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Spanish Regional Elections During the Covid-19 Pandemic

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Jordi Barrat Esteve

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International IDEA

Strömsborg

SE-103 34 Stockholm

Sweden

Telephone: +46 8 698 37 00

Email: info@idea.int

Website: <https://www.idea.int>

Copyeditor: Andrew Robertson

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Spanish Regional Elections During the Covid-19 Pandemic

Jordi Barrat Esteve

1. Introduction

Three regional elections were scheduled in Spain for 2020: in the Basque Country, Galicia and Catalonia. In the Basque Country and Galicia parliamentary mandates were expiring, while in Catalonia a political agreement led to early elections. When a state of emergency was declared in mid-March, the Basque Country and Galicia had already started the electoral process. Elections would have taken place on 5 April, but a decision was made to cancel them; they later took place on 12 July. By contrast the Catalan Government did not call for elections before the state of emergency. Catalan elections were eventually scheduled for 14 February 2021, then postponed to 30 May for fear that pandemic restrictions would weaken the legitimacy of the outcome, but complaints were lodged to the Court (Tribunal Superior de Justicia de Catalunya 2021), who maintained the first date. The text limits its scope to the Basque and Galician elections.

This case study begins by considering whether the provisions for states of emergency in Spanish law allow governments to cancel elections. It outlines the distribution of activities concerning electoral matters in Spain and identifies which actors would be responsible for taking such a sensitive decision. Finally, the case study considers the administrative aspects related to the right to vote during a pandemic: electoral precincts, recruitment of polling staff, implementation of postal voting, disenfranchisement of Covid-19 positive voters, transportation of ballots and electoral campaigning.

In general terms, the Spanish case demonstrates that elections can be held during a pandemic, provided certain regulatory and organizational measures are implemented. Regarding the electoral law, specific voting procedures are needed for those people who are not allowed to attend regular polling stations and are thus disenfranchised. Flexible deadlines for postal voting or home voting could be considered. Electoral precincts performed reasonably well on election day and measures in place, such as sanitizers, re-location of certain polling stations, and mandatory use of masks, were effective enough to maintain voting procedures. Finally, future policymakers should pay close attention to the electoral campaign. Political parties adapted their strategies to pandemic restrictions and in this case, all managed to undertake campaigning. No major criticisms arose, but it should be noted that social networks played a pivotal role under Covid-19 conditions.

2. Background

In Spain, there are four types of elections—municipal, regional, nationwide and European. While all municipalities hold elections at the same time (the last Sunday of May) and every four years, regional and nationwide elections may vary. Relevant parliaments have a four-year mandate, but early elections are also accepted. European Parliament elections are held every five years.

With the exception of elections to the Upper Chamber, all contests follow a proportional system (i.e. D'Hondt), closed lists are used, constituencies are normally based on the provincial territorial division and thresholds apply for obtaining representation.

Spain has a parliamentary system, at both central and regional level, and therefore prime ministers must have the confidence of the assemblies to govern. Since 1978, when the current constitution was established, the partisan structure combined an imperfect bi-party system (i.e. two main parties with other minor actors) at a central level with important regional parties in the Basque Country and Catalonia. Such regional parties have seats at the Spanish Parliament too; they are deeply involved at the national level and at times have even become key parliamentary supports for a ruling government. However, since 2015 Spain has moved to a multi-party system, with new political parties (such as Cs, Vox, and Podemos) having substantial representation.

The Spanish electoral administration is led by the Central Electoral Commission (Junta Electoral Central, JEC), a permanent administrative body which is tasked with all electoral-related matters. However, the practical arrangements are normally undertaken by either the central government or regional ones, such as the Basque and Galician regional cabinets in this case. Other entities, such as the Census Office or municipalities, are also involved. Finally, when elections are called, temporary electoral commissions are set up under the supervision of the JEC. These are provincial, sub-provincial (zonal) and, for certain elections, also regional election management bodies (EMBs). They are supposed to take decisions and resolve electoral-related disputes as a first administrative resort.

3. Cancelling elections: constitutional provisions

According to the Spanish Constitution (Spain 2011a), there are three different states of emergency (alarm, exception and *sitio*). Given the challenges caused by Covid-19, the national government declared a state of alarm on 14 March 2020. The parliament upheld its validity until the end of June 2020.

The Basque and Galician elections had already been called on 10 February and, under the state of alarm, both regional cabinets decided to cancel them. The relevant decrees, Decree 7/2020 in the Basque Country, of 17 March (Eusko Jaularitz 2020a); and Decree 45/2020 in Galicia (Xunta 2020a), a day later withdrew preparations that had already finished, such as the nomination of candidates. Decrees calling for new elections would have to resume the whole process from the very beginning. Legally speaking, therefore, these were annulments of procedures that had already taken place.

However, the Constitution was ambiguous on how to proceed. Firstly, it was not clear whether elections could be cancelled. Secondly, there were no indications as to which body was supposed to take such a decision.

Contrary to what happens in the states of exception and *sitio* (Spain 2011a: article 55SC), there is no constitutional provision allowing for the suspension of fundamental rights under a state of alarm. Doubts therefore arose as to whether the Basque and Galician decrees, which cancelled elections and directly affected the fundamental right to vote, were lawful (see Montilla Martos 2020; Arroyo Gil 2020; Teruel Lozano 2020). Having in mind such

constraints related to the state of alarm, the Constitutional Court (83/2016, 28 April) had already developed a distinction between *suspension* and *limitation* of fundamental rights. The state of alarm would admit limitations, but no suspensions. The distinction is far from clear, both from a theoretical angle and in practice, but the lawfulness of the above-mentioned decrees hinged upon it. Should cancelling elections be deemed a suspension (and not a mere limitation) of a fundamental right, a state of alarm would not sanction it. For their part, electoral authorities decided to continue on the basis that it was a human rights limitation only.

As for which entity was constitutionally entitled to cancel elections, the electoral code was silent on the matter. The Organic Law on the General Electoral Procedure (Ley Orgánica del Régimen Electoral General, LOREG) (Spain, 2011b) enumerates tasks to be undertaken by JEC (article 19), but none of them covers the cancellation of an election. Governmental regulations provided no clear guidance either.

The Galician Government therefore struggled to prove that cancelling elections was the most convenient solution at the time, insisting that: ‘a systematic, teleological, integrative and constitutional-driven interpretation of the legal framework related to the state of alarm imposes, for the sake of the effectiveness of the right to vote and its proper exercise, cancelling elections’ (Xunta 2020a). Galicia’s regional electoral commission acknowledged that no specific legal provision existed for cancelling elections and therefore decisions should be taken according to the ‘rule of law mechanisms and the *consensus among electoral contestants*’ (Xunta Electoral de Galicia 2020a, 2020b; emphasis added). The Basque electoral commission was slightly more conclusive. It also shared the opinion of the political parties, which had been formalized in a written statement (Euskadiko Hateskunde Batzodea 2020a), and considered lawful the decree cancelling the elections that had been proposed by the Basque cabinet, but no further grounds were provided (Euskadiko Hateskunde Batzodea 2020b).

Instead of governmental decrees with such weak legal grounds, a more orthodox solution would have been an urgent parliamentary modification of the Spanish electoral law (see Presno Linera 2020a, 2020b). Neither the Basque nor the Galician assemblies could modify their relevant electoral laws because their plenaries had already stopped sitting and neither Basque nor Galician regulations oversee urgent decrees from the government (see De La Iglesia Chamarro 2013), but the Spanish Parliament could still have used certain powers that may apply to both central and regional institutions. No parliamentary act was modified, however, and despite legal concerns, both the Basque and the Galician governments approved the two decrees. From a political perspective, political parties accepted that the cancellation was an appropriate, necessary and proportionate measure given the circumstances.

4. Eventual implementation of the 2020 elections

The announcement to hold new elections was published when the state of alarm was still in force—Decree 72/2020 for Galicia (Xunta 2020b) and 11/2020 for the Basque Country (Eusko Jaulartiza 2020b), both on 18 May—and therefore elections took place under very challenging conditions. The rationale was that the health situation had already improved since March, and that if elections were postponed any longer they would likely be held in autumn, when the mandate of both Galician and Basque parliaments had expired and when the pandemic was expected to escalate again. Some parties voiced their opposition to making any hasty decisions about the election schedule (Cebrián Zazurca, 2020: 31–32), including EH Bildu and Elkarrekin-Podemos in the Basque Country and in Galicia, Galicia en Comun, Bloque Nacionalista Galego (BNG) and Partido dos Socialistas de Galicia (PSdeG) (Diario Vasco 2020a, 2020b; *Faro de Vigo* 2020a, 2020b; *Nosdiario* 2020). In the Basque

case, an appeal against the decree was filed and the Basque judiciary confirmed that elections could be held, provided specific Covid-19-related measures were taken (Izarra 2020). Health authorities were also consulted, and in neither region did civil society explicitly oppose the move to hold elections.

Upholding the right to vote under a pandemic and a state of alarm presented political, legal and operational challenges for national as well as regional governments. As the regional elections approached, Covid-19 figures worsened in some areas and how to avoid the disenfranchisement of Covid-19-positive voters became vigorously debated. This was just one among a number of concerns.

On 12 July 2020, both the Basque Country and Galicia managed nevertheless to hold elections efficiently and professionally. Electoral activities were successfully conducted by polling staff and preliminary results were delivered at approximately 22:00 on polling day, in line with previous operational forecasts. According to official information, in Galicia all 3,952 polling stations were open at 10:30 (Xunta 2020c) with no major incidents to be noted. In the Basque Country, with 2,678 polling stations, the situation was the same at 10:11 (Hauteskundeak 2020).

Turnout and outcomes

Turnout reflected more absenteeism than usual in both regions. In Galicia, whose voters' list included just over 2.7 million citizens, turnout is normally low. In 2020 it was 49 per cent whereas in 2016 it had been 53.6 per cent (Xunta 2016). In Burela, the zone most affected by Covid-19, elections ran smoothly (*Faro de Vigo* 2020c) and turnout was a respectable 51.7 per cent (Xunta 2020c, 2020d). While higher than the Galician average, Burela's turnout was, however, almost eight points down on 2016's (when it was 59.6 per cent) and the drop for Galicia as a whole was just five points. It is difficult to determine how far Burela's turnout was related to the pandemic. Some days ahead the incumbent President had pleaded with elderly people, in general normally supportive of his political party, to be unafraid and vote (*Faro de Vigo* 2020d).

In the Basque Country, whose voters' list encompassed just under 1.8 million citizens, turnout was 50.8 per cent, as compared to 60 per cent in 2016 and an even higher figure in 2012 (64 per cent). In the municipality of Ordizia, turnout was 55.9 per cent in 2020 and 65.1 per cent in 2016 (Eusko Jularitza 2020c). Again, the most affected zone achieved a higher turnout than the Basque average, but here both Ordizia and the whole Basque Country saw the same 10 per cent drop since the last regional elections.

It is important to note that neither election was *expected* to be closely contested; both ruling parties could reasonably expect to maintain and even increase their vote shares, as was finally the case. Such forecasts may also help to explain the lower turnout, as well as the lack of controversy or much academic investigation into the pandemic's possible impacts. In Galicia, the Partido Popular increased its parliamentary support gaining one seat and achieving 48 per cent (from 47.6 per cent in 2016) of valid votes. In the Basque Country, with a more fragmented assembly, the ruling Basque Nationalist Party (EAJ-PNV) again achieved first place with 39.1 per cent (from 37.6 per cent in 2016). While the results in Galicia allowed for one-party government, in the Basque Country EAJ-PNV continued its coalition with the Socialist Party of the Basque Country–Basque Country Left (PSE), the third party with a vote share of 13.7 per cent.

In summary, the political landscape did not change much in either region. When it comes to parliamentary support for the cabinets, both governments maintained the same structure and partisan compositions. On the other hand, important readjustments took place in the distribution of seats in the assemblies. These include a stronger weight of the ruling parties, poor results for left-wing Podemos in both elections, the remarkable second place position of

a Galician party (BNG), and the arrival of a very new player in the Basque Country, namely the far-right Vox.

It is also worth noting that the final distribution of parliamentary seats was decided on a very close margin in both regions. Galicia has a tradition of out-migration, and expatriates therefore have a weight in local politics, thus the final distribution of seats was slightly modified due to out-of-country voting (OCV, see below). Overseas votes, which are tallied after the election day, gave an extra seat to the ruling party in Galicia, with a narrow margin of 45 votes (*Última Hora* 2020). In the Basque Country, another seat was re-allocated thereby making more difficult a political alternative to the incumbent Prime Minister. The margin was 108 votes (Alonso 2020). The voters that were formally disenfranchised due to Covid-19 measures (see Quarantined voters, below) might conceivably have affected the final outcome, therefore.

That said, general turnout figures among expatriates are aligned with the general outcome, being lower in both cases. In Galicia, 1.2 per cent of overseas voters cast a ballot, compared to 2.4 per cent in 2016. In the Basque Country, 3.5 per cent of overseas voters did so, down from 4.7 per cent. Consideration should be given to some particular areas—OCV, and how Spanish and foreign postal services handled electoral material—because this is where the Electoral Commission itself recognized that the pandemic had an impact (Decision 73/2020, and see JEC 2020a). However, there is no direct evidence that this extended to the outcomes.

5. Mitigation measures

Electoral precincts

Both Galician and Basque authorities adjusted electoral logistics so that the voting process could be carried out according to Covid-19 mitigation requirements (Diario Oficial de Galicia 2020a; see also Xunta 2020f, 2020g; Euskal Herriko Agintaritzaren Aldizkaria 2020; see also Eusko Jaularitza 2020g).

The total number of polling station premises, their location and their internal set up were assessed under new health criteria and modified when needed. In the Basque Country, for instance, the assessment was that the traditional, larger polling centres (those with more than 10 polling stations) complied with Covid-19 obligations, whereas 85 polling stations were split into new ones, 100 premises were relocated and 42 additional ones were used (761 in total) (Eusko Jaularitza 2020c, 2020d). Polling centres that were located at care institutions were considered for relocation, and steps were taken to avoid sharing entrances with other services (Eusko Jaularitza 2020c). Information about polling station location is always included on polling cards in Spanish elections, but on this occasion, it was of renewed importance to avoid confusion for voters.

Health measures regarding the layout and procedures in polling stations were similar in the two regions. All were sanitized prior, during and after election day. Restrooms were only available for polling staff; sanitizer liquid was available for polling staff and at general disposal. Physical distances were respected regarding electoral equipment (booths without curtains, ballot boxes, larger tables). A steady flow of voters was maintained over the election day by dedicated polling staff, who offered instructions on minimum distances required and gave precedence to vulnerable groups. The time voters spent at the polling centre was also minimized, with appropriate signage guidance on checking polling cards ahead, and proactive measures taken when people remained on the premises after having voted.

Masks were mandatory, but they could be temporarily removed for identification purposes (when the polling board needed to authenticate the ID card produced by the voter). Voters were recommended to use gel sanitizers both at the entrance and when leaving. Moreover, it was recommended that both the ID card and the ballot envelope were not handed over to polling staff but were just presented for visual inspection. Finally, in the Basque

Country nitrile gloves and FFP2 masks were mandatory for tallying operations at polling stations and for the general tally a few days later. Gloves and masks for polling staff were provided by the authorities.

All these measures were communicated to voters, party agents and polling staff. Information clips were displayed on the relevant institutional websites, for instance (Eusko Jaularitza 2020f, 2020g; Xunta 2020j). Moreover, every member of the polling staff was given an operational handbook (Eusko Jaularitza 2020g; Xunta 2020g). For the most part, training sessions or rehearsals were not undertaken, but that is also the norm in Spanish elections under usual conditions. Online or blended training was not considered either.

It is difficult to quantify the financial burden of such measures, as in general terms no disaggregated budget figures were published. However, Basque electoral authorities informed municipalities that they would receive EUR 300 instead of EUR 205 per polling station. Municipalities were tasked with accommodating polling stations and costs were expected to increase as a result of these new health measures. The total budget for Basque elections was EUR 6 million (Eusko Jaularitza 2020d).

Polling staff

Any citizen can be recruited as polling staff in Spain. They are appointed by lottery according to the catchment area of each polling station. Electoral service is a legal duty and there are criminal sanctions for breaching it. Citizens may be exempted only with reasonable cause, but the electoral code does not clarify which cases will be deemed reasonable and which not. Moreover, exemptions are approved by zone electoral commissions with no appeal to a higher administrative body (article 27.3 LOREG). Historically, different and even contradictory criteria have been applied for such exemptions and in 2011 the Electoral Commission was obliged to establish minimum parameters that any electoral body should follow (JEC Instruction 6/2011, 28 April).

Health constraints caused by Covid-19 created an unexpected recruitment scenario and no useful precedents existed. In Vigo, for the very first time the municipality was asked to appoint new members because 158 out of 3,348 had exempted themselves as of 29 June 2020 (*Faro de Vigo* 2020e). On 23 June Bilbao's zonal EMB also highlighted that some ('*diversas*') petitions of exemption had been filed covering citizens at risk of Covid-19, citizens living with infected persons or pregnant women, to name a few. 'Given such plurality of cases', the Bilbao EMB wanted to know whether any general instruction existed in this regard (Euskadiko Hateskunde Batzodea 2020c). Although zone EMBs were likely to use different criteria to judge exemptions, the Electoral Commission refused to be involved in the adjudication of such cases. JEC Decisions 122 and 123/2020 (9 July) and 131/2020 (17 July) confirmed that these matters belong to zonal EMBs and the Electoral Commission refused therefore to again establish common criteria.

Every polling station has a president and two deputies. In 2020 two substitute members of staff were appointed by lottery at the same time, to address potential vacancies. In total, polling staff, both active and substitutes, numbered 35,568 in Galicia and 24,102 in the Basque Country. Lack of clarity in the procedures could have been problematic. However, no problems were documented on election day and all polling stations, with all staff assigned to them, operated normally.

Postal voting

Spain allows votes to be cast by postal means and no specific excuses are needed to use such a voting method. This appears to have been very helpful for mitigating the effects of Covid-19 in the 2020 elections. Applications for postal voting increased in Galicia and in the Basque Country. In Galicia, 77,057 petitions were processed in 2020, compared to 46,037 in 2016 and 33,757 in 2012. Likewise, in the Basque Country, there were 124,473 applications in

2020 compared to 51,981 in 2016 and 46,107 in 2012 (INE 2020). In the Basque Country, the postal service hired 470 temporary staff (Diario Vasco 2020b).

The Electoral Commission (JEC Decision 56/2020) modified some procedural steps to make the postal voting process easier for the voter, no longer requiring them to go to a post office to request a postal vote. However, that administrative decision did not entirely match what the higher electoral parliamentary Act stipulates (see Table 1).

Table 1. Postal voting procedures: before and during pandemic

| | Ordinary procedures (Electoral Act) | Special Covid-19 procedures (JEC Decision) |
|---|-------------------------------------|---|
| Application | At postal offices only | Electronic means admitted |
| Delivering of voting documentation at voter's home | Voter's signature mandatory | Voter's signature not needed |
| Casting a ballot | At postal offices only | At postal offices or at home when voting documentation is handed over |

Firstly, electronic applications were now permitted and, given that electronic signatures were required, voters' authentication was not a concern. But it is worth recalling that the electoral law establishes that the application must be filed 'at any post office' (article 72.1 LOREG), where ID cards and signatures are to be checked (article 72.2 LOREG).

Moreover, once the voter was handed the electoral material (i.e. ballots, envelopes, census affidavit), he or she was now exempted from signing the receipt. This contradicted the electoral code: 'the receipt will have to be signed by the voter once his/her identity having been accredited' (article 73.2 LOREG). According to the Electoral Commission, this requirement would have been 'interpreted in an exceptional way' and, upon requests from the Spanish Ombudsperson and one political party, it made an analogy with cases of illiterate people who apply for postal voting despite not being able to stamp a signature (see JEC Decisions 67/1993, 90/2020 and 91/2020).

Finally, the same 56/2020 JEC Decision foresaw the ballot being cast just after the relevant documentation was handed over to the voter. Although the traditional practice consisted in again attending a post office, legally speaking article 73.3 LOREG does not establish such a requirement. Obligations are limited to using registered mail—and the voter may even delegate this final step to a proxy. Completing both steps (i.e. delivering of electoral material and casting a ballot) at the same time is a proposal that had not hitherto been considered, but Covid-19 may thus have eased cumbersome postal procedures in future elections.

Out-of-country voting

The Electoral Commission's approach was also flexible for out-of-country voting (OCV). Overseas voters are normally entitled to send postal ballots to their Consulate up to five days before election day. Their documentation is then sent to Spain and tallied by the provincial EMBs a few days after in-person voting (e.g. 20 July 2020 in Galicia). The Consulates are usually required to send ballots to Spain on the eve of the election day. Given the extraordinary juncture and contradicting articles 75.4 and 8 LOREG, the Electoral Commission extended deadlines and thus out-of-country voters were able to send postal ballots until 11 July; the processing of OCV postal ballots by Consulates was also extended beyond election day itself (JEC Decision 73 and 84/2020, 3 and 11 June 2020). On the other hand, the Electoral Commission did not accept a petition from the Galician Government asking for a postponement of the overseas tally. It also acknowledged that OCV

was not feasible at all in some countries, such as Venezuela or Cuba (JEC Decision 134/2020, 17 July 2020).

During the 2020 regional electoral cycle, the Electoral Commission's role was difficult as it was asked to facilitate new and easier voting channels while the law remained unchanged. While decisions about postal voting seemed reasonable, certain aspects openly contradict what is established by the Electoral Act and therefore concerns existed about their legal validity. In this regard, JEC Decision 93/2020 went beyond a formal adjudication and makes clear that the Electoral Commission would have very much welcomed a proactive approach from other institutions, namely the parliament: 'once elections were announced under a pandemic [. . .] consideration should have been given to inevitable risks and obstacles that would make difficult and even sometimes impossible a normal implementation of the right to vote [. . . but] whatever the reasons in place [. . .] the necessary legal modifications were not approved'.

Quarantined voters

Covid-19 cases were widespread in some areas of both Galicia and the Basque Country a few days ahead of the elections. Polling stations remained open, but both governments decided not to allow those testing Covid-19 positive to vote in person (RTVE 2020; Eusko Jaularitza 2020e). These citizens were therefore disenfranchised (Pérez Royo 2020). One case was reported, for example, of a Basque woman being formally notified by the Health Service that she 'should stay at home for 10 days and she [was] not allowed to go out and vote on Sunday' (Euskadiko Hateskunde Batzodea 2020d).

In Galicia, 253 voters were recorded as Covid-19 positive on election day, 185 of whom were in the district of A Mariña (Xunta 2020h, 2020i). In the Basque Country, there were some 160 Covid-19-positive voters, most of them resident in the Ordizia ward (Eusko Jaularitza 2020e). Quarantined citizens, that is, close contacts to Covid-19-positive cases, were allowed to vote. They had to wear masks and limit their mobility to the voting itself, which was deemed as a justified exception to ongoing restrictions (see e.g. the explanatory memorandum of the Galician Decree in Diario Oficial de Galicia 2020b).

Some political parties asked for a cancellation of the elections at least in zones with high rates of Covid-19 infection. The BNG in Galicia raised a petition for an election cancellation in A Mariña seven days ahead of the election day, when the Covid-19 cases were high. Marea Galeguista, an electoral coalition formed in May 2020, proposed this solution too (BNG 2020; *Faro de Vigo* 2020f). Likewise, on 8 July most mayors of A Mariña (10 out of 14) who belonged to Galician opposition parties supported this strategy of advocating for a cancellation (*Faro de Vigo* 2020g).

No specific measure was established to guarantee the right to vote of these Covid-19-positive citizens. Neither postal voting, whose procedural deadlines had already expired, nor proxy voting, which is not accepted in Spain, were available. Home voting was not considered by electoral authorities either. Moreover, Basque authorities even warned that ignoring the obligation to stay at home and instead going to vote would be understood as a criminal offence against public health (Eusko Jaularitza 2020e). Despite the predictable challenges, electoral authorities treated Covid-19 like an unpredicted infectious disease that could suddenly affect certain citizens during the election day.

The Gipuzkoan provincial EMB, as well as two political parties, addressed petitions to the Basque Electoral Commission about measures for Covid-19-positive voters. The Basque Electoral Commission resolved the first (filed by EH Bildu on 10 July) by stating that 'measures taken by the public administration ensure appropriate conditions for the freedom of movement in order to allow attendance at polling stations, *let alone reduced groups of people duly justified on health grounds*' (emphasis added/Euskadiko Hateskunde Batzodea 2020h). Such phrasing had already been used by the Central Electoral Commission in other decisions

(JEC Decisions 126 and 127/2020, on 9 July), but it is worth noting that those dealt with generic petitions intending to accommodate voting procedures in certain Covid-19-affected zones of Galicia, that is, they did not directly address particular cases of disenfranchised voters.

The decision of the Basque authorities was brought to the Central Electoral Commission, who acted as the last administrative resort, by the Elkarrekin-Podemos party. On the eve of the election day the Electoral Commission President dismissed the appeal on the same grounds that had been used by the Basque commission. The Electoral Commission also emphasized the decision of the Supreme Court in dismissing urgent temporary measures (*cautelarisimas*) for the previous Galician case (Supreme Court 2020). The court stressed the petition's vagueness, with just a generic demand to adopt 'appropriate strategies'. Given these precedents, the Electoral Commission concluded that 'there is no information according to which measures taken by Basque authorities intend to disenfranchise citizens from their right to vote. Instead, they intend to guarantee another fundamental right [i.e. the right to life] in an adequate, proportionate and motivated way' (JEC 2020b; see also JEC Decisions 128 and 129/2020, on 17 July, which resolved the appeal and confirmed the JEC President's decision).

A special postal voting procedure established for police corps stationed in Catalonia in 2019 (Supreme Court 2019; JEC Decision 695/2019, 8 November) was proposed as a model for assisting voters infected with Covid-19, but rejected by the Electoral Commission in July 2020 (Decision 127/2020, 9 July; see also Presno Linera 2020a).

Pre-filled ballots

In Spain voters can bring ballots from home. Political parties are paid to deliver them to every household and both ballots and envelopes can even be printed by political parties themselves. This is a measure that had already caused concerns about vote secrecy when the colour or the shape of ballots slightly differed from the official samples (see e.g. JEC Decision 192/2004 or 445/1999). In the pandemic context this existing practice was officially encouraged as a means of reducing physical handling of ballots at polling stations, in both Galicia (article 4.1/Order 29 May 2020; Diario Oficial de Galicia 2020a) and the Basque Country (article 6.4/Order 25 June 2020, Euskal Herriko Agintaritzaren Aldizkaria 2020; see also Eusko Jaularitza 2020g).

Despite the obvious benefits to public health, not all political parties were able or willing to mail ballots, possibly compromising the level playing field. In Galicia, seven political parties filed complaints. The Electoral Commission responded that 'the recommendation of bringing ballots from home jeopardizes neither equality nor political pluralism [...] The Covid-19 pandemic fully justifies the recommendation, which intends to ease how ballots are cast and reduce the time that is necessary to exercise the right to vote' (Decisions 81/2020, on 11 June, and 125/2020, on 9 July). On 7 and 11 July, the Basque EMB used the same grounds for dismissing petitions from two other political parties (Euskadiko Hateskunde Batzodea 2020e, 2020f). The same position was taken regarding a petition from Equo Berdeak-Verdes de Euskadi, who sought to deliver political party ballots just to quarantined voters, namely in the most problematic areas (Euskadiko Hateskunde Batzodea 2020g).

Electoral campaigning

According to Spanish electoral law, the electoral campaign lasts two weeks and ends two days before election day. The eve of the election is considered a rest day. In Galicia and the Basque Country, the official campaign therefore started on 26 June and ended on 10 July. The state of emergency had already expired (on 21 June) when the official campaign began, but certain health restrictions remained in place, namely those regarding social distancing and maximum capacity of events. Moreover, an informal campaign had already started before

26 June, when restrictions were higher and the state of alarm was still enforced. Therefore, the whole electoral campaign needed to be reconsidered and adapted if parties were to reach the voters.

In the Basque Country, despite legal regulations establishing two weeks for the campaign, some political parties and even the government advocated for a shorter period (i.e. one week) (Diario Vasco 2020a). However, complete political agreement was not achieved so the electoral campaign stuck to the legal calendar.

Massive rallies were substituted by smaller gatherings with limited audiences. Political parties (e.g. EH Bildu) also strengthened their phone-based campaign (Diario Vasco 2020c). When Covid-19-positive cases were reported in specific areas, such as A Mariña (Galicia) in the beginning of July, some political parties such as PSdeG and BNG decided to discontinue campaigning in the most affected zones (PSdeG 2020; *Faro de Vigo* 2020h).

6. Conclusions

Elections should be held regularly and therefore any postponement or cancellation raises alarms about democracy (see James and Alihodzic 2020). Such extraordinary scenarios are only acceptable when no other options exist, and with careful consideration of all legal principles in place. They cannot be allowed to become routine. However, the Covid-19 pandemic obliged many countries to accommodate their electoral calendars to a public health emergency (International IDEA 2020). They have also been forced to set up new mechanisms aimed at upholding the right to vote under very restrictive public health measures. This was the case for both the Basque Country and Galicia.

In general terms, the Spanish case in 2020 demonstrates that elections can be held during the Covid-19 pandemic, provided certain regulatory and organizational measures are implemented. Voting at polling stations, for example, was carried out successfully with protective health measures in place. However, there were also some specific legal, operational and political concerns. Among other legal aspects, Spanish states of emergency do not establish a clear path to cancel elections and therefore there is room for improving Spanish law in the future. Doubts persist on whether a state of alarm covers a measure that is close to a total suspension of a fundamental right. Neither does the electoral code establish which entity is tasked with approving such an electoral cancellation.

Additionally, anyone testing positive for Covid-19 in the last 10 days before the election was disenfranchised, with no contingencies in place for them. Although specific measures were adopted for the wider electorate, such as expedited postal voting, a more flexible approach—in both legal and operational terms—would have avoided excluding this category of citizens.

Last, but not least, the electoral campaign was readjusted due to pandemic restrictions and therefore social networks and digital political advertising gained a more important role. No major political criticisms have been made in this regard, but the different dynamics of competition online mean that the level playing field and campaign finance rules must be kept under review.

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About the author

Jordi Barrat Esteve holds a PhD in constitutional law from the University of Leon and a B.A. in Law from the University of Navarre. A professor of constitutional law at the University Rovira i Virgili (Catalonia), he has previously held academic posts at the universities of Navarre, Alacant and Leon and visiting positions in Peru, Moldova and Mexico. He was Deputy of the Catalan Office for the Quality of Democracy (2013–2014). His research focuses on the legal framework for new voting technologies and he has provided consultancies for various international organizations including A-WEB, the Carter Center, the Council of Europe, the European Union, IFES, International IDEA, OAS and OSCE/ODIHR.

Contributors

Toby S. James is Professor of Politics and Public Policy at the University of East Anglia, UK.

Alistair Clark is Reader in Politics at the University of Newcastle, UK.

Erik Asplund is Programme Officer in the Electoral Processes Programme, International IDEA.

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The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

What do we do?

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on democratic practices; offers technical assistance and capacity-building on reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

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Our headquarters are located in Stockholm, and we have regional and country offices in Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

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