



Office for Democratic Institutions and Human Rights

SPAIN

PARLIAMENTARY ELECTIONS

9 March 2008

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

29 January - 1 February 2008



Warsaw
14 February 2008

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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Permanent Mission of Spain to the OSCE to observe the 9 March 2008 parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) to Madrid from 29 January to 1 February 2008. The NAM was composed of Mr. Vadim Zhdanovich, OSCE/ODIHR Senior Election Adviser, and Mr. Jonathan Stonestreet, OSCE/ODIHR Election Adviser.

The purpose of the OSCE/ODIHR NAM was to assess the pre-electoral environment and the preparations for the parliamentary elections, and to advise on the modalities for a possible election observation activity with regard to these elections. The NAM met with the Ministry of Foreign Affairs, the Central Election Commission, the Ministry of Interior, the General Council of the Judiciary, political parties, and media representatives. A full list of meetings is included as an annex to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs of Spain for its assistance and cooperation in organizing the NAM. The OSCE/ODIHR would also like to thank the representatives of the other State institutions, political party representatives, and media representatives who took the time to meet with the NAM.

II. EXECUTIVE SUMMARY

Elections will be held on 9 March 2008 for the Parliament of Spain, consisting of the Chamber of Deputies and the Senate.

The election process is regulated by a comprehensive election law addressing the entire range of relevant legislative issues, including important safeguards for the conduct of democratic elections. The law was credited throughout the NAM as being an important factor contributing to stability in a country with a complex political structure. Since the previous parliamentary elections in 2004, there have been a few changes to the law, including provisions to require gender equality on candidate lists, to increase the access to voting by visually impaired persons, and to allow for postal voting for voters temporarily outside Spain.

The 2004 OSCE/ODIHR Election Assessment Mission recommended that consideration be given to addressing certain aspects of the law. These include ensuring the equality of the vote, and the need to further guarantee the secrecy of the vote. In addition, the legislation does not provide for full access to the process by international observers and domestic non-partisan observers, and is therefore not fully compliant with the 1990 OSCE Copenhagen Document.

The Central Election Commission and lower level commissions, whose membership is largely drawn from the judiciary, administer the elections with the operational support of the Ministry of Interior. On election day, polling stations are managed by electoral boards composed of citizens selected by lottery. Political parties expressed confidence in the overall election process, particularly in the work of the election administration.

The official election campaign is relatively brief, lasting from 22 February to 7 March, although in practice unofficial campaigning has been ongoing since prior to the calling of elections. The campaign is expected to be active and the overall campaign environment conducive to the ability of voters to hear a wide range of political views on a variety of issues. However, interlocutors noted that possible threats and intimidation from extremists could limit the ability of citizens to exercise fundamental rights in some areas of the Basque region.

There are ongoing legal cases at State level which could result in the suspension of two political parties prior to election day, due to allegations that they have financial and other links with the terrorist group ETA and/or with a political party previously banned for maintaining links with the terrorists.

Coverage of political party campaigns in the public broadcast media is regulated on the basis of equity, and free campaign advertising spots are broadcast on public media according to the same principle. The election campaign appears to be generating public interest, especially the prospect of debates between the candidates of the two largest parties, a format that is relatively unusual in parliamentary elections in Spain. Smaller parties believe that such a format would unfairly benefit the major parties.

The OSCE/ODIHR NAM considers that the deployment of an Election Assessment Mission could be useful in assessing particular aspects of the election process, including protection of secrecy of the vote, new legal provisions to improve the participation of women in the election process, postal voting, access for observers, as well as the electoral environment in the Basque region and other regions.

III. BACKGROUND

The Parliament of Spain (*Cortes Generales*) is a bicameral body composed of the Chamber of Deputies and the Senate. The Chamber of Deputies, which holds the primary legislative power, is composed of 350 directly elected deputies from constituencies based on Spain's 50 provinces and the exclaves of Ceuta and Melilla. The Senate, the upper chamber, is composed of some 257 senators,¹ 208 of whom are directly elected from the constituencies and the remainder indirectly elected by the assemblies of the Autonomous Communities. Both chambers serve a maximum of four years and serve concurrent terms.

The Chamber of Deputies is elected in a closed-list system on the basis of proportional representation. Constituencies are multi-member and most elect at least

¹ The outgoing Senate had 257 senators, but the number can vary slightly.

two deputies. There is a three per cent threshold, including blank ballots, to obtain representation in a constituency. For the upper chamber, the mainland constituencies elect four senators each (with special provisions for the islands and Ceuta and Melilla). These senators are elected from the constituencies via an open list system in which voters can choose any three candidates, including from different parties.

The upcoming elections were convoked by royal decree on 14 January 2008, at the proposal of the government, in accordance with constitutional requirements. On 18 January, the delegation of Spain to the OSCE invited the OSCE/ODIHR to observe the elections, in line with its commitments under the 1990 OSCE Copenhagen Document.

For the previous parliamentary elections in 2004, the OSCE/ODIHR deployed an Election Assessment Mission. The mission at that time noted the public trust in the honesty and integrity in the election system and confidence in the election administration, which conducted a democratic election despite the extraordinary circumstances of the terrorist attacks carried out just prior to election day. The 2004 Election Assessment Mission also identified issues to be further addressed, including steps to more fully ensure secrecy of the vote and ensure access of international observers and domestic non-partisan observers to the election process. The 2004 Election Assessment Mission identified significant issues in the Basque region related to intimidation of the population by certain groups of separatists and resulting limitations on the ability to exercise fundamental rights.

IV. FINDINGS

A. LEGAL FRAMEWORK

The Constitution states that elections are to be held on the basis of “universal, free, equal, direct, and secret suffrage” and defines the system for parliamentary elections. The Organic Law on the General Election Regime (“the election law” or “the law”) is a comprehensive statute which provides the primary framework for elections and implements the Constitution’s electoral provisions. It was assessed by the OSCE/ODIHR Election Assessment Mission in 2004 as “a highly detailed and internally consistent instrument that addresses the entire range of legislative issues related to parliamentary elections.”² In addition, other laws and regulations affect the conduct of elections, including the Law on Political Parties, the Law on the Right of Assembly, and royal decrees proposed by the government.

All of the NAM’s interlocutors stated that the election law has provided a high degree of political stability to Spain and has contributed to public confidence in the integrity of the electoral process. While several political parties support possible changes to the law – for instance, increased proportionality of representation in the Chamber of Deputies, or the introduction of an open list system – each highlighted that the current election system provides for a balance of interests and that significant reform would be unlikely without overall consensus.

² The 2004 OSCE/ODIHR Election Assessment Mission Report is available at www.osce.org/odihr-elections/14652.html

Nevertheless, three modifications to the election framework have been introduced since the 2004 elections. One of these requires that procedures be established to ensure the secrecy of the vote for visually impaired voters. A second change, designed to increase the access of citizens to the voting process, permits voters who will be temporarily outside Spain on election day to apply at Spanish consulates to vote by mail.

The third change has been to introduce a requirement for gender parity in candidate lists for elections to the Chamber of Deputies and in other elections. Political parties, coalitions and groups of citizens nominating candidate lists must now ensure that for each constituency at least 40 per cent of each gender is represented on the entire candidate list and, within the list, that at least 40 per cent of each gender is represented in each group of five candidates. This provision was in effect for the 2007 municipal elections. It was challenged in court by a group of deputies of the *Partido Popular* (PP), after the party had not been allowed to register a list comprised entirely of women in a municipality in the Canary Islands. The Constitutional Court upheld the provision on 29 January 2008.³

The 2004 OSCE/ODIHR report noted aspects of the election system which are relatively unusual in the OSCE area. For instance, the allocation of seats to the Chamber of Deputies among the constituencies creates a situation in which there are significant disparities as to the number of votes needed to elect a deputy, raising an issue of equality of the vote. The General Council of the Judiciary informed the NAM that this situation could not be changed without amending the constitution. The election law also provides that at the conclusion of the counting process in a polling station, only invalid and disputed ballots are preserved while ballots not in dispute are immediately destroyed. This makes a full recount impossible. The Central Election Commission stated that the system allows for further scrutiny of disputed ballots if necessary, while giving legal force to results which are not disputed by Electoral Board members or political party representatives at the time of counting.

B. ELECTION ADMINISTRATION

1. Election Administration Bodies

Parliamentary elections in Spain are administered by four levels, consisting of the Central Election Commission (CEC), Provincial Election Commissions (PEC), District or Zone Election Commissions (DEC), and Electoral Boards (*Mesas Electorales*) at polling station level. The Ministry of Interior has a significant role in the technical preparation of the elections. In addition, the voter register is managed by the Electoral Census Office under the Statistical Institute. As noted in 2004, the election administration is considered to be independent, nonpartisan and competent. All official bodies involved with the elections appear to enjoy the confidence of political parties, although some concerns were raised regarding out of country voting. The CEC is composed of thirteen members, of whom eight are judges of the Supreme Court designated by lottery and five are university professors nominated by

³ The full text of the decision is available on the website of the Constitutional Court at www.tribunalconstitucional.es/jurisprudencia/Stc2007/STC2007-4069-2007.html

Parliament. The CEC is a permanent body, appointed near the beginning of each new parliamentary term. It has broad powers, including issuing instructions to lower level commissions; resolution of complaints and appeals; directing and supervising the Electoral Census Office; approving election materials produced by the Ministry of Interior; and imposing administrative sanctions. The CEC meets in closed sessions.

Lower level election commissions are not permanent bodies but are formed only for election periods. The PECs are formed in each province and are composed of three magistrates and two professors. The PECs approve candidate list nominations, approve the design of ballot papers, and tabulate results. The DEC, formed along the same lines as the PECs, oversee the material organization of the electoral boards.

Constituencies are divided into “sections” of up to 2000 voters. Each section has one or more electoral boards. The electoral boards, corresponding to polling stations committees, are composed of a president and two representatives and are formed by citizens selected by lottery from the voter register of the sections. Service in the electoral boards is obligatory for those citizens selected and is compensated. There will be more than 59,000 electoral boards for the upcoming election.

The Ministry of Interior plays a significant role in administering elections under the supervision and control of the CEC and lower level commissions. The Ministry is responsible for the procurement and distribution of all election materials, including ballots, ballot boxes and voting booths. The Ministry arranges for voter education spots to appear in the media, produces instruction materials for electoral boards, and organizes a system for the electronic tabulation of the preliminary results of the elections.

The Electoral Census Office maintains the voter register based on information received from local authorities and from consulates abroad. Inclusion in the voter register is automatic. The voter register is updated on a monthly basis. According to information from the Ministry of Interior there are over 33,000,000 voters residing in Spain for the upcoming elections. The Electoral Census Office also determines at the provincial level the number of electoral sections and the number of electoral boards in each, in consultation with the local authorities.

There is a well-defined process for deciding any election disputes, and decisions can be appealed to a higher election commission and eventually to the Supreme Court and Constitutional Court. In practice, there are few complaints filed by either political parties or voters. There are a number of provisions regulating campaign finance and spending, which are checked by the Central Election Commission and the Spanish Court of Audit.

2. Methods of Voting

As noted in the OSCE/ODIHR Final Report on the 2004 parliamentary elections, the voting system in Spain is unusual in that ballots are not accounted for until they are deposited in the ballot box. Ballots are produced by the authorities and by political parties, which can mail ballots directly to voters. The voter places the ballot corresponding to the political party of his or her choice in a special envelope (for the

Chamber of Deputies) or marks and places a ballot in a special envelope (for the Senate). After verification that the voter is on the voter list for that electoral board, the envelope is deposited in the ballot box by the president of the board.

Ballots and envelopes are available at the polling station, both inside and outside the voting booths, or voters may choose to come to the polling station with the ballot already sealed in the envelope. While the law states that voting is secret, it does not require voters to use the voting booths provided.⁴ This system of voting raises an issue of secrecy of the vote, since in practice voters can vote openly. As noted in the 2004 OSCE/ODIHR Final Report, in certain areas of the country, especially in some parts of the Basque region, this could lead to possible voter intimidation, where some electors may fear to pick up certain ballots from the ballot table or to vote in a voting booth. This concern was reiterated during the NAM by some interlocutors who said that some voters in this region prefer to cast their ballots by post due to such potential intimidation.

Postal voting is used for those voters who wish to do so. Few concerns were raised regarding postal voting inside Spain, although one interlocutor stated that some postal votes in the Basque region had not been delivered to polling stations in past elections. Several interlocutors raised a degree of concern regarding the ability of the election administration to fully ensure the integrity of postal voting for citizens residing outside Spain. Ballots are mailed to these voters automatically at their last registered address, and it is not possible to verify who has cast the ballot. In addition, the tight deadlines for the production, mailing, and return of ballots, as well as the reliability of some foreign postal systems, causes some voters to receive their ballots too late or not at all. The Ministry of Foreign Affairs noted that of some 1,190,000 registered voters residing abroad, only some five per cent of these ballots are actually voted.⁵

Although trials of electronic voting systems have been conducted during past elections, no electronic voting is planned for the 9 March elections. The CEC stated that while some proposals have been made, none fully guaranteed the integrity of the vote, especially regarding ensuring the secrecy of the vote.

C. CAMPAIGN

Candidate lists may be presented by political parties, coalitions, and groups of citizens. The lists must be presented to the PECs by 4 February 2008, after which there is a period for correction of any errors, followed by an appeals process which must be concluded by 21 February. The official election campaign period lasts for 15 days, starting on 22 February and concluding at midnight on the night of 7 March, when the campaign silence period commences.

Unofficially, the pre-election campaign has been ongoing since prior to the calling of elections. The main distinctions between the two periods are that during the official campaign there are provisions for free airtime on public broadcast media (see Media

⁴ Organic Law on the General Election Regime, Articles 86.1 and 86.2.

⁵ Voters residing outside Spain may also cast their ballot in person at the Spanish consular representation in their country of residence. As noted above, new provisions in the law allow voters temporarily outside Spain on election day to vote by post.

section below), and that political parties are not allowed to ask citizens for their vote prior to the start of the official campaign period.

NAM interlocutors expect the campaign to be active, with parties, coalitions, and groups of voters conducting public meetings and rallies, advertising in the media, canvassing voters and campaigning by internet and other means. Municipal authorities are required to allocate free space for campaign posters and other materials. The main campaign issues identified by political parties were the economy, anti-terrorism policy, and social issues. No concerns were expressed with the overall campaign environment; however, there were concerns raised regarding the campaign environment in the Basque region. The NAM was informed that in some cases, intimidation from extremists could limit the freedom of citizens to express their political views, to assemble, or to run as candidates for political office, despite efforts from the regional authorities to prevent such intimidation.

The Law on Political Parties permits the illegalization or suspension of political parties for associating with or supporting terrorist groups or violence. Several court cases and proceedings were ongoing at the time of the NAM regarding the potential illegalization of two political parties, the *Partido Comunista de las Tierras Vascas* (PCTV-EHAK) and the *Acción Nacionalista Vasca* (ANV). The prosecutor has presented evidence to the Supreme Court that both parties are controlled by *Batasuna*, a political party which was previously banned for its links to the terrorist group ETA. The Court has been requested to suspend the activities of both parties prior to the election, including the right to present candidate lists. The *Audiencia Nacional* – a national court that investigates terrorism-related cases – is also conducting hearings that could lead to suspension of one or both parties prior to the election. Both parties are currently represented in elected assemblies at regional and/or municipal level.

D. MEDIA

Spain has large number of print and electronic media outlets which offer a wide variety of opinions and information to the public. Most citizens get their information from television, although newspapers, radio and the internet play an important role. At the national level there are two public TV channels (under the public broadcast corporation *RTVE*) as well as four major private TV broadcasters, and there are nearly a dozen public TV broadcasters at regional level.

According to the election law, public broadcasters must provide neutral and equitable news coverage during the campaign period. In addition, they must provide free space for political party ads based on the number of votes received by each party in the previous parliamentary election. There is a minimum amount of free airtime for parties not represented in parliament. The CEC is the authority regarding the amount of time of free advertising per party, as well as the format and the schedule of broadcasting the spots.

These regulations do not apply to private broadcasters. However, all media, including print media, are required to respect the campaign silence period (8 – 9 March), and the publication of opinion polls is prohibited in the five days preceding election day. Some interlocutors stated that these rules are too restrictive in the modern media

environment. In this respect, the political party *Izquierda Unida* (IU) raised media coverage of marches traditionally held on 8 March, International Women's Day, in which political leaders typically participate, as a potential issue.

A media issue raised by NAM interlocutors was the possible organization of two televised debates between the leading candidates of the two largest parties, the PP and the *Partido Socialista Obrero Español* (PSOE). There appears to be a high level of public interest in the debates, especially since debates in such a format are rarely held. The *Partido Nacionalista Vasco* (PNV) and IU, however, both stated that they disagree with the format of debates that do not include their representatives, since this would distort the full picture of a parliamentary election. The CEC noted that the election law requires equitable treatment and not equal treatment. The CEC stated that it could not prevent a debate between the two largest parties but could require that additional measures be taken to offer other parties equitable opportunities.

E. ELECTION OBSERVATION

The election law provides for the presence of political party observers in polling stations on election day. This right is widely exercised and contributes to transparency and the high level of public confidence. In addition, the vote count is open to the public. However, the law does not provide for access to the election process by international observers or by domestic observers who are not nominated by political parties. To eliminate any uncertainty in regard to observers and to bring the law into full compliance with OSCE commitments and best practices, the OSCE/ODIHR recommended in 2004 that the authorities adopt a specific legal provision permitting nonpartisan domestic observers and international observers to monitor elections. This recommendation has not yet been addressed.

V. CONCLUSIONS AND RECOMMENDATIONS

The election process in Spain as a whole appears to enjoy a high level of public confidence, and the comprehensive election legislation includes important safeguards for the conduct of democratic elections. The NAM nevertheless considers that the deployment of an Election Assessment Mission could be useful, in particular with regard to assessing protection of secrecy of the vote, new legal provisions to improve the participation of women in the election process, postal voting, access for observers, as well as the electoral environment in the Basque region and other regions of Spain.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

Mr. José M. Pons, Director General for Europe and North America
Mr. José Ángel López Jorrin, Head of the OSCE Task Force
Mr. Javier Suárez Cardona, Deputy Director General for Social Affairs
Mr. Enrique Asorey Brey, Director, Division of Multilateral Affairs and OSCE
Mr. José Luis Lozano García, Senior Adviser, Division of Multilateral Affairs and OSCE

Ministry of Interior

Ms. María del Rosario García Mahamut, Director General for Internal Policy
Mr. Pedro Guillén Marina, Deputy Director General for Electoral Processes

General Council of the Judiciary

Mr. Enrique López, Spokesperson and Member of the Council
Mr. Celso Rodríguez Padrón, Secretary General
Mr. Eduardo Ortega, Chief of Cabinet of the President of the Council

Central Election Commission

Mr. José María Ruiz Jarabo, Chairman
Mr. Manuel Alba, Secretary

Ombudsman Office

Ms. María Luisa Cava de Llano y Carrió, First Deputy Ombudsman
Mr. Manuel Aguilar Belda, Second Deputy Ombudsman

Political Parties

Mr. Francisco Fernández Marugán, Spanish Socialist Worker's Party (PSOE), Member of the Standing Committee of the Chamber of Deputies
Mr. Gustavo de Aristegui, People's Party (PP), Member of the External Relations Committee of the Chamber of Deputies
Mr. Pedro Chaves, United Left (IU), Coordinator of electoral program
Mr. Josu Erkoreka, Representative of the Basque Nationalist Party (PNV)

Media

Mr. Javier García de la Vega, Deputy Director of the News, TV Channel Antena 3
Ms. Marta Abad, Director General of International Relations, Public TV Channel RTVE
Mr. Javier Pérez, Director General for Institutional Relations, Public TV Channel RTVE
Mr. Iñaki Gil, Deputy Director of "El Mundo"
Mr. José María Ridaio, Deputy Director of "El País"