



**Office for Democratic Institutions and Human Rights**

# **SPAIN**

## **EARLY PARLIAMENTARY ELECTIONS**

**20 November 2011**

**OSCE/ODIHR Election Assessment Mission Final Report**



**Warsaw  
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**I. EXECUTIVE SUMMARY**

Following an invitation by the Permanent Mission of Spain to the Organization for Security and Cooperation in Europe (OSCE), the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Assessment Mission (EAM) to observe the early parliamentary elections on 20 November 2011.

Elections were held for the two parliamentary chambers; the Chamber of Deputies and the Senate. The conduct of these elections reflected Spain's established democratic traditions. The elections were held in a professional and transparent manner. The electoral stakeholders appeared to have confidence at all stages of the process and voters had the opportunity to make an informed choice in a pluralistic electoral environment.

Although some 70 electoral contestants ran in the elections, the race was dominated by the competition of two parties: the Spanish Socialist Workers' Party and the People's Party. The campaign took place in an open atmosphere, generally respecting civil and political rights and fundamental freedoms. Key campaign issues were related to the current economic crisis and unemployment, as well as the electoral system.

While the legal framework provides an overall sound basis for the conduct of democratic elections, some recent amendments appear to be at odds with paragraphs 7.6 and 7.9 of the 1990 OSCE Copenhagen Document. These amendments included the possibility to remove the mandate of elected officials prior to the expiry of their mandate, as well as a range of measures to restrict activities of political parties that may be illegalised for their support of violence or terrorism. To date, no such measures have been applied.

The Chamber of Deputies comprises 350 representatives, elected on the basis of proportional representation with closed regional lists and a three per cent regional eligibility threshold. The allocation of seats to constituencies does not fully ensure the equality of the vote, as per paragraph 7.3 of the Copenhagen Document. Generally, the election system tends to favour larger parties, nationwide and province-wide.

Elections were administered by a four-tier system of election commissions headed by a Central Election Commission (CEC). The Ministry of Interior was in charge of the technical preparations of elections. Voter lists were compiled by the Electoral Census Office, under CEC supervision, and were perceived by OSCE/ODIHR EAM interlocutors as accurate, overall. The election administration and the Ministry of Interior organised and administered the elections in an efficient, timely and transparent manner. The election administration was generally perceived to be experienced and impartial, and it enjoyed a high degree of public confidence.

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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.

Reports on the campaign expenditures of parties by the Court of Audit are published after each election, but only after a special parliamentary committee endorses them. In the absence of clear deadlines for parliamentary endorsement and subsequent publication in the official state gazette, public access to the reports can be significantly delayed.

The media landscape is pluralistic and promptly responsive to issues of public interest. Official campaign coverage is regulated in detail by the electoral legislation. Electronic public and private broadcasters are bound by strict rules for campaign coverage based on principles of equal access and neutrality. Pluralistic broadcasting and print media provided broad coverage of the campaign. Notwithstanding, political parties of moderate influence complained to the public broadcasters about limited access.

The complaints and appeals process provided for effective remedy of election related issues. During the run-up to the elections, political parties often lodged complaints, related mainly to alleged breaches of the rules by other political parties. The CEC appeared to resolve these complaints swiftly and published summaries of its decision on its website.

The legal framework does not provide for non-party domestic and international observation, and thus falls short of the commitment made in paragraph 8 of the Copenhagen Document. Nonetheless, the OSCE/ODIHR EAM had full access to all stages of the electoral process and was able to receive all information requested.

In accordance with OSCE/ODIHR's methodology, the OSCE/ODIHR EAM did not observe election day proceedings in a systematic and comprehensive manner. However, mission members visited a few polling locations in Madrid, Valladolid and Toledo and attended counting in Madrid.

## **II. INTRODUCTION AND ACKNOWLEDGEMENTS**

On 27 September 2011, the OSCE/ODIHR was invited by the Permanent Mission of Spain to the OSCE to observe the early parliamentary elections scheduled to take place on 20 November 2011. The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) from 10 to 13 October 2011.<sup>2</sup> Based on its recommendations, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) from 8 to 24 November 2011. The OSCE/ODIHR EAM was headed by Nikolai Vulchanov and included five other experts, all drawn from six OSCE participating States. The EAM was based in Madrid, but made visits to Zaragoza, Lleida, Seville and Bilbao.

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

The OSCE/ODIHR wishes to thank the Ministry of Foreign Affairs (MFA), the Ministry of Interior (MoI), the Central Election Commission (CEC) and the election administration at all

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<sup>2</sup> All OSCE/ODIHR reports on elections in Spain are available at: [www.osce.org/odihr/elections/spain](http://www.osce.org/odihr/elections/spain).

levels, as well as other national and regional state institutions, political parties, media, civil society organisations and other interlocutors for their support and co-operation.

### III. POLITICAL CONTEXT

On 26 September 2011, early parliamentary elections were called for 20 November by a royal decree following the dissolution of the parliament by Prime Minister Jose Luis Rodriguez Zapatero. The parliament, elected in March 2008, was dissolved four months before the end of its term. The decision to call early elections was taken in the face of a deepening economic crisis and the increasing difficulties of the minority government to secure a parliamentary majority.

Following the 2008 parliamentary elections, 12 parties were allocated seats in the lower chamber of parliament, which votes in the prime minister.<sup>3</sup> The Spanish Socialist Workers' Party (PSOE), together with its Catalanian branch, the Socialist Party of Catalonia (PSC), won the highest number of seats but fell short of absolute majority. After forming a minority government led for a second term by Prime Minister Zapatero, PSOE formed *ad hoc* coalitions with regional parties as necessary.

The regional and local elections of 22 May 2011 were a success for the opposition People's Party (PP), which won an absolute majority in 8 out of 13 autonomous regions where regional elections were held. PSOE was defeated in the local elections even in its traditional strongholds, such as Andalucía and Extremadura.

The 22 May elections were preceded by significant popular demonstrations.<sup>4</sup> Participants called for a change of policies and comprehensive social and economic reform. A citizens' protest movement "15 May" (15-M) emerged. Its members criticized the current two party dominated political system, welfare cuts, and alleged political corruption.

### IV. LEGAL FRAMEWORK

#### Introduction

While the legal framework provides a sound basis for the conduct of democratic elections overall, some recent amendments appear not to be in line with paragraphs 7.6 and 7.9 of the Copenhagen Document.

The legal framework for elections comprises the Constitution, the Organic Law on General Election Regime (hereinafter, election law), and a number of royal decrees and instructions issued by the CEC. The CEC's instructions are binding on lower-level election commissions.

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<sup>3</sup> People's Party (PP) – 152 seats, PSOE – 144, PSC – 25, Convergence and Union (CiU) – 10, Basque Nationalist Party (EAJ-PNV) – 6, Republican Left of Catalonia (ERC) – 3, United Left-Alternative (IU) – 2, Galician Nationalist Bloc (BNG) - 2, Canary Coalition – Canary Nationalist Party (CC-PNC) – 2, Union of the People of Navarra in Coalition with the People's Party (UPN-PP) – 2, Progress and Democracy Union (UPyD) – 1 and Navarra Yes (Na Bai) – 1.

<sup>4</sup> It was estimated that some 6.5-8 million people participated in the protests: <http://www.rtve.es/noticias/20110806/mas-seis-millones-espanoles-han-participado-movimiento-15m/452598.shtml>.

Other relevant laws include the 2002 law on political parties, the 2007 law on financing of political parties and elements of the administrative and penal laws.

Since the 2008 parliamentary elections there have been a number of changes to the election law.<sup>5</sup> The latest amendments were made in July 2011, which is at odds with the recommendation of the Council of Europe's Commission for Democracy through Law (Venice Commission), that "fundamental elements of electoral law should not be open to amendment less than one year before an election".<sup>6</sup> Of note among the changes was a range of measures to restrict the activities of political parties for their support of violence or terrorism. In cases where such support has been established, parties may be illegalised at any time during or after the election.

Measures include extending the deadline within which appeals against candidacies based on their possible prohibition may be presented, provisions to delay the announcement of returned candidates whose parties become subject to legal proceedings between election day and the official announcement of results, and provisions for the removal of elected representatives on the basis of links with illegalised parties. The OSCE/ODIHR EAM was informed by the CEC's president that none of these measures had been applied during these elections.

Other amended provisions address the media and the campaign, postal voting from abroad, as well as a number of technical changes.

### Law on Political Parties

The 2002 Law on Political Parties permits the suspension or dissolution of political parties for supporting terrorism or the use of violence. The competence for adjudicating such acts is vested with a specially constituted chamber of the Supreme Court. Since then, these provisions have been applied on several occasions, resulting in the dissolution of a number of political parties.

In a controversial case, the coalition *Bildu* was dissolved by the Supreme Court in May 2011,<sup>7</sup> but was allowed to re-establish on appeal to the Constitutional Court in the same month<sup>8</sup>. *Bildu* did not run in the 2011 parliamentary elections, however some of the same parties did contest them after forming another coalition called *Amaiur*.<sup>9</sup>

The suspension or prohibition of a political party is a sensitive measure, to be applied only in the gravest of circumstances.<sup>10</sup> OSCE participating States have committed themselves to respecting the rights of citizens to establish political parties and to allow them to compete on an equal basis.<sup>11</sup> Reasonable restrictions can be imposed on these rights if deemed necessary, inter alia,

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<sup>5</sup> Changes were made by four organic laws approved in November 2010 (*Ley Orgánica* 8/2010), January 2011 (*Ley Orgánica* 2/2011 and *Ley Orgánica* 3/2011), and July 2011 (*Ley Orgánica* 7/2011).

<sup>6</sup> Code of Good Practice in Electoral Matters, Opinion no.190/2002, Section II.2.b.

<sup>7</sup> Case 2/2011 (STS 2293/2011) of 1 May 2011:

[http://www.poderjudicial.es/cgpj/es/Poder\\_Judicial/Tribunal\\_Supremo](http://www.poderjudicial.es/cgpj/es/Poder_Judicial/Tribunal_Supremo)

<sup>8</sup> Case 62/2011 of 5 May 2011:

<http://www.tribunalconstitucional.es/en/jurisprudencia/Pages/Sentencia.aspx?cod=10128>.

<sup>9</sup> *Bildu* run in the 22 May 2011 local and regional elections, and won majority in Gipuzkoa Province, [http://www.juntaelectoralcentral.es/jelect/2011/GENERALES\\_2011\\_Candidaturas.pdf](http://www.juntaelectoralcentral.es/jelect/2011/GENERALES_2011_Candidaturas.pdf).

<sup>10</sup> Guidelines on Political Parties Regulation by OSCE/ODIHR and European Commission for Democracy through Law (the Venice Commission) of the Council of Europe, paragraphs 89-90: [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)024-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)024-e.pdf).

<sup>11</sup> Copenhagen Document, paragraphs 7.5 and 7.6.

in the interests of national security or public safety.<sup>12</sup> The ECtHR has found that restrictions imposed on political parties have complied with the necessary requirements in the European Convention.<sup>13</sup>

### Right to Complete a Term of Office

A recent amendment to the election law permits the removal of an elected representative from her/his mandate on the basis of ‘incompatibility’, prior to the expiry of the mandate.<sup>14</sup> A representative’s mandate may become void if the party that nominated him or her is ruled illegal after the elections.<sup>15</sup> If a party is illegalised, the election law provides that the election administration must notify the candidate(s). Such candidates may then choose either to step down, or to make a declaration distancing themselves from the actions of the party within 15 days. In the event that the candidate subsequently is deemed to contradict his/her declaration, their tenure becomes void and the deputy may not complete his/her term of office. The decision on what constitutes such a contradiction is currently foreseen to be an administrative one and is to be taken by the CEC. Any decision may be appealed to the Supreme Court.

OSCE participating States have committed to ensuring that candidates who are legitimately elected “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”.<sup>16</sup> Removal of a legitimately elected representative is a sensitive matter that may restrict the right to participate in public affairs and undermine political pluralism. The grounds for such a removal should be established by laws based on objective and reasonable criteria and incorporating fair procedures.

In the interests of a more robust protection of the right to complete a term of office, and notwithstanding the constitutional right to file an appeal for constitutional protection (*recurso de amparo*) with the Constitutional Court, *consideration could be given as to whether the decision on what constitutes a contradiction of a declaration in the context of Article 6.4 of the election law may be more appropriately made by a court of law, whilst retaining the right of appeal to a higher court.*

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<sup>12</sup> Article 11.2 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe provides that “no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”. See at: <http://conventions.coe.int/treaty/en/treaties/html/005.htm>.

<sup>13</sup> Applications 51762/07 and 51882/07 by *Eusko Abertzale Ekintza – Acción Nacionalista Vasca* decided on 7 December 2010; 25803/04 and 25817/04 by *Herri Batasuna* and *Batasuna* respectively, decided on 30 June 2009; 35579/03, 35613/03, 35626/03 and 35634/03 by *Etxeberria, Barrena Arza, Autodeterminazio Bilgunea* and *Aiarakoand others* respectively, decided on 6 November 2009; and 43518/04 by *Herritarren Zerrenda*, decided on 30 June 2009. For rulings of the court, see <http://www.echr.coe.int>.

<sup>14</sup> Election law, Article 6.4, added by *Ley Orgánica 3/2011* in January 2011.

<sup>15</sup> The legal basis for such a removal is ‘incompatibility’. 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>16</sup> Copenhagen Document, paragraph 7.9.

## V. ELECTORAL SYSTEM

Spain has a bicameral parliament: the *Cortes Generales*, comprising a lower chamber, the Chamber of Deputies (*Congreso de los Diputados*) and an upper chamber, the Senate (*Senado*). Members of both chambers are elected to four-year terms. Key elements related to the electoral system for parliament are laid down in the Constitution and tend to prioritise, to some extent, equal territorial representation in both chambers.

Spain is a decentralized state, comprising 17 autonomous regions that enjoy a broad degree of ‘asymmetric’ autonomy, including recognition of several nationalities and their respective languages.<sup>17</sup> Each autonomous region comprises of a number of provinces. There are 50 provinces and two cities with special status, Ceuta and Melilla. Each province includes a number of municipalities. There are 8,116 municipalities in total. Each province and each city of special status, 52 in total, represents an electoral constituency for both the Chamber of Deputies and the Senate.

### Chamber of Deputies

The Constitution stipulates that the Chamber of Deputies comprises “a minimum of 300 and a maximum of 400 deputies elected by universal, free, equal, direct, and secret suffrage under the terms established by law”, on the basis of proportional representation with closed provincial lists. Currently, the Chamber of Deputies comprises 350 deputies.

The Constitution further stipulates that the “law shall distribute the total number of deputies, assigning a minimum initial representation to each province and distributing the remainder in proportion to the population”. Currently, the minimum initial representation is set to two deputies per province.<sup>18</sup> The legal requirement for a degree of equal territorial representation of the provinces in the Chamber of Deputies means that less populated provinces are over-represented in both chambers.<sup>19</sup> Further, less populated provinces elect low numbers of deputies and have therefore high ‘natural’ thresholds.<sup>20</sup>

As a consequence, the electoral system for the Congress of Deputies does not fully uphold the equality of the vote state-wide.<sup>21</sup> Notwithstanding the decentralized system of Spanish

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<sup>17</sup> Provisions determining autonomy may vary from one autonomous region to another.

<sup>18</sup> The proportional allocation of the remaining 248 seats among the provinces is done by the method of largest remainders, using the Hare-Niemeyer-Hamilton quota.

<sup>19</sup> Based on population data of 1 January 2010, the average population per seat in the Chamber of Deputies is 134,346 people. The average population per seat in the provinces of Madrid and Barcelona is 179,410 and 177,779 respectively, while for Soria it is 47,629 and for Teruel, 48,425, [www.ine.es/jaxi/tabla.do?path=/t20/e245/p04/provi/11/&file=0ccaa001.px&type=pcaxis &L=1#nogo](http://www.ine.es/jaxi/tabla.do?path=/t20/e245/p04/provi/11/&file=0ccaa001.px&type=pcaxis &L=1#nogo).

<sup>20</sup> In each constituency, the ‘natural threshold’ can be approximated, in percents, by the quotient of 100 divided by the number of members returned by this constituency. To date, the three percent eligibility threshold exceeds the ‘natural’ threshold only in the constituency of Madrid, and could be effective there and, possibly, in Barcelona. On the other hand, half of the 50 provinces return five or less members of the Chamber of Deputies.

<sup>21</sup> Copenhagen Document, paragraph 7.3. The Venice Commission, in Section I.2 of its Code of Good Practice in Electoral Matters, recommends that “seats must be evenly distributed among constituencies”; see also p.17 of the Explanatory Report, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf). Paragraph 21 of General Comment 25 to Article 25 of the 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. The distribution of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group [...]”, <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb>.

government, *consideration could be given to further enhancing guarantees for equality of suffrage for the election of deputies.*

In order to contest the elections for the Chamber of Deputies, political parties, federations, coalitions and groups of citizens must register candidate lists in the constituency where they wish to run. In order to be eligible for seat allocation, a list must receive at least three percent of the valid votes in the constituency.

Valid votes are those cast for candidate lists, as well as blank votes.<sup>22</sup> Blank votes are not taken into account in the allocation of seats because they do not constitute a choice for a political option on offer.<sup>23</sup> However, they have the effect of increasing the number of votes that a candidate list must win in order to be eligible for seat allocation. This may in turn lead to the ineligibility of a party that has garnered a number of votes close to the value of the three percent threshold.

Within each constituency, seats are allocated proportionally to the votes cast for the respective lists using the method of the largest quotients.<sup>24</sup> This ensures proportionality between eligible lists province-wide. In this context, the electoral system for the Chamber of Deputies generally stimulates parties of considerable influence state-wide and province-based parties.

Some parties of moderate influence state-wide to date expressed concerns that the current electoral system provides regionally based parties with a disproportionately high number of seats. In general, any electoral system in line with international standards for democratic elections would be based on a broad agreement, but not necessarily a consensus, with regard to the specific balance between inclusiveness of opinions and stability of government.

## Senate

The Constitution specifies that the Senate is a chamber of territorial representation. The Senate comprises senators elected by popular vote, and senators elected by the legislative assemblies of the autonomous regions. Each province returns four senators “by universal, free, equal, direct, and secret suffrage”.<sup>25</sup> Voters can choose up to four candidates for the Senate, and may choose candidates from different parties.<sup>26</sup> Currently, the Senate comprises 257 senators, of whom 208 are elected by popular vote.

## VI. ELECTION ADMINISTRATION

The parliamentary elections were administered by a four-tiered structure consisting of a CEC, 50 Provincial Election Commissions (PECs), 303 District or Zone Election Commissions

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<sup>22</sup> This is a rare arrangement. Representatives of civil society indicated that it represents an expression of dissatisfaction with the entire range of political options available to the voter, whilst at the same time upholding participation.

<sup>23</sup> An exception to this was the political party *Escaños en Blanco* (‘Empty Seats’); please see Campaign Section.

<sup>24</sup> Election law, Article 163.1; this method is also known as the D’Hondt method.

<sup>25</sup> Constitution, Article 69 (2-4); the cities of special status, Ceuta and Melilla, elect two senators each. There are additional requirements for the representation of the island constituencies in the Senate.

<sup>26</sup> Although the voter casts the vote for an individual candidate in Senate elections, on the ballot candidates are clustered by party.

(DECs)<sup>27</sup> and 59,876 Electoral Boards (EBs) (*Mesas Electorales*). As the majority of election commissioners are judges, the judiciary plays an important role in the election administration. The MoI is in charge of logistics and technical preparations of the elections.

The CEC is a permanent body composed of 13 members appointed within 90 days following the constitutive sitting of the Chamber of Deputies. Eight CEC members are judges of the Supreme Court and are determined by lottery.<sup>28</sup> The remaining five members are university professors of law, political sciences and sociology, appointed by the Chamber of Deputies on a joint proposal of the parties, federations, coalitions or groups of electors represented in this chamber. The President and the Vice-President of the CEC are chosen from amongst the judge-members of the CEC.

The members of the CEC cannot be removed. They may only be suspended for criminal offences or electoral infringements by a decision adopted by an absolute majority of the CEC members.

The main responsibilities of the CEC include issuance of binding instructions to the PECs, resolution of complaints and appeals, supervision of the activities of the Electoral Census Office<sup>29</sup> (*Oficina del Censo Electoral*), uniform interpretation of electoral rules and imposing administrative sanctions for non-criminal electoral offences.

The CEC generally meets on a weekly basis during the election period. The meetings are called by the president or at the request of two members. The presence of at least seven members is required for a quorum; decisions are taken by the majority of the votes of the members present. The CEC Secretary and the Director of the Electoral Census participate in the sessions without the right to vote.

Both PECs and DECs are temporary bodies, established three days after the announcement of the elections. Their mandate expires 100 days after the elections. The PECs and the DECs consist of five members, three judges<sup>30</sup> and two professors<sup>31</sup> of law, political sciences and sociology. The PEC Secretary is usually the Secretary of the respective Provincial High Court. The Municipal Council Secretaries are appointed as secretaries for the DECs. The Secretaries of the PECs and the DECs as well as the provincial delegate of the Electoral Census Office attend the sessions of the commissions, but do not enjoy the right to vote.

All election commissions meet in closed sessions. Their deliberations and decisions are published in the Official State Gazette and provincial Gazettes for the CEC and the PECs /DECs, respectively “where the general nature makes it advisable”.<sup>32</sup> Decisions are later posted

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<sup>27</sup> DECs of the cities of Ceuta and Melilla, within their respective districts, also have PEC functions.

<sup>28</sup> There are approximately 90 Supreme Court judges. The lottery includes also the judges who are members of the outgoing CEC.

<sup>29</sup> The Electoral Census Office is part of the National Institute of Statistics at the Ministry of Economy and Finance.

<sup>30</sup> The judges appointed as members of PECs are High Provincial Courts’ judges selected by the General Council of Judicial Power by lottery. The judges appointed as members for the DECs are First Instance Courts’ judges selected by lottery.

<sup>31</sup> Those members are appointed by the CEC in the case of PECs and by the PECs in the case of DECs.

<sup>32</sup> While there is no legal deadline for publication of decisions, the mission was informed that decisions are published as soon as possible.

on the CEC's official website.<sup>33</sup> *Notwithstanding the overall confidence in the performance of the election administration, with a view to further enhancing transparency, the authorities should consider that the CEC and the lower-level commissions conduct their meeting in sessions open to observers and media representatives.*

The provincial delegates of the Electoral Census Office are responsible for the establishment of the electoral sections. For these elections, the 52 constituencies were divided into 35,957 electoral sections, each including from 500 to 2,000 voters.<sup>34</sup>

Each EB comprises a president and two members, as well as two substitutes for each of these positions. EB members are selected by lottery among all literate voters registered in the corresponding electoral section. Service on electoral boards is mandatory, but those who wish to be exempted can submit an application in writing and provide justification. The OSCE/ODIHR EAM was informed that for these elections, DECs received more applications for exemption compared to previous elections, possibly due to financial reasons.<sup>35</sup>

The main task of the EBs is to administer voting and counting on election day. EB members do not receive special training, although they are provided with a training manual. Furthermore, the MoI developed a special website, which among other things offered a presentation of the EBs' functions. *The authorities could consider extending training course for the EBs' members to further enhance their efficiency on election day.*

The MoI co-ordinated and supervised printing and distributing ballot papers, along with ballot boxes and voting booths. A large scale voter education campaign in the media was launched by the MoI informing the citizens of different aspects of the electoral process, such as postal voting procedures, secrecy of the vote and facilities available to disabled voters. The MoI took efforts to reduce costs and further enhance the efficiency of the results tabulation by a broad use of new technologies. An area of particular focus for the MoI remained the facilitation of voting for disabled people, in particular creating conditions for visually impaired voters to vote without assistance.

The election administration and the MoI organised and administered the 20 November parliamentary elections in an efficient, timely and transparent manner. The election administration was generally perceived to be experienced and impartial, and enjoyed a high degree of public confidence.

## VII. VOTER REGISTRATION

Spanish citizens who have reached the age of 18 and are in the voter register are eligible to vote in parliamentary elections. Citizens sentenced by a final court judgement to forfeiture of their right to vote, declared incapable by decision of a court and those committed to psychiatric hospitals with the declaration on inability to exercise the right to vote are deprived of this right.

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<sup>33</sup> [www.juntaelectoralcentral.es](http://www.juntaelectoralcentral.es).

<sup>34</sup> Each municipality must have at least one electoral section.

<sup>35</sup> The service was compensated with EUR 60, which could be less than the daily salaries for some categories of professionals.

The Electoral Census Office, under the supervision of the CEC, is responsible for compiling the state-wide voter register under a passive system and for certifying postal voting registrations. The voter register includes voters residing both in Spain and abroad. It is updated with information provided by the civil registration office, the Ministry of Justice and the MFA.

The Electoral Census Office has a branch in each province. The municipal population registration offices collect and transfer voters' data to the provincial branches of the Electoral Census Office on a monthly bases. The voter lists used by the EBs on election day are extracted from the state-wide voter register on the basis of voters' registered residences.<sup>36</sup> Political party and candidate representatives may obtain a copy of the voter lists, but only for electoral purposes.<sup>37</sup>

The number of voters included in the voter lists for these elections was 35,776,615. Of those, 1,479,314 were registered abroad and 1,519,397 were first-time voters.

From 3 to 10 October, voters could check their personal data at the municipal councils' offices and at consulates abroad. If inaccuracies were identified, voters could request corrections from the Electoral Census Office. Some 17,000 complaints were filed, including from voters abroad. Of these, 1,778 were rejected and the rest were corrected.<sup>38</sup> All stakeholders considered the voter lists accurate and voter registration enjoyed overall public confidence.

## VIII. REGISTRATION OF POLITICAL PARTIES AND CANDIDATES

Candidates may be nominated by political parties, coalitions, and groups of citizens. Candidates are grouped in lists, with as many candidates as the number of mandates in the corresponding constituency. A list can also include up to 10 substitute nominees. Nobody can stand as a candidate in more than one constituency.

For candidates 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 the relevant constituency. According to recent amendments of the election law, parties, federations and coalitions, which did not obtain a parliamentary seat in the previous elections, are required to collect signatures of at least 0.1 per cent of the voters registered in the constituency in which they intend to run.

Voters can sign in support of only one candidate list. The electoral contestants were granted 20 days to collect the required numbers of signatures.<sup>39</sup> The accuracy of the personal data of voters who signed in support of candidate lists and their signatures were checked at the provincial branches of the Electoral Census Office. Signatures were scrutinized and compared to digital images in the national identity card database.

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<sup>36</sup> Residents in Spain are obliged to register at the municipality where they habitually reside. Practice indicates that this obligation is not always respected.

<sup>37</sup> According to CEC Instruction 646/2003, entries of voters who feel that their lives are under threat may be removed from the copies of the voter lists provided to election stakeholders.

<sup>38</sup> See: [http://www.ine.es/en/oficina\\_censo/elecgral2011/elecgral2011\\_tab\\_en.htm](http://www.ine.es/en/oficina_censo/elecgral2011/elecgral2011_tab_en.htm).

<sup>39</sup> From 27 September, when the call for the elections was published in the State Official Gazette, until 17 October, the last day for candidate registration.

Some political parties and civil society organizations<sup>40</sup> complained to the Constitutional Court that the requirement for providing 0.1 per cent signatures was unconstitutional, infringing their right to access public office on equal terms.<sup>41</sup> The Court rejected the appeal, ruling that the requirement is a safeguard to prevent spurious parties.

OSCE participating States have committed to “respect the right of citizens to seek political office ...individually or as representatives of political parties ..., without discrimination”.<sup>42</sup> Furthermore, requirements for a minimum number of supporters for nomination “should be reasonable and not act as a barrier to candidacy”.<sup>43</sup> While the legally required amounts of signatures, both for candidates nominated by groups of citizens and by non-parliamentary parties are in line with good electoral practice, potential candidates from non-parliamentary parties and those nominated by groups of citizens are not treated equally – the law appears to discriminate against the latter. *Consideration could be given to establishing equal conditions for the nomination of candidates by non-parliamentary parties and groups of citizens.*

Registration of electoral contestants took place from 12 to 17 October. Some 70 electoral contestants (both political parties and coalitions) registered to run.<sup>44</sup> The collection of the required 0.1 per cent of signatures proved to be a difficult exercise for some political parties. Representatives of non-parliamentary parties complained to the OSCE/ODIHR EAM that the requirement to collect signatures was cumbersome.

OSCE/ODIHR EAM interlocutors expressed concerns about inconsistent rulings by different PECs. Some PECs allowed non-parliamentary parties to correct errors in signature lists within 48 hours. On 20 October, the CEC issued a decision banning corrections of the submitted signature lists after the deadline for candidate registration. In some cases, the parties appealed PECs’ decisions rejecting their registration documents due to insufficient number of valid signatures submitted. The appeals were submitted to Administrative Courts and in one case to the Constitutional Court.<sup>45</sup> The appeals delayed the finalization of the candidate registration process and subsequently affected other legal deadlines, such as deadlines for ballot printing and ballot distribution abroad. *Consideration should be given to ensuring a uniform practice with regard to corrections of potential technical mistakes in the collected signatures and consistent co-ordination of legal deadlines with potential complaints and appeals procedures.*

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<sup>40</sup> *Soberanía de la Democracia* (SOBERANID), *Movimiento por la Unidad del Pueblo Canario*; Pontevedra, Valladolid and Malaga branches of *Anticapitalistas* coalition, *Movimiento ciudadano* 15-M and Hartos.org.

<sup>41</sup> Article 23 of the Constitution stipulates: “Citizens (...) have the right to access on equal terms to public office, in accordance with the requirements determined by law.”

<sup>42</sup> Copenhagen Document, paragraph 7.5.

<sup>43</sup> General Comment 25 to ICCPR Article 25, paragraph 17,.

<sup>44</sup> The CEC did not maintain a register of the candidate lists. These are registered in PECs, which also announce the election results.

<sup>45</sup> An appeal for constitutional protection was filed by the Humanist Party (*Partido Humanista*, PH), N. 5890/2011. The PH submitted 623 signatures to the Toledo PEC, of which 224 were declared invalid. Consequently, PH was denied registration. Its request to the PEC for the possibility to correct the mistakes was rejected. The PH appealed to the Constitutional Court as the PEC did not justify why they declared some of the signatures invalid. The Court, referring to the right to stand for elections and “the right to access on equal terms to public office”, Article 23.2 of the Constitution, declared the refusal of the PEC in Toledo to register the PH candidature in Toledo invalid.

## IX. ELECTORAL CAMPAIGN

The electoral campaign lasted from 4 to 18 November. While prior to the official start of the campaign period it is prohibited to “advertise electoral propaganda” and to call for votes of the electors, during that time electoral contestants can perform their regular activities as political parties, coalition or federations.

Political parties presented their platforms and reached out to the electorate via audiovisual media, rallies, meetings with voters and internet social networks. The internet was used more widely during the campaign and was particularly noted by interlocutors.

While 70 electoral contestants (including 13 coalitions) ran in the elections, the race was dominated by the competition of the two most influential parties: PSOE and PP. The IU and the UPyD were also visible during the campaign. The major regional political parties and coalitions that were visible during the campaign included the Basque EAJ-PNV, the Catalanian CiU and ERC, the Canarian Coalition (CC-NC-PNC), and the Galician BNG.

On 20 October, the Basque terrorist, separatist group ETA announced a ‘definitive cessation of its armed activity’.<sup>46</sup> The statement was welcomed by both the Spanish government and the parliamentary opposition, and considerably changed the political landscape of the Basque Country. Shortly before the ETA statement, on 4 October 2011, a new coalition, *Amaiur*, registered as an electoral contestant in the Basque and Navarra autonomous regions.<sup>47</sup> The coalition had an openly pro-independence agenda for the Basque Country and intended to pursue its programme through peaceful and democratic means.

OSCE/ODIHR EAM interlocutors in the Basque Country underlined a great improvement in the electoral environment after the ETA statement. The electoral campaign ran without the application of special security measures for candidates and they could reach out freely to the electorate in rural areas. No security incidents were reported in the Basque Country during these elections. The *Amaiur* campaign was the most visible in this region. It appears there were no calls for boycott as was the case in previous elections.

The main issues discussed during the campaign were the current economic crisis and high unemployment. The scale of austerity measures in sectors such as education, healthcare and social assistance defined the differences between centre-left and centre-right of the political landscape. PSOE and IU underlined that the principles of the social welfare state should be preserved, while the PP was of the opinion that the cuts would also be necessary in the social sectors. Some electoral contestants called for revising the division of competencies between the central government and autonomous communities in justice, education and healthcare sectors, with a view to avoiding possible overlaps and saving public funds.

The current electoral system was also the focus of some contestants. A majority of the parties’ representatives met by OSCE/ODIHR EAM expressed their wish to review some aspects of the system. Parties of moderate influence nation-wide, such as the IU and the UPyD, expressed the view that the system should be ‘more proportional’ at the national level, arguing that the disproportion between the national total of parties’ votes and their respective number of seats in

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<sup>46</sup> The full text of the ETA declaration is available at:  
[http://www.rtve.es/contenidos/documentos/declaracioneta\\_es.pdf](http://www.rtve.es/contenidos/documentos/declaracioneta_es.pdf).

<sup>47</sup> *Amaiur* is a coalition comprised of the parties *Alternatiba Eraikitzen*, *Aralar* and *Eusko Alkartasuna*.

the Chamber of Deputies was too high. The over-representation of smaller provinces in the Chamber of Deputies was also mentioned as an issue. Many expressed their doubts about the current delineation of the Senate, saying that it should be given greater competencies in order to strengthen its role in the legislative process.

The dissatisfaction with the overall political situation expressed earlier in the year was also visible in some electoral initiatives launched for the parliamentary elections. Organizations related to the 15-M movement launched a called project, *Doriyakitu*, calling on voters to request that blank votes (which are counted as valid), should actually return seats in the parliament, and such seats should remain empty. Meanwhile, an Empty Seats political party (*Escaños en Blanco*) was registered in 21 constituencies. The party intended to leave their potential seats in the Chamber of Deputies empty in the event that they obtained enough votes to be eligible for seat allocation.<sup>48</sup>

## X. CAMPAIGN FINANCING

Legal provisions for political financing are outlined in the election law and the law on the financing of political parties. The election law stipulates campaign expenditure limits.<sup>49</sup> Foreign donations are prohibited. An eligible donor can contribute up to EUR 10,000 for one electoral contestant within an election.

Some of the costs of the contestants' campaigns are covered by state subvention, the size of which is calculated in accordance with the number of seats obtained in both chambers of the parliament (EUR 21,167 per seat), the number of votes for the Chamber of Deputies (EUR 0.81 per vote) and for the Senate (EUR 0.32 per vote). Additionally, political parties that form a parliamentary group in either of the chambers receive EUR 0.22 per voter for printing of ballot papers.<sup>50</sup> Some political parties shared with the OSCE/ODIHR EAM the opinion that the level of subsidies is too generous and should be reduced. Furthermore, according to them, political parties should cover the costs of printing ballot papers and should not be eligible for reimbursement of those costs.

Each electoral contestant has to appoint a manager, who is in charge of the campaign accounts. The manager has to notify the CEC and/or the respective PECs about the opening of bank accounts for the collection of funds. The accounts should reflect all the money intended to cover the campaign costs and all expenses incurred. Representatives of political parties were confident about their knowledge of the management of electoral accounts and legal provisions regulating campaign financing.

Electoral contestants which satisfied the necessary conditions to obtain State subsidies, or who have requested advance payments on said subsidies, have to submit detailed financial reports to

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<sup>48</sup> The party expressed its willingness to disband upon reform of the election law which would ensure that blank votes are taken into account in seat allocation. The means by which such reform would take place and the role that the party would play in the legislative process is not clear from the party manifesto. The party's lists got 0.40 per cent of votes.

<sup>49</sup> These are calculated by multiplying the number of registered citizens by EUR 0.37 in each constituency contested.

<sup>50</sup> Ballot papers are designed and printed by the State; in addition, electoral contestants are also allowed to print ballots to be distributed to voters ahead of polling. This subsidy is to cover the costs of mailing to voters, the envelopes and ballots and/or campaign materials.

the Court of Audit up to 125 days after the elections.<sup>51</sup> These reports are not public. No later than 30 days after the submission of reports, the state is to pay electoral contestants 90 percent of the amount of subsidies to which they are entitled, according to the official results of the elections. Within 200 days of the elections, the Court of Audit should check the submitted financial reports and present its audit report to electoral contestants, the government and the Joint Parliamentary Committee for the Court of Audit. Following the approval of the audit report by the parliamentary committee, the report is published in the official state gazette. However, it would appear that parliamentary approval and subsequent publication are not subject to deadlines. The final tranches of state subsidies are paid to the political parties when their financial reports have been approved by the parliamentary committee.

The timeframe for publishing the reports can be lengthy. After the March 2008 parliamentary elections, electoral contestants submitted their reports by 12 July 2008. The Court of Audit informed the OSCE/ODIHR EAM that it had missed its deadline for auditing by 2 months, submitting its findings to the parliamentary committee on 28 November 2008. In addition to the delay of the Court of Audit, the consecutive steps were also lengthy: the report was endorsed by the Parliamentary Committee on 23 March 2010, and was eventually published in the State Official Gazette on 2 June 2010.<sup>52</sup> The Group of States against Corruption (GRECO) recommended that, “the financial and personnel resources dedicated to the Court of Audit [be increased] so that it is better equipped to perform effectively its monitoring and enforcement tasks concerning political financing, including by ensuring a more substantial supervision of political parties’ financial reports.”<sup>53</sup>

*Consideration should be given to ensure that the Court of Audit report be made available for public scrutiny in a timely manner.*

- *Given the complexity of the audit and the number of electoral contestants that submit financial reports, consideration could be given to increasing the resources dedicated to the Court of Audit for its reporting on campaign financing.*
- *Consideration should be given to ensure that the timeframes for endorsement of the Court of Audit report by the Parliamentary Committee and its subsequent publication are reasonable and stipulated by law.*

*In order to further enhance transparency of campaign financing, consideration could be given to publishing electoral contestants’ financial reports, upon their submission. The same requirement for publication upon submission could be considered for the report of the Court of Audit to the Joint Parliamentary Committee, with an appropriate indication that the report is pending endorsement by the respective body.*

*Legal provisions delineating the right of appeal of possible Court of Audit decisions recommending refusal or reduction of subsidy due to infringements could be clarified.*

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<sup>51</sup> It would appear that the date on which the count of 125 days begins is election day, although this not precise in the election law.

<sup>52</sup> <http://www.boe.es/boe/dias/2010/06/02/pdfs/BOE-A-2010-8806.pdf>.

<sup>53</sup> GRECO Compliance Report on Spain adopted at its 50th Plenary Meeting, 28 March – 1 April 2011, Recommendation V, paragraph 73, p. 11, [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).

## X1. MEDIA

### Media Environment

The key television broadcasters include the public *RTVE* with its two main channels, La1 and La2,<sup>54</sup> and the privately-owned *Antena 3*, *Telecinco*, *Cuatro* and *La Sexta*. Two other TV channels, *NeoTV* and *VeoTV*, have increased their access to the national broadcasting market since the analogue switch-off from April 2010. In addition, multiple regional operators broadcast in most of the autonomous regions. Television and radio are the primary sources of information.<sup>55</sup>

More than one hundred newspapers are published in Spain, but few have a circulation of more than 100,000 copies per day, including *El País*, *El Mundo* and *ABC*. The Catalan newspapers *La Vanguardia* and *El Periódico* sell most of their copies in Catalonia and *El Correo* is mainly read in the Basque Country. According to the Spanish Association of Daily Newspaper Publishers, the circulation of the paid press and the free newspapers has suffered a dramatic decrease since 2007.<sup>56</sup>

### Legal Framework

Freedom of expression is guaranteed by the Constitution, which also explicitly prohibits censorship. The election law provides for the legal basis for media coverage of the electoral campaign with respect for the principles of pluralism, equity, proportionality and neutrality of information.<sup>57</sup> In addition, CEC instructions and decisions establish procedures for media coverage during the campaign.

Public and private broadcasters cannot accept paid campaign advertising. Public media have an obligation to provide free airtime, which is divided among all contestants according to a formula based on the number of votes and seats obtained by each party in the last elections to the Chamber of Deputies.<sup>58</sup> The airtime provided to political parties by public broadcasters in news and current affairs programmes, as well as time dedicated to political debates and interviews, is also allocated on the basis of the parties' previous electoral results.

The CEC is the primary media regulatory body during the electoral campaign period. The CEC allocates free airtime among parties in the public media, upon the proposal of a Radio and Television Committee.<sup>59</sup> Moreover, the CEC supervises the media coverage of the campaign and adjudicates on complaints from political parties and candidates regarding the coverage of

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<sup>54</sup> *RTVE* also broadcasts three TV channels reaching minor audience, *24 horas*, *Clan* and *Teleduarte*.

<sup>55</sup> The Spanish radio market has over 1,000 stations. The sector is dominated by four key groups in terms of audience share and revenues: the public service broadcaster *RNE (RTVE)* and three private groups, *SER*, *Uniprex* and *Radio Popular*.

<sup>56</sup> Paid newspapers suffered a 6.52 per cent loss of sales between March 2008 and March 2009, according to the Association. The fall of advertising revenue limited the number of local editions of free newspapers and reduced the amount of copies distributed in large urban areas.

<sup>57</sup> Election law, Articles 59-69.

<sup>58</sup> Election law, Article 60.2.

<sup>59</sup> The Committee consists of one representative of each party, federation or coalition that stands for the election in question and is represented in the Congress of Deputies (Election law, Article 65.3).

the campaign by the media during the election period.<sup>60</sup> The election law provides the CEC with broad powers including the competence to initiate cases. However, the OSCE/ODIHR EAM was informed that, in practice, the election administration tends to wait until a formal complaint is submitted.<sup>61</sup>

*The authorities could consider the consistent monitoring of the media coverage of the electoral process, with a view to ensure that media regulations on electoral campaign coverage are fully respected.*

Print media are unregulated with respect to electoral campaign coverage, except for a prohibition on the publication of results of public opinion polls in the five days prior to the elections and an obligation to guarantee the same rate for commercial and political advertising. There are no specific regulations for campaigning in the internet.

### Coverage of the Elections

The pluralistic media landscape is promptly responsive to issues of public interest. Spanish newspapers reported actively on the campaign, interviewed candidates and published editorials on election-related issues. Spanish public TV covered campaign activities using a number of different formats.<sup>62</sup> A face-to-face debate between the leaders of PSOE and PP was televised on 7 November 2011 by Spanish national TV stations *RTVE*, *Antena 3*, *Cuatro* and *La Sexta*, as well as by several regional and satellite stations.

A second debate involving representatives of the five competing parties with parliamentary groups in the out-going Chamber of Deputies was broadcast on 9 November 2011. This drew criticism and complaints from other parties, which were allocated slots for broadcasting recorded video-messages rather than live airtime.

A number of OSCE/ODIHR EAM media interlocutors expressed discontent regarding the prohibition to publish results of public opinion polls in the five days prior to election day; they claimed that in the internet era, this proscription appears outdated.<sup>63</sup>

Social networks played a considerable role in the electoral campaign and were sources of political humour and satire.<sup>64</sup> Most of the print and electronic press reported that a Twitter account parodying a leading candidate in the elections was inexplicably closed, which provoked a negative reaction among internet users.<sup>65</sup>

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<sup>60</sup> The CEC received a significant number of complaints on media coverage of the electoral campaign, and most were rejected.

<sup>61</sup> This is a long-standing practice and has not been questioned by the political parties. The CEC acts of its own initiative only in case of a flagrant violation of the election law or when the law provides specifically that the CEC has to approve a resolution.

<sup>62</sup> These included free political advertising, direct access programming, news and current affairs programming, interviews and debates.

<sup>63</sup> The newspapers *El País*, *El Mundo* and *La Razón* published results of public opinion polls during the five days prior to election day.

<sup>64</sup> The Spanish news Agency EFE released daily reports on the cyber-campaign and almost every Spanish digital and print media analyzed candidates' e-popularity, their tag clouds, their number of followers and their ability to generate 'likes'.

<sup>65</sup> A debate on the freedom of expression immediately spread in the social networks and was reported upon by several newspapers.

## XII. COMPLAINTS AND APPEALS

The system of complaints and appeals appears to provide for effective remedy of election-related issues. The election law sets out a detailed basis for complaints and appeals. It states that decisions of election commissions may be appealed to the next level of election administration, unless a provision is made for a particular procedure, when it may be appealed directly to the courts. The law distinguishes clearly between the jurisdictions of relevant decision-making bodies and states when administrative and legal routes are exhausted for each type of complaint.<sup>66</sup>

Deadlines for filing and deciding on complaints and appeals range from two to five days and are shorter than the equivalent procedures outside an electoral period. Disputes generally appeared to be resolved within a period of time suited to the electoral process.

During the run-up to the elections, political parties most often lodged complaints. Their complaints related mainly to alleged breaches of the rules by other political parties. The CEC appeared to resolve these complaints swiftly and published summaries of its decision on its website. The CEC received a high number of complaints on election day, many of which were filed by the 15-M movement, but does not appear to have published them at the time of this report. *Consideration could be given to publishing all complaints and the relevant CEC or courts' decisions on respective websites in a timely manner.*

Notwithstanding the range of administrative and legal avenues, the Constitution provides for all citizens to make claims regarding protection of constitutional rights (*recurso de amparo*) to the Constitutional Court. The Court dealt with some 12 claims in the run-up to the 2011 elections,<sup>67</sup> with the majority of these related to the submission of candidate support signatures and 1 to the re-instating of the *Bildu* coalition.

## XIII. ELECTION OBSERVATION

The accreditation and presence of candidates' proxies and representatives in polling stations is foreseen by the election law. On election day, large numbers of candidates' proxies and representatives were present in the polling stations; this contributed to the transparency of the process and may have increased public confidence.

However, party proxies at times appeared to dominate and created the impression that they were in control of the election day process. When the EB members appeared less experienced, it seemed that the process was run mostly by the proxies. *Consideration should be given to ensure that the role of party proxies and representatives on election day remains strictly within their legal authority.*

The election law does not provide for the presence of non-party domestic and international observers. Therefore, it is not in full compliance with paragraph 8 of the Copenhagen

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<sup>66</sup> Some complaints are left for final resolution only within the election administration. For example, the number and delimitation of ESS is resolved by the respective PEC, rather than by a court of law.

<sup>67</sup> <http://www.tribunalconstitucional.es/en/Pages/Bienvenida.aspx>.

Document.<sup>68</sup> *Consideration should be given to introducing legal provisions to ensure full access to all stages of the electoral process to non-party domestic and international observers, including accreditation arrangements.*

While there was no accreditation mechanism for international observers, the CEC facilitated OSCE/ODIHR EAM access to all levels of election commission and provided mission members with authorization letters that allowed them to follow voting and counting proceedings on election day. The co-operation received from the CEC and lower-level commissions was highly appreciated and allowed the EAM to obtain all needed information.

#### XIV. PARTICIPATION OF WOMEN

Since the adoption of an equality law in 2007, legal obligations have been placed on political parties to ensure a measure of gender balance in their candidate lists.<sup>69</sup> The provisions require that each gender represents a minimum of 40 percent of candidates on parties' candidate lists for the Chamber of Deputies. This requirement is applicable to each group of five candidates, although there is no specific ranking requirement within each group. For the Senate, the law requires that where candidates are grouped in lists, the proportion of each gender must be as close as possible to numerical equality.

Only two of the CEC members are women. The 2011 data show an increase in women's representation within the CEC staff over 2010 (15 per cent, compared with just under 8 per cent).<sup>70</sup> However, this proportion is significantly lower than that of women in elected bodies (35 per cent), or registered women voters (just over 51 per cent).<sup>71</sup>

*Given the low representation of women in the CEC, consideration could be given to promoting gender balance in the nomination process of its members.*

For these elections to the Chamber of Deputies, 48 per cent of candidates were women, while for the Senate - 41 per cent.<sup>72</sup> This represents an increase for both chambers compared to 2008 when women represented 46 per cent and 38 per cent, respectively. In 2011, 125 women were elected to the Chamber of Deputies representing just under 36 per cent, slightly higher than 2008; 74 women, representing just under 36 per cent, were elected to the Senate, compared to 32 per cent in 2008.

The proportion of women among elected representatives varied among parties: 63 of PP's 170 Deputies, 35 of PSOE's 96, 5 of CiU's 16, 1 of *Amaiur*'s 7, and 2 of UPyD's 5. Representatives

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<sup>68</sup> Paragraph 8 of the Copenhagen Document provides: "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>69</sup> The *Ley Orgánica 3/2007 para la Igualdad Efectiva de Mujeres y Hombres* (Law on Effective Equality for Women and Men, or Equality Law) was promulgated in May 2007.

<sup>70</sup> Data from the National Institute of Statistics:  
[http://www.ine.es/ss/Satellite?L=0&c=INESeccion\\_C&cid=1259925595743&p=1254735110672&pagina\\_me=ProductosYServicios%2FPYSLayout&param3=1259924822888](http://www.ine.es/ss/Satellite?L=0&c=INESeccion_C&cid=1259925595743&p=1254735110672&pagina_me=ProductosYServicios%2FPYSLayout&param3=1259924822888).

<sup>71</sup> Data from the National Institute of Statistics:  
[http://www.ine.es/buscar/searchResults.do?searchType=DEF\\_SEARCH&tipoDocumento=4&searchString=mujeres](http://www.ine.es/buscar/searchResults.do?searchType=DEF_SEARCH&tipoDocumento=4&searchString=mujeres).

<sup>72</sup> Data from the MoI:  
[http://elecciones.mir.es/generales2011/Las\\_elecciones\\_en\\_cifras/Las\\_elecciones\\_en\\_cifras.htm](http://elecciones.mir.es/generales2011/Las_elecciones_en_cifras/Las_elecciones_en_cifras.htm).

of women's civil society groups commented to the OSCE/ODIHR EAM that competition between men and women for places on party lists is greater for the parliamentary elections in places where male candidates lost seats in the local elections and were seeking places on their party's parliamentary lists.

A number of factors may have influenced the impact of gender quotas on the election of women, such as party policy in relation to the positioning of women on candidate lists, internal party rules for the selection of female candidates, which districts parties promoted female candidates in, and the number of seats that candidates were competing for. The lower number of seats returned by some constituencies might have had a negative impact on the proportion of women elected. Notwithstanding the current considerable percentage of elected candidates from the less represented gender in Spain, *consideration could be given to further enhancing gender balance by introducing additional ranking requirements for the order of the candidates.*

## XV. PARTICIPATION OF NATIONAL MINORITIES

The Constitution protects all 'peoples of Spain' in terms of the exercise of human rights, their cultures and traditions, languages, and institutions. Castilian is the official state language, but other languages can be recognized as official by the population of autonomous regions. Basque, Catalan and Galician are official languages in respective autonomous regions, together with Castilian. All electoral materials are provided in these four languages.

Spain has ratified the Council of Europe's Framework Convention for the Protection of National Minorities. Although Roma (*gitanos*) are not constitutionally recognized either as an ethnic minority or as one of the 'peoples of Spain', they are the biggest minority group in Spain. Their population is estimated to be approximately 650,000-1,000,000, which constitutes between 1.4 and 2.1 per cent of the total population.<sup>73</sup>

No Roma political party was registered as an electoral contestant and Roma issues were not visible during the campaign. Roma representatives stated to the OSCE/ODIHR EAM that they continue to face difficulties in joining the mainstream Spanish politics, as none of the parties is interested in putting Roma candidates in electable positions on candidate lists. Few Roma are represented in regional or local government, *for example* in Extremadura and Valencia, but there is no Roma deputy at the national level.

The lack of representation of Roma in decision making bodies was noted by the Council of Europe's European Commission against Racism and Intolerance, which "encourage[d] the authorities to continue improving the Plan for Roma Development and the National Roma Council, giving Roma the opportunity to hold leading positions with decision making powers".<sup>74</sup> As some 38-50 per cent of the Roma population live in Andalucía, political activists hope for better Roma representation in the upcoming autonomous regional parliament elections, tentatively to be held in March 2012.

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<sup>73</sup> According to the last official update of the census of 1 January 2010, the Spanish population is 47,021,031: <http://boe.es/boe/dias/2010/12/23/pdfs/BOE-A-2010-19706.pdf>  
There is no exact data on the numbers of Roma living in Spain, as the census data does not include information on ethnicity.

<sup>74</sup> European Commission against Racism and Intolerance, Report on Spain (fourth monitoring cycle), adopted on 7 December 2010, published on 8 February 2011, p.27: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/spain/ESP-CBC-IV-2011-004-ENG.pdf>.

## XVI. POLLING

### A. POSTAL VOTING

The election law allows for postal voting for Spanish citizens residing in Spain as well as for those residing temporarily or permanently abroad.<sup>75</sup> Data from the Electoral Census Office indicated the total number of received postal vote applications to be 821,205.<sup>76</sup> The postal services reported that 94.7 per cent of those who had requested to vote by post had received documentation for voting.

#### *Postal Voting in Spain*

A voter residing in Spain wishing to cast a vote by post could do so without providing any justification. The deadline for voters to request ballots was 10 November. The deadline for voters to send marked ballot papers and a voter registration certificate to the post office was 17 November. The post delivered them to the EBs by the closure of polling for counting. Envelopes received after the closure of polls were destroyed.

#### *Postal Voting Outside of Spain*

One of the amendments to the electoral law adopted in January 2011 was the introduction of an active system for applying for postal voting from abroad. The rationale for this was to enhance the protection of the security of the vote and introduce a more effective safeguard of checking the identity of the voter.

Spanish citizens registered as permanent residents abroad received an application form from the Electoral Census Office. The form was also available at consular offices and could be downloaded from the MoI website. If a voter chose to vote by post, s/he had to mail it to the provincial branch of the Electoral Census Office by 22 October, at their last registered address, the filled-in application form and identity proof documents.<sup>77</sup>

Voters temporarily residing abroad had to request the application form, fill it and deliver it personally to the consular office on condition that they were registered or would register at that moment as temporary residents abroad. The deadline for these applications was 22 October.

Due to a number of appeals regarding collection of signatures for candidate registration, specifically in the Barcelona constituency, the printing of ballots was delayed by 36 hours. This affected the delivery of ballots to postal voters. In an effort to minimize the numbers of disfranchised voters, the CEC issued a decision extending the deadline to include all envelopes received with a postal stamp by 19 November, instead of 15 November.

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<sup>75</sup> Voters who have applied for postal voting cannot vote in person.

<sup>76</sup> 671,599 from voters residing in Spain, 13,226 from voters residing temporarily abroad and 136,380 from voters permanently abroad, [http://www.ine.es/en/oficina\\_censo/elecgral2011/elecgral2011\\_tab\\_en.htm](http://www.ine.es/en/oficina_censo/elecgral2011/elecgral2011_tab_en.htm). The voter list included 1,479,314 citizens living abroad.

<sup>77</sup> Documents included photocopy of international passport, certificate of citizenship and certificate of registration at the consular office.

## B. POLLING STATION VOTING

In accordance with the OSCE/ODIHR methodology, the OSCE/ODIHR EAM did not observe election day proceedings in a systematic and comprehensive manner. However, on election day mission members visited a limited number of polling stations in Madrid, Valladolid and Toledo. OSCE/ODIHR EAM members had access to all polling stations and were able to receive all information requested.

The voting process in polling stations visited was well administered and took place in a calm atmosphere. The OSCE/ODIHR EAM noted that the election administration enjoyed the trust of election stakeholders. Access for people with disabilities was limited in some stations visited, although procedures had been established for visually impaired voters to request a Braille template and mark their ballot alone or ask for assistance.<sup>78</sup>

Overall, voting procedures were implemented efficiently by EB members. Ballots and envelopes were available on tables at the entrance to polling locations as well as inside voting booths. In addition, prior to election day, parties were allowed to provide voters with their ballots. For the elections of the Chamber of Deputies, each competing list in a given constituency had its own ballot paper. For the Senate, all candidates' lists within a constituency were presented on the same ballot. For the first time, the ballot paper for the Senate included instructions to voters on the numbers of candidates that they could select, in line with past OSCE/ODIHR recommendations.

On occasion, the secrecy of the vote was not respected by voters, as they were not obliged to use the voting booths. However, in those cases, no pressure or intimidation was evident. The election law does not fully ensure respect for the secrecy of the vote, a fundamental principle for democratic elections.<sup>79</sup> *The authorities should consider measures to further enhance the secrecy of the ballot.*

The use of some 2,000 electronically managed EBs was piloted in Madrid. The system included electronic voter lists and forms for counting and printing the results protocols.<sup>80</sup>

## C. COUNTING, TABULATION AND ANNOUNCEMENT OF RESULTS

Counting took place immediately after the close of polls. The observed counting processes were public and transparent and were conducted in an overall orderly and expedient manner. However, the OSCE/ODIHR EAM noted some minor procedural variations in ballot counting. On occasion, parties' proxies were involved in the counting process. All valid ballot papers were destroyed after the counting, except for those disputed.

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<sup>78</sup> Article 29 of the United Nations Convention on the Rights of Persons with Disabilities require States Parties to “ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: [...] (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use...”.

<sup>79</sup> ICCPR General Comment 25, paragraph 20.

<sup>80</sup> It had been already used in 900 EBs during the 2009 elections to the European Parliament and in the local and autonomous regions elections of May 2011.

The MoI representatives in all polling stations country-wide reported the provisional results either via their ‘personal digital assistants’ directly to the MoI or by phone to the respective provincial delegate of the government. The MoI published provisional results on election night. Official results were published on 10 December 2011.

Provisional and official results were posted on the website of the MoI, down to each municipality. While efforts appear to have been taken to publish the electoral results disaggregated by polling station, the information was inaccessible at the time of the report. *The publication of provisional/official results for each polling station in a format accessible to the public would further enhance the transparency of the process.*

## ANNEX 1: OFFICIAL ELECTION RESULTS<sup>81</sup>

### Chamber of Deputies

<b>Total Number of Valid Votes</b>	24,348,837
<b>Total Number of Invalid Votes</b>	317,555
<b>Total Number of Voters Voted</b>	24,666,392
<b>Total Number of Voters on Voter Lists</b>	35,779,491

<b>Political Party or Coalition</b>	<b>Votes</b>	<b>% Votes</b>	<b>Seats</b>	<b>% Seats</b>
People's Party (PP)	10,061,311	41.32	170	48.57
Spanish Socialist Workers' Party (PSOE)	6,080,964	24.97	96	27.43
Convergence and Union (CiU)	1,015,691	4.17	16	4.57
Socialist Party of Catalonia (PSC-PSOE)	922,547	3.79	14	4.00
United Left-Greens (IU-LV)	1,685,991	6.92	11	3.14
People's Party in Coalition with Aragon's Party (PP-PAR)	339,502	1.39	8	2.29
AMAIUR	334,498	1.37	7	2.00
Coalition United People's Party – Extremadura (PP-EU)	339,237	1.39	6	1.71
Progress and Democracy Union (UPyD)	1,143,225	4.70	5	1.43
Basque Nationalist Party (EAJ-PNV)	324,317	1.33	5	1.43
Republican Left of Catalonia (ESQUERRA)	244,854	1.01	3	0.86
Galician Nationalist Bloc (BNG)	184,037	0.76	2	0.57
Canaries Coalition – New Canary, Canaries Nationalist Party (CC-NC-PNC)	143,881	0.59	2	0.57
Coalition People of Navarra and People's Party (UPN-PP)	126,516	0.52	2	0.57
Coalition Compromise (COMPROMÍS-Q)	125,306	0.51	1	0.29
Citizens Forum (FAC)	99,473	0.41	1	0.29
The Future (GBAI)	42,415	0.17	1	0.29

<b>Total Number of Seats</b>			350	100
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### Senate

<b>Political Party or Coalition</b>	<b>Seats</b>
People's Party (PP)	136
Spanish Socialist Workers' Party (PSOE)	48
Convergence and Union (CiU)	9
Socialist Party of Catalonia PSC (PSC-PSOE)-ICV-EUA	7
Basque Nationalist Party (EAJ-PNV)	4
AMAIUR	3
Canaries Coalition – New Canary, Canaries Nationalist Party (CC-NC-PNC)	1

<sup>81</sup> Source: State Official Gazette, Number 297, 10 December 2011.

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the 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 democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and 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 **democratization** 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 persons, 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 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 organizations.

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