary elections. Coverage in news and elections-related programming, including interviews and candidate debates, is also distributed on the basis of past electoral performance. In April 2015, the CEC instructed that “significant political groups” not represented in parliament must also be given coverage, provided it is neither equal to nor greater than that allotted to parties represented in parliament. According to the election law, private television channels that organise electoral debates between only the two leading parties must compensate other political forces represented in parliament with a proportional amount of coverage.<sup>56</sup>

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<sup>52</sup> Their action is backed by the platform To Defend Those Who Defend (*Defender a Quien Defiende*).

<sup>53</sup> Paragraph 47, 2011 [United Nations Human Rights Council General Comment No. 34](#) prescribes that states “should consider decriminalisation of defamation” and “the use of criminal defamation laws ... is intolerable. Criminal defamation laws should be repealed and replaced with appropriate civil defamation laws”, as per [Joint Declaration](#) by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE RFoM and the Organization of American States Special Rapporteur on Freedom of Expression in 2002.

<sup>54</sup> See [Part V, Articles 44-54](#). The section of the original act providing for the establishment of a national broadcast authority was later repealed in 2013. Catalonia and Andalusia each has a regulator, but neither has legal competence during elections.

<sup>55</sup> Broadcast media licences are renewable every 15 years. Six new or renewed licences were issued shortly before calling the elections in October (to *AtresMedia*, *Mediaset*, *Real Madrid*, *13TV*, *Radio Blanca-Kiss TV* and *Central Broadcaster Media*), leading some OSCE/ODIHR EAM interlocutors to allege that the timing of the decision may have aimed at deterring critical coverage of the government.

<sup>56</sup> Several small parties complained to the CEC about having been excluded from a debate on *La Sexta*. Their representatives told the OSCE/ODIHR EAM that any compensation with coverage in other programmes would be inadequate given the debates’ significantly higher viewership.

### C. COVERAGE OF THE ELECTIONS

Newspapers and Internet portals reported actively on the campaign. The news coverage of the elections became a topic of discussions among stakeholders. Some journalists, representatives of smaller political parties and members of legislative assemblies of some of the autonomous regions criticised the rigid system of distributing coverage among different contestants on public television and radio, for not reflecting the political reality and providing voters with insufficient information.

*Legislation should be reviewed to allow for coverage of election campaigns by public media to rely on editorial discretion rather than a formula-based distribution of airtime, provided that all contestants are treated equally and are allowed sufficient opportunity to present their platforms.*

The formats of televised debates among candidates were criticised by many stakeholders. Public television channel *La1* organised two debates: one featuring representatives of nine political parties, and another with the leaders of *PP* and *PSOE*. Private channel *La Sexta* organised a debate involving *PP*, *PSOE*, *Podemos* and *C's*, and was criticised for granting the latter two “significant political groups” more time than was accorded to parties represented in the outgoing parliament. A debate between the same four forces was organised by *El País* and streamed on its website and broadcast on the private *13TV*.<sup>57</sup>

Although the CEC does not monitor the media, it adjudicates media-related complaints. The majority of all complaints during the campaign were made by political parties dissatisfied with media coverage, and most were rejected. Following a complaint by the *PSOE*, on 17 December the CEC instructed the Prime Minister’s office to remove from its website material praising the achievements of the government.<sup>58</sup> Similarly, the Ministry of Interior was criticised by several political parties and on social media for using its official Twitter account to campaign for the *PP*.<sup>59</sup>

### XIII. COMPLAINTS AND APPEALS

The system of complaints and appeals generally provides for an effective remedy in most election-related matters. The election law stipulates the procedures and timelines for filing complaints on voter registration, candidate registration and election results. Deadlines for filing and deciding on complaints and appeals range from two to five days. The deadlines were generally respected, and disputes were resolved within reasonably short periods.

Complaints relating to the election campaign are partially regulated by CEC instructions that prescribe a timeline for their consideration by the election administration, but neither special procedures nor timelines for appeals through the judiciary are foreseen in the legislation.

*To ensure an effective remedy, the legislation should be amended to provide procedures and timelines for judicial appeals on complaints regarding the election campaign.*

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<sup>57</sup> While four party leaders were invited, the *PP* leader declined to participate.

<sup>58</sup> The plaintiff argued that official resources managed by the executive were misused for campaigning purposes. Article 50.2 of the election law prohibits the use of public funds during the campaign to promote the achievements of the incumbent government. The material was removed following the CEC instruction.

<sup>59</sup> On election day, the Ministry tweeted a photo of the Prime Minister casting his vote alongside a photo of Spain’s first post-Franco Prime Minister, Adolfo Suárez, casting his vote in 1977.

Electoral complaints can be made to the courts free of charge. In cases of unfounded complaints, however, the legal costs are normally borne by the plaintiffs unless “exceptional circumstances” can be cited. Several OSCE/ODIHR EAM interlocutors opined that legal costs constitute an obstacle to effective remedies, and some perceive the courts’ decisions on the matter to be inconsistent.<sup>60</sup>

*All election complaints should be free of unnecessary and excessive obstacles, especially as regards the cost of lodging a complaint, which should be minimal or waived entirely whenever possible. The law should be clear and consistent so as to discourage arbitrary interpretation.*

Complaints are considered by the election administration through a written procedure. A commission may request additional written clarifications from interested parties, but makes its decisions without a hearing. Decisions contain only the findings, generally without a description of the complaint or the reasoning behind the decision. Some OSCE/ODIHR EAM interlocutors opined that not participating in person in the process of complaint consideration and the absence of reasoning in the decisions limits the possibility to appeal. Such restrictions limit the right of redress prescribed in paragraphs 5.10 and 5.11 of 1990 OSCE Copenhagen Document.<sup>61</sup>

*The legislation should provide for a more effective, fair and transparent procedure for the consideration of complaints by the election administration, including the reasoning of the decisions that would provide the basis for an appeal.*

The CEC adjudicated 89 complaints before election day. Most related to campaign issues and especially its coverage in the media but also postal voting and the publication of opinion poll results during the campaign silence period. One decision was appealed to the Supreme Court before election day.<sup>62</sup>

The legislation provides for two types of special election complaints to the Constitutional Court, and prescribes different deadlines for their consideration: three days for complaints on candidate registration and 15 days on election results. Nine complaints on candidate registration were submitted during these elections, but the Court did not consider any because they lacked “constitutional relevance”.<sup>63</sup> The Constitutional Court decisions were not made public. No complaints on election results were submitted after the elections.

#### **XIV. CITIZEN AND INTERNATIONAL OBSERVERS**

The election law provides for the contestants to be represented at the election commissions, but proxies cannot attend the commissions’ closed sessions and communicate with them in written form

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<sup>60</sup> The political party *Ciudadanos Libres Unidos* (CILUS) submitted two identical complaints in Madrid and in Barcelona in relation to the collection of signatures. Both complaints were founded, but the First Instance Madrid Administrative Court No.11 imposed a fee.

<sup>61</sup> Paragraph 5.10 of the 1990 OSCE Copenhagen Document states that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity,” while paragraph 5.11 prescribes that “administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available”.

<sup>62</sup> On 14 December, the Supreme Court, taking into account the special urgency and the suspension of the CEC’s earlier decision, authorised the distribution of electoral campaign materials featuring a stylised version of the Spanish flag by the political party Vox. The Court also ruled that while the national flag or symbols may not feature in political parties’ logos, their use in campaign materials is not prohibited.

<sup>63</sup> Eight complaints concerned the signature collection requirement and one was related to the absence of provisions for independent candidates to contest an election individually rather than as part of a list.

only. The representatives of contestants can be accredited as observers in polling stations for the entirety of election day proceedings.

The law does not provide for election observation by citizen or international observers, despite a long-standing OSCE/ODIHR recommendation, contravening paragraph 8 of the 1990 OSCE Copenhagen Document.<sup>64</sup> Nonetheless, the OSCE/ODIHR EAM was able to conduct its assessment in an unhindered manner and enjoyed all the necessary support from the CEC, which, inter alia, facilitated access to the PECs and to polling stations on election day.<sup>65</sup>

*Consideration should be given to introducing legal provisions to ensure full access to all stages of the electoral process to citizen and international observers, including accreditation arrangements.*

## XV. ELECTION DAY

In the limited number of polling stations visited by the OSCE/ODIHR EAM the voting process was organised in a transparent manner. The transparency was enhanced by an extensive presence of party proxies and representatives who, rather than members of EBs, often directed voters to their polling stations. Overcrowding and the lack of organization of the flow of voters were noted in several locations. The pilot project system for electronic management of polling stations in Madrid appeared to function smoothly in the polling stations visited. A number of polling stations visited lacked adequate access for voters with limited mobility. Visually impaired voters could vote with ballots printed in Braille or with the help of a special template requested in advance.<sup>66</sup>

According to the Constitution and the election law, suffrage is secret, but the use of voting booths is not mandatory. In most of the polling stations visited by the OSCE/ODIHR EAM, the individual party ballots for the Chamber of Deputies election were not available inside the booths, leaving voters to select them in full view of everyone present, thus potentially revealing their voting preference. Voters generally marked the Senate election ballots outside the voting booths. Contrary to paragraph 7.4 of the 1990 OSCE Copenhagen Document, vote secrecy was not always ensured in the polling stations visited.<sup>67</sup>

*The election law and the practical aspects of organization of voting should be reviewed to ensure the secrecy of the vote, as provided by OSCE commitments.*

During the counting process at polling stations visited, procedures were less strictly adhered to. The lack of training of EBs was noted as a possible source of some EB's confusion and subsequent delays, especially during the counting of ballots with open lists for the Senate elections.<sup>68</sup> Although a training manual was available to EB members, the election law does not provide for their mandatory training, which was organized on an ad-hoc basis by local authorities.

*The authorities could consider extending training course for the EB members to further enhance their efficiency on election day.*

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<sup>64</sup> Paragraph 8 of the [1990 OSCE Copenhagen Document](#) provides that “the participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place.”

<sup>65</sup> The OSCE/ODIHR EAM was not granted a meeting by one PEC.

<sup>66</sup> The OSCE/ODIHR EAM was informed that some 1,000 voters opted for this possibility.

<sup>67</sup> Paragraph 7.4 of the [1990 OSCE Copenhagen Document](#) provides that participating States will “ensure that votes are cast by secret ballot or by equivalent free voting procedure”.

<sup>68</sup> By law, the ballots are destroyed after the counting, except those challenged by proxies or invalid. This procedure effectively prevents any recounts except in polling stations with challenged ballots.

Preliminary results were announced per constituency within hours after the polls closed. They were tabulated in Madrid by a contracted private company that also provided hardware and software for data collection at the polling station level. The final results were tabulated by the PECs three days after the election day. The CEC announced the final results per polling station which, although not required by the law, increased the transparency of the process. According to official results, voter turnout was 69.7 per cent for the Chamber of Deputies and 71.88 per cent for the Senate elections.

*As previously recommended, a mandatory publication of both provisional and final results per polling station in a format accessible to the public would further enhance the transparency of the election process.*

## **XVI. RECOMMENDATIONS**

These recommendations, as contained throughout the text, are offered with a view to further enhance the conduct of elections in Spain and to support efforts to bring them fully in line with OSCE commitments and other international standards for democratic elections. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that remain to be addressed. The OSCE/ODIHR stands ready to assist the authorities of Spain to further improve the electoral process and to address the recommendations contained in this and previous reports.<sup>69</sup>

### **A. PRIORITY RECOMMENDATIONS**

1. The authorities should ensure the full enjoyment of the rights of freedom of expression, association and peaceful assembly, and that any restrictions on the exercise of these rights are proportional and minimal, in accordance with international standards.
2. The principle of equality of the vote should be upheld, in accordance with the Constitution, OSCE commitments, other international obligations and standards and good international practice.
3. The authorities should address the shortcomings of the postal voting system, and take steps to ensure that all voters benefit from equal voting opportunities to the maximum extent possible.
4. Consideration should be given to making the donation limit and the prohibition provisions apply to all foundations and associations affiliated with political parties, and to obliging them to also report their expenditures.
5. Consideration should be given to requiring the publication of financial reports by electoral contestants in a timely manner and accompanied by all supporting materials to allow for public scrutiny.
6. Consideration should be given to reviewing the method of selecting the members of *RTVE*'s executive board with a view to protecting the public broadcaster from political interference and ensuring standards of professionalism and editorial independence.

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<sup>69</sup> In paragraph 24 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations."

7. Consideration could be given to establishing an independent broadcasting authority in order to ensure transparency and pluralism in the broadcast sector, issue licenses, conduct media monitoring, including during electoral campaigns, and adjudicate complaints.

## **B. OTHER RECOMMENDATIONS**

### **Election Administration**

8. As previously recommended, given the low representation of women in the CEC, consideration should be given to promoting gender balance in the nomination process of its members.
9. The legal framework should be reviewed to increase the transparency of the work of election administration. In particular, the commissions should conduct their meetings in sessions open to observers and media representatives, and all their decisions should be published.

### **Voter Registration**

10. Further consideration should be given to amend the election law in order to extend the right to vote to all persons with disabilities.

### **Candidate Registration**

11. Limitations on the right to stand should be reviewed to further enhance full compliance with OSCE commitments and other international obligations and standards. Any restriction on the right to stand for an election must be justifiable on objective and reasonable criteria. The withdrawal of individual franchise in case of a criminal conviction without a final court decision should be reconsidered. The legislation should be amended to allow individual citizens to run as independent candidates, in accordance with OSCE commitments and other international obligations and standards.
12. As previously recommended, consideration should be given to establishing equal conditions for the nomination of candidates by non-parliamentary parties and groups of citizens.
13. The authorities should reconsider the restriction that citizens may sign in support of only one candidate list. The process would be more open and inclusive if citizens could sign for as many lists as they choose.
14. Further efforts should be made by the authorities to ensure equal participation of women and men in the electoral process, possibly by including a stricter ranking on the candidate lists. Political parties should be encouraged to take further steps to increase women's participation in parties' activities and as candidates.

### **Political Party and Campaign Finance**

15. Consideration should be given to ensuring that all infringements of political finance rules entail effective, proportionate and dissuasive sanctions.

## **Media**

16. Legislation should be reviewed to allow for coverage of election campaigns by public media to rely on editorial discretion rather than a formula-based distribution of airtime, provided that all contestants are treated equally and are allowed sufficient opportunity to present their platforms.

## **Complaints and Appeals**

17. To ensure an effective remedy, the legislation should be amended to provide procedures and timelines for judicial appeals on complaints regarding the election campaign.
18. All election complaints should be free of unnecessary and excessive obstacles, especially as regards the cost of lodging a complaint, which should be minimal or waived entirely whenever possible. The law should be clear and consistent so as to discourage arbitrary interpretation.
19. The legislation should provide for a more effective, fair and transparent procedure for the consideration of complaints by the election administration, including the reasoning of the decisions that would provide the basis for an appeal.

## **Citizen and International Observers**

20. Consideration should be given to introducing legal provisions to ensure full access to all stages of the electoral process to citizen and international observers, including accreditation arrangements.

## **Election Day**

21. The election law and the practical aspects of organization of voting should be reviewed to ensure the secrecy of the vote, as provided by OSCE commitments.
22. The authorities could consider extending training course for the EB members to further enhance their efficiency on election day.
23. As previously recommended, a mandatory publication of both provisional and final results per polling station in a format accessible to the public would further enhance the transparency of the election process.

## ANNEX I: ELECTION RESULTS<sup>70</sup>

### Chamber of Deputies

<b>Number of participating voters</b>	25,438,532	69.67%
<b>Invalid votes</b>	227,219	0.62%
<b>Blank votes</b>	188,132	0.51%

<b>Political Party or Coalition</b>	<b>Votes</b>	<b>% Votes</b>	<b>Seats</b>	<b>% Seats</b>
People's Party ( <i>PP</i> )	7,236,965	28.70	123	35.14%
Spanish Socialist Workers' Party ( <i>PSOE</i> )	5,545,315	21.99	90	25.71%
<i>Podemos</i>	3,198,584	12.68	42	12%
<i>Ciudadanos (C's)</i>	3,514,528	13.94	40	11.42%
<i>En comú</i>	929,880	3.68	12	3.42%
<i>Podemos – Compromís</i>	673,549	2.67	9	2.57%
Republican Left of Catalonia – Catalonia Yes ( <i>ERC-Cat Sí</i> )	601,782	2.38	9	2.57%
Democracy and Freedom ( <i>DiL</i> )	567,253	2.24	8	2.28%
<i>Podemos - En Marea - ANOVA – EU</i>	410,698	1.62	6	1.71%
Basque Nationalist Party ( <i>EAJ-PNV</i> )	302,316	1.19	6	1.71%
United Left and People's Unity in Common ( <i>IU- UPeC</i> )	926,783	3.67	2	0.57%
Basque Country Unite ( <i>EH Bildu</i> )	219,125	0.86	2	0.57%
Canarian Coalition and Canarian Nationalist Party ( <i>CC-PNC</i> )	81,917	0.32	1	0.28%
<b>Total</b>	<b>24,208,695</b>		<b>350</b>	

### Senate<sup>71</sup>

<b>Number of participating voters</b>	24,869,217	71.88%
<b>Invalid votes</b>	800,897	3.22%
<b>Blank votes</b>	978,380	4.07%

<b>Political Party or Coalition</b>	<b>Seats</b>
People's Party ( <i>PP</i> )	124
Spanish Socialist Workers' Party ( <i>PSOE</i> )	47
<i>Podemos</i>	9
Basque National Party ( <i>EAJ-PNV</i> )	6
Republican Left of Catalonia – Catalonia Yes ( <i>ERC-Cat Sí</i> )	6
Democracy and Freedom ( <i>DiL</i> )	6
<i>En comú</i>	4
<i>Podemos - En Marea - ANOVA – EU</i>	2
<i>Podemos – Compromís</i>	1
Change ( <i>Cambio-Aldaketa</i> )	1
Canarian Coalition and Canarian Nationalist Party ( <i>CC-PNC</i> )	1
Gomera Socialist Group ( <i>ASG</i> )	1
<b>Total</b>	<b>208</b>

<sup>70</sup> Source: [CEC](#).

<sup>71</sup> Information on the total number of voters in the [Senate elections](#) represents 99.91 per cent of votes tallied. Figures include only seats elected directly – seats elected by the legislative assemblies of the 17 autonomous regions are excluded.

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratisation. Today it employs over 150 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organises the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratisation** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All OSCE/ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organisations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).