



Briefing for the UN Human Rights Committee on

Art.25 ICCPR / Spain

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I. Introduction

Democracy Reporting International submits this briefing for the consideration by the Human Rights Committee and the Spanish delegation in the context of Spain's periodic reporting on the implementation of the International Covenant on Civil and Political Rights (ICCPR).

Spain has a history of genuinely democratic elections with frequent changes of government since the establishment of democracy in the country. There are however two issues in the electoral framework of Spain, which merit a discussion between the UN Human Rights Committee and the Spanish Delegation, because they touch on core concepts of art.25 ICCPR; namely equality and secrecy of the vote.

II. Equality

In the elections for the Chamber of Deputies (*Cortes Generales*) there is a significant variation in how many voters are represented by each seat: In Madrid a seat represents around 130,000 voters, while at the other end of the spectrum, in the electoral districts of Soria and Terouel, a seat represents less than 30,000 voters.¹ The variations are less strong, but still significant if compared to population figures rather than voters²: A seat in Madrid represents a population of some 174,000, while seats in Soria and Terouel represent a population of 47,000 and 72,000 respectively.³

While the electoral districts follow provincial boundaries, the Chamber of Deputies, which is the lower house, has no 'territorial' logic; the constitution designates the Senate as the "chamber of territorial representation".

Although the Spanish constitution reiterates the principle of equality of the votes⁴, it appears that the existing inequalities are not particularly controversial. They are seen as justifiable, given that some regions of Spain are thinly populated and a strict application of the equality criteria would create electoral districts of very large geographic size, making campaigning and constituency work difficult.

¹ Electoral districts also comprise different numbers of seats, from one (Ceuta, Melilla) to 35 (in Madrid).

² Indeed according to the Spanish constitution the population is the relevant reference; art.68 II stipulates: "The electoral district is the province. The cities of Ceuta and Melilla shall be represented by one deputy each. The law shall distribute the total number of deputies, assigning a minimum initial representation to each district and distributing the remainder in proportion to the population."

³ Calculation based on data of registered population on 1 January 2007 by the Spanish National Statistics Office. Population estimates including non-registered population produce similar results. See: www.ine.es

⁴ Art 68: "(1) The House of Representatives is composed of 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."

The UN Human Rights Committee noted in its General Comment on art. 25 ICCPR:

“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 drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.” (Para.21)

In the case of *Matyus v. Slovakia* (No.923/2000) the Human Rights Committee found a violation of art.25 ICCPR, because of highly un-equal seat-residents ratios, with seats representing from 200 to 1,400 residents.

The Council of Europe's 'European Commission for Democracy Through Law' issued guidelines on elections (5-6 July 2002), which elaborated on the meaning of equal suffrage:

„a. Equal voting rights: each voter has in principle one vote; where the electoral system provides voters with more than one vote, each voter has the same number of votes.

b. Equal voting power: seats must be evenly distributed between the constituencies.

i. This must at least apply to elections to lower houses of parliament and regional and local elections:

ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged.

iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration.

iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).

v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods.

vi. With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries.“

The assessment mission by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) to the Spanish Parliamentary elections in 2004 noted:

“The authorities may wish to evaluate whether the current distribution of seats in the Chamber of Deputies meets the constitutional stipulation and international standards on the equality of votes.”⁵

III. Secrecy of the Vote

The Spanish election law states that the “the vote shall be secret” (art.86). However, there is no legal obligation that voters use a polling booth and according to reports⁶, secrecy is not ensured or insisted on by polling officials with voters often choosing ballots and inserting them in envelopes in public view.⁷ The non-enforcement of the secrecy provision may raise particular concerns in some areas of the Basque region where voter intimidation can be an issue.⁸ The UN Human Rights Committee noted: „States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant.“ (General Comment on article 25, paragraph 20).

The OSCE/ODIHR recommended in relation to Spain: „The authorities should ensure that the secrecy provisions of the law are implemented. This could be easily done, for example by requiring voters to vote in a booth.“⁹

Given the importance of the principles of equality and secrecy of the vote in election processes around the world, these issues merit a discussion and possible clarification in the context of Spain's reporting on the implementation of the ICCPR.

⁵ Page 3, OSCE/ODIHR Election Assessment Report, Parliamentary Elections of 14 March 2004', Warsaw, 27 April 2004

⁶ *Supra*, page 7

⁷ There is one ballot for each political party.

⁸ “Special circumstances surrounded the election environment in the Basque region. Unlike the rest of Spain, the election campaign could not be carried out in full freedom in the region, as a result of intimidation by violent separatist groups, in particular the ETA. The intimidation interfered with the ability of candidates and political parties to conduct their campaigns, and put limits on voters' freedom of expression, association and assembly. (...) The climate of intimidation also jeopardizes a free vote, especially in rural areas. Recalling that voting in a voting booth is not compulsory in Spain, in some areas voters might fear to use a booth and vote in secret, since this action in itself could lead to suspicion.“ Page 11, OSCE/ODIHR Report 2004.

⁹ Page 7, OSCE/ODIHR Report 2004