

**SPAIN**  
**CENTRAL ELECTORAL COMMISSION**  
**REPRESENTATION OF THE PEOPLE INSTITUTIONAL ACT**  
**2007**

**REPRESENTATION OF THE PEOPLE INSTITUTIONAL ACT**  
(Ley Orgánica del Régimen Electoral General)

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**JUAN CARLOS I, KING OF SPAIN,**

To all who see and understand the following,

Let it be known: That the Spanish Parliament (*Cortes Generales*) have passed and I have given My Assent to the following Act.

***PREAMBLE***

I.- This present Representation of the People Institutional Act (*Ley Orgánica del Régimen Electoral General*, in abbreviation *LOREG*) is intended to provide a stable framework in which political decisions reflecting the right to vote can be taken in complete freedom. This is undoubtedly the essential aim of any electoral law in a democratic system.

Democracy can be truly deemed to exist when the sovereignty of the people is reflected in the affairs of government. Such an Act as the present one must therefore necessarily be regarded as a fundamental step towards the consolidation of a democratic State.

The Spanish Constitution is unequivocally one of the most advanced constitutions in the Western world and it consequently lays the foundation for a mechanism enabling alternation in power to reflect the political diversity of our society, while fully preserving all other political liberties at the same time.

These principles are embodied in the present Act, which governs the procedures for giving effect to the will of the majority of the people in the different representative bodies of the Spanish State.

In this respect section 81 of the Constitution requires that an Institutional Act (*Ley Orgánica*) governing all election procedures be passed by the *Cortes Generales*.

This makes it necessary on the one hand to gather in a unified and comprehensive legal body all the various matters falling under the constitutional notion of "general electoral law" (*derecho electoral general*), and to make provision on the other hand for each of the specific electoral processes within the field of State jurisdiction.

All this requires firstly the adoption of a set of provisions to replace the Royal Decree-Act (*Real Decreto-Ley*) of 1977, still in force, which has proved adequate during the first stage of the transition of our country towards democracy. This replacement is not however a drastic change, since the very text of the Constitution embodied already the essential elements of the electoral system laid down by the Royal Decree-Act.

Secondly this Act incorporates rules governing specific elections -already adopted by both Houses of Parliament-. In the area of local government elections, for instance, the Act basically follows the regulation laid down in Act 39/1978, still in force, as amended in Act 6/1983) by the present Parliament. The same applies to causes of ineligibility and disqualification for members of Congress and Senators in this Act, which are the same as those provided for in the Disqualifications for Members of Congress and Senators Institutional Bill, upon which there has already been a vote in both Houses.

Lastly the new electoral regulation makes its comprehensive approach by drawing on the experience of a democratic process in motion since 1977 and by adding the technical improvements that are needed to make up for the gaps that have become apparent with the consolidation of our democratic institutions.

II.- The Act is therefore inspired by this twofold purpose: to fulfill a constitutional obligation that cannot be postponed and to fulfill it with the comprehensive approach imposed by the Constitution itself.

The Representation of the People Institutional Act has been arranged for the achievement of these two very aims, by drawing a fundamental division between provisions that apply generally to any elections by direct universal suffrage and those designed for the different types of political elections, as an adaptation to the peculiar features of the various electoral processes which the State must legally regulate.

The Constitution makes it a duty of the State in the first place implementation of Section 23, which refers to one of the fundamental rights in the setting-up of a law-abiding State: the regulation of active and passive suffrage for all citizens, and secondly, by providing in Section 81 for a mandatory General Electoral Institutional Act, it broadens the field of activity to be covered by the State; that is to say, it makes the State's activity necessary beyond the single guarantee of suffrage, since, as already declared by the Constitutional Court, the title must be construed as covering the essential and nuclear elements of the electoral system.

Besides, under Section 149.1.1. of the Constitution, the State has exclusive jurisdiction legally to define the basic conditions guaranteeing equal exercise by all Spaniards of their constitutional rights, among which the right to vote, as laid down in Section 23.

The Act's approach is founded on the greatest respect for the powers of Self-Governing regional Communities, as it devises a system that can be not only developed, but also amended or replaced in many features by the Self-Governing Communities' own legislation.

The Introductory Part defines the scope of the Act, in conformity with the guiding principles in the foregoing paragraphs.

Part I, under the heading "Common provisions for elections by direct universal franchise", covers a set of chapters providing in the first place for direct implementation of Section 23 of the Constitution, for instance the first and second chapters governing the right to vote and to be a candidate. In the second place, it deals with matters which are essential elements of electoral law, such as some aspects of election procedure. It finally deals with election offences. The provisions in this Part are undoubtedly the hard core of the Act, an orientation point for the rest of its contents and also the basis of the Self-Governing Communities' legislative activity.

There are noteworthy innovations in this Part, among them the Electoral Register system, the regulation of electoral expenses and subsidies, the procedure for their control and the judicial guarantees for effective exercise of active and passive suffrage.

Part II contains the specific provisions for election of Members of Congress and Senators, thoroughly implementing the principles enshrined in the Constitution: definition of each province as the electoral constituency and its entitlement to a minimum initial representation, the rule of proportional representation and the set of causes of ineligibility and disqualification for Members of Congress and Senators.

On the basis of these constitutional premises, which are also taken into account in the Royal Decree-Act of 1977, the Act sets out to bring some technical corrections and improvements that can be conducive to a better functioning of the whole system.

Part III contains the specific provisions for local elections. It puts together the contents of Act 39/1978 and amendments to it by Act No. 6/1983, and it also introduces some innovations such as the possibility of and procedure for the dismissal of Mayors by Councillors, something which has already been declared lawful by the Constitutional Court.

Parts IV and V deal with elections to the Insular Councils (*Cabildos Insulares*) of the Canary Islands and to Provincial Councils (*Diputaciones Provinciales*). The present system has been maintained in both cases.

III.- An electoral system in a democratic State must guarantee as its very nucleus the free expression of the people's sovereignty, a general freedom which is attended nowadays by a set of other liberties, such as freedom of speech, freedom of information, freedom of assembly, freedom of association, etc. The immediate effect of this Act can only be therefore to entrench the liberties referred to above, thus preventing any obstacles that may arise from the social structure from interfering with what is the peak point in the exercise of political freedom.

The framework of free access to participation in political affairs designed by this Act is an irreversible landmark of our history and the most conspicuous sign of our living together in a democratic society .



## **INTRODUCTORY**

### **Section 1.- Purpose of the Act.**

1. - This present Act shall apply to:

a) Elections of members of the Congress of Deputies (*Diputados*) and senators (*Senadores*) without prejudice to the provisions of Self-government Statutes (*Estatutos de Autonomía*) for designation of the senators referred to in Section 65.9 of the Constitution;

b) Elections of members of local assemblies (*Corporaciones locales*);

c) Election of members of the European Parliament. (*Added by Sect. 1 of Institutional Act 1/198, of April 2*).

2. - It shall likewise apply in the terms provided in the First Additional Provision of this Act, to elections to the Self-governing Communities' Legislative Assemblies, as a surrogate to the Communities' legislation in this area.

## **PART I**

### **COMMON PROVISIONS FOR ELECTIONS BY DIRECT UNIVERSAL SUFFRAGE**

#### **Chapter I** **Franchise**

### **Section 2.- Right to vote** (*Derecho de sufragio activo*).

1.- All Spanish citizens of age not falling within any of the cases contemplated in the next article shall have the right to vote.

2.- Exercise of said right requires prior registration in the electoral register in force on the relevant date

### **Section 3.- Disenfranchisement**

1. - The following have no right to vote:

a) Persons convicted by a final court's decision to forfeiture of the right to vote as the main or as an accessory penalty during the term of the conviction;

b) Persons pronounced incapable by a final judicial decision, provided said decision specifically declares the incapacity for the exercise of suffrage;

c) Persons residing in a mental hospital by authorization of a court, where the court explicitly declares in said authorization the subject's incapacity to exercise his right to vote;

3. - For the purposes of this section, the courts or tribunals having jurisdiction for declaring incapacity or enforced residence in a mental hospital must make specifically pronounce on the subject's incapacity to exercise his right to vote, and if such is the case, they shall so notify the Civil Register for entry of the relevant note.

Section 4.- Exercise of suffrage.

1. - The right to vote shall be exercised personally at the election ward where the elector is entered in the electoral register and before the voting bureau

2. - No one may vote more than once at the same election.

Section 5. - No compulsion for exercise of suffrage.

No one can be compelled or coerced under any circumstances to exercise his right to vote nor to disclose his vote.

**Chapter II**

**Eligibility**

*(Derecho de sufragio pasivo)*

Section 6.- Passive franchise.

1. - All Spanish citizens of age having the legal capacity to vote are eligible, provided they do not fall within any of the following causes of ineligibility:

a) Members of the Spanish Royal Family included in the Civil Register created by Royal Decree 2,917/1981, of November 27, as well as their spouses;

b) The Presidents of the Constitutional Court, of the Supreme Court (*Tribunal Supremo*), of the Council of State, of the Auditing Court and of the Council referred to in Section 131.2 of the Constitution;

c) Judges of the Constitutional Court, members of the General Judiciary Council (*Consejo General del Poder Judicial*), Standing Councillors of State and members of the Auditing Court;

d) The Ombudsman (*Defensor del Pueblo*);

e) The State's Attorney-General (*el Fiscal General del Estado*);

f) Undersecretaries, Secretaries-General, Directors-General of Ministries and similar departments;

g) Accredited Heads of diplomatic Missions with official residence in a foreign State or at the seat of an international organization;

h) Higher courts' judges, ordinary judges and public prosecutors in active service;

- i) Professional and reserve military officers as well as members in general of Armed Forces and Security and Police Corps in active service;
- j) Chairmen, members and secretaries of Electoral Commissions;
- k) Government's Delegates in Self-governing Communities, Provincial Subdelegates and Deputy-Subdelegates and similar authorities with a different jurisdiction area;
- l) The Director-General of the Radio and Television Authority (*RTVE*) and the Directors of companies belonging to said Authority;
- m) Presidents, Directors and similar officers of autonomous state organizations with a responsibility all over the national territory, as well as the respective Government's Delegates;
- n) Presidents and Directors-General of Social Security Managing Boards with responsibility for the whole national territory;
- o) The Director of the Electoral Register Office;
- p) The Governor and the Deputy-Governor of the Bank of Spain and the Presidents and Directors of the Official Credit Institute and all other official credit bodies;
- q) The Chairman, councillors and Secretary-General of General Council Nuclear Security Council.

2. - The following are also ineligible (*as amended by Sect. 5 of Institutional Act 1/2003 of March 10*):

- a) Persons sentenced to imprisonment by a final court's decision, for the term of their conviction;
- b) (*as amended by Sect. 5 of Institutional Act 1/2003, of March 10, 2003*) Persons convicted, even if judgment is not yet final, for rebellion, terrorism or other offences against the State where the judgment has imposed the penalty of forfeiture of eligibility according to criminal law.

3. - The following are ineligible during their tenure of office in constituencies within the whole or part of their respective jurisdiction area:

- a) Persons discharging the highest level functions of each Ministry in the different territorial divisions below the area of the State;
- b) Chairmen, directors and similar officers of autonomous organizations with a limited territorial jurisdiction, as well as Government's delegates in those organizations;
- c) Territorial delegates of the Radio and Television Authority and Directors of Television Stations reporting to Self-governing Communities;

- d) Chairmen and directors of the Social Security's regional or provincial management boards;
- e) Secretaries-general of Government's Regional Delegations and Provincial Subdelegations;
- f) Provincial Delegates of the Electoral Register Office.

#### Section 7.- Declaration of ineligibility.

1. - Persons falling within one of the causes listed in the preceding section shall be declared ineligible on the very date of their candidacy or at any later time before the holding of the election.

2.- Notwithstanding the foregoing subsection, persons wishing to be proclaimed candidates but not included in the electoral register may be proclaimed provided they produce with their application sufficient proof that they meet all necessary conditions.

3.- Higher courts' judges, ordinary judges and public prosecutors, as well as professional and reserve military officers and members in active service of Armed Forces and Security and Police Corps who intend to stand as candidates, shall request to be transferred to the corresponding non-active position.

4.- Higher courts' judges, ordinary judges, public prosecutors, members of Armed Forces and of Security and Police Corps in active service shall be entitled in any case to keep their rank and their position, in the terms laid down by the relevant regulations. If they are elected they may keep if they so wish their non-active position, upon expiry of their mandate, until the constitution of the new parliamentary assembly or local council.

### **Chapter III** **Election authorities.**

#### **1<sup>st</sup> Subdivision.- Electoral Commissions.**

#### Section 8.- Electoral Commissions (*Juntas Electorales*).

1. - Election authorities shall be responsible for ensuring as provided for in this Act the transparency and objectivity of the election process and of the principle of equality

2. - Election authorities consist of the Central,. Provincial, Judiciary District and, as the case may be, Self-governing Communities' Electoral Commissions, as well as of voting bureaus.

3. - The Central Electoral Commission shall have its seat in Madrid, Provincial Electoral Commissions shall be based in province capital cities and those of Judiciary Districts in the main localities of judiciary districts referred to in subsection 6 below.

4. - The Electoral Commissions of the cities of CEUTA and MELILLA shall also discharge the functions of Provincial Electoral Commissions in their respective districts.

5. - Electoral Commissions shall hold their meetings in their respective seat and, failing this, at the place where their secretaries discharge their functions.

6. - For the purposes of this Act judiciary districts are the same as those for the local elections in 1979.

#### Section 9.- Central Electoral Commission (*Junta Electoral Central*).

1. - The Central Electoral Commission is a permanent body consisting of:

a) Eight judges of the Supreme Court, designated by lot by the General Judiciary Council;

b) (*as amended by Institutional Act 8/1991, of March 13*) five University professors of Law, Political Science or Social Science (*Sociología*) in active service, appointed on a joint proposal by parties, federations, coalitions or electors' groups represented in the House of Congress;

2. - Appointments referred to in the preceding subsection shall be made in the ninety days following the constituent meeting of the Congress of Deputies. Where there has been no such proposal for persons referred to in paragraph a) within said time limit, the Bureau of the Congress of Deputies, after having heard the political groups of the House, shall designate those persons, taking into account the proportional representation of said groups in Congress.

3. - Members so designated shall be appointed by Royal Decree and remain in office until the inauguration of the new Central Electoral Commission at the beginning of the next Parliament.

4. - Members shall in turn choose from those belonging to the judicial sector the President and the Vicepresident of the Commission at the constituent meeting thereof, which shall be duly convened by the Secretary.

5. - (*As amended by aforesaid Institutional Act 8/1991, of March 13*). The Chairman of the Central Electoral Commission shall exclusively perform the Electoral Commission's functions from the call of the electoral process until the proclamation of duly elected candidates and, should the case arise, until the execution of judgments on election petitions, including human rights petitions contemplated in Sect. 114.2 of this Act, in connection with said electoral process. The General Judiciary Council shall take the necessary measures to this end.

6. (*Former 5*) - The Secretary of the Central Electoral Commission shall be the Secretary-General of the Congress of Deputies.

#### Section 10.- Provincial Electoral Commission (*Junta Electoral Provincial*)

1. - Provincial Electoral Commissions shall consist of:

a) Three members among judges of the respective High Council, appointed by lot by the General Judiciary Council.. Where there is not a sufficient number of judges in said High Provincial Court there shall be proceeded to appoint judges among one-person tribunals of the capital city;

b) (*As amended by Institutional Act 8/1991, of March 13*). Two members appointed by the Central Electoral Commission among Senior Professors and Professors of Law, Political Science or Social Science or lawyers of acknowledged prestige residing in the province. Their appointment shall take place once candidates have been officially announced. To this end the representatives of candidates standing for the district shall jointly nominate the persons who are to discharge these functions. If no such nomination has not been put forward before the beginning of the election campaign, the Central Electoral Commission shall proceed to the appointments.

2. - Members referred to in subsection 1 a) of this present Section shall choose one of them as President of the Commission.

3.- (*As amended by Institutional Act 8/1991, of March 13*) The Chairmen of Provincial Electoral Committees shall exclusively perform the functions pertaining to their respective Electoral Commission from the calling of the electoral process until the proclamation of duly elected candidates and, should the case arise, until the execution of judgements on election petitions, including human rights appeals contemplated in Sect. 114.2 of this Act, in connection with the electoral process in their constituency. In the latter case, the term provided for in Sect. 15.2 of this Act shall be extended for so long as necessary and the General Judiciary Council shall take the appropriate steps to this purpose.

4 (*Renumbered by said Institutional Act 8/1991, of March 1. Former subs. 3*).- The Secretary of the Provincial Electoral Commission shall be the Secretary of the corresponding Provincial High Court and, where there are more than one, the first by order of seniority.

#### Section 11.- Judiciary District Electoral Commission (*Junta Electoral de Zona*).

1. - Judiciary District Electoral Commissions shall consist of:

a) Three members, appointed by lot among first instance civil or criminal investigation judges by the Inner Governance Chamber of the corresponding High Court of Justice. Where there are not enough judges in the relevant judicial district, Judges of the Peace of said district shall appoint instead, also by lot;

b) (*As amended by Institutional Act 8/1991, of March 13*) Two members among Law, Political Science and Social Science graduates residing in the judiciary district. Their appointment shall take place on the official announcement of candidates, to which end the representatives of candidates standing for the respective constituency shall jointly nominate the persons who are to discharge this function. If no such nomination has been put forward before the beginning of the election campaign, the Provincial Electoral Commission shall make the appointment.

2. - Members referred to in paragraph 1a) of this Section shall choose among themselves the Chairman of the Judiciary District Commission.

3. - The Clerk of the corresponding civil First Instance Court or, when there is more than such Court, the Clerk of the Senior Court shall act as Secretary of the Judiciary District Electoral Commission.

4. - Secretaries of city councils shall be the delegates of Judiciary District Electoral Commissions and act under direct subordination to them.

#### Section 12.- Right to speak but not to vote in Electoral Commissions.

1. - The Director of the Electoral Register Office and Provincial Delegates thereof shall have the right to speak, but no right to vote at the Central Electoral Commission and at the respective Provincial Commission.

2. - Secretaries of Electoral Commissions may speak but not vote in deliberations thereof and shall be responsible for the custody in their respective office of all documents pertaining to the Commission.

#### Section 13.- Cooperation of Electoral Commissions with public authorities.

1. - Both Houses of Parliament shall make available to the Central Electoral Commission all personal and material resources necessary for the discharge of its duties.

2. - The same obligation extends to the Government and to city councils in relation with Provincial and Judiciary District Electoral Commissions and on a surrogate capacity to Provincial Courts (*Audiencias Provinciales*) and to courts with a smaller area of jurisdiction. For elections to Legislative Assemblies of Self-governing Communities this obligation also applies to the regional Government.

#### Section 14.- Constitution of Provincial and Judiciary District Electoral Commissions.

1. - Provincial and Judiciary District Electoral Commissions shall be initially constituted by their member judges on the third day following the call of the election.

2. - Where one of the members appointed to said Commissions wishes to stand as a candidate he shall notify the Secretary of the Commission at the initial constitution thereof so that he may be replaced within four days at the latest.

3. - After the replacements, if any, contemplated in the preceding subsection the Commissions shall proceed to election of a Chairman. The Chairmen of Provincial and Judiciary District Commissions shall thereupon cause the full list of members thereof to be published on the following day in the respective Provincial Gazette (*Boletín Oficial de la Provincia*).

4. - Said Commissions shall be convened by their Secretary for their constituent meeting, to which end the General Judiciary Council or, as the case may be, the Chairman of the

corresponding Provincial Court, shall communicate to each of them the full list of members of the respective Commission.

Section 15.- Call of more than one election on the same day.

1. - Where several elections are called on the same day, Provincial and Judiciary District Commissions to be constituted on such occasion shall have competence for all those elections.

2. - The mandate of Provincial and Judiciary District Commissions shall expire one hundred days after the election.

3. - Should another election be called during their mandate, the Commissions' competence shall be deemed as extended until one hundred days after the holding of said election.

Section 16.- Fixity of tenure of Electoral Commissions' members.

1. - Members of Electoral Commissions may not be removed from office.

2. - They may only be suspended for criminal offences or electoral contraventions, on a procedure previously initiated by the higher ranking Commission, by an absolute majority's decision of said Commission, and without prejudice to any case applicable judicial proceedings.

3. - Central Electoral Commission shall have jurisdiction under the same circumstances for suspension of its own members.

Section 17.- Replacement of Electoral Commissions' members.

In cases contemplated by Sections 14 and 16, as well as in the event of a resignation duly motivated and accepted by the respective Chairman, members shall be replaced according to the following rules:

a) Members and Chairmen shall be replaced by the same procedure as for their appointment;

b) The Clerk of the Congress of Deputies shall be replaced by the Head Clerk of the Senate or, as the case may be, by the most senior Clerk of Parliament (*el Letrado de las Cortes Generales más antiguo*);

c) Provincial and Judiciary District Commissions' Secretaries shall be replaced according to the seniority principle.

Section 18.- Meetings of Electoral Commissions.

1. - Meetings of Electoral Commissions shall be convened either *ex officio* by the respective Chairman or at the request of two members. The Secretary shall deputize for the Chairman in the discharge of this function where the Chairman is unable to act for a justified reason.

2. - For a meeting to be valid three at least of the Provincial or Judiciary District Commission's members must be present. For a Central Electoral Commission's meeting the presence of seven at least of its members is required.

3. - All summonses shall be issued by whatever means ensuring that reception thereof, date of meeting, agenda and other particulars of the proposed meeting are duly established. Members of the Commission who have been duly summoned must attend and are liable to prosecution for in attendance without having given a justifiable reason in time,

4. - Notwithstanding the preceding subsections a Commission shall be deemed to be duly convened and validly constituted to deal with any matter if all members are present and unanimously agree to hold the meeting.

5. - Decisions shall be taken a majority of members present. The Chairman shall have a casting vote in the event of a tie.

6. - The Chairmen of Electoral Commissions shall cause their decisions, as well as the contents of the consultations answered, to be made public where the general nature thereof makes it advisable.

Publication shall take place in the State's Official Gazette in the case of the Central Electoral Commissions and in the respective Provincial Gazette in all other cases.

Section 19.- Functions of Central Electoral Commission (as amended by Institutional Act 8/1001, of March 13).

1. - In addition to the functions explicitly set out in this Act, the Central Electoral Commission shall have the following responsibilities:

- a) To conduct and supervise the activity of the Electoral Register Office;
- b) (As amended by Sect. 1 of Institutional Act 3/1995, of March 23) to make a report on all draft provisions to be issued in relation to the electoral register for the implementation and the application of this Act;
- c) (Renumbered by said Institutional Act. Formerly 1.b) to give binding instructions to Provincial Electoral Commissions and, as the case may be, to Self-governing Communities on any matter relating to elections;
- d) (Also renumbered by said Act. Former 1.c) to determine with a binding effect all consultations submitted to it by Provincial Electoral Commissions and, as the case may be, by Self-governing Communities;
- e) (Former 1.d) to revoke *ex officio* at any time or at a party's request, within the time limits set out in Section 21 of this Act, any decisions of Provincial Electoral Commissions or, as the case may be, of the respective Self-governing Community, where such decisions run counter to the interpretation of electoral rules laid down by the Central Electoral Commission itself;

f) (*Former 1.e*) to unify interpretation criteria of Provincial Electoral Commissions or, as the case may be, of Self-governing Communities in the application of election rules;

g) (*Former 1.f*) to approve on a proposal by the State Administration or by the Administration of Self-governing Communities, the model minutes of constitution of polling Bureaus, of counting operations, of sittings, the general count and of proclamation of elected candidates. Said models must allow instant issue of copies of the minutes through self-copying documents and by similar procedures:

h) (*Former 1.g*) to determine all claims, complaints and petitions submitted to it under this Act or any other provision enabling it to such determination;

i) (*Former 1.h*) to ensure compliance with provisions relating to accounts and to election expenses in the period between call of the election and the hundredth day after polling date);

j) (*Former 1.i*) to exert disciplinary powers on any persons officially taking part in election proceedings;

k) (*Former 1.j*) to punish all violations committed during the election process other than those constituting a criminal offence and to impose fines up to the maximum amount laid down in this Act;

l) (*Former 1.k*) to issue their credentials to members of Congress of Deputies, Senators, local councillors, provincial councillors and insular councillors in case of vacancy for death, incapacity or resignation, after expiry of the mandate of Provincial or Judiciary District Commissions.

2 (as amended by Institutional Act 3/1995, of March 23).- In addition to responsibilities explicitly set out in this Act, Provincial and Judiciary District Electoral Commissions shall also perform within their territorial jurisdiction the functions entrusted to the Central Electoral Commission by paragraphs h), j) and k) of subsection 1 above. The power to impose fines shall be limited to a maximum amount of 100,000 *pesetas* (*i.e. sixty Euros*) for Provincial Commissions and 50,000 *ptas* (*i.e. thirty Euros*) for Judiciary District Commissions.

3. - Provincial Electoral Commissions may equally, within the higher criteria of the Central Electoral Commission:

a) Issue binding instructions to Judiciary District Electoral Commissions on any electoral matter;

b) Determine with a binding effect consultations submitted to it by Judiciary District Commissions;

c) To annul *ex officio* at any time or at an interested party's request within the time limits set out in Section 21 of this Act, any decisions of Judiciary District Commissions that are opposed to the interpretation laid down by the corresponding Provincial Electoral Commission;

d) Unify Judiciary District Commissions' interpretation criteria on any electoral issue.

4. - Judiciary District Commissions shall ensure the existence in every polling Bureau of the election equipment referred to in Section 8 of this Act.

5. - In the event of non-payment of the fines contemplated in this Section the relevant Electoral Commission shall forward to the appropriate division of the Ministry of Economy and Finance (*Ministerio de Economía y Hacienda*) a certificate of said non-payment for coercive recovery of the fine.

#### Section 20.- Consultations to Electoral Commissions.

Electors must address their consultations to the Judiciary District Commission corresponding to their place of residence.

Political parties, coalitions or federations and electors' groupings may submit consultations to the Central Electoral Commission when they are about general questions that may concern more than one Provincial Electoral Commission. In all other cases consultations are to be submitted to the corresponding Provincial or Judiciary District Electoral Commission, provided its area of jurisdiction includes the operation territory of the organization submitting the consultation.

Public authorities and assemblies may directly consult the Commission whose area of jurisdiction includes the territory of said authorities or assemblies.

Consultations shall be submitted in writing and resolved by the relevant Commission, unless the Commission, in view of their significance or because in its opinion they should be determined with a comprehensive criterion, decides to forward them to a higher Commission.

Where the urgent nature of a consultation makes it impossible to convene the Commission and whenever there are former and concurring decisions of the Commission itself or of a higher Commission, the Chairman may issue under his own responsibility a provisional reply, pending ratification or alteration thereof at the next meeting of the Commission.

#### Section 21.- Revision of Provincial, Judiciary District and Self-Governing Communities' Electoral Commissions.

1.- Except in cases where a specific procedure for appeal to the courts is provided by this present Act, decisions of Provincial and Judiciary District Commissions and, as the case may be, of Self-governing Communities are subject to appeal before the higher-ranking Commission, which shall determine the issue within five days from the lodging of the appeal.

2. - Appeals must be submitted within the twenty-four hours following notification of the decision before the Commission responsible for said decision. The Commission shall within forty-eight hours forward its report to the Commission which is to determine the appeal. There shall be no administrative *or judicial* appeal against the latter Commission's decision<sup>1</sup>.

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<sup>1</sup> The words "*or judicial*" were declared unconstitutional by Decision 149/2000 (June 1) of the Constitutional Court. An appeal can also therefore be lodged with the appropriate courts of justice.

Section 22.- Remuneration of members of the Central Electoral Commission.

1. - Parliament shall determine the daily allowances and bonuses payable to members of the Central Electoral Commission and to the staff attached to it.

2. - Daily allowances and bonuses to members of all other Electoral Commissions and their staff shall be fixed by the Government. Provided that in the event of elections to Legislative Assemblies of Self-governing Communities said compensations shall be determined by the respective regional Government, for the Community's Electoral Commission as well as for lower-ranking Commissions.

3. - Receipt of said remunerations shall be compatible in any case with the respective salary.

4. - Financial monitoring of said remunerations shall be conducted in accordance with legislation in force.

**2<sup>nd</sup> Subdivision.- Polling bureaus and Electoral wards.**

Section 23.- Polling bureaus and election wards.

1. - Every constituency shall be divided into election wards (*Secciones Electorales*).

2. - Each ward shall comprise a maximum of 2,000 (two thousand) and a minimum of 500 (five hundred) electors. Provided that every municipal community shall have at least one election ward.

3. -No ward may comprise areas belonging to different municipalities.

4. - Electors of each election ward shall be placed in the election lists by alphabetical order.

5. - There shall be at least one polling bureau (*Mesa Electoral*) in every election ward.

6. - Notwithstanding the foregoing subsections, where the number of electors in a ward or the territorial distribution or local population makes it advisable, the Provincial Delegation of the Electoral Register Office may, on a proposal by the respective city council, provide for the constitution of other bureaus and share out among them the electorate of the ward. In the first case the ward electorate shall be allotted by alphabetical order to the different polling bureaus, which shall be preferably located in separate halls inside the same building. In the event of a scattered population said distribution shall be made on the basis of the least possible distance between the elector's place of residence and the corresponding bureau, Provided that in no case the number of electors allotted to each bureau shall be less than 200 (two hundred).

Section 24.- Constitution of election wards and polling bureaus.

1. - Provincial Delegations of the Electoral Register Office shall fix the number, the territorial limits of election wards, the respective premises and polling bureaus, after having heard the city councils concerned.

2 (As amended by Institutional Act 3/1995, of March 23).- The list of wards, polling stations and polling bureaus belonging to each ward shall be published in the Provincial Official Gazette on the sixth day following the call of the election and shall also be posted for public view in the corresponding local council.

3. - Electors may within the six following days file their claims against the boundaries so determined before the Provincial Electoral Commission, who shall make a final decision within the next five days.

4 (As amended by Institutional Acts 3/1995, of March 23, and 9/2007, of October 8).- The final list of wards, polling bureaus and polling stations shall be published on INTERNET and posted for public view in the corresponding local councils within the ten days preceding the polling day.

5. - City councils must adequately signpost the premises corresponding to each election ward and polling bureau.

Section 25.- Membership of the polling bureaus.

1. - Every polling bureau shall consist of a presiding officer (*Presidente*) and two members (*vocales*).

2. - Where there is more than one election on the same date, the polling bureau shall be the same for all of them.

Section 26.- Setting-up of polling bureaus.

1. - Polling bureaus shall be set up by city councils under the supervision of Judiciary District Electoral Commissions.

2. - The presiding officer and members of each bureau shall be publicly designated by lot among all persons registered in the corresponding election ward provided they are under 65 (sixty-five) years of age and can read and write. The presiding officer shall be a grammar school or second-degree professional training graduate or, failing this, have a primary school qualification.

3. - The same procedure shall be followed for designation of the two substitutes for each member of the bureau.

4. - The drawings of lots contemplated above shall be carried out between the 25<sup>th</sup> (twenty fifth) and 29<sup>th</sup> (twenty ninth) days after the call of the election.

Section 27 .- Presiding officer and members of polling bureaus (*Presidente y vocal de Mesas Electorales*).

1. - The functions of presiding officer and member of polling bureaus are compulsory. Provided that they may not be discharged by persons standing as candidates.

2 (*As amended by Institutional Act 8/1991, of March 13*).- The appointment of presiding officers and members of polling station bureaus shall be notified to the appointees within the following three days. On reception of said notification, appointees shall also receive for the discharge of their duties a handbook of instructions duly supervised by the Central Electoral Commission and approved by a decision of the relevant Self-Governing Community' regional Government.

3 (*As amended by Institutional Act 8/1991, of March 13*). – The appointees shall have a right of appeal within seven days to the Judiciary District Electoral Commission, by stating a reasonable duly documented cause that prevents them from acceptance of the appointment The Commission shall adopt a resolution against which there is no further appeal, in the course of the five following days and, as the case may be, duly notify the appellant's replacement to the first substitute. Ineligibility under the provisions of this Act shall be deemed to be a reasonable cause for non-acceptance.

4 (*Former 3*).- If at a later time one of the persons so designated is unable to report for discharging his functions, he must so notify the Judiciary District Commission and furnish it with the adequate justification within 72 (seventy-two) hours at least before the beginning of the event he was to attend. Should the cause of incapacity arise after expiry of said term, the Commission must be immediately notified and in any case before the time at which the Bureau is to be constituted. In this case the Commission shall inform the corresponding substitute member if there is enough time to do so and shall, if necessary, appoint another person.

5 (*Former 4*).- For the purposes of Section 101 of this present Act Judiciary District Electoral Commissions shall communicate to the relevant judges before the polling day the identification data of the persons, both full members and substitutes, composing the bureaus.

Section 28.- Workers and civil servants as members of polling bureaus.

1.- Employed workers and civil servants appointed as presiding officers or members of polling bureaus are entitled to payment of a full-day work during polling day, and are also entitled in any case to a five-hour reduction of their working time on the day following the poll.

2. - A statutory instrument shall determine the daily allowances, if any, of presiding officers and members of polling bureaus.

**3<sup>rd</sup> Subdivision.- Electoral Register Office**  
*(Oficina del Registro Electoral)*

Section 29.- Electoral Register Office.

1. - The Electoral Register Office is within the National Statistical Institute the body responsible for compiling the electoral register. It shall discharge its functions under the direction and the supervision of the Central Electoral Commission.

2. - The Electoral Register Office shall have a Delegation in every province.

3. - City councils and Consulates shall cooperate with the Electoral Register Office in the compilation of the electoral register.

Section 30.- Responsibilities of the Electoral Register Office.

1. - The Electoral Register Office shall be responsible for:

a) Coordinating the process of formation of the electoral register, with a power in this capacity of giving instructions to city councils and consulates, as well as to officers of the Civil Register and of the Register of Convicts and Persons at Large;

b) Supervising compilation of the electoral register, for which purpose it shall be empowered to inspect city councils and consulates;

c) Deleting multiple registrations of one elector that have not been detected by city councils or consulates, in the conditions laid down in Section 33;

d) Drawing up provisional and final election lists;

e) Adjudicating petitions against acts of the authorities taking part in electoral register operations and in particular those raised on account of undue exclusion or inclusion of any person in the election lists. The adjudication shall close the administrative stage of petitions procedure.

**Chapter IV**  
**The Electoral Register**  
*(El Censo Electoral)*

**1<sup>st</sup> Subdivision.- Conditions and manner of registration.**

Section 31.- Registration in the Electoral Register.

1. - The Electoral Register shall contain the names of all persons who satisfy the conditions for being an elector and are not deprived, either temporarily or permanently, of their right to vote.

2. - The Electoral Register shall consist of the register of electors residing in Spain and of the register of absent-resident electors living abroad.

3 (As amended by Institutional Act 1991, of March 13).- There shall only one Electoral Register for all kinds of elections, without prejudice to extension thereof for local government and European Parliament elections, in accordance with the provisions of Sections 176 and 210 of this Institutional Act.

#### Section 32.- Contents and procedure of registration.

1. - Registration in the Electoral Register is compulsory. Without prejudice to Section 85, and in addition to name and surnames, the only necessary data for identification of electors at the moment of the poll, it shall include among the other registration particulars the number of the National Identity Card (*Documento Nacional de Identidad*).

2. - City councils shall proceed *ex officio* to registration of persons residing within their boundaries.

3 (as amended by Institutional Act 3/1995, of March 23).- Consulates with diplomatic status and consular divisions of Diplomatic Representations shall proceed *ex officio* to the registration of Spanish nationals residing in their respective area of jurisdiction in the manner provided for by the law.

#### Section 33.- Territorial sections of Electoral Register.

1. - The Electoral Register shall be arranged in territorial wards.

2. - Each elector is to be registered in a particular ward. No one may be registered in more than one ward or more than one in the same ward.

3. - Where an elector is registered more than once, the last entry shall prevail and the other ones shall be cancelled. If the entries bear the same date, the elector shall be notified of the fact so that he may choose one of them within the following ten days. In default thereof the relevant authority shall decide *ex officio* which entry shall prevail.

4. - Except as provided in the preceding subsection, entries shall be kept unaltered unless personal data or particulars of the elector concerned have demonstrably changed.

5. - Alterations made pursuant to the foregoing subsections shall be immediately notified to the elector concerned.

### **2<sup>nd</sup> Subsection.- Compilation of the Electoral Register**

#### Section 34 (as amended by Sect. 5 of Institutional Act 3/1995, of March 23).- Nature and duration of the Electoral Register.

1. - The Electoral Register is of a permanent nature and shall be updated every month.

2. - The Electoral Register to be used for each election shall be the register in force on the date on which election is called.

Section 35 (as amended by Sect. 6 of Institutional Act 3/1995, of March 23). - Updating of Electoral Register.

1. - For the updating of the Register, local councils shall forward every month to the relevant Provincial Delegation of the Electoral Register Office, within the time-limit fixed by the Electoral Register Office, a list with the documents listed in the instructions thereof, with the following data:

- a) Any changes during the preceding month in the street directory;
- b) New registrations and removals of residents of legal age<sup>2</sup> up to said date;
- c) Changes of address and any other registration data during the preceding month, relating to persons entered in the Electoral Register;

2. - The updating of data corresponding to the first month of each year shall also include new entries, as under age, of residents who will attain voting age<sup>3</sup> between the 1<sup>st</sup> January and 31<sup>st</sup> December of the following year.

Section 36 (Updating of the Register of electors residing abroad) (as amended by Sect. 7 of Institutional Act 3/1995, of March 23).

In order to update the register of absent electors residing abroad Consulates shall forward according to the same procedure as local councils every entry and removal, as well as any change of address, of Spanish subjects living in their area of jurisdiction.

Section 37 (Updating of Electoral Register by the General Register Office and the Register of Detained Convicts and Convicts at large) (Actualización del Censo Electoral a cargo del Registro Civil y del Registro de Penados y Rebeldes)(as amended by Sect. 8 of Institutional Act 3/1995, of March 23).

For the purposes of the two preceding Sections, officers in charge of the General Register Office and of the Register of Detained Convicts and Convicts at Large shall every month, within the period appointed by the Electoral Register Office, notify Provincial Delegations of the Electoral Register of any facts of a civil or criminal nature that have taken place during the preceding month and may affect registration in the Electoral Register.

Section 38 (Updating of Electoral Register by the Electoral Register Office) (as amended by sect. 9 of Institutional Act 3/1995, of March 23).

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<sup>2</sup>That is to say, 18 (eighteen) years, according to Sect. 12 of the Spanish Constitution.

<sup>3</sup> *Vide supra*, Sect. 1, according to which all Spaniards of legal age are entitled to vote unless they have been deprived of such right for one of the causes set out in Sect. 2.

1. - The Electoral Register Office shall proceed to the monthly updating of the Electoral Register on the basis of the data received before the first day of each month.

2. - Provincial Delegations of the Electoral Register Office shall keep freely accessible at any time to interested parties the updated Electoral Register with the data referred to in the preceding sections. Access may be gained through local councils, consulates or directly at Provincial Delegation premises.

3. - Claims regarding registration data must be addressed to the corresponding Provincial Delegation of the Electoral Register Office., which shall deliver a resolution within five days from reception of the claim. Local councils and consulates shall immediately forward any such claims submitted to them to the corresponding Provincial Delegation of the Electoral Register Office.

4. - The Electoral Register Office shall make all appropriate arrangements to facilitate the disposal of consultations and claims by local councils and consulates.

5. - Appeals against resolutions on these matters by Provincial Delegations of the Electoral Register Office shall be dealt with by the preferential and summary procedure provided for in Sect. 53, subs. 2, of the Constitution.

### **3<sup>rd</sup> Subdivision.- Corrections in Electoral Register at election time.**

Section 39.-Rectification of Electoral Register during election time (as amended by Sect. 10 of Institutional Act 3/1995, of March 23).

1. - The Electoral Register for each election shall be the Electoral Register closed on the first day of the month preceding the date of call of the election. Where relevant data have not yet been entered in the Register in some local councils or consular areas, the data to be used for those councils or consulates shall be the latest ones available. The Director of the Electoral Register Office shall notify these cases to the Central Electoral Commission so that it may take the appropriate steps..

2 (Second paragraph added by Sect. 5 of Institutional Act 1/2003, of March 10).- Local authorities and consulates shall maintain a viewing service of electors' lists in force for the respective city council and its area of jurisdiction within eight days as from the sixth day following call of the election.

Viewing may be effected by information technology means, upon the applicant having shown evidence of his identity or by public exhibition of electors' lists, or by public exhibition of election lists where no information technology means are sufficiently available.

3. - Within the period specified in the subsection any person may petition the appropriate Provincial Delegation of the Electoral Register Office with regard to the petitioner's registration data. Petitions may be submitted either before the Provincial Delegation of the Electoral Register Office or through the local councils or consulates, which shall forward them forthwith to the respective Delegation.

4. - The Provincial Delegation of the Electoral Register Office shall adjudge within three days on the petition and cause the appropriate corrections to be made. Corrections shall be exhibited to the public on the seventeenth day following the call of the election. The Provincial Delegation shall also notify its decision to each petitioner and to the local councils and consulates concerned.

5. - The Electoral Register Office shall send to each elector a registration card with the updated data of his entry in the Register, as well as the polling ward and polling bureau where he is to vote, and shall also notify the electors concerned of any changes in wards, polling stations or polling bureaus referred to in Section 24 of this present Institutional Act.

#### Section 40 .-Appeal from the Electoral Registration Office's decisions.

1. - There shall be a right of appeal to the corresponding civil first instance judge against decisions of the Electoral Register Office within five days from notification thereof.

2. - The judge's decision, to be pronounced within five days, shall be notified to the appellant, to the city council concerned, the consulate and the Provincial Delegation of the Electoral Register Office. This decision shall be final at the judicial stage.

#### **4<sup>th</sup> Subdivision.- Access to Register's data .**

#### Section 41.- Access to data of Electoral Register

1. - A Royal-Decree (*Decreto-Ley*) shall specify the electors' personal data that are to be entered in the Electoral Register, as well as those of lists and copies of the electoral register

2. - Any disclosure of information contained in the Electoral Register is hereby forbidden, unless disclosure is requested through a court of law.

3. - Notwithstanding subsection 2, the Electoral Register Office may disclose statistical data that do not reveal personal information about electors.

4. - Self-Governing Communities may, after call of the election, obtain a copy of the Electoral Register with the related corrections, in a fashion that allows computerized treatment.

5. - Representatives of each candidate may be furnished on the day following the official proclamation of candidates with a copy of the constituency register, arranged by polling bureaus and in a fashion allowing computerized treatment, provided that such treatment shall only be used for the purposes of this Act. Alternatively general electoral representatives may obtain in the same conditions a copy of the Register currently in force in the constituencies where their party, federation or coalition has put up candidates. Judicial District Electoral Commissions (*Juntas de Zona*) shall also have a copy of the electoral register available, corresponding to their territorial jurisdiction.

6 (*Added by Sect. 5 of Institutional Act 1/2003, of March 10*).- Exceptionally and on duly justified grounds persons who may be subject to threat or compulsion endangering their life, their physical integrity or their freedom may be struck off the copies of the Electoral Register referred to in subsection 5 above.

## **Chapter V**

### **General requirements for the calling of elections.**

#### **Section 42.- Call of elections (*Convocatoria de elecciones*)**

1 (*As amended by Institutional Act 8/1991, of March 13*).- Where, in case of an election to Spanish Parliament (*Cortes Generales*) or to Legislative Assemblies of Self-Governing Communities, the Prime Minister (*Presidente del Gobierno*) or the President of the respective regional Government makes use of his prerogative of early dissolution as explicitly contemplated by the law, the ensuing election Decree shall be published on the day following issue thereof in the Official State Gazette or in the Official Gazette of the respective Self-Governing Community. It shall come into force on the very day of publication and appoint the date of the election, which is to be held between the fifty- fourth and the sixtieth days from the date of publication.

2 (*As amended by Institutional Act 8/1991, of March 13*).- Where, in case of a general parliamentary election or an election to Legislative Assemblies of Self-Governing Communities the Prime Minister or the President of the respective regional Government does not make use of his prerogative of early dissolution as explicitly contemplated by the law, the election Decree shall be issued on the twenty-fifth day prior to the date of expiry of Parliament or of the Legislative Assembly concerned and published on the following day in the Official State Gazette or, as the case may be, in the Self-Governing Community's Official Gazette. It shall come into force on the very day of publication and appoint the election day, which shall be between the fifty-fourth and the sixtieth day from publication.

3 (*As amended by Sect. 1.3. of Institutional Act 13/1994, of March,30*).- Where, in case of local government elections or elections to Legislative Assemblies of Self- Governing Communities, the President of the regional Government does not have a prerogative of early dissolution explicitly granted by the law, election Decrees shall be issued not earlier than the fifty-fourth nor later than the sixtieth day before the fourth Sunday of the current year and published in the Official State Gazette or, as the case may be, in the Self-Governing Community's Official Gazette. They shall come into force on the very day of publication and the elections shall be held on the fourth Sunday of May of same year. The term of councils or assemblies so elected shall be four years and expire, in every case, on the day before the following elections are held.

**Chapter VI**  
**Electoral procedure**

**1<sup>st</sup> Subdivision.- Candidates' representatives before Electoral Administration.**

**Section 43.- Candidates' representatives.**

1.- Parties, federations, coalitions and electors' groupings intending to take part in an election shall appoint at the time and in the manner provided for by the specific provisions of this Act.

2. - Representatives-general shall act on behalf of competing parties, federations or coalitions.

3. - Representatives of candidatures shall represent all candidates included. Notifications, writs and summonses addressed by electoral authorities to candidates shall be addressed to said representatives' place or residence. Acceptance by a candidate of his inclusion in a candidature is deemed to grant a proxy to the respective representative for acting in any judicial proceedings relating to the election.

**2<sup>nd</sup> Subdivision.- Nomination and proclamation of candidates.**

**Section 44.- Nomination of candidates.**

1. - The following are entitled to present candidates or lists of candidates:

- a) Parties and federations entered in the corresponding register;
- b) Coalitions set up as provided in next paragraph;
- c) Electors' groupings satisfying the conditions laid down by the specific provisions of this Act.

2. - Parties and federations entering a coalition pact to take part jointly at an election shall inform the relevant Electoral Commission within ten days from the call of the election. Said notification must include the name and rules of the coalition and the persons at the head of the coalitions' leading or coordinating bodies.

3. - No party, federation, coalition or electors' grouping may present more than one list of candidates in one constituency for the same election. Federated or coalition parties may not present candidatures of their own in a constituency where there are candidates of said federations or coalitions already standing at the same constituency.

4 (As amended by the 2<sup>nd</sup> Additional Provision of Institutional Act 6/202, of June 27). - No candidates can be presented by groupings of electors who can be deemed practically a continuation of or succession to the activity of a political party that has been judicially

pronounced illegal and dissolved or suspended. To this end there shall be had regard to substantial similarity of structure and to the organization and functioning of the persons acting as members, leaders, representatives or managers of the candidates, to the financial sources and material means of said groupings or to any other relevant features, such as proclivity to support violence or terrorism, which may lead to assume such continuation or succession.

Section 44 bis (added by 2<sup>nd</sup> Addit. Prov. of Institutional Act 6/2002, of June 27).-  
Balanced representation of genders in lists of candidates.

1.- Candidates nominated for elections to Congress, municipal elections and elections to Insular Councils of the Canary Islands according to this Act, or to European Parliament or Legislative Assemblies of Self-Governing Communities, shall have a balanced proportion of women and men, so that candidates of either sex make up at least 40 per 100 (forty per cent) of total membership. Where the number of seats to be covered is less than 5 (five), the ratio between women and men shall be as close as possible to equal balance.

In elections to Legislative Assemblies of Self-Governing Communities, the statutes governing their respective electoral system may contemplate arrangements in favour of a larger presence of women in candidates lists to said elections.

2. - The same forty per cent ratio shall be kept in each five-seat bracket of the whole list. Where the last bracket is less than five, said ratio of women to men shall be the nearest possible one to equal balance, provided that the mandatory proportion for the whole list is preserved.

3. - The rules of the preceding subsections shall also apply to the alternates' lists.

4. - Where candidates to Senate are grouped in lists according to Section 171 of this Act, those lists shall also have a balanced ratio of women and men, so that the total proportion is as close possible to equal balance.

Section 45.-Presentation of candidatures.

Candidatures signed by parties, federations and coalitions' representatives and the promoters of electors' groupings shall be submitted to the appropriate Electoral Commission between the 15<sup>th</sup> (fifteenth) and the 20<sup>th</sup> (twentieth) day following the call of the election.

Section 46.- Nomination in writing of candidatures.

1. - Nominations of each candidature must clearly express the name, initials and symbol of the promoting party, federation, coalition of grouping of electors, as well as the name and surname of the candidates contained therein.

2. - Nominations must be accompanied by a statement of acceptance by member candidates as well as by documents attesting their eligibility.

3 (as amended by Sect. 5 of Institutional Act 1/2003, of March 10).- Where the presentation is to be done by a list system, each of these shall contain as many candidates as seats to be filled.

If the list also includes alternate candidates, their number shall not exceed 10 (ten) and the list shall indicate the order of priority of candidates as well as alternates.

4. - Nominations must be made with names, initials or symbols that do not lead to confusion with those relating to or traditionally used by other legally constituted parties.

5. - No candidatures may be submitted. with symbols reproducing the flag or the coat of arms of Spain or containing names symbols that make reference to the Crown

6 (As amended by Institutional Act 8/1991, of March 13).- Nobody may stand as a candidate for more than one constituency or be included in more than one candidature.

7 (As amended by Institutional Act 8/1991, of March 13).- Candidates' names may be followed by an indication of independence or, in case of coalitions or federations, by the name of the party to which each candidate belongs.

8. - Candidatures nominated by electors' groupings must be accompanied by written evidence of the number of signatures legally required for taking part in the election . No elector may give his signature for more than one nomination.

9. - The corresponding Electoral Commissions shall make a note stating the date and exact time of submission of each candidature and issue a receipt thereof. The Commission's Secretary shall assign to each candidature a sequence number that must be kept in all publications.

#### Section 47.- Publication of candidatures.

1. - Submitted candidatures must be published on the 22<sup>nd</sup> (twenty-second) day after the call of the election in the manner prescribed by the special provisions of this Act.

2.- Two days later the appropriate Electoral Commissions shall notify to representatives of candidatures any irregularities they may have detected either *ex officio* or upon a complaint by another representative. Said irregularities must be corrected within 48 (forty-eight) hours.

3. - The competent Electoral Commissions shall proceed to proclamation of candidates on the 27<sup>th</sup> (twenty seventh) day following the call of the election.

4. - No candidature shall be proclaimed unless it meets the requirements set out in the foregoing sections or those laid down in the special provisions of this Act

5. - Proclaimed candidatures shall be made public on the 28<sup>th</sup> (twenty eighth) day after call of the election in the manner prescribed by the special provisions of this present Act.

#### Section 48.- Alteration of candidatures.

1. - Candidatures may not be modified once they have been submitted, except within the time limit contemplated in the preceding section for rectification of irregularities and only in the event of death or resignation of a candidate or as a result of rectification itself.

2. - Where a candidature consists in a list of candidates, any drops from it after proclamation shall be deemed to be covered by the successive candidates and, as the case may be, by the alternate candidates.

### **3rd Subdivision.- Petitions against proclamation of candidates and candidatures.**

#### Section 49.- Appeals against proclamation of candidates and candidatures.

1.- After proclamation any excluded candidate and representatives of proclaimed candidatures or of candidatures whose proclamation has been denied may within two days lodge an appeal before the competent Administrative Judge (*Juzgado de lo Contencioso-Administrativo*) against the decisions of the Electoral Commissions. Petitioners must set out in their appeal the reasons they see fit and append all relevant pieces of evidence.

2. - The time limit for lodging the appeal contemplated in the preceding subsection shall run from the date of publication without prejudice to mandatory notification to representatives of candidate or candidates rejected.

3. - The judge's decision, which is to be pronounced within two days from the appeal, is final and there shall be no appeal against it, without prejudice to the individual protection procedure (*procedimiento de amparo*) before the Constitutional Court. To this end the lodging of the protection petition shall be deemed as compliance with the requirement laid down in Section 44.1.a) of the Constitutional Court Institutional Act

4. - Constitutional protection must be applied for within two days and the Constitutional Court must determine the petition within the three following days.

5 (*Added by 2<sup>nd</sup> Addit. Prov. of Institutional Act 6/2002, of June 27*).- Petitions under the present section may also be made in cases of proclamation or exclusion of candidatures submitted by electoral groupings referred to in subs. 4 of sect. 44 of this Institutional Act, with the following provisos:

a) The appeal referred to in subs.1 of this present section shall be submitted to the Special Chamber (*Sala Especial*) of the Supreme Court (*Tribunal Supremo*) contemplated in Section 61 of the Judiciary Power Institutional Act (*Ley Orgánica del Poder Judicial*)<sup>4</sup>;

b) Persons entitled to apply for declaration of illegality of a political party under paragraph 1 of Section 11 of the Political Parties Institutional Act are also allowed to lodge the aforesaid appeal.

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<sup>4</sup> Sect. 61 of said Institutional Act laying down the general structure of the judicial organisation makes provision for a special chamber consisting of the President of the Supreme Court, the Presidents of the different Chambers (i.e. divisions) thereof and the longest-serving as well as the most recent member of each of them, entrusted . among other duties, with the adjudication of legal proceedings on alleged unlawfulness and consequential dissolution of political parties brought in under Political Parties Institutional Act 6/2002, of June 27 (*Ley Orgánica....de Partidos Políticos*).

#### **4<sup>th</sup> Subdivision.- General provisions on electoral campaign.**

##### Section 50.- Electoral campaign.

1 (*As amended by Sect. 2 of Institutional Act 13/1994, of March 30*) .- The authority who has called an election in the exercise of its legal responsibilities may launch during the election period a campaign of an institutional nature designed to inform citizens on the polling date, the voting procedure and the conditions and arrangements for postal voting, provided that such campaign does not seek to influence the electors' vote. This institutional publicity operation shall be conducted by free-of-charge spots in publicly-owned mass-communications media in the territorial area of the election process, provided such spots are sufficient to attain the campaign goals.

2. - For the purposes of this Act "electoral campaign" means all lawful activities carried out by candidates, parties, federations, coalitions or groupings in order to gain votes.

3. - Except as provided in subsection of this present Section, no body corporate other than those mentioned in the preceding subsection may conduct an electoral campaign as from the date of calling of the election, without prejudice to section 20 of the Constitution<sup>5</sup>.

##### Section 51.- Duration of electoral campaign.

1. - The electoral campaign shall begin on the thirty-eighth day from the call of the election.

2 (*As amended by Institutional Act 13/1994, of March 30*).- Duration thereof shall be fifteen days<sup>6</sup>.

3. - It shall end in any case at zero hours of the day immediately preceding polling day.

##### Section 52.- Persons barred from taking part in electoral campaign.

Members of the Armed Forces or of the Security Corps and Forces of the State, Self-governing Communities or municipalities, judges, senior judges or public prosecutors in active service and members of Electoral Commissions may not disseminate electoral propaganda or carry other electoral campaign activities.

#### **5<sup>th</sup> Subdivision.- Propaganda and electoral campaign events.**

##### Section 53.- Period when electoral campaign is prohibited.

No electoral propaganda may be disseminated nor can any electoral campaign event be held once the campaign is legally finished or in the period between the call of the election and legal

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<sup>5</sup> Sect. 20 of Const. proclaims freedom of expression, of literary and artistic creation and of mass-communications media and explicitly bans previous censorship of these media.

<sup>6</sup> The Act originally said "between a minimum of fifteen and a maximum of twenty-one days".

start of the campaign. The prohibition relating to the latter period does not include however activities usually performed by parties, coalitions and federations in the exercise of their constitutionally acknowledged functions, and in particular by section 20 of the Constitution.

Section 54.- Holding of electoral campaign gatherings.

1. - Public electoral campaign gatherings shall be subject to statutes governing freedom of assembly. Powers vested in this matter in governmental authorities<sup>7</sup> shall be assumed by Provincial Electoral Commissions.

2. - Governmental authorities shall retain in any case all their powers in matters of public order, to which purpose Provincial Commissions shall inform those authorities of all meetings that have been previously notified to them .

3 (*Added by Sect. 4 of Institutional Act 13/1994, of March 30*). – Local Councils shall set aside official premises and public areas free of charge for electoral campaign gatherings.

Section 55.- Electoral propaganda.

1. - Local councils shall set aside special places for free posting of public notices and, as the case may be, of billboards and notices to hang as banderols on posts or streetlamps. Propaganda by banners and banderols may only be displayed in places set aside free of charge by local councils.

2. - Apart from the special free-of-charge places referred to above, parties, associations, coalitions, federations and candidatures may only display posters or other types of electoral propaganda in authorized commercial premises.

3 (*Added by Sect. 4 of Institutional Act 13/1994, of March 30*).- Expenditure by candidates in this type of publicity may not exceed 25 per 100 of the expenditure limit laid down in Sects. 175.2., 193.2 and 227.2, depending on the respective election process.

Section 56.- Allotment of space for electoral campaign).

1 (*As amended by Sect. 4 of Institutional Act 13/1994, of March 30*).- For the purposes of the preceding section, local councils shall, within seven days from the calling of the election, notify to the corresponding Judiciary District Electoral Commission the locations available for free posting of notices and, as the case may be, of banners and banderols.

2 (*Also as amended by sect. 4 of Institutional Act 13/1994, of March 30*).- Said Judiciary District Electoral Commission shall, in allotting such locations, have regard to the total number of votes polled by each party, federation or coalition in the previous equivalent election in the

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<sup>7</sup> These “governmental authorities” are basically the “Provincial Government's Subdelegates” (*Subdelegados Provinciales del Gobierno*), one for each of the 50 provinces, originally called “Civil Governors” (*Gobernadores Civiles*).

same constituency, and to the preferences expressed by parties, federations or coalitions with the highest number of votes in the last election of the same type in the constituency.

In case of a European Parliament election the allotment shall take into account the total number of votes polled by each party, federation or coalition in the previous equivalent election within the territorial jurisdiction of the corresponding District Electoral Commission, and the preferences expressed by the parties, federations or coalitions with the highest number of votes in the last similar election in said area.

3. - On the second day after the official proclamation of candidates, the Commission shall notify to the representatives of each candidature the places allotted to it for public notices.

#### Section 57.- Free electoral events.

1.- For the purposes of Section 54 city councils shall within 10 (ten) days following the call of the election, communicate to the corresponding Judiciary District Electoral Commission, which shall in turn transmit them to the Provincial Commission, the official premises and public places set aside for free performance of electoral campaign days.

2.- Said list, which must specify the days and hours available for use of the different premises and places, shall be published in the Provincial Official Gazette within the 15 (fifteen) days following call of the election. From that date onwards representatives of candidatures may request from Judiciary District Commissions the use of the premises and place listed.

3.- On the fourth day after proclamation of candidates Judiciary District Commissions shall allot premises and places available according to requests received and having regard to the principle of equal opportunity, and in default thereof, according to preferences of the parties, federations or coalitions with the largest number of votes in the last equivalent election in the same constituency. Thereupon said District Commissions shall communicate to representatives of each candidature the premises and places so allotted.

#### Section 58 (as amended by Sect.5 of Institutional Act 13/1994, of March 30)<sup>8</sup>.- Candidates' advertisements in the press and in broadcasting stations.

1. - Candidates may engage in advertising in the periodical press and in private broadcasting stations, with a maximum expenditure limit of 20 per 100 of the limit laid down for parties, groupings, coalitions, federations or candidates' lists in sects. 175.2, 193.2 and 227.23 of this Act, depending on each type of election process.

2. - Advertising rates for such electoral publicity may not be higher than those currently applying to commercial advertising. No discrimination shall be allowed between candidates as to insertion, rates and location of publicity spaces, all of which shall expressly state their political nature.

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<sup>8</sup> In fact the only substantial alteration has been the laying down of a maximum limit on advertising expenditure, as the rest is simply the result of cutting down the four subsections to only two, basically with the same contents.

**6<sup>th</sup> Subdivision.- Use of publicly-owned mass-media for electoral campaign.**

Section 59.- Sending by post of electoral propaganda.

A statutory instrument shall fix special rates for postal sending of electoral propaganda.

Section 60.- Electoral publicity in publicly-owned mass-communications media.

1. - No spaces of electoral publicity may be bought in publicly-owned mass-communication media.

2. - During the electoral campaign parties, federations, coalitions and groupings of electors taking part in the election shall be entitled to free propaganda spaces in television and radio broadcasting stations as provided in the following sections.

Section 61.- Allotment of free-of-charge spaces for electoral propaganda

The allotment of free spaces for electoral propaganda shall be made having regard to the total number of votes obtained by each party, federation or coalition in the latest equivalent election.

Section 62.- Allotment of propaganda in media with less territorial coverage than the territory of election.

1. - Where the territorial coverage of a mass-medium or of programming thereof is smaller than the area concerned by the election, the allotment of space shall be made on the basis of the aggregate number of votes polled by each party, federation or coalition in the constituencies comprised in the territorial broadcasting range of said medium or, as the case may be, of programming thereof.

2 (*Added by Institutional Act 8/1991, of March 13*).- In the event of a European Parliament election, the allotment of space shall have regard to the aggregate number of votes of each party, federation or coalition in the coverage area of the medium in question or programming thereof.

Section 63.- Allotment of propaganda space in case of simultaneous elections.

1. - For the purpose of distribution of free propaganda spaces at elections to either House of Parliament only the results of the preceding election to the Congress of Deputies shall be taken into account.

2.- Where elections to a Self-governing Community's Legislative Assembly or to city councils are being held at the same time as an election to Congress of Deputies, only the result of the latest election to Congress is to be taken into consideration for allotment of spaces in the general programming of national media.

3.- Should an election to the Legislative Assembly of a Self-governing Community be held at the same time as city council elections, there shall be had regard only to the result of the last election to said Assembly for allotment of spaces in the mass-communication media of the

relevant Self-governing Community or in the corresponding regional programs of national media.

4.- In the case contemplated in the foregoing subsection and where the rule of subsection 2 of this present section is not applicable, the allotment of spaces in the general programming of national media shall be made according to the results to the last city council elections.

5 (*As amended by Sect. 1 of Institutional Act 1/1987, of April 2*).- Where an election to either House of Parliament or to local government bodies is to take place at the same time as an election to European Parliament, only the results of the previous parliamentary or, as the case may be, local election shall be taken into account for the allocation of advertising time in the national media.

6 (*Added by Sect. 1 of Institutional Act 1/1987, of April 2*).- Where elections to the Legislative Assembly of a Self-Governing Community are to be held at the same time as an election to the European Parliament, only the results of the last elections to said Assembly shall be taken into account for allocation of advertising time in the media of said Community or in the respective regional programmes of national media.

7 (*Formerly 5*).- In cases for which no explicit provision is made in this section, the Electoral Commissions with jurisdiction in each case shall define the criteria for allocation of advertising time in publicly-owned media in the event of simultaneous elections.

Section 64.- Scale of priority for free allocation of electoral propaganda in publicly-owned media).

1 (*As amended by Institutional Act 8/1991, of March 13*).- Allocation of free electoral propaganda time in each publicly-owned medium and its different programming areas of coverage shall be done on the basis of the following priorities:

a) Ten minutes to parties, federations and coalitions not having taken part or not having obtained any seat in the previous equivalent election;

b) Fifteen minutes for parties, federations or coalitions who having obtained seats in the previous equivalent election, did not attain 5 per 100 (five per cent) of the total number of votes validly cast in the national territory:

c) Thirty minutes for parties, federations and coalitions who, having obtained seats in the previous equivalent election, attained between 5 (five) and 20 (twenty) per 100 of the total number of votes referred to in paragraph b);

d) Forty-five minutes for parties, federations and coalitions who, having obtained seats in the previous equivalent election, attained at least 20 (twenty) per 100 of total number of votes referred in paragraph b).

2.- Only parties, federations or coalitions putting up candidates in more than 75 (seventy-five) of the constituencies comprised in the territorial broadcasting coverage or, as the case may be, in the programming of the relevant medium shall be entitled to the free broadcasting times

referred in the preceding subsection. Municipal elections shall be subject to the special provisions of this Act.

3 (*As amended by Institutional Act 8/191, of March 13*).- Parties, associations or federations who fail to present as many candidatures as contemplated in the preceding subsection shall nevertheless be entitled to fifteen minutes in national media's programs provided they have attained in the previous equivalent election 20 (twenty) per 100 of the votes cast within a Self-Governing Community at similar times to those allocated to parties, federations and coalitions referred to in subsection 1.d) of this present section. In this case broadcasting shall be restricted to the territory of the relevant Self-governing Community. Provided that such right shall not be used in addition to the free broadcasting times contemplated in the preceding subsection.

4.- Electors' groupings who associate themselves to launch their own propaganda in publicly-owned media shall be entitled to a ten-minute broadcast provided they have put up as many candidates as required by subsection 2 of this present section.

#### 65.- Authorities responsible for allotment of free electoral propaganda space.

1.- The Central Electoral Commission shall be the competent authority for allotment of free-of-charge election propaganda spaces in publicly-owned mass-communication media, whatever their legal owner, on the proposal of the Committee referred to in the following subsections of this present section.

2.- A Radio and Television Committee, under the authority of the Central Electoral Commission, shall have competence for making an allotment proposal of free election propaganda spaces.

3.- The Committee shall be appointed by the Central Electoral Commission and consist of one representative of each party, federation or coalition intending to take part in the election, provided it is already represented in the Congress of Deputies. Said representative shall have a proportional vote in relation to the Congress' total membership.

4.- The Central Electoral Commission shall also choose the Chairman of the Committee among the representatives appointed according to the preceding subsection.

5. -The Central Electoral Commission may delegate to Provincial Electoral Commissions the allotment of free electoral propaganda spaces in regional and local programmes of State-owned media and of media with a similar area of coverage which are also publicly-owned. In this case a committee shall be set up in the territorial area concerned with the same powers as those provided in subsection 2 of this section and with a membership that must take into account the parliamentary representation in the Congress of Deputies of said territory. The Committee shall act under the authority of the corresponding Provincial Electoral Committee.

6.- Where elections are being held only to the Legislative Assembly of a Self-governing Community, the functions contemplated in this section in relation to State-owned media, shall be deemed to be restricted to the territory of said Community and shall be discharged in the manner prescribed in this Act by the Community's Electoral Commission or, where this is not yet

constituted, by the Electoral Commission of the province whose capital is the Community's capital. In the same event Electoral Commissions of Self-governing Communities shall have at least, in relation to mass-media controlled by the Community or by municipalities thereof, the responsibilities assigned by this section to the Central Electoral Commission, including authority over a Radio and Television Committee where it is so contemplated by the legal statutes of the Self-governing Community governing elections to its Legislative Assembly.

#### Section 66 .- Ensuring political and social plurality.

The respect of political and social plurality, as well as neutrality of information by publicly-owned mass-communication media in election periods, shall be ensured by the organization of said media and their control in the manner prescribed by the law. There shall be a right of appeal against decisions of managing bodies of the above-mentioned media during said periods to the relevant Electoral Commission in accordance with the preceding section and by the procedure provided for by the Central Electoral Commission.

#### Section 67.- Determination of time and broadcasting order for electoral propaganda spaces.

For the determination of the time and of the broadcasting order of election propaganda spaces to which all parties, federations or coalitions taking part in the election are entitled under this present Act, the competent Electoral Commission shall have regard to the preferences of parties, federations or coalitions according to the number of votes polled by each of them at the last equivalent election.

### **7<sup>th</sup> Subdivision. - Right to demand rectification.**

#### Section 68.-Right to demand rectification during electoral campaign

Where any mass-communication medium divulges facts concerning candidates or leaders of parties, federations, coalitions of electors' groupings taking part in the election, and the formations concerned find such facts inaccurate and that their dissemination might cause them harm, they may exercise the right to demand rectification according to the Institutional Act 2/1984, of March 26, with the following particularities:

a) If the information the parties concerned demand to rectify has been divulged in a publication whose periodical nature makes rectification impossible, the editor of said publication shall within three days from the demand cause the rectification to be published at its expense within the same term in another publication of the same area and with a similar circulation.

b) The oral hearing provided for in subsection 2 of section 5 of the aforesaid Institutional Act shall be held within 4 (four) days from the date of petition.

## **8<sup>th</sup> Subdivision.- Electoral opinion polls.**

### Section 69.- Preelection opinion polls .

Publication of preelection opinion polls between the date of call of the election and the polling day shall be governed by the following rules:

1.- Persons taking opinion samples or conducting preelection opinion polls shall under their responsibility append the following specifications, including any publication thereof:

a) Name and place of residence of the body, public or private entity or individual who has conducted the poll, as well as of the body or person having commissioned it;

b) Technical characteristics of the poll, which shall necessarily include the following particulars: sampling system, size of the sample, margin of error, representativity level, procedure for selection of surveyed persons and date of performance of the field work;

c) Full text of questions asked and number of persons who did not answer each of them.

2.- The Central Electoral Commission shall ensure that the data and information published on surveys do not contain any deliberate falsification, concealment or alteration, as well as strict compliance with the specifications referred to in the preceding paragraph and respect of the prohibition imposed by subsection 7 of this present section.

3.- The Central Electoral Commission may require any person who has carried out a survey opinion poll made public, to furnish them the additional technical information they see fit in order to carry out the verifications they may deem necessary.

Provided that this information may not include the contents of data relating to the questions that under the legislation in force are for the firms or the client's private use.

4.- Communications media who have published or divulged a preelection opinion poll in violation of the present Act, shall make public and disseminate within 3 (three) days the rectifications required by the Central Electoral Commission, with the indication of their origin and of the cause of rectification. Publication shall be made or programmed in the same spaces or pages as the rectified information.

5.- Where the sampling or the survey to be modified has been disseminated in a publication whose periodical nature makes rectification the following three days impossible, the editor shall cause it to be published at the publication's expense with an indication of said impediment within the aforesaid term. in another medium of the same area and with a similar circulation

6.- Central Electoral Commission's decisions on opinion polls and surveys shall be notified to the persons concerned and made public- There shall be a right of appeal against them before administrative courts in the manner prescribed by the Administrative Jurisdiction Act, provided that there shall be no obligation to lodge a preliminary revocation appeal (*recurso de reposición*) before the Commission itself

7.- No preelection polls shall be published or divulged by any communication medias in the two days preceding the date of polling

8 (*Added by Institutional Act 8/1991, of March 13*).- Where any department of Public Administration conducts during an election period opinion polls on voting intention, the results thereof if so requested, shall be made known within forty-eight hours from the request to all political formations taking part to the election in the territory covered by the opinion poll.

### **9<sup>th</sup> Subdivision.- Ballot forms and envelopes.**

#### Section 70.- Ballot papers and voting envelopes.

1.- Electoral Commissions shall adopt the official form of ballot papers for their respective constituency, according to the criteria laid down in the special provisions of this Act and in statutory instruments.

2.- The State Administration shall ensure availability of ballot papers and voting envelopes according to the provisions of next section, without prejudice to the possibility of their preparation by political formations taking part in the election.

3.- The relevant Electoral Commissions shall check that ballot papers and voting envelopes prepared by political formations taking part in the election are fashioned in accordance with the official form.

#### Section 71.- Drawing-up of ballot papers.

1.- Preparation of ballot papers shall start immediately after the proclamation of candidates.

2.- Where appeals have been lodged against the proclamation of candidates under Section 49 of this Act, the preparation of ballot papers shall be postponed in the constituency where said appeals have been made, until the determination thereof.

3.- The first ballot papers so prepared shall be immediately forwarded to Provincial Delegates of the Electoral Register Office for the sending thereof to absent-residents living abroad.

4.- Provincial Subdelegations of the Central Government must ensure delivery of ballot papers and voting envelopes in a sufficient amount for each polling bureau, one hour at least before the scheduled beginning of the poll.

**10<sup>th</sup> Subdivision.- Postal voting (*voto por correspondencia*).**

Section 72.- Conditions for postal voting (*as amended by Institutional Act 6/1992, of November, 2*).

1.- Electors expecting to be absent from the place where they are entitled to exercise their right to vote or to be unable to vote in person on the polling day, may vote by post, provided they have submitted an application for this purpose to the Provincial Delegation of the Electoral Register Office and they fulfill the following requirements:

a) The elector shall apply to the respective Provincial Delegation, from the calling of the election but not later than the tenth day before polling day, for a certificate of registration in the Electoral Register. The application may be delivered at any Post Office station.

b) The application must be submitted in person and the Post Office employee to whom it is delivered shall require the applicant to produce his National Identity Card (*Documento Nacional de Identidad*) and check the coincidence of both signatures. Photocopies of National Identity Card shall not be accepted.

c) In case of illness or incapacity making personal submission impossible and on production of an official medical certificate, which shall be free of charge, the application may be submitted on the elector's behalf by another person duly authorized by a notary's or consulate's proxy, which is to be issued only for one individual and shall not include more than one person nor give power to act on behalf of more than one elector. The corresponding Electoral Commission shall check in each case the fulfilment of the conditions set out in this subsection.

d) Post office stations shall forward within three days all documents so received to the corresponding Electoral Register Office.

Section 73.- Process of postal voting (*as amended by Institutional Act 6/1992, of November 2*).

1.- On receipt of the application referred to in the preceding section, the Provincial Delegation shall check the applicant's registration, enter the corresponding note on the Register so that no vote is cast in person on polling day and deliver the certification applied for.

2 (*As amended by Institutional Act 6/1992, of November 2*).—The Electoral Register Office shall send to the applicant by registered mail, not before the thirty-fourth day from the call of the election nor later than the sixth day before polling day, the ballot forms and election envelopes, together with the certificate referred to in subsection 1 above, a covering envelope with the address of the bureau assigned to the elector. An explanatory form shall be attached to the foregoing.

The acknowledgment of receipt of papers referred to in the preceding subsection must be personally signed by the applicant after producing evidence of his identity. If he is not at his place of residence, he shall be instructed to go in person or send the proxy referred to in paragraph c) of the foregoing subsection to the corresponding Post Office station where, on production of proof of identity, he shall receive the necessary papers for postal voting. The contents of said papers is to be explicitly mentioned in the aforesaid receipt

3 (As amended by Sect. 12 of Institutional Act 371995, of March 23).- Once the elector has chosen or, as the case may be, filled in the ballot form, he shall introduce it into the voting envelope and seal this. If more than one election have been called, he must proceed in the same manner with each ballot form. He shall then put the voting envelope or envelopes into the covering envelope addressed to the polling bureau and send the latter by registered mail not later than the third day preceding polling day. The covering envelope is sent free of charge.

4.- The Post Office must keep until polling day all the correspondence addressed to voting bureaus and deliver it to them at 9 (nine) a.m. on polling day, and it shall continue deliveries of such material as it may have received before eight p.m. on that day. The Post Office shall also keep a record of all documents received, which shall be at Electoral Commissions' disposal. Envelopes received after (8) eight p.m. on polling day shall be forwarded to the corresponding District Electoral Commission.

Section 74.- Exercise of right to vote by citizens during military service (as amended by Institutional Act 9/2007, of October 8)<sup>9</sup>

The Government, on a report by the Central Electoral Commission, shall make special provision to adapt the procedures of the two preceding sections to votal post by personnel on merchants ships, Navy vessels or fishing boats, by personnel of the Spanish Armed Forces and of the State Security bodies and forces on duty abroad, as well as for votal post by citizens who are temporarily out of Spain between the call of the election and polling day.

Section 75.- Voting by persons living abroad.

1.- Provincial Delegations of the Electoral Register Office shall send *ex officio* to persons entered on the register of absent residents living abroad an identical certificate to the one contemplated in Section 72 and the corresponding ballot papers and voting envelopes, as well as an envelope addressed to the Provincial Electoral Commission . An explanatory note is to be appended to the foregoing.

2.- The aforesaid documents shall be sent by registered mail not later than 34<sup>th</sup> (thirty fourth) day after the call of the election in provinces where there has been no appeal against the proclamation of candidates and not later than the 40<sup>th</sup> (fortieth) day in all other provinces.

3 (as amended by Sect. 12 of Institutional Act 3/1995, of March 23).- The above-mentioned electors shall exercise their right to vote by the procedure contemplated in subsection 3 of Section 73 and send the envelope addressed to the Electoral Commission responsible for the count by registered mail not later than the day before polling day. In elections of members of Congress, Senators, members of Legislative Assemblies of Self-governing Communities, and also of members of European Parliament, where in the last case electors choose to vote in Spain,

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<sup>9</sup> This section has no real effect any longer, since conscription (*servicio militar obligatorio*) has been "suspended" (in fact abolished) by Royal Decrees 247/2001, of March 9, and 3422002, as from December 31, 2002, in the exercise by the Government of the authorization given to it by Personnel of the Armed Forces Act 17/1999, of May 18, 13<sup>th</sup> Additional Provision. But its has now been deemed necessary to make provision for several categories of persons, namely staff in merchant ships, in the Navy or in fishing ships.

Spanish nationals living in a European Union country other than Spain may also exercise their right to vote not later than the seventh day before polling day, by handing personally their envelopes at the diplomatic Consulate or at the Consular Division of the Diplomatic Representation where they are registered. Consulates and Consular Divisions shall forward by electoral despatch the voting envelopes to the office to be set up for that purpose at the Foreign Affairs Ministry, and said office shall in turn urgently send the envelopes to the Electoral Commissions concerned. In all cases contemplated in the present subsection, the envelope or envelopes must, as a necessary condition for validity of such votes, be stamped or otherwise marked by the Post Office service of the State in question, or, as the case may be, duly certified by the diplomatic consulate or consular authorities of the Diplomatic Representation concerned, to prove compliance by the elector with the time limits required in each case.

4.- On the day of general counting and before the count begins, the relevant Electoral Commission shall be formally constituted as a Polling Bureau at 8 (eight) o'clock a.m., with the polling controllers appointed to this end by the competing candidatures.

5.- The Chairman shall thereupon proceed to introduce into the ballot box or boxes the voting envelopes of absent residents received up to that day and the Secretary shall enter the names of said voters in the corresponding list. The Commission shall count forthwith all these votes, the result of which is to be added to the result of the general counting.

6.- The Government, on a report by the Central Electoral Commission, is hereby empowered to make provision for the criteria and restrict the scope of application of this section, as well as lay down other procedures for the vote of absent residents living in foreign States where the procedures of present section cannot be carried out.

### **11<sup>th</sup> Subdivision.- Election proxies and polling controllers**

*(Apoderados e interventores).*

#### **Section 76.- Election proxies (Apoderados).**

1.- The representative of each candidature may grant a proxy to any citizen of age and in full use of his civil and political rights, for representation of said candidature in election acts and events.

2. -The proxy shall granted before a Notary or before the Secretary of the relevant Provincial or Judiciary District Electoral Commission, which shall issue the corresponding credential, according to the officially determined form.

3.- Proxies must produce their credential and their National Identity Card to the members of polling bureaus and other appropriate authorities.

4.- Salaried workers and civil servants who produce evidence of their capacity as proxies shall be entitled to a one-day paid leave on the polling day.

Section 77.- Election proxies' rights.

Proxies shall have access to election premises, to watch voting and counting operations, to raise claims and protests and to receive certifications contemplated in this Act, where these have not already been issued to another proxy or to a polling controller of the same candidature.

Section 78.- Polling controllers (Interventores).

1.- Every candidature's representative may appoint not later than 3 (three) days before the poll, two controllers for each polling bureau by issuing credentials out of a counterfoil book, with the date and his signature below the appointments.

2.- The counterfoil leaves for each controller shall be divided into 4 (four) parts. one as a the counterfoil proper, which the representative must keep; the second one, which shall be handed to the controller as his credential; and a third and fourth ones, which shall be sent to the Judiciary District Commission, which shall in turn forward one of them to the relevant polling bureau and the other to the bureau in whose electors' roll the controller is entered, so that he be excluded from voting at said bureau. The forwarding of the appointments to Judiciary District Commissions shall be done not later than the third day before polling day, and District Commissions are to send them to the bureaus in such a manner that they have already been received at the moment of their constitution

3 (as amended by Sect. 5 of Institutional Act 1/2003, of March 10).- Any person registered in the Electoral Register and who is legally an elector, may be appointed as polling controller.

As regards electors not registered in the electors' roll corresponding to the constituency where they are to perform as controllers, the District Electoral Commission concerned shall require the Electoral Register Office urgently to send the certificate of registration of said electors in the Electoral Register, unless this has been previously handed in by the person so appointed .

4.- Salaried workers and employees and civil servants who show proof of their appointment as controllers shall be entitled during polling day and on the following day to a leave of absence as contemplated by Sect. 28 of this present Act for members of voting bureaus.

Section 79.- Rights of polling controllers.

1 (As amended by Sect. 5 of Institutional Act 1/2003, of March, 10).- Polling controllers shall exercise their right to vote at the polling bureau to which they have been accredited. Where the controller is not registered in the constituency corresponding to the bureau at which he is to discharge his functions, he shall exercise his right of suffrage by postal voting in the manner and to the extent provided for in Sections 72 and 73 of this present Act.

2.- One controller for each candidature may attend the polling bureau, take part in its deliberations but with no right to vote and exercise at the bureau all other rights contemplated by this Act .

3.- For the purposes of the preceding subsection controllers of the same candidature accredited to a polling bureau may freely replace each other.

4.- Any proxy may carry out the functions contemplated in subsection 2 of this section in the absence of controllers of the respective candidature.

### **12<sup>th</sup> Subdivision.- Constitution of Voting Bureaus**

#### **Section 80.- Constitution of polling bureaus.**

1.- The presiding officer, the two members of each polling bureau and their respective alternates, if any, shall meet at the Bureau's premises at eight o'clock a.m. on the day appointed for the voting

2.- If the president has not come, he shall be replaced by his first alternate. Where the latter is also absent, he shall be replaced by a second alternate, and if the second alternate has not come either, the first or the second member, in this order, shall take over the functions of presiding officer. Members who have not come or who are acting as presiding officer shall be replaced by their alternates.

3.- No polling bureau may be constituted without the presence of a presiding officer and two members. Where this requirement cannot be met, members of the bureau present, alternates who are attending or, in their default, the competent administrative authority shall write and sign as report of the facts and send it by registered mail to the District Commission and also notify it by telegraph or by telephone.

4.- In the above-mentioned case the Bureau shall freely designate the persons who are to constitute the polling bureau and it may also direct the one of the electors present in the preises be appointed to this end. The Commission shall in any case notify the Public Prosecutor of the facts for the determination of a possible criminal liability of the Bureau's members or of the alternates who have failed to attend.

5.- Where, in spite of the provisions of the preceding subsection, one hour after the time scheduled for the beginning of the poll it has not been possible to constitute the bureau, the persons mentioned in subsection 3 of this section shall so notify the District Commission, which is to convene a new vote at the Bureau within the two following days. A copy of the notice thereof shall be immediately affixed at the door of the voting premises and the Commission shall proceed *ex officio* to the appointment of the new bureau's members.

#### **Section 81.- Necessary equipment of every voting bureau**

1.- Every polling bureau shall be equipped with a ballot box for each election to be held and shall also have a polling booth.

2.- It must also have a sufficient number of voting envelopes and ballot papers in the booth or next to it for every candidature.

3.- Ballot boxes, booths, ballot papers and voting envelopes shall conform to the officially determined model.

4.- If at the time scheduled for the constitution of the bureau or at any later time one of the aforesaid is missing, the presiding officer must immediately notify the District Commission, which shall provide the necessary supply.

#### Section 82.- Appearance of controllers before voting bureau.

1.- The presiding officer and the members are to receive, after constitution of the meeting, between eight and eight-thirty a.m. the credentials of controllers appearing in this capacity and check them against the counterfoil sheets in their possession, and if they find them in conformity with each other, they shall admit said controllers to the bureau. If the presiding officer has not received those sheets or in is doubt about the authenticity of the credentials, the identity of the controllers present or on both points, he shall nevertheless grant them admission if they so demand, but he must state in the minutes his reservations so that the issue can be adequately clarified and the controllers in question be prosecuted.

2.- Where more than two controllers appear on behalf of one particular candidature the presiding officer shall only admit those who fist deliver their credentials, to which end he shall number the credentials by chronological order of delivery.

3.- Counterfoil sheets received by the presiding officer must be appended to the election records. Credentials produced by the controllers shall be handed back to them after having been checked by the presiding officer. If the presiding officer has not received said sheets,. the corresponding credentials must be appended to the election records at the end of the counting.

4.- If a controller appears before the bureau after eight-thirty a.m., once the minutes of constitution thereof, have been drafted, the presiding officer shall not admit him to the discharge of his functions. Provided that said controller shall have a right to vote in the bureau.

#### Section 83.- Minutes of constitution of bureaus.

1.(*As amended by Institutional Act 8/1991, of March 13*).- At eight-thirty a.m. the presiding officer shall write the minutes of constitution of the voting bureau, to be signed by the presiding officer himself, the other members of the bureau and the polling controllers, and shall on request deliver a copy thereof to any candidate's representative, election proxy or polling controller.

2.- The minutes shall include the names of the persons composing the voting bureau as members and a list of names of the polling controllers, with a reference to their respective candidate.

3 (*Also as amended by Institutional Act 8/1991, of March 13*).- Where the presiding officer refuses or delays delivery of a copy of the constitution minutes to those entitled to it, the claimant or claimants shall write in duplicate a protest and sign it. One copy of the protest shall be appended to the minutes of the electoral proceedings and the other copy shall be sent by the claimant or claimants to the Electoral Commission responsible for the ensuing count of votes, in accordance with the general provisions of this Act.

4 (also as amended by Institutional Act 8/1991, of March 13).- The presiding officer is required to give only one copy of the constitution minutes to each party, federation, coalition or grouping taking part in the election.

### **13<sup>th</sup> Subdivision.- The voting**

#### **Section 84 .-Beginning of the voting.**

1 (As amended by Institutional Act 8/1991, of March 13).- Once the Bureau's constitution minutes have been written and the corresponding copies made, the polling shall begin at nine o'clock *a.m.* and continue without interruption until eight o'clock *p.m.* The presiding officer is to announce the beginning with the words:" Beginning of the poll" ("*Comienza la votación*").

2.-Only for reasons of *force major* the poling may be called off, or be suspended if already in progress, under the presiding officer's responsibility by a written and reasoned decision. The presiding officer shall in any case send a certified copy thereof by registered mail to the Provincial Commission to enable it to ascertain if the motives were true and sufficient and to declare or demand any resulting liabilities.

3.- Where the voting has been suspended no account is to be taken of votes cast at the bureau nor shall any counting be conducted. The presiding officer shall immediately cause the ballot papers in the box to be destroyed and mention the fact in the report referred to in the preceding subsection.

4.- Notwithstanding subsection 2 of this section, the presiding officer shall interrupt the voting if the becomes aware of the lack of ballot papers of one of the candidatures and of the impossibility of replacing them with ballot forms supplied by the respective proxies or controllers. In this case the presiding officer shall inform the District Commission of his decision for the latter to supply the ballot papers. Provided that the interruption may not last more than one hour and the voting shall be extended for as long a time as it has been interrupted. Subsection 3 of this shall not apply in this case.

#### **Section 85.- Proof of the elector's right to vote**

1 (As amended by Institutional Act /1997, of May 30)..- Exercise of the right to vote shall be subject to the elector's registration in certified copies of electors' rolls or a special register's certificate and to the elector's identification in either case by production of his National Identity Card, passport or driving license with the holder's photograph and also, if he is an alien, of his residence card.

2 (As amended by Institutional Act 8/1991, of March 13).- The certified copies of the electors' roll referred to in the preceding paragraph shall only comprise citizens already of age on polling day.

3.- Persons who can prove their right to registration in that ward' s roll of electors by producing written evidence of a court' s decision to that effect are also entitled to the exercise of their right to vote.

4.- Where, despite production of the documents referred to in subsection 1 above, the polling station' s bureau, in their own judgment or on a public claim at that moment by a polling controller, an agent or another elector, are in doubt of the identity of a person who is about to vote, they shall decide on the issue by a majority vote on the basis of documentary and oral evidence given by the electors present at the ward. They shall send in any case a report n the possibility of a criminal offence to the appropriate Court of Law, so that it may prosecute any person guilty of impersonation or of denial of his own identity.

5 (*As amended by Institutional Act 3/1995, of March 23*) .- The special electoral certificate enabling citizens to prove in exceptional circumstances their registration in the electors' roll shall be regulated by such instructions as the Central Electoral Commission deems fit regarding delivery, relevant authority, delay for issue and cases where it applies.

#### Section 86.- Moment of voting

1.- Vote shall be secret.

2.- Electors may only vote in the ward and at the polling bureau allotted to them, except as provided in subsection 1 of Section 79. They shall proceed to the bureau one by one, after having gone, if they so wish, through the booth standing in the same room, at a place between the entrance and the bureau, to enable them to choose the ballot paper and put it into the apposite envelope.

3 (*As amended by Institutional Act 8/1991, of March 13*).- Each elector shall give his name and surname to the presiding officer. Members of the Bureau and polling controllers shall check by means of the electoral register lists or the corresponding certificate, the elector' s right to vote, as well as his identity, which shall be certified according to Section 85 above. The elector shall then personally hand to the presiding officer the voting envelope or envelopes duly closed. The presiding officer, holding said envelope or envelopes in full sight of the public all the time, shall read out the elector' s name, say the word “..votes” (“...vota”) and then put the envelope or envelopes in the corresponding box or boxes.

4 (*As amended by said Institutional Act 8/1991, of March 13*).- Members of the Bureau and polling controllers, if they so wish, shall enter, ach on his own numbered list, the name and surname of voters in the order in which they have cast their vote, and state the number allocated to them in the electoral registration lists or, as the case may be, in the special registration certificate produced. There shall be a numbered list for each House of Spanish Parliament and, as the case may be, for the Legislative Assemblies of Self-Governing Communities, local government assemblies or the European Parliament. Every elector has the right to verify if his name and surname have been duly entered in the voters' list to be drawn up by the Bureau for each box.

Section 87 (as amended by Institutional Act 9/2007, of October 8).- Aid for persons with physical incapacity.

1.- Electors who cannot read or are unable for reasons of physical disability to pick up the ballot form or put it in the envelope and hand it in person to the presiding officer, may avail themselves of the assistance of a companion of their own choice.

2.- Notwithstanding the preceding subsection, the Government, on receipt of a report by the Central Electoral Commission, may make provision for a voting procedure for blind persons or persons with a visual disability enabling them to exercise their right to vote, with full guarantee of the secrecy of vote.

Section 88.- End of voting.

1.- At eight *p.m.* the presiding officer shall cry out the end of the voting. If some of the electors present or proceeding to the polling station's bureau have not yet voted, the presiding officer shall allow them to do so but shall not allow anybody else to vote.

2.- The presiding officer shall then proceed to put the postal ballot papers in the ballot boxes, after checking their compliance with the provisions of subsection 3 of Section 73 and that the elector is duly entered in the electoral register's lists, whereupon the Bureau's members shall enter the names of these electors in the numbered list of voters.

3.- Upon conclusion of the foregoing, it shall be the turn of Bureau's members and the polling controllers to vote. The numbered voters' list must set out the names of controllers not entered in the Bureau's own electors list.

4.- The voters' numbered lists shall be finally signed by the Bureau's members and the polling controllers on the margin of each page and immediately below the last name entered therein.

Section 89.- Minimum number of Bureau' members to be present at all times.

Two at least of the Bureau's members must be present at all times.

Section 90.- No arrest of Bureau's members.

No authority may arrest a Bureau's presiding offices, members or polling controllers during voting time at which they must perform their duties, *except* in case of *flagrant delicto*.

Section 91.- Bureaus' presiding officers.

1.- The presiding officer shall have within the polling premises exclusive authority to keep order, ensure electors' freedom and preserve the observance of the law.

2.- The presiding officer shall ensure that the entrance of the voting premises is at all times free and accessible to all persons entitled to entry therein.

3.- Without prejudice to section 76, the following persons shall have a right to enter the premises of election wards: electors allotted to the ward, representatives of candidatures and candidates themselves, election proxies and polling controllers, public notaries- to attest to any action relating to the voting that is not in breach of the secrecy of voting- constables, should their presence be requested by the presiding officer, members of Electoral Commissions, first-instance judges and their delegates and finally any persons appointed by the Administration to obtain information about the results of the count.

4.- Nobody may enter the premises of an election ward with weapons or instruments than can be used as such. The presiding officer shall direct that any person in breach of this prohibition be expelled at once.

5.- Notaries may attest, without any special authorization being required, to any action relating to the voting, even those taking place outside their own district, provided they occur in the same province. They shall also be available during the polling day to parties, coalitions, federations and groupings of candidates, either at their own place of residence or in the office where they usually discharge their functions.

#### Section 92.- Police force intervention.

Police forces posted for protection of ward premises shall assist presiding officers at their request, either within or outside said premises.

#### Section 93.- Electoral propaganda on polling day.

No election propaganda of any kind shall be carried out in the premises of wards or their vicinity. No groups shall be allowed that may obstruct access to said premises in any way, nor shall presence in the surroundings be permitted of persons who may obstruct or prevent free exercise of the right to vote. Presiding officers shall take all steps they think fit in this respect.

#### Section 94.- Incidents and disturbances in wards.

Any incident having affected peace and order in ward premises, as well as the name and surname of those responsible for it, shall be recorded in the minutes of the voting.

### **14<sup>th</sup> Subdivision.-Counting of votes in polling bureaus.**

#### Section 95. –Counting of votes (*Escrutinio*).

1.- On conclusion of the voting the count shall begin immediately.

2.- The count shall be conducted in public and shall not be suspended, except by reason of *force major*, even if more than one election are being held at the same time. The presiding officer shall cause a person who has in any way disturbed or obstructed the operations to be immediately expelled from the premises.

3 (*As amended by Institutional Act 1/1987, of April 2*).- In the event of more than one election being held concurrently, the count shall proceed in the following order: (1) the European Parliament, (2) the Congress of Deputies (3) the Senate, (4) Local Councils, (5) Legislative Assemblies of Self-Governing Communities and finally the Canary Islands' Insular Councils (*Cabildos Insulares*).

4.-The count shall be carried out with the presiding officer extracting the envelopes one by one from the corresponding ballot box and reading out the name of the candidates list or, as the case may be, of the candidates. He shall also read each ballot paper himself and then show it to the other members of the Bureau, to polling controllers and to election proxies.

5.-If a notary in the discharge of his duties, a representative of a candidature or a member of a list has doubts as to the contents of a ballot paper read out by the presiding officer, he may request at once that such ballot paper be shown him for examination and his request shall be granted.

#### Section 96.- Void ballot papers.

1.- Votes cast in an envelope or in a ballot paper other than the officially approved form, as well as ballot papers not placed in any envelope or in an envelope containing more than one ballot paper of different candidatures, shall be null and void. Should an envelope contain more than one ballot paper for the same candidate, the vote shall be valid but counted only as one.

2.- In elections to Congress of Deputies, European Parliament, Local Councils and Canary Islands' Insular Councils, votes cast in ballot papers where the names of candidates appearing therein have been changed, added, marked or crossed out, or where the order of candidates has been altered, as well as ballot papers that have been changed in any other way, shall also be null and void.

3.- (*As amended by Institutional Act 13/1994, of March 30*).- In elections to the Senate, votes cast in ballot papers where more than three candidates have been ticked out for provincial constituencies, more than two names for each of the constituencies of Gran Canaria, Mallorca and Tenerife and of the cities of Ceuta and Melilla<sup>10</sup>, or more than one for the remaining insular constituencies<sup>11</sup> shall be null and void.

4.- Votes cast in envelopes that have been tampered with in any of the manners mentioned in the preceding subsections shall be equally null and void.

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10. The cities of Ceuta and Melilla are situated in the northern-African coast of the Mediterranean Sea, facing the nearby southern coast of Spanish mainland. Each of them has its own autonomy Statute (for CEUTA, Institutional Act 1/1995, of March 13, and for MELILLA Institutional Act 2/1995, also of March 13).

<sup>11</sup> I.e. five of the seven Canary Islands, namely (from East to West) LANZAROTE, FUERTENTURA, GOMERA, LA PALMA and HIERRO, and two of the Balearic Islands: MENORCA and IBIZA (the astermost and westernmost ones respectively) of the archipelago). For electoral purposes the constituency of IBIZA also comprises the nearby isle of FORMENTERA, the smallest and least populated of the archipelago.

5 (As amended by Institutional Act 13/1994, of March 30).- Envelopes that do not contain a ballot paper shall be treated as valid blank votes. The same shall apply to unmarked ballot papers in elections to the Senate.

Section 97.- Announcement of results.

1 (As amended by Institutional Act 8/1991, of March 13).- On completion of the count the total number of envelopes shall be checked against that of the voters entered under subsection 4 of Section 86 of this Act.

2 (As amended by Institutional Act 8/1991, of March 13).- The presiding officer shall thereupon ask whether there is any objection against the count and, should there be none, or once the bureau has disposed by a majority vote of the objections raised, he shall announce the results, with specification of the number of registered electors, registration certificates received, voters, void ballot papers, blank votes and votes obtained by each candidate or candidature.

3.- The ballot papers taken out of the ballot boxes shall be destroyed in full view of those present, except rejected or challenged ballot papers, which shall be appended to the minutes and filed away with it, after having been signed by Bureau's members.

Section 98.- Minutes of the count (as amended by Institutional Act 8/199, of March 13).

1.- The Bureau shall immediately make public the results by a record of the count containing the data mentioned in subsection 2 of section 97 above and have it affixed without delay on the outside or at the entrance of the premises. A copy of said record shall be handed on request to representatives of the concurring candidates who are present at that time or, as the case may be, to polling controllers, election proxies or candidates themselves. No more than one copy thereof shall be furnished to each candidate or candidatures.

2.- A copy of the counting record shall also be furnished to the person appointed by the State Administration with the sole purpose of assisting the Government in the discharge of their duty to give provisional information on election results.

Section 99.- Minutes of Bureau's sitting (as amended by Institutional Act 8/1991, of March 13).

1.- Once all the proceedings contemplated in the above sections have been completed, the presiding officer, members of the Bureau and polling controllers thereof shall sign the minutes of the sitting. These shall contain in full detail the number of electors allotted to the Bureau according to the relevant electoral register lists and to the registration certificates produced; the number of electors who have cast their vote, the number of polling controllers who, though not being entered in the Bureau's list have nevertheless cast their vote, and the number of void ballot papers, blank votes and votes polled by each candidate or candidature, as well as a summary mention of protests and complaints that may have been raised by representatives of candidatures, members thereof, their proxies or controllers or by electors themselves on the voting or the count, and the Bureau's decision on each of them, and any dissenting opinions among Bureau's members. The minutes shall also include any incident of the type referred to in section 94.

2.- All representatives of candidatures and members thereof, as well as their election proxies and controllers, are entitled to be furnished immediately and free of charge with a copy of said minutes. The Bureau shall have no excuse for non compliance with this obligation.

Section 100.- Election documents.

1.- Following the above, the Bureau shall proceed to the preparation of election documentation which is to be divided into three envelopes.

2.- The first envelope shall contain the whole election file, namely the following documents:

- a) The original minutes of the Bureau's constitution;
- b) The original minutes of the sitting;
- c) The documents referred to in the latter and, in particular the numbered list of voters and ballot papers rejected as null and void or against which an objection has been raised;
- d) The list of the electoral register used by the Bureau for the voting and
- e) (*Added by Institutional Act 8/1991, of March 13*).- Registration certificates produced.

3 (*As amended by Institutional Act 1/1991, of March 13*).- The second and third envelopes shall respectively contain a copy of the constitution's minutes.

4.- Once all envelopes have been sealed, the presiding officer, Bureau members and polling controllers shall sign them across the part where each envelope is to be opened at a later moment.

Section 101.- Delivery of Bureaus' documentation to the First-Instance Court or Magistrates' Court.

1.- When they have the relevant documentation ready, the presiding officer and members of the Bureau and polling controllers who so wish shall immediately proceed to the First- Instance Court or to the Magistrate's Court having jurisdiction over the polling station area for delivery of the first and the second envelopes. Police forces shall accompany them and, if need be, provide transportation facilities.

2.- Once he has satisfied himself of the identity of the presiding officer and, as the case may be, of the Bureau's members and the controllers, the judge or magistrate shall take possession and deliver a receipt of the documentation, stating the day and exact time of delivery.

3.- Within ten hours from receipt of the last batch of documents, the judge or magistrate shall personally proceed to the seat of the Electoral Commission responsible for the counting, and deliver the first envelopes, for which he shall be given a receipt in full detail.

4 (*As amended by Institutional Act 8/1991, of March 13*) .- Second envelopes shall be filed with the corresponding first-instance or magistrate's court and may be later requested by

Electoral Commissions for the general counting operations and by courts with jurisdiction for electoral appeals.

5.- The Provincial Electoral Commission shall make the necessary arrangements to facilitate the judge's visit referred in subsection 3 of this section.

Section 102.- Delivery of documentation to Post Offices.

1.- Third envelopes are to be delivered to a Post Office official, who shall personally collect them at the polling station's bureau. At least one member thereof shall remain there to effect the delivery.

2.- On the day following the poll the Post Office shall forward said envelopes to the Electoral Commission responsible for the count.

**15<sup>th</sup> Subdivision.- Aggregate counting**  
(*Escrutinio general*)

Section 103.- Aggregate counting.

1 (*As amended by Institutional Act 8/1881, of March 13*).- The aggregate counting shall be carried out on the third day following the poll by the corresponding Electoral Commission, in accordance with the special provisions of this Act.

2.- The aggregate counting shall be conducted as a single operation and be open to the public.

Section 104.- Meeting for the count.

1 (*As amended by Institutional Act 8/1993, of March 13*).- Each Commission, including representatives and proxies of candidates or candidatures wishing to attend, shall meet at the premises where the Secretary thereof discharges his duties. The Chairman shall write the minutes of the constituent meeting of the Commission and sign them together with members thereof and the Secretary, as well as duly accredited representatives and proxies.

2.- The meeting shall begin at ten *a.m.* on the day appointed for the count. Should less than half plus one of the Commission's members be present at that time, the meeting is to be postponed until twelve noon. If for any reason the meeting cannot be held at the latter time, the Chairman shall convene a new one for the following day, announcing his decision to members present and to the public and informing the Central Electoral Commission. At the time so appointed the new meeting shall begin whatever the number of members present

Section 105.- Sitting for the count.

1.-The aggregate counting shall begin with the Secretary reading out the legal provisions relating to the operation.

2.-The Commissions' staff shall then, under the supervision of the Commission itself, open one by one the envelopes referred to in subsection 2 of section 100 above.

3 (*As amended by Institutional Act 8/1991, of March 13*).- Where the corresponding envelope from any of the polling stations is missing or its contents are incomplete, the third envelope referred to in section 102 shall be used instead. Failing this and without prejudice to subsection 4 of section 101, a copy of the minutes of the Bureau's sitting duly produced by a representative or proxy of a candidate or candidature, shall be used. Where contradictory copies are shown, none of them is to be taken into account.

4 (*As amended by Institutional Act 8/1991, of March 13*).- Where there are double or different minutes or records from a polling station's bureau or where the number of voters shown in the record exceeds that of the electors of the bureau according to the electoral register lists and to the registration certificates produced –with the exception of votes cast by the polling controllers-, the Commission shall not include said votes in the aggregate count. Provided that where this is due to a single material, factual or arithmetical error, the Commission itself shall rectify it.

5.- The Commission's Secretary shall give the summary result of each polling station's bureau and the Commission's staff are to make the corresponding entries, if need be, by a mechanical or electronic means leaving a documentary evidence of such entries.

6.- Where the number of polling station bureaus makes it advisable, the Electoral Commission may be divided into two sections for the performance of the operations referred to in the subsections above, in which case one of the Commission's members shall act as secretary in one of the sections.

#### Section 106. – Annulment of minutes and votes.

1 (*As amended by the Institutional Act 8/1991, of March 13*).- The Commission may not void any minutes, record or vote in the course of the general count, its authority being confined to verifying without debate polling station bureaus' counts and aggregate numbers of votes admitted as such by the corresponding bureaus, on the basis of their minutes or of the copies thereof, except for cases referred to in subsection 4 of section 105 where the Commission may only rectify the mere material, factual or arithmetical errors detected in said documents.

2.- Representatives or polling controllers on behalf of candidates or candidatures are not allowed to make any complaint or raise any protest while minutes are being read, except for specific observations on the accuracy of the data under examination.

#### Section 107.- Interruption of aggregate counting.

1.- The aggregate counting may not be interrupted. The Commission may, however, after having sat for twelve hours, adjourn the proceedings until the following day, but cannot in any case leave the counting of votes of a particular polling ward unconcluded.

2 (*As amended by Institutional Act 8/1991, of March 13*).- The aggregate counting shall be completed not later than the sixth day after the election.

Section 108.- Minutes of aggregate counting.

1 (*As amended by Institutional Act 8/1991, of March 13*).- On completion of the count, the Electoral Commission shall issue in triplicate an aggregate count record for the relevant constituency which shall state in detail the number of electors in all polling stations' bureaus –on the basis of the electoral register lists and the registration certificates produced-, the number of voters, the votes obtained by each candidate or candidature, blank votes and rejected ballot papers. After the end of the sitting a full account of the aggregate counting proceedings, shall be written in the minutes thereof, which shall be signed, together with the aggregate counting record, by the Chairman, the Commission's members and Secretary and duly accredited candidates' representatives-general and proxies-general.

2 (*As amended by Institutional Act 8/1991, of March 13*).- Representatives and proxies of candidates or candidatures shall have one day to make complaints and raise protests, provided they refer only to facts or developments contained in the minutes of polling stations' bureaus or in the minutes of the Electoral Commissions' sitting for the general count.

3 (*Also as amended by Institutional Act 8/1991, of March 13*).- The Electoral Commission shall settle in writing the aforesaid complaints and notify immediately their decision to representatives and proxies of the candidate or candidature concerned. There shall lie a right of appeal against such decision by the representatives-general or the proxies-general before the Electoral Commission itself within twenty-four hours. On the day after lodging of the appeal, the Electoral Commission shall forward the whole file, with their own report, to the Central Electoral Commission and notify immediately thereafter the representatives of the candidate or candidature for the relevant constituency, and summon them to appear before the Central Electoral Commission on the following day. The Central Electoral Commission, after having heard both parties for a period not exceeding two days, shall determine the appeal in the course of the following day and transmit their resolution to the corresponding Electoral Commissions so that the latter may issue the writs of elected candidates.

4 (*Also as amended by Institutional Act 8/1991, of March 13*).- Where after the period referred to in subsection 3 above no complaints or protests have been received or the Central Electoral Commission has determined all complaints, the appropriate Electoral Commissions shall proceed within the following day to issue the writs of declaration of elected candidates, for which purpose votes cast for each candidate or candidature plus blank votes shall be counted as valid votes.

5 (*Also as amended by Institutional Act 8/1991, of March 13*).- Said writs of declaration shall be issued in triplicate and signed by the Chairman and the Secretary of the corresponding Commission, and shall explicitly contain the following information: number of electors in the wards of the constituency, of voters, of votes obtained by each candidate or candidature, of blank votes, of valid votes, of rejected ballot papers and of seats obtained by each candidate or list of candidates. A list with the names of elected candidates is also to be included and mention shall equally be made of complaints and protests raised before the Electoral Commission and the respective decision and also of appeals to the Central Electoral Commission, if any, with the latter's resolution.

6 (*Originally 4*).- The Commission shall file away one of the copies of the writ. The second copy shall be forwarded to the House of Parliament or Assembly or to the council where elected candidates are to sit, and the third one to the Central Electoral Commission, who shall proceed within forty days to publish the overall results and each constituency results in the Official Gazette, without prejudice to continuation of proceedings on appeals against such declarations.

7 (*Originally 5*).- Certified copies of the aggregate count record shall be delivered to representatives of candidates or lists of candidates who so request and proclamation credentials shall equally be issued to elected candidates. The Electoral Commission may decide that said certifications and credentials be immediately sent to the candidates concerned through their representative.

8 (*Originally 6*).- On taking their seat -and as a necessary condition for full investiture- elected candidates shall swear or promise allegiance to the Constitution and compliance with all other legal requirements laid down by the corresponding acts or statutory provisions.

### **16<sup>th</sup> Subdivision.- Electoral petitions** (*Contencioso electoral*)

#### Section 109.- Decisions that can be appealed against.

There shall lie a right of petition to courts against Electoral Commissions' decisions on proclamation of elected candidates, as well as on election and proclamation as elected candidates of Presidents of local authorities.

#### Section 110.- Persons who can present electoral petitions.

The following are legally entitled to present an election petition or to oppose any such petition:

- a) Candidates declared elected or not declared elected;
- b) Representatives of candidates having stood for election in the relevant constituency;
- c) Political parties, associations, federations and coalitions who have presented candidates in that constituency.

#### Section 111.- Intervention of the Attorney-General's Office.

The Attorney-General's Office shall represent the State and defend the process of law in all legal election proceedings.

## Section 112. – Submission of electoral petitions.

1.- Election petitions shall be submitted before the appropriate Electoral Commission within three days following the declaration of elected candidates in the form of a written statement of the facts, legal grounds and purpose of the petition.

2 (*As amended by Institutional Act 8/1991, of March 13*).- The Administrative Appeals Division (*Sala de lo Contencioso-Administrativo*) of the Supreme Court (*Tribunal Supremo*) shall be the competent court for adjudging petitions arising from a general election and from elections to the European Parliament, and the Administrative Appeals Division of the Higher Court of Justice (*Tribunal Superior de Justicia*) of each Self-Governing Community shall be the competent court for determining petitions arising from elections to the Self-Governing Community's Assembly or to local authorities elections.

3 (*Also as amended by Institutional Act 8/1991, of March 13*).- On the day following presentation, the Chairman of the relevant Electoral Commission shall forward to the appropriate Court's Division the petition itself, the whole election file and a report from the Electoral Commission on the grounds for the Commission's decision which is being appealed. The Chairman's decision shall be notified immediately to the representatives of candidates or candidatures having taken part in the election and shall include a summons to appear before the Court's Division within the two following days.

4 (*Originally 3*).- The Court's Division, on the day following the time limit for appearance of the interested parties, shall forward the petition and accompanying documents to the Attorney-General's Office and to all those acting as parties to the proceedings and direct that the whole file and the Electoral Commission's report be laid at their disposal, so that within a common and not extendable period of four days they can make the allegations they deem relevant to the case. These allegations may be supported by documents which in their opinion may be conducive to supporting or challenging the grounds of the petition. The Attorney-General's Office and the interested parties may also request the opening of the period for admission of evidence and propose the means of proof they think appropriate.

5 (*Originally 4*).- On the day following expiry of the term for allegations, the Court's Division may decide *ex officio* or on a party's request to open the period for admission of evidence and gathering of proofs it may see fit. This phase shall take place in accordance with the general rules for administrative legal proceedings, but its duration may not exceed five days.

## Section 113.- Determination of electoral petitions.

1.- After the end, as the case may be, of the stage for gathering evidence, the Court's Division, without any further proceedings, shall pass its judgement within four days.

2.- The decision shall consist in one of the following judgments:

- a) Rejection of the petition;
- b) Validity of the election and proclamation of elected candidates, which may include the mention of the list having obtained the highest number of votes;

c) Avoidance of decision to declare one or more candidates elected and proclamation of the candidate or candidates who ought to have been so declared;

d) (*As amended by Institutional Act 8/1991, of March 13*) avoidance of the election held in one or more polling station bureaus which may have been affected by invalidating irregularities, and the need to call new elections in that or those bureaus. The call may be solely for polling in said bureau or bureaus or for a new election where it relates to the president of a local authority, and it shall be held in any case within three months from the date of judgment. Notwithstanding the nullity of the poll in one or more bureaus or wards, no new election will be necessary in said bureaus or wards where avoidance does not affect the allocation of seats in the constituency.

3 (*Repealed by said Institutional Act 8/1991, of March 13*)<sup>12</sup>.

Section 114.- Notification of judgment . Appeals available.

1.- The decision shall be notified to the interested parties not later than the thirty-seventh day from the election day.

2 (*As amended by Institutional Act 8/1991, of March 13*).- There shall lie no ordinary or extraordinary appeal from the decision of the Court, save for clarification of the judgement, and without prejudice to appeal on grounds of unconstitutionality to the Constitutional Court, which must be lodged within three days. The Constitution Court shall dispose of the appeal within the fifteen following days.

Section 115.- Notification of judgment to the relevant Electoral Commission.

1.- The decision shall be notified to the corresponding Electoral Commission by sending a copy thereof in the prescribed form, with return of whole file, and must be executed immediately and on its exact terms.

2.- The Court's Division, *ex officio* or on the Attorney-General's request, may also directly notify all authorities, bodies or institutions of any nature which may be concerned by the contents of the determination and it may also take such steps as it sees fit for full execution of all the orders contained therein.

Section 116.- Nature of electoral petitions.

1.-Electoral petitions are to be treated as a matter of urgency and given first priority for examination and final judgment in the Administrative Appeal Division of the competent court

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<sup>12</sup> In fact there was no repeal materially or substantively speaking, since the contents of original subs. 3 were incorporated as final sentence for subs. 2

2.- The Administrative Procedure Act shall apply where this Act makes no specific provision for matters of election petitions.

Section 117.- Petitions to be free of charge.

Court proceedings under this Act are free of charge. Provided that where a party or parties have made unfounded allegations, they shall be ordered to defray the cost of the proceedings unless the court relieves them from such payment in view of exceptional circumstances acknowledged as such in the judgment.

**17th Subdivision.- General rules of procedure in election petitions.**

Section 118.- Features of election documents.

1.- The following shall be free, exempt from stamp duty and written on ordinary paper:

a) Applications, certificates and proceedings relating to formation and revision of the Electoral Register and to registration therein;

b) All operations and supporting documents relating to the election process, including notarial documents.

2.- Copies to be issued of election documents may be made by any mechanical or electronic means of reproduction, but said documents shall only have effect if duly stamped and signed as in the same manner as their originals.

Section 119.- Calculation of time limits.

Terms referred to in this Act cannot be extended and shall always be construed as expressed in natural days.

Section 120.- Administrative Procedure Act applicable in the absence of provisions in this Act.

The Administrative Procedure Act shall apply in all matters where this Act makes no explicit provision.

**Chapter VII.**  
**Election expenses and subsidies**

**1<sup>st</sup> Subdivision.- Election managers and election accounts.**

Section 121.- Candidate's election manager. (As amended by Institutional Act 8/1991, of March 13).

1.- Every candidate or candidature shall have an election *manager* (*un administrador electoral*) in charge of income and expenses as well as of accounts generally. Candidates nominated by each party, federation or coalition within the same province are to have a common manager.

2.- The accounts shall comply in any case with the general principles of the General Accountancy Scheme.

#### Section 122.- Manager-general.

1.- Parties, federations or coalitions who nominate candidates in more than one province shall also have a manager-general.

2 (*As amended by Institutional Act 8/1991, of March 13*).- The manager-general shall be responsible for all election income and expenditure of the party, federation or coalition and its candidates, as well as for the respective accounts, which must contain at least the detailed data referred to in subsection 2 of section 121 0above.

3.- Candidates' managers shall act under the manager-general's responsibility.

#### Section 123.- Appointment of manager-general.

1 (*As amended by Institutional Act 8/1991, of March 13*).- Any citizen of voting age<sup>13</sup> in full use of his civil and political rights, may be appointed election manager-general. Provided that persons referred to in Subs. 2 of Sect. 6 of this Act may not be appointed to this function..

2.- Candidates' representatives and parties', federations' and coalitions representatives-general cannot be managers-general at the same time.

3. -Candidates cannot be election managers.

#### Section 124.- Opening of accounts.

1.- The managers-general and election managers of candidates or candidatures appointed in due time and in the manner prescribed by the relevant provisions of this Act shall notify to the Central Electoral Commission and to the respective Provincial Commissions the bank accounts opened for collection of funds.

2.- The opening of accounts may be effected, after appointment of the election manager, in any bank or savings bank. The notification referred to in subs. 1 above is to be sent within twenty hours following the opening of the account.

3.- Where candidates or candidatures nominated have not been officially declared as such or decide not to stand for election, the money paid into the account by third persons shall refunded to the parties, federations, coalitions or groupings who have presented those candidates or candidatures.

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<sup>13</sup> See footnote 2, to Sect, 35, subs. 1, paragraph b).

Section 125.- Income of and expenditure out of accounts.

1.- All monies intended to defray election expenses, whatever their origin, shall be paid into the accounts and all expenses shall be paid out of said accounts.

2.- Election managers and persons authorized by them for disposal of funds out of the accounts shall be responsible for ensuring that monies paid in and out are used for their proper purpose.

3.-After the end of the electoral campaign the balance of said accounts shall be used to pay during ninety days following the poll expenses previously incurred.

4.- All claims relating to election expenses that have not been notified to managers within sixty days after the polling day, shall be void and not payable. The relevant Provincial Electoral Commission or, as the case may be, the Central Electoral Commission, may however allow exceptions to this rule on reasonable grounds.

Section 126.- Donation of funds into accounts.

1.- Persons who bring funds into the accounts referred to in the preceding sections shall state their name and address and their National Identity Card or passport, which must be shown to the appropriate employee of the bank or savings bank where the account has been opened.

2.- Where the money is paid in on behalf of another person or of a body corporate, the name of such person must be stated.

3.- Where payments into accounts are made by parties, the origin of the monies so paid in is to be stated.

**2nd Subdivision.- Financing of elections.**

Section 127.- Election subsidies.

1.- The State shall, in accordance with the rules laid down by the special provisions of this Act, subsidize the expenses incurred by parties, federations, coalitions or grouping of electors taking part in elections to Congress of Deputies, Senate, European Parliament and local councils. Provided that the subsidy granted to each political group may not in any case exceed the amount declared in its statement of election expenses and verified by the Auditing Court (*Tribunal de Cuentas*) in the discharge of its functions.

2.- (*As amended by Institutional Act 1/2003, of March 10*)<sup>14</sup>.- Both entitlement to said subsidies and payment thereof to political formations or to any other person or entity to which

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<sup>14</sup> This amendment consists partly in a change in the arrangement of provisions, where by the original subsection, which contemplated the grant of advances to political formations taking part in an election, has now become a new Section 127 *bis*, and partly- and more substantially- in the introduction in the new subs. 2 of certain conditions for effective payment of subsidies.

this right may have been transmitted on any grounds, shall be subject to the showing of proof that candidates elected on behalf of such parties, federations, coalitions or groupings of electors have become members of Congress of Deputies, Senators, members of the European Parliament or members of the relevant local assembly and have effectively entered the functions for which they have been elected and in respect of which the entitlement to such subsidies arises. The election and the exercise of said functions are to be checked and certified by the executive bodies of the relevant assembly.

3 (*Also as amended by Institutional Act 1/2003, of March 10*)<sup>15</sup>.- In conformity with Section 4 of Financing of Political Parties Institutional Act 3/1987, of July 2, the State shall not subsidize expenses such as those referred to in this section incurred by parties, federations, coalitions or groupings of electors who have engaged in a type of conduct contemplated in Section 9 of the Political Parties Institutional Act 6/20023, of June 27, as a ground for the banning of a political party, as detected and appraised according to such Act, where, having regard to degree of reiteration or gravity of such conduct, there is no sufficient ground for initiating a legal banning procedure.

4 (*Equally as amended by Institutional Act 1/2003, of March 10*)<sup>16</sup> .- Subsidies contemplated in this present section shall not apply on the same ground to said political formations who keep or include in their executive bodies, parliamentary or political groups or candidates' lists persons convicted by a court of law, even if sentence is not yet final, for rebellion, terrorism or serious offence against the State's security as defined in criminal legislation<sup>17</sup>, unless the relevant formation has made public its rejection of both the aim of such actions and the means resorted to.

Section 127 bis.- Advance payments of election subsidies. (Added by sect. 5 of said Institutional Act 1/2003, of March 10)<sup>18</sup>

1.- The State shall give advances on the aforesaid subsidies to parties, federations and coalitions having obtained at the latest election to Spanish Parliament, the European Parliament or, as the case may be, to city councils, and not having been later deprived of their entitlement thereto under the preceding section. The advanced amount may not exceed 30 per 100 (thirty per cent) of the subsidy received by the same party, federation or coalition at the latest election of the same description, nor the same percentage of the subsidy arising from application of sections 175, subs.3; 193, subs. 3, and 227, subs. 3, of this Act.

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<sup>15</sup> Also an entirely new provision. Former subs. 33 was in fact a continuation of subs. 2 about advance payments.

<sup>16</sup> Former subs., 4 has become subs. 3 of new Section 127 bis.

<sup>17</sup> For rebellion ("*rebelión*") see Sections 472-484 of the Criminal Code (*Código Penal*), for terrorism sects. 571-580 thereof and for offences against the State's security sects<sup>16</sup> Former subs., 4 has become subs. 3 of new Section 127 bis.

<sup>17</sup> For rebellion ("*rebelión*") see Sections 472-484 of the Criminal Code (*Código Penal*), for terrorism sects. 571-580 thereof and for offences against the State's security. 581-588, specifically relating to treason ("*traición*"), sect.589-597 for offences "putting in danger the peace or the independence of the State", and finally sects. 598-604.on disclosure and communication of national defence secrets or data.

<sup>18</sup> This new provision includes part of original Sect. 127, namely subss. 2 (here subs. 1) 3 (here subs. 2), 4 (here subs. 3), 5 (here number 4) and 6 (here 5). A Subs. 6 of the new Section is on the other hand entirely new.

2.- The above-mentioned advances may be applied for between the twenty-first and the twenty-third day after the call of the election.

3.- Parties, federations or coalitions who have presented candidates in more than one province, shall present the application for advance payments through their the respective manager-general to the Central Electoral Commission. In all other cases the application shall be presented by the respective manager to the relevant Provincial Electoral Commission, which shall forward the request to the Central Commission.

4.- As from the twenty-ninth day from the call of the election, the State's Administration shall make available the corresponding advances to election managers.

5.- Sums paid in advance to a party, federation or coalition shall be returned after the election in the amount exceeding the subsidy to which said party, federation or coalition is finally entitled.

6.- Without prejudice to the preceding subsection, sums paid in advance shall be totally returned if no proof can be shown, according to Sect. 133, subs. 4, of this Act, of candidates elected on behalf of said political formations having effectively become members of the Congress of Deputies, Senate, European Parliament or the corresponding local assembly and of their having entered the exercise of the functions for which they have been so elected and which give a right to the subsidy provided for in this Act.

#### Section 128.- Donation of public funds to electoral accounts.

1.- No Public Administration office or corporation or other public sector body or company belonging to the State, a Self-Governing Community, a Province or a local council or partly private-partly public company may bring funds into election accounts, and the same prohibition applies to any firms who supply services or goods or undertake works on a contractual basis for any Public Administration department.

2 (As amended by Institutional Act 1/1987, of April 2).- Donations of funds to said accounts by foreign bodies or entities are also forbidden , except appropriations in the budget of the European Communities' institutions for the financing of elections to the European Parliament, and in local councils elections only for persons to whom Section 13, subs. 2, of the Constitution<sup>19</sup> applies.

#### Section 129.- Limits to donations.

No individual or body corporate may pay more than one million *pesetas*<sup>20</sup> into accounts opened by the same party, federation, coalition or grouping for collection of funds with regard to elections already announced.

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<sup>19</sup> Said subs. 2 of Section 13 of the Constitution reads: "2.- Only Spanish subjects are entitled to the rights conferred by Section 23, with the exception of what may be provided for by law or by an international treaty, on a reciprocity basis, regarding the right to vote and the right to be elected in local council elections".

<sup>20</sup> That is to say, about 6,010 euros, as the exchange rate of the former peseta to the euro was set at 1 euro= 166.386 Ptas.

### **3<sup>rd</sup> Subdivision.- Election expenditure**

#### Section 130.- Election expenses (as amended by Institutional Act 8/1991, of March 13)

Expenses incurred by parties, federations, coalitions or groupings taking part in an election from the day of calling thereof to the date of proclamation of candidates, shall be deemed to be election expenses, provided they fall within one of the following categories:

- a) The production of envelopes and ballot papers;
- b) Propaganda and advertisements directly or indirectly aimed at promoting vote for their candidates, whatever the manner and the means used;
- c) The hiring of premises for holding election campaign events;
- d) Payment of remunerations or bonuses to temporary staff in the employment of candidates;
- e) Means of transportation and travelling expenses of candidates and leaders of parties, federations, coalitions and groupings and staff in candidates' employment;
- f) Correspondence and posting;
- g) Interests of loans received for the election campaign and due to be charged up to the date of payment of the relevant subsidy,
- h) Whatever election expenses may be necessary for the organization and running of offices and services required for the election.

#### Section 131.- Limits on election expenditure.

1.- No party, federation, coalition or grouping of electors may incur election expenses above the limits laid down by the specific provisions of this Act, such limits being always construed as expressed in constant value *pesetas*.

2 (As amended by Institutional Act 8/1991, of March 13).- Where two or more elections by direct universal suffrage are held on the same date, parties, federations, coalitions or groupings of electors taking part in said elections, may not incur additional election expenses exceeding by 25% (twenty-five per cent) the maximum limits allowed for election to the Spanish Parliament.

### **4<sup>th</sup> Subdivision.- Control of election accounts and allocation of subsidies.**

#### Section 132.- Statement of election accounts.

1 (As amended by Institutional Act 13/1994, of March 30).- From the call of the election until the hundredth day after the poll, the Central Electoral Commission and Provincial

Commissions shall ensure compliance with the rules laid down under the foregoing sections of this Chapter.

2 (Also as amended by Institutional Act 13/1994, of March 30).- They may to this end require at any moment banking institutions and savings banks to provide statements of election accounts, the number and identity of payers and any other information the Commissions may deem necessary for the discharge of their auditing functions.

3.- (As amended by said Institutional Act 13/1994, of March 30).- They may also require election managers to provide the accountancy information they deem necessary and they shall resolve in writing any consultation made to them by said managers.

4.- Where their investigations bring to light a type of conduct that may be constitutive of an electoral offence, the Commissions shall inform the Public Prosecutor's Office for the institution by the latter of the corresponding proceedings. The Commissions themselves shall punish infringements in these matters under Section 153 of this Act.

5.- The Commissions shall equally notify the Auditing Court of the result of their own monitoring activity.

#### Section 133.- Presentation of electoral accounts.

1. Between 100 (one hundred) and 125(one hundred and twenty-five) days after the election, parties, federations, coalitions or groupings who satisfy the necessary conditions to obtain State subsidies, or who have requested advance payments on said subsidies, shall lay before the Auditing Court a detailed and duly documented account of their election income and expenses.

2.- Said presentation shall be effected by the manager-general of parties, federations or coalitions who have nominated candidates in several provinces and by the manager of each candidate or candidatures in all other cases.

3.- Financial institutions of any description having granted loans to parties or associations mentioned in subsection 1 above, shall send to the Auditing Court a notice with full particulars of said loans, within the time limits prescribed in said subsection.

4 (As amended by Institutional Act 1/2003, of March 10)<sup>21</sup>.- Within 30 (thirty days) after submission to the Auditing Court of said accounts, the State shall, as an advanced payment pending completion of the Auditing Court's task, pay election managers 90% (ninety per cent) of the subsidies to which each of them is entitled under the criteria laid down in this Act, according to overall results of the election as published in the Official State Gazette, after deduction of the advance payment referred to in subs. 1 of Section 127 *bis* of this Act. On this occasion parties,

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<sup>21</sup> Two major amendments have been made to this subsection (which was noticeably shorter): firstly, the sum to be paid is now 90 per 100 of the total subsidy, i.e. twice as much the original amount of 45 per 100, and secondly, no such payment shall be made to lists of candidates that include persons convicted by a final judicial sentence for rebellion or terrorism or for an offence against State institutions whenever the court's decision has imposed ineligibility as an accessory penalty.

coalitions, federations and groupings of electors must produce as a condition for receipt of said advance a bank guarantee of 10 per 100 (ten per cent) of the subsidy so granted, as well as a certificate delivered by the relevant body that candidates elected for the different political formations have actually become members of the Congress of Deputies, senators, members of European Parliament or members of a local authority's assembly and entered the exercise of the functions for which they have been so elected and whose election has given or is giving a right to perceive the subsidies contemplated in this Act.

No such advance payment shall be made either where the relevant political formation includes persons referred to in subs. 2, paragr. b), of Section 6 of this Act.

5.- Companies who have invoiced over one milliohm *pesetas* for election expenses to parties and associations mentioned in subsection 1 above, shall also inform the Auditing Court in the manner prescribed under subsection 2 above.

6 (*As amended by Institutional Court 1/2003, of March 10*).- The State's Administration shall pay the amount of the corresponding subsidies to election managers of the formations entitled thereto, unless said managers have requested the Central Electoral Commission to pay the relevant sum wholly or partly to the financial institutions indicated, as the case may be, by the managers as a reimbursement of advances or loans made previously by those institutions. The State Administration shall make the relevant payment in conformity with the manager's notification unless said advances or loans have been granted to political formations falling within subs. 2, 3 and 4 of Section 127 of this Act. No such notification can be revoked without the consent of the financial institution concerned.

#### Section 134.- Control by Auditing Court.

1.- The Auditing Court, within thirty days following the period appointed in subs. 1 of the foregoing section may require all those under obligation to submit accounts and reports pursuant to said section, to present such supplementary clarifications and documents as the Court deems necessary.

2.- Within 200 (two hundred) days after the election the Auditing Court shall in the discharge of its examination duty, pronounce on the correctness of the election accounts. Where the Court has detected irregularities in said accounts or infringements of the limitations on election income and expenses, it may recommend refusal or reduction of the State's subsidy to the party, federation, coalition or grouping in question. If it also appears that a criminal offence may have been committed, the Court shall notify the Attorney-General's Office accordingly.

3.- The Court shall within the same term send the results of its audit in a reasoned report comprising the statement of certified regular expenses of each party, federation, coalition, association or grouping of electors, to the Government and to the Commission to be set up under the First Transitional Provision of the Auditing Court Institutional Act 2/1982, of May 12.

4.- Within one month from the sending of the Auditing Court's report, the Government shall submit to Parliament an extraordinary appropriations bill for the aggregate of the subsidies granted, which shall be paid within 100 (one-hundred) days from the passing of the bill by both Houses of Parliament.

5 (Added by Section 5 of Institutional Act 1/2003, of March 10).- Disbursement of the subsidies by the relevant body shall be effected in conformity with the Monitoring Report approved in Parliament by the Joint Committee for the Auditing Court and with the provisions of subss. 2, 3 and 4 of Section 127 of this Act.

## **Chapter VIII** **Electoral offences and infringements.**

### **1<sup>st</sup> Subdivision.- General provisions.**

#### **Section 135.- Officers discharging electoral functions.**

1.- For the purposes of this Chapter, public officers are all persons who are to be treated as such under the Criminal Code, all persons who discharge a public duty relating to elections and in particular chairmen and members of Electoral Commissions, as well as presiding officers, members and polling controllers at polling stations' bureaus and their respective replacements.

2.- For the same purposes the Electoral Register –and authorized copies thereof-, minutes of proceedings, lists, certificates, counterfoil book sheets and appointment credentials of persons who are to take part in the election process, and any documents delivered by persons entrusted with issue of the same by this Act, shall be deemed to be official documents.

#### **Section 136.- Highest penalty to be imposed.**

Actions that can be deemed to be an offence under this Act and the Criminal Code shall be punished under the provisions providing for the higher penalty.

#### **Section 137).- Penalty of specific disqualification from eligibility (as amended by Institutional Act 10/1995, of November, 23).**

The penalty of specific disqualification from eligibility in any election falling within the scope of this Act<sup>22</sup> shall be imposed, in addition to the penalties laid down in the following sections, for all offences referred to in this Chapter.

#### **Section 138.- Criminal Code to be applied as surrogate statute.**

The Criminal Code shall apply in all matters not expressly provided for in this Chapter.

### **2<sup>nd</sup> Subdivision.- Electoral offences.**

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<sup>22</sup> An important amendment was made here by said Institutional Act 10/1995, namely the deletion of the words “right to vote and” before “for eligibility”. In other words, since that amendment persons guilty of an offence under sections 139 to 150 are no longer deprived of the right to vote, i.e, they are not disfranchised any longer (in Spanish terminology they retain their right of “active suffrage” -*sufragio activo*- and only lose that of “passive suffrage”)

Section 139.- Wilful offences committed by public officers.

Public officers shall be liable to imprisonment for a term between one month and one day and six months<sup>23</sup> and to a fine from 30,000 (thirty thousand) to 300.000 (three-hundred thousand) *pesetas*<sup>24</sup> where they have wilfully committed any of the following offences:

1. Failure to comply with legal provisions relating to formation, maintenance and public exhibition of the electoral register;
2. Failure to comply with statutory rules on the constitution of Electoral Commissions and polling station bureaus, as well as on voting, decision-making and counting;
3. Failure to issue minutes of proceedings, certificates, notifications and other election documents in the manner and at the time prescribed by the law;
4. Arousing doubt on a person's identity or on that persons' rights without reasonable cause;
5. Suspension without reasonable cause of any election proceedings;
6. Rejecting, hindering or unduly delaying admission, examination or determination of protests and claims by pensions legally entitled thereto or failing to have the same put on record;
7. Causing a clear prejudice to candidates in the discharge of their duties;
8. Failing the comply with the prescribed procedure for postal vote.

Section 140.- Offence by abuse of office or false statement.

1. Public officers shall be liable to imprisonment for a term from six years and one day to twelve years and a fine between 30,000 (thirty thousand) and 300,000 (three-hundred thousand) *ptas.* for having wilfully committed by an abuse of office one of the following misrepresentations:

a) Altering without authorization dates, hours and place at which any electoral proceedings, including those of a preparatory nature are to be held, or announcing the holding thereof in a way that can be misleading to electors;

b) Omitting or stating the names of voters in any election proceedings a way that may be conducive to mistake about their authenticity of said names;

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<sup>23</sup> Imprisonment from one month and one day to six months (*arresto mayor*) is seldom enforced by the court , as the Criminal Code allows the sentencing court to suspended any sentence of imprisonment up to a maximum of two years where the convicted person has not been sentenced for the same or another offence in the recent past and has settled or paid off any accessory civil liability imposed by the sentence (a power applied by the courts in the vast majority of cases).

<sup>24</sup> That is to say, from approximately 18 (one hundred) to 1,800 (one-thousand eight hundred) Euros.

c) Altering, hiding or changing in any way the election envelope or the ballot papers handed in by the voter in the exercise of his franchise;

d) Inaccurately carrying out the count of electors when preparing or rectifying the Register or during the polling or counting operations;

e) Not telling the truth in oral statements to be mandatorily made at election proceedings under this Act;

f) Allowing, though being able to avoid it, someone to vote more than twice or to vote without being legally able to vote, or failing to make the due protest;

g) Printing, making or using ballot papers or election envelopes in contravention of the rule in force;

h) (*Added by Institutional Act 1/2003, of March 10*) failing to his duty relating to certifications on subsidies for election expenses contemplated in this Act;

i) Incurring any similar type of fraud connected with elections, by one of the means set out in Section 302 of the Criminal Code<sup>25</sup>.

2.- Where misrepresentations referred to in this Section are due to gross recklessness, they shall be punished with imprisonment of a term not less than six months nor exceeding three years<sup>26</sup>.

3.- In examination of the cases referred to in this Section the Court shall comply with the provisions of Section 318 of the Criminal Code<sup>27</sup>.

#### Section 141.- Offences relating to vote by post.

1 (*Added by Institutional Act 6/1992, of November 2*).- Any person who wilfully acts in contravention of the procedure laid down for postal voting shall be punished with arrest from seven to twenty-four weekends and a fine between<sup>28</sup> 180 and 1,800 Euros<sup>29</sup>.

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<sup>25</sup> Now Section 390 of the new Criminal Code adopted by Institutional Act 10/1995, of November 23. Said Section (within Chapter relating to “misrepresentations in documents”) sets out the following types of fraudulent practices: 1) alteration of essential elements or parts of a document; 2) forging wholly or partly a document; 3) mentioning as part to the proceedings persons who have not taken part therein or attributing to them statements or words other than those they actually said, and 4) not telling the truth in an account or narrative of facts.

<sup>26</sup>- “Minor imprisonment” (“*prisión menor*”) in the former Code of 1973, now replaced (11<sup>th</sup> Transitional Provision, 1,d) by said term of imprisonment from 6 months to 3 years.

<sup>27</sup> Under Section 318 of the Criminal Code, where the offence is “attributed” to a body corporate, the relevant penalty shall be imposed on the directors or division managers responsible for having knowingly caused the illegal action to be committed or deliberately failed to redress it although they were able to do so.

<sup>28</sup> In fact the Act still says “major arrest” (“*arresto mayor*”), i.e. arrest from one month and one day to six months, according to the terminology and types of penalties contemplated in the former Criminal Code of 1973 (Sect. 30). This penalty has been abolished by new 1995 Code and replaced with a new type of penalty, the aforesaid arrest during seven to twenty-four weekends (Sect. 33.3., *i*).

<sup>29</sup> Here again the Act refers to ancient *pesetas* (namely from 30,000 to 300,000), but we prefer to speak directly of Euros.

2.- Any person who wilfully takes part in any of the misrepresentations referred to in Section 140 shall be punished with a term of imprisonment from six months to six years<sup>30</sup> and a fine from 180 to 1,800 Euros<sup>31</sup>. In these cases the court shall also abide by Section 318 of the Criminal Code.

Section 142.- Offence in casting several votes or voting without legal capacity

Any person who votes twice or more times at the same election or who wilfully votes without legal capacity to do so, shall be punished with imprisonment for a term of six months<sup>32</sup> and a fine from 180 (one-hundred eighty) to 1,800 (one-thousand eight hundred) Euros.

Section 143.- Offence of absence from or failure to comply with legal duties at polling bureaus.

Presiding officers and members of polling station bureaus, as well as their replacements, who without reasonable cause fail to attend or do not comply with the obligation under this Act to apologize for or give notice of their absence, shall be liable to imprisonment between seven and twenty-four weekends and a fine from 180 euros to 1,800 euros<sup>33</sup>.

Section 144.- Offences relating to electoral propaganda.

1.- Any person who commits one of the following actions:

a) Engaging in propaganda activities after expiry of the time-limit for the electoral campaign;

b) Breaking the legal rules relating to election billboards and space allotted to them, as well as to meetings and other public events for electoral propaganda; shall be liable to arrest between seven and twenty-four weekends or a fine between 180 and 1,800 euros.

2.- Members in active service of the Armed Forces and State Security Forces, of local and Self-Governing Communities, police forces and judges, magistrates and members of the Public Attorney' Office (*Fiscales*) as well as of Electoral Commissions who disseminate electoral propaganda or carry out other electoral campaign activities, shall be liable to a term of imprisonment of six months and a fine between 601 (six hundred and one) and 1,803 (one thousand eight hundred and three) Euros<sup>34</sup>.

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<sup>30</sup> Once again the Act uses the categories and terms of the former Criminal Code, in this case "minor imprisonment" ("*prisión menor*"). The new one has abolished titles and denominations and opted for setting out purely and simply the period of imprisonment in each case. There is however an important difference, namely that the minimum term of the equivalent of "minor imprisonment" is now only three years, instead of six years.

<sup>31</sup> *Vide supra* footnotes 24 and 29.

<sup>32</sup> The Act literally says "Minor imprisonment at its lowest degree", always with the terms of the former Criminal Code' terminology, i.e. three months and one day, but as the substitute penalty runs exactly from three months onwards, this now means exactly and strictly three months.

<sup>33</sup> As regards the penalty of imprisonment see notes 26 and 30, and for the fine see footnotes 28 and 30.

<sup>34</sup> *Vide supra* for analogy footnotes 24 and 29. The Spanish texts still says 100,000 (one hundred thousand) *ptas* and 300,000 (three hundred thousand) *pesetas* respectively..

Section 145.- Offences in connection with election surveys.

1.- Any person who wilfully infringes current regulations on election opinion polls shall be liable to arrest from seven to twenty-four weekends, a fine between 3,005 (three thousand and five) and 30,000 (thirty thousand) Euros<sup>35</sup> and the accessory penalty of disqualification for professional practice.

Section 146.- Offences relating to the exercise of right to vote.

1.- Any person who:

a) By reward, gift, remuneration or promise directly or indirectly procures an elector's vote or induces him to abstain from voting;

b) Exerts pressure on voters with violence or intimidation to prevent them to refrain from voting or to compel them to vote against their will or to disclose the secrecy of voting;

c) Unjustifiably prevent or hinder the entrance, exit or stay of electors, candidates, election proxies, polling controllers and notaries in or from any places where election proceedings are carried out; shall be liable to arrest from seven to twenty-four weekends and to a fine between 180 (one-hundred eighty) and 1,803 (one-thousand eight-hundred and three) Euros.

Section 147.- Offences relating to peace and order at the polling place.

Any person who seriously disturbs order of election proceedings or enters the premises where said proceedings are taking place, with weapons or other instruments that can be used as such, shall be liable to arrest from seven to twenty-four weeks and to a fine from 180 (one hundred eighty) to 1,803 (one thousand eight hundred and three) Euros.

Section 148.- Calumny and injuries during electoral campaign.

Where calumny and injury are committed during an election campaign and on the occasion and by reason thereof, prison penalties contemplated in the Criminal Code shall be imposed at their highest degree<sup>36</sup>.

Section 149.- Fraudulent misrepresentation in election accounts.

1.- Managers of candidates and managers-general of parties, federation, coalitions or groupings of electors who forge the accounts -by unduly entering or omitting contributions or expenses- or who manipulate said accounts in order to fake an increase or a decrease in accounting positions, shall be liable to imprisonment or a term of six months to three years<sup>37</sup> and a fine of 180 (one-hundred eighty) to 1,803 (one-thousand eight –hundred and three) Euros.

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<sup>35</sup> *Vide supra* footnote 23 for analogy.

<sup>36</sup> The highest penalty for calumny (sect. 206 of new Criminal Code) is two years or a “daily” fine of 24 (twenty-four) months if the calumny has been disseminated in writing and a “daily” fine of 10 (ten) months if disseminated orally. For “serious” injuries the highest sanction is a daily fine of 14 (fourteen) months if the injury has been made “in public” and a daily fine of 7 (seven) months in all other cases.

<sup>37</sup> See for analogy footnotes 24, 29 and 34.

2.- The Court, having regard to the seriousness of facts and the circumstances, shall have discretion to impose the immediately lower penalties<sup>38</sup>.

#### Section 150.- Misappropriation of election funds.

1.- If the manager of a candidate, a manager-general or a person authorized to operate with election accounts misappropriates or embezzles funds for purposes other than those contemplated in this Act, he shall be liable to imprisonment for a term of six months to three years and a fine of 180 (one-hundred eighty) to 1,803 (one-thousand eight-hundred and three) Euros.

2.- If he does it with a profit-making intention, the penalty shall be a term of imprisonment from 3 (three) to 8 (eight) years imprisonment<sup>39</sup>.

3.- The Court, having regard to the seriousness of the facts and the circumstances, to the accuser's personal situation and to the aims of his action, may impose the immediately lower penalty.

### **3<sup>rd</sup> Subdivision.- Judicial procedure.**

#### Section 151.- Criminal proceedings.

1.- Prosecution for punishment of the offences set out in the foregoing sections shall be conducted in conformity with the Criminal Prosecution Institutional Act (*Ley Orgánica de Enjuiciamiento Criminal*) and proceedings instituted under the provisions thereof shall have priority and be carried out with the greatest possible urgency.

2.- Criminal action arising from said offences is a public one and does not require payment of any caution.

#### Section 152.- Final court decisions.

The Court or the judge having competence for execution of final decisions delivered on proceedings for offences referred to in this Part shall cause them to be published in the Provincial Official Gazette ("*Boletín Oficial de la Provincia*") and send a copy to the Central Electoral Commission.

### **4<sup>th</sup> Subdivision.- Minor election contraventions.**

#### Section 153.- Election infringements.

1.- Any breach of the compulsory rules laid down by this Act that is not a criminal offence shall be punished by the corresponding Electoral Commission with a fine between 120 (one-

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<sup>38</sup> That is to say, as far as deprivation of liberty is concerned, 24 (twenty-four) weekends arrest .

<sup>39</sup>This is the penalty which has replaced in the new Criminal Code the former "major imprisonment" ("*prisión mayor*") of six years and one day to twelve years.

hundred twenty) and 1,200 (one-thousand two-hundred) Euros, if the infraction has been committed by a public authority or a public officer and between 30 (thirty) and 601 (six-hundred one) Euros if committed by a private individual<sup>40</sup>.

2.- Breaches of the provisions of this Act relating to election opinion polls shall be punished with a fine between 300 (three-hundred) and 3,000 (three-thousand) Euros<sup>41</sup>.

3 (*Added by Section 5 of Institutional Act 1/2003, of March 10*).- The provisions of the Consolidated General Budgetary Appropriations Act (*Texto Refundido de la Ley General Presupuestaria*) adopted by Royal Legislative Decree (*Real Decreto Legislativo*) 1,091/1998, of September 28, shall also apply to infringements relating to subsidies for election expenses.

## **PART II**

### **SPECIAL PROVISIONS FOR ELECTION OF MEMBERS OF CONGRESS OF DEPUTIES AND SENATORS**

#### **Chapter I** **Eligibility**

##### **Section 154.- Persons disqualified for membership of Congress of Deputies and Senate.**

1.- In addition to persons falling within Section 6 of this Act, any person discharging a function or holding an office appointed and paid for by a foreign State shall be ineligible as member of the Congress of Deputies or as Senator.

2.- Nor are eligible to Congress of Deputies Presidents and members of the Government of Self-governing Communities and holders of any office freely appointed by said regional governments and members of Autonomous Bodies (*Instituciones Autónomas*) who by law or under a regional statutory rule are to be elected by the corresponding Legislative assembly.

3.- Nobody can stand simultaneously as candidate to the Congress of Deputies and to the Senate.

#### **Chapter II** **Disqualifications.**

##### **Section 155.- Disqualifications for members of Congress of Deputies and Senators.**

1.- Causes for ineligibility are also causes for disqualification.

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<sup>40</sup> Once again we have translated into Euros the amounts expressed in *pesetas* in the Spanish original, 20,000 (twenty-thousand) to 200,000 (two-hundred thousand) and 5,000 (five thousand) to 100,000 (one -hundred thousand) *ptas.* respectively.

<sup>41</sup> Same observation *mutatis mutandis* as in the preceding footnote. The Spanish original says 50,000 (fifty-thousand) and 500,000 (five-hundred thousand) *ptas.*

2.- The following persons are also disqualified:

- a) Chairman of the Restrictive Practices Court (*Tribunal de Defensa de la Competencia*)<sup>42</sup>;
- b) Members of the Board of Directors (*Consejo de Administración*) of the Spanish Broadcasting and Television Authority (*Ente Público RTV*);
- c) Members of the Prime Minister's Executive Office (*Gabinete de la Presidencia del Gobierno*) and of the Executive Office of each Minister or State-Secretary;
- d) Government's Representatives (*Delegados del Gobierno*) in the Autonomous Ports, Hydrological Confederation Authorities (*Confederaciones Hidrográficas*) ,Toll Motorways Concessionaire Companies, COPLACO (*Comisión de Planeamiento y del Coordinación Area Metropolitana de Madrid*)<sup>43</sup>, and the bodies referred to in the next paragraph;
- e) Chairmen of the Board of Directors, members thereof, administrators, Directors-General, managers and holders of equivalent positions in public bodies, State monopolies and companies directly or indirectly controlled through a majority stake by a public identity, whatever its legal form, and of publicly funded Savings Banks;

3.- Nobody may be a member of both Houses of Parliament at the same time nor simultaneously member of a Self-governing Community's Legislative Assembly and of the Congress of Deputies<sup>44</sup>.

4.- (*Added by Institutional Act 8/1991, of March 13*) Senators appointed by Self-governing Communities, no matter whether they are or not members of the respective Legislative Assembly,

a) May only carry out such activities as they are expressly authorized to perform as Senators by the Constitution and by this Act, whatever their *status* by virtue of their appointment by the Self-governing Community;

b) They may only receive their salary as senators, unless they expressly choose to receive their salary as members of the Legislative Assembly.

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<sup>42</sup> Abolished by the new Restrictive Practices Act (*Ley de Defensa de la Competencia*) 15/2007, of July 3 (Official State Gazette n° 159, of July 4, 2007) and replaced by the National Restrictive Practices Commission (*Comisión Nacional de la Competencia*) set up by said Act.

<sup>43</sup> Literally Greater Madrid Area Planning and Coordinating Commission, which original y was an autonomous Authority reporting to the Central Government, but was gradually transferred by the State(1983, 1984 and 1989) to the Madrid Self-governing Community.

<sup>44</sup> Literal reproduction of Section 67, subs. 12, of the Constitution.

<sup>45</sup> Let us recall that according to Section 67.5 of the Constitution each Self-governing -Community (whether it consists of one province only or of two or more provinces) is entitled to appoint one Senator and another one for each million inhabitants in its own territory, the appointment being made by the Legislative Assembly. (this is or course in addition to the four Senators each of the 50-fifty- provinces in Spain must elect by direct universal franchise).

Section 156.- Salary of members of the Congress of Deputies and Senators.

1.- Members of the Congress of Deputies and Senators may sit in collective executive bodies or boards of directors of organizations, public entities or firms directly or indirectly controlled by the public sector through a majority stake, where their appointment to such bodies is to be made by the respective House of Parliament, by the Parliament as a whole or by the relevant Self-governing Community's Legislative Assembly, but in this case they are only entitled to travelling and daily allowances in force, which must comply with the State Administration's general regulations.

2.- The sums to which they are entitled but which cannot be paid to them pursuant to the foregoing section, shall directly paid into the Treasury by the relevant organization, entity or firm.

3.- Under no circumstance may members of the House sit in more than two collective executive bodies or boards of directors referred to in subsection 1 above.

Section 157.- Full-time occupation.

1 (*As amended by Institutional Acts 1/1987, of April 2, and 8/1991, of March 13*) .- The mandate of member of Congress of Deputy or of the Senate shall be discharged as a full-time commitment as provided for in the Constitution and in this Act.

2 (*As amended by said Institutional Act 8/1991, of March 13*).- Pursuant to the foregoing subsection, the office of member of the Congress of deputies or senator shall be incompatible with the holding, personally or through a substitute, of any other position or the exercise of any profession or activity, whether private or public, on his own or on other persons' behalf, remunerated by salary, wages, tariff duty, professional fee or in any other way. Where a member of either House is transferred to a special administrative or employment situation in said position, profession or activity, he shall have the guarantee of reintegration into his rank and position in the terms to laid down by the relevant regulations.

The full-time commitment and disqualifications regime provided for in this Act shall apply in all cases and no option shall be allowed to receive payments or remunerations corresponding to positions or offices falling within said disqualifications.

3 (*Former 2*).- In particular the mandate of member of Congress of Deputies or senator shall be incompatible with active work in the Public Service and with the holding of any other position in the employment or within the budgetary appropriations of constitutional bodies, Public Administration departments, quasi non-governmental organizations and public entities, firms directly or indirectly controlled by a majority public sector's stake or any other activity directly or indirectly on behalf of said bodies, firm or entities. .

4 (*Former 3*).- Notwithstanding the provisions of the foregoing subsection, parliamentarians who are University professors may take part within their own University in teaching or research activities of a special nature, that do not involve management or supervision of services, provided that they may only receive for said activities the specific indemnities statutorily prescribed.

Section 158.- Other remunerations of members of Congress and senators.

1.- Under no circumstance may members of Congress or senators receive more than one salary out of budgetary appropriations for constitutional bodies or of Public Administration in general, quasi-autonomous organizations or public entities and companies directly or indirectly controlled through a majority public-sector stake, nor may they opt for the salary of incompatible positions, except for the travelling expenses and daily allowances they may receive for their compatible activities.

2.- In particular, members of Congress and senators may not receive retirement pensions or other payments from any public and mandatory social security scheme. Provided that entitlement to said retirement pensions shall be automatically recovered from the very moment of expiry of the parliamentary mandate.

Section 159.- Professional disqualifications for Congress of Deputies and Senate (as amended by Institutional Act 8/1991, of March 13)

1.- According to Section 157 of this Act the mandate of member of Congress or senator is incompatible with performance of private activities.

2.- The following activities shall be in all cases incompatible with the parliamentary mandate:

a) Management, defence and direction of or advice to any public bodies or firms at the State, Self-governing Communities and local authorities level, in relation to matters to be decided by said bodies or firms, that directly affect the operation of a public service or have the aim of obtaining a public subsidy or guarantee. Provided that this does not apply to private activities carried out by those directly concerned in the exercise of their own acknowledged right, as well as to subsidies or guarantees whose grant results from automatic application of a general Act or statutory instrument.

b) The activity of contractor or guarantor of works, services, supplies and generally any contracts to be paid for by funds of bodies or firms the public sector at State, Self-governing Communities or local authorities level, or the holding of positions or offices involving management, representation, advice or provision of services in firms or companies that engage in such activities;

c) The holding of offices or positions that entail functions of management, representation, advice or provision of services in firms or companies with a licensing agreement or concession of a public monopoly;

d) Provision of advice services or other services individually or in partnership to bodies or firms of the public sector at State, Self-governing Communities or local authorities level;

e) Any stake above 10 (ten) per 100 acquired wholly or partly after the date of election as member of Congress of Deputies or the Senate, unless acquired by inheritance, in firms or companies contracting for works, services, supplies or any other services generally paid out of

funds of public sector entities or firms at State, Self- governing Communities or local authorities level;

f) Offices of Chairman, member of the Board of Directors, administrator, Director-General, manager or similar positions, as well as the provision of services in credit or insurance institutions or in any other companies or entities with a basically profit-making purpose and having normally recourse to savings and to credit;

g) And any other activities that are by nature incompatible with parliamentary commitment and obligations laid down in the relevant regulations.

3.- The following shall be the only exceptions to the prohibition of public and private activities referred to in Section 157 of this Act and in this present Section:

a) Mere administration of personal and familiar estate. Provided that this activity shall in no case be deemed a private one, where the parliamentarian, his spouse or any person related to him by a similar link deriving from life in common and descendants under age possess jointly or separately a stake above 10 (ten) per 100 in trade or professional concerns of any description with agreements, concessions or contracts with public sector bodies or firms at State, Self-governing Communities or local authorities level;

b) Literary, scientific, artistic or technical production and creation, as well as publications arising there from, where this does not fall within any of the situations contemplated in Section 157.2 of this Act or subsections 1 and 2 of this present Section;

c) Private activities other than those set out in subsection 2 above that may be authorized by the relevant Committee of either House on the parliamentarian's request. Such request and the ensuing authorization shall be entered in the register of private activities referred to in subsection 1 of Section 160 of this Act.

Section 160 Declaration of private activities (as amended by Institutional Act 8/1991, of March, 13).

1.- Members of Congress of Deputies and senators shall deliver in writing, pursuant to the Rules of Procedure of each House, a declaration of all activities which may constitute a cause of disqualification under this Institutional Act and of any other activities that currently bring or might bring an economic profit, as well as of their private estate, both on becoming members of either House and when losing their parliamentary *status* and whenever there is a change in their economic condition.

2.- Declarations on activities and estate shall be made separately and in accordance with the forms prescribed by the Bureaus (*Mesas*) of both Houses at a joint meeting, and shall be entered in a Register of Interests (*Registro de Intereses*) to be instituted in each House under the direct authority of the respective Speaker for the purpose of the present Section and those of the respective Rules of Procedure. The declaration of activities shall comprise:

a) Any current activities which may constitute a cause for disqualification under subsection 2 of Section 159 above;

b) Those whose practice may according to the law be compatible with parliamentary duties;

c) In general any activities that actually bring or might bring an economic reward.

The contents of the Register of Interests shall be available for public view, except as regards parliamentarians' private estate.

All procedures relating to the Register of Interests and to activities of members of the Congress of Deputies and senators, except as provided in the remaining subsections of this present Section and in subsection 2 of Section 159.3. c) thereof, shall be instituted and resolved by the Speaker of each House.

3.- Cases of presumptive incompatibility shall be determined at a plenary sitting of the House concerned, on the corresponding committee's proposal. The resolution shall state the reasons thereof and where it is about private activities, it shall be on the basis of the situations set out in Subsection 2 of Section 159. Where the resolution declares that a cause of disqualification exists, the member concerned must choose between his seat or the disqualifying position, activity, source of income or stake, and if he fails to exercise said option, he shall be deemed as having relinquished his seat.

4.- Where one of the Houses declares in the appropriate plenary sitting the reiteration or continuation by one of its members of the activities referred to in paragraph a) of subsection 2 of Section 159 or of the provision of services referred to in paragraph d) of said subsection and Section, further performance by said member of such activities or services shall be construed as resignation from his seat, which shall take effect in the manner provided for by the Rules of Procedure of the relevant House.

### **Chapter III** **Electoral system**

#### **Section 161.- Constituencies for election of members of Congress and senators.**

1.- The constituency for election of members of the Congress of Deputies and senators shall be each of the Spanish provinces<sup>46</sup>. Each of the cities of CEUTA and MELILLA shall also be a constituency.

2.- The preceding subsection does not apply for elections to Senate, to the insular provinces, where the constituencies for this purpose shall be each of the following islands or groups of islands: MALLORCA, MENORCA, IBIZA-FORMENTERA, GRAN CANARIA, FUERTEVENTURA, LANZAROTE, TENERIFE, HIERRO, GOMERA and LA PALMA.

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<sup>46</sup> Cfr. Sect. 68.2 of the Constitution for Congress and Sect. 69.2. thereof for the Senate. Let us recall that the Spanish territory is divided into 50 provinces, 47 of them are the mainland ("peninsulares"), with the Canary Islands forming two provinces and the Balearic Islands one province.

### Section 162.- Membership of the Congress of Deputies.

- 1.-The Congress consists of 350 (three-hundred fifty) members (*diputados*)<sup>47</sup>.
- 2.- Each province shall elect a minimum of two members, each of the cities of CEUTA and MELILLA being represented by one member.
- 3.- The other 248 (two-hundred and forty-eight) members shall be distributed among the provinces proportionally to their population, according to the following method:
  - a) An allotment quota shall be obtained by dividing the total population of peninsular and insular provinces into 248 (two-hundred and forty-eight);
  - b) Each province shall be allotted the number of members in round figures resulting from division of its population by said quota;
  - c) The rest shall be allotted by assigning one number of each of the provinces whose quotient, as obtained according to the foregoing paragraph, has a bigger decimal fraction.
- 4.- The Decree calling for the election shall specify the number of members to be elected in each constituency, according to this Section.

### Section 163.- Allotment of seats in Congress.

- 1.- The allotment of seats according to the results of the counting shall be effected under the following rules:
  - a) No account shall be taken of candidatures having polled less than 3 per 100 (three per cent) of the votes validly cast in the constituency;
  - b) The rest of candidatures shall be arranged in a column in descending order according to the number of votes obtained by each of them;
  - c) The number of votes polled by each list of candidates shall be successively divided by 1,2,3, etc. up to the number of seats to be filled in the constituency, which shall form a similar table to the one shown below, and the seats shall be allotted to the candidates or list with the biggest quotients in the table, by descending order.

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<sup>47</sup> Section 68.1 of the Constitution says: "1.-Congress shall consist of a minimum of three hundred and a maximum of four hundred members,....".

<sup>46</sup> Cfr. Sect. 68.2 of the Constitution for Congress and Sect. 69.2. thereof for the Senate. Let us recall that the Spanish territory is divided into 50 provinces, 47 of them are the mainland ("*peninsulares*") , with the Canary Islands forming two provinces and the Balearic Islands one province.

<sup>47</sup> Section 68.1 of the Constitution says: "1.-Congress shall consist of a minimum of three hundred and a maximum of four hundred members,....".

Example: 480,000 (four-hundred eighty-thousand) votes validly cast in a constituency where 8 (eight) members are to be elected. Said aggregate number shared by six lists:

A (168,000 votes) B (104,000 votes) C(72,000 votes) D (64,000 votes) E (40,000) F (32,000 votes).

División 1 2 3 4 5 6 7 8

A	168,000	84,000	56,000	42,000	33,600	28,000	24,000	21,000
B	104,000	52,000	34,666	26,000	20,800	17,333	14,857	13,000
C	72,000	36,000	24,000	18,000	14,400	12,000	10,285	9,000
D	64,000	32,000	21,333	16,000	12,800	10,666	9,142	8,000
E	40,000	20,000	13,333	10,000	8,000	6,666	5,714	5,000
F	32,000	16,000	10,666	8,600	6,400	5,333	4,451	4,000

List A consequently obtains 4 (four) seats, list B 2(two) seats and lists and lists C and D 1 (one) seat each<sup>48</sup>.

d) Where different lists happen to have the same quotient in the table, the corresponding seat shall be allotted to the list having polled the largest number of votes and if two lists have the same number, the first tie shall be resolved by drawing lots and successive ones in alternate order<sup>49</sup>.

e) Seats allotted to each list shall be assigned to the candidates contained therein by the order in which they are entered.

2.- In each of the constituencies of CEUTA and MELILLA the seat shall be allotted to the candidate who has polled the largest number of votes.

#### Section 164.- Replacement of members of the Congress.

1.- In the event of death, incapacity or resignation of a member of the Congress of Deputies, his seat shall be assigned to another candidate or, as the case may be, to the substitute candidate of the same list entitled thereto according to his place in the list.

2.- Vacancies of members elected for CEUTA and MELILLA shall be filled by their respective substitute, as nominated pursuant to Section 170 of this Act.

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<sup>48</sup> This is called the D'HONDT formula, after the Belgian mathematician who invented it in 1899, its essential element being the so-called "distributing number" ("*número repartidor*" in Spanish, i.e. the quotient of the table taken as the key for the allotment of seats. This quotient is the smallest quotient in descending order down to the number of seats to be filled, the eighth in the example, i.e. 42,000 (four-thousand), after 168,000, 104,000, 84,000, 72,000, 64,000, 56,000 and 52,000. This variation of the proportional representation system is the most usual in Western European countries who use proportional representation instead of the majority system.

<sup>49</sup> That is to say, if the same two lists A and B, of which A was the winner in the lots, are to compete again for another seat (which cannot be mathematically assigned to any other list), this shall be allotted to B, and if they compete for a third time, it shall be allotted to A and so on alternatively.

Section 165.- Allotment of Senate seats by provincial constituencies.

1.- Each provincial constituency shall elect 4 (four) senators.

2.- Each insular constituency shall elect the following number of senators: GRAN CANARIA, MALLORCA and TENERIFE 3 (three) each; IBIZA-FORMENTERA, MENORCA, FUERTEVENTURA, GOMERA, HIERRO and LA PALMA, 1 (one) each.

3.- The cities of C EUTA and MELILLA shall elect 2 (two) senators each.

4.- Self-governing Communities shall also appoint one Senator and a further senator for each million inhabitants in their territory. The appointment shall be made by the respective Legislative Assembly in the manner provided for by the relevant Self-Government Statute, which shall ensure in any case an adequate proportional representation. For the purposes of said appointment the precise number of senators for each Self-governing Community shall be determined on the basis of the population census in force on the date of the last election to the Senate.

**Chapter IV**  
**Call of elections.**

Section 167.- Call of elections to Congress and Senate.

1.- Elections to the Congress of Deputies, to the Senate or to both Houses of Parliament at the same time<sup>50</sup> shall be announced by a Royal Decree (*Real Decreto*).

2.- Except in the case contemplated in Section 99, subs. 5, of the Constitution<sup>51</sup>, the relevant Royal Decree shall be issued with the countersign of the Prime Minister, on his proposal and under his sole responsibility, after deliberation in the Council of Ministers.

3.- In the event of early dissolution of the Congress of Deputies, of the Senate or of both Houses, the dissolution Decree shall also include the call of a new election to the House or Houses so dissolved.

4.- The Speaker of the Congress of Deputies shall countersign the Decree for dissolution of the Houses of Parliament and call of a new election in the case contemplated in Section 99, subs. 5, of the Constitution<sup>52</sup>.

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<sup>50</sup> Up to now (November 2007) all general elections have involved both Houses; there has never been a separate election to Congress or to Senate.

<sup>51</sup> That is to say, as regards appointment of senators by Self-governing Communities.

<sup>52</sup> Said subs. 5 of Section 99 of the Constit. says: "5.- If after two months from the first vote for investiture" (of a new prime Minister after a general election) "no candidate has obtained the confidence of Congress, the King shall dissolve Congress and call new elections following endorsement by the Speaker".

**Chapter V**  
**Election procedure.**

**1<sup>st</sup> Subdivision.- Candidates' representatives before election authorities.**

**Section 168.- Representatives of candidates in elections to Congress and Senate.**

1.- For the purpose of Section 43 of this Act each of the parties, federations and coalitions intending to take part in the election shall notify in writing to the Central Electoral Commission the appointment of a representative-general before the ninth day after the call of the election. Said notification must include the acceptance of the person so appointed.

2.- Each representative-general must appoint before the Central Electoral Commission the representatives nominated by the candidates of his party,. federation or coalition for each constituency. The appointment shall be made before the eleventh day after the call of the election.

3.- The Central Electoral Commission shall notify within two days to Provincial Electoral Commissions the name of representatives of candidates for the respective constituency.

4.- Candidates' representatives shall in any case appear before the corresponding Provincial Electoral Commission in order to state their acceptance prior to the presentation of the respective candidature.

5.- Promoters of electors' groupings shall appoint their candidates' representatives at the moment of presentation of the lists of said candidates before the Provincial Commissions.

**2<sup>nd</sup> Subdivision.- Presentation and proclamation of candidates.**

**Section 169.- Presentation of candidates for elections to Congress and Senate.**

1.- Each Provincial Electoral Commission shall be the Electoral Commission having competence for all proceedings referred to in Part I, Chapter VI,. 2<sup>nd</sup> subdivision, of this Act, in elections to the Congress of Deputies and to the Senate.

2.- Every candidature shall be presented in the form of a list of candidates.

3.- Groupings of electors shall require for presentation of their candidates the signatures of at least 1 per 100 (one per cent) of the electors entered in the electoral register for the constituency.

4.- Candidatures so presented and the lists of candidates proclaimed for all constituencies shall be published in the Official State Gazette.

Section 170.- Candidates for C EUTA and MELILLA.

The nomination papers presented for the constituencies of CEUTA and MELILLA shall include the name of a substitute candidate.

Section 171.- Candidates to Senate.

1.- Candidatures to the Senate are indivisible for voting and counting purposes but may be grouped in lists for presentation and for conduction of the election campaign.

2.-Every candidature to the Senate shall include a substitute candidate.

**3<sup>rd</sup> Subdivision.- Ballot papers and election envelopes.**

Section 172.- Ballot papers and election envelopes for elections to Congress and Senate.

1.- For the purposes of Section 70.1 of this Act Provincial Electoral Commissions are the Electoral Commissions competent for elections to the Congress of Deputies or to the Senate.

2.- Ballot papers designed for election of members of the Congress of Deputies must contain the following particulars: the initials and symbol of the party, federation, coalition of grouping electors presenting the candidates, the name and surname of candidates and substitute candidates with an indication of their order on the list and, as the case may be, the situation referred to in Section 46.7 of this Act<sup>53</sup>.

3.- Ballot papers designed for election of senators shall be printed only on one side, with the indications set out in subsection 2 above, and include the following particulars:

a) Name or initials and symbol of the entity nominating the candidate or candidates, be it a party, federation, a coalition or an electors' grouping. Below said name or initials the ballot paper must include the names of the respective candidate or candidates, these being set out in the latter case in alphabetical order according to the first letter of the first surname.

b) Name of the substitute candidate under the name of each candidate and with due typographical distinction;

c) A list shall be drawn up of each of the blocks made up of the names of the nominating entity and of its respective candidates, the order of said list being determined by drawing lots in each constituency and disregarding any alphabetical order;

d) The name of each candidate shall be preceded by a square space and voters shall cross out the square or squares corresponding to the candidate or candidates of their choice.

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<sup>53</sup> Let us recall that subs. 7 of Section 46 contemplates the possibility of a candidate standing independently from any party and also the possibility of a party standing as part of a coalition, and directs that either situation be stated together with the name of the candidates in the nomination papers.

#### **4<sup>th</sup> Subdivision.- Aggregate counting**

##### Section 173.- Aggregate counting by Provincial Electoral Commissions.

In elections to the Congress of Deputies or to the Senate Provincial Electoral Commissions shall the Electoral Commissions having competence for any general counting operations.

#### **Chapter VI** **Election expenses and subsidies**

##### Section 174.- Appointment of managers-general for elections to Congress and to Senate.

1.- Managers-general of political parties, federations and coalitions shall be appointed by the respective representatives-general in a written notification to the Central Electoral Commission to be handed in before the 11<sup>th</sup> (eleventh) day after the call of the election. Said statement shall include the appointees' acceptance.

2.- Candidates' managers shall be appointed by the respective representatives together with the nomination of said candidates in a written communication to the Provincial Electoral Commission, which shall include the appointee's explicit acceptance. Provincial Electoral Commissions shall in turn notify to the Central Electoral Commission the name of the managers so appointed in their constituency.

##### Section 175.- Subsidizing expenses in elections to Congress and to Senate.

1.- The State shall subsidize expenses arising from election activities according to the following rules:

a) 12,020 (twelve-thousand) Euros<sup>54</sup> for each seat obtained in the Congress of Deputies or in the Senate;

b) 0.45 (zero point forty-five) Euros<sup>55</sup> for each vote polled by each list of candidates to Congress, subject to at least one member thereof having obtained a seat;

c) 0.18 (zero point eighteen) Euros<sup>56</sup>.

2 (As amended by Institutional Act 8/1991, of March 13).- For elections to both Houses or to either of them, the limit of election expenses shall be the result of multiplying by 0.24 Euros<sup>57</sup> the legal number of inhabitants of the constituencies where the party, federation, coalition or electors' grouping has nominated candidates.

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<sup>54</sup> I.e. 2,000,000 (two million) *ptas.*, which is the amount still appearing in the official text.

<sup>55</sup> “ “ 75 (seventy-five) *ptas.*, “ “ “ “ “ “ “ “ “ “

<sup>56</sup> I.e. 30 (thirty) *ptas.*, “ “ “ “ “ “ “ “ “ “

<sup>57</sup> I.e. 24 (twenty-four) *ptas.*, “ “ “ “ “ “ “ “ “ “

3.- In addition to subsidies referred to in the foregoing subsections, the State shall subsidize parties, federations, coalitions or electors' groupings for election expenses resulting from direct and personal mailing to electors of ballot papers and election envelopes and of electoral propaganda and advertising according to the following rules:

a) 0.12 Euros<sup>58</sup> for elector in each constituency where candidates have been nominated for the Congress of Deputies and the Senate, subject to the candidates having obtained in the Congress or in the Senate the number of seats required to form a parliamentary group. Provided that constitution of a parliamentary group in both Houses gives no right to receive the aforesaid subsidy more than once.

b) The sum so paid is not be included within the limit laid down in subsection 2 of this Section, subject to proof of actual performance of the activity referred to in this present subsection

4.- The amounts mentioned in the preceding subsections are expressed in constant value *pesetas*, and shall be updated. In the five days following call of the election by an Order of the Ministry of Economy and Finance.

5 (*Added by Institutional Act 1/2003, of March 10*).- No subsidy shall be paid in the case contemplated by subsection 2,3 and 4 of Section 127 of this Act<sup>59</sup>.

## **Special provisions for municipal elections**

### **Chapter I**

### **Franchise**

*(Derecho de sufragio activo)*

#### **Section 176.- Right to vote at municipal elections.**

1 (*As amended by Section 1 of Institutional Act 1/1997, of May 30*).- Without prejudice to Chapter I of Part I of this Act foreign persons residing in Spain whose country allows Spanish residents to vote at similar elections by virtue of a treaty or at European Communities elections, shall be entitled to vote as electors at local councils elections. The right to vote at municipal elections also extends to persons residing in Spain who, not having acquired the Spanish nationality:

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<sup>58</sup> Pursuant to Sect. 23. 1 of Congress' Rules of Procedure, constitution of a parliamentary group in the Lower House requires a minimum of 15 (fifteen) , but a group can also be made up of members of one or more political formations who, though not having said minimum, have polled no less than 5 (five) seats and 15 per 100 (fifteen per cent) at least of the votes in the constituencies where they have nominated candidates or 5 per 100 (five per cent) of the aggregate votes in the whole national territory. As to the Senate, the minimum required is 10 (ten) (Sect. 27,subs. 1, of the Rules of Procedure).

<sup>59</sup> Section 127 deals, as may be remembered, with advance payments to certain candidates.

a) Are citizens of European Union according to paragraph 2 of subs. 21 of Section 8 of the European Community Treaty;

b) Satisfy the conditions for franchise required of Spanish nationals and have expressed their wish to exercise their right to vote in Spain.

2.- The Government shall notify to the Electoral Register Office the list of foreign States whose nationals residing in Spain are to be entered in said Register.

## **Chapter II**

### **Eligibility**

*(Derecho de sufragio pasivo)*

Section 177.- Right to be voted for at municipal elections (as amended by Sect. 2 of said Institutional Act 1/1997, of May 30).

1.- Without prejudice to Chapter II of Part I of this Act the right of eligibility extends to all residents in Spain who, though not having the Spanish nationality:

a) Are citizens of the European Union under paragraph 2 of Subs. 1 of Section 8 of the European Community Treaty or subjects of countries granting to Spanish citizens the right of eligibility at local council elections by virtue of a treaty;

b) Satisfy the conditions for eligibility laid down in this Act for Spanish citizens;

c) Have not been deprived of the right to eligibility in their country of origin.

2.- Persons falling within one of the situations contemplated in Section 6 of this Act<sup>60</sup> and direct or substitute debtors to the corresponding local authority subject to an executive procedure by a judicial decision, are not eligible to the office of Mayor or local councillor.

## **Chapter III**

### **Disqualifications**

Section 178.- Disqualifications for the office of local councillor.

1.- Causes of ineligibility referred to in the preceding section shall also be disqualifications for the office of local councillor.

2.- The following are also disqualified:

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<sup>60</sup> Let us recall that Section 6 contains the list of offices and positions disqualifying for candidacy at any election to be held by direct universal franchise.

a) Lawyers and litigators' agents in court, guiding or representing parties in judicial or administrative proceedings against the respective local authority, except in actions referred to in Section 63.1 of the Local Government Basic Act (*Ley Reguladora de las Bases de Régimen Local*).

b) Division directors, civil servants or other staff on active service of the respective local council or in entities and firms under the authority thereof;

c) Directors-general and holders of similar offices in Provincial and Local Savings Banks operating in the local authority's territory;

d) Contractors and subcontractors in contracts wholly or partly financed by the respective local authority or by entities under the authority thereof.

3.- Where a disqualification arises persons in such situation shall choose between relinquishing their seat in the council or putting an end to the situation that has given rise to said disqualification by virtue of the preceding subsection.

4. -Where the cause of disqualification is that contained in paragraph b) of subs. 2, the civil servant or employee who chooses to sit as a local councillor shall be put in the special services position or, in default thereof, in a situation contemplated in the relevant collective bargaining agreement that specifically provides for preservation of his employment position.

5 (*Added by Sect. 3 of Institutional Act 1/1997, of March 30*).- Citizens eligible under Section 177, subs. 1, of this Act shall be subject to the disqualifications referred in this section.

#### **Chapter IV** **Electoral system**

##### **Section 179.- Scale for allotment of local councillors.**

1.-Each municipality forms a constituency which shall return a number of councillors resulting from application of the following scale:

Up to 250 residents.....	5 councillors
From 251 to 1,000 residents.....	7 councillors
From 1,001 to 2,000 residents.....	9 councillors
From 2,001 to 5,000 residents.....	11 councillors
From 5,001 to 10,000 residents.....	13 councillors
From 10,001 to 20,000 residents.....	17 councillors
From 20,001 to 50,000 residents.....	21 councillors
From 50,001 to 100,000 residents.....	25 councillors

From 100,001 onwards, one further councillor for each 100,000 residents or fraction of said number, plus one more where the aggregate is an even number.

2.- The foregoing scale shall not apply where the local council, in conformity to local government legislation, operates as an open council of all residents, who shall directly elect the mayor by a majority system.

Section 180.- Assignment of seats in city councils.

Seats in city councils shall be assigned by the procedure contemplated in Section 163 of this Act, except that lists having not obtained 5 per 100 (five per cent) at least of the votes validly cast in the constituency shall not be taken into account.

Section 181.- Constituencies where no candidates have been nominated.

1 (as amended by Institutional Act 8/1991, of March 13).- Where no candidates have been nominated for a particular constituency, a by-election shall be held within six months in said constituency.

2.- Where no candidates are presented for said by-election, the procedure provided for in subs. 3 of Section 182 shall be followed.

Section 182 Replacement of councillors (as amended by Sect. 5 of Institutional Act /1991, of March 13).-

1.- In the event of death, incapacity or resignation of a councillor, his seat shall be assigned to a candidate or, as the case may be, to a substitute candidate in the same list according to order of position in said list.

2.- Where there would remain no possible candidates or substitutes to appoint if said procedure was applied, vacancies shall be filled with citizens of age who are not disqualified. Such substitutes shall be appointed by the party, federation, coalition of electors' grouping whose councillors are to be replaced and the appointment shall be notified to the respective Electoral Commission for issue of the appropriate credential. Provided that persons who, having been candidates or substitutes in the above mentioned list, have relinquished their seat, cannot be so appointed.

3.- Should the *de facto* number of members elected at the respective election fall below half of the council's legal membership, there shall be constituted a management committee made up of all remaining members of the council and citizens appointed to fill the aforesaid vacancies pursuant to the preceding subsection.

Section 183.- Dissolution of local councils (as amended by Sect. 5 of Institutional Act 1/2003, of March 10).

1.- In the event of dissolution of local councils by decision of the Council of Ministers (*Consejo de Ministros*) as contemplated in the basic local government statutes or a management deemed to be seriously detrimental to the general interest and a failure to comply with the council's constitutional duties, a by-election shall be held within three months for the formation of a new council. Provided that no such by-election shall be held if there would remain less than

one year of the council's mandate at the date on which the new council so elected should be constituted.

Until constitution of the new council or expiry of the dissolved council, ordinary business shall be the responsibility of a managing committee appointed by the Provincial Deputation<sup>61</sup> or, as the case may be, by the appropriate body of the Self-governing Community, whose membership shall not in any case exceed the legal number of members of the council. The functions of Mayor or chairman shall be discharged by the member chosen for that purpose by absolute majority among all members of the committee.

2.- Where dissolution takes place because the executive bodies of the local council have carried out some of the actions contemplated in Section 61.2 of Basic Local Government Act 7/1985, of April 2<sup>62</sup>, the Provincial Deputation or, as the case may be, the appropriate body of the Self-governing Community shall direct assume after such dissolution the ordinary management of the council until expiry of the corresponding mandate, but may not adapt decisions for which a qualified majority is required.

#### Section 184.- Councillors in municipalities between 100 and 250 inhabitants.

1.- Councillors in municipalities with a population between 100 (one hundred) and 250 (two-hundred fifty) inhabitants shall be elected by the following procedure:

- a) Each party, federation, coalition or grouping may present one list with five names as a maximum;
- b) Each elector may vote for a maximum 4 (four) among the candidates proclaimed for the municipality;
- c) There shall be proceeded to the counting of votes obtained by each candidate in the constituency and the resulting numbers shall be arranged in descending order in a column;
- d) Candidates having obtained the largest number of votes shall be proclaimed until the maximum number of five councillors has been reached.
- e) Ties shall be resolved by drawing lots.
- f) In the event of death, incapacity or resignation of a councillor the vacancy shall be allotted to the candidate who has polled the next largest number of votes.

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<sup>61</sup> Provincial Deputations are the directly elected assemblies of the 50 Spanish provinces. *Vide infra* Part V of this Act, Sects. 202-209).

<sup>62</sup> Subs. 2 of said Sect. 61 of the Local Government Act describes as seriously detrimental to the general interest" any decisions or acts "giving explicit or tacit cover or support, in a reiterated and grave manner, to terrorism or to those who take part in the execution of terrorist actions, praise or justify terrorism or scorn or humiliate victims thereof or their relatives".

## **Chapter V** **Call of election**

### **Section 185.- Call of municipal election.**

The Decree calling for the election shall be adopted in the Council of Ministers on a proposal by the Home Office (*Ministro del Interior*) and the Ministry of Territorial Administration.

## **Chapter VI** **Election procedure**

### **1<sup>st</sup> Subdivision.- Representatives.**

#### **Section 186.- Representatives of municipal candidates.**

1.- For the purposes of Section 43, political parties, federations and coalitions intending to take part at the election shall nominate in a communication to Provincial Electoral Commissions, before the ninth day after the call of the election, a representative-general to act on their behalf and representation in each province, and they shall nominate as well within the same time limit a representative-general before the Central Electoral Commission. Said communications shall contain a statement of acceptance by the person so appointed.

2.- Representatives-general shall appoint in a communication to each Provincial Electoral Commission before the eleventh day after the call of the election the candidates' representatives of the party, federation or coalition in each municipality.

3.- Within two days the Provincial Electoral Commissions shall communicate to the respective Judiciary District Electoral Commissions the names of the representatives of candidates nominated for their area of jurisdiction.

4.- Candidates' representatives shall in any case appear before the appropriate Judicial District Electoral Commission to make their acceptance known before presentation of the respective candidates.

5.- Promoters of electors' groupings shall appoint their candidates' representatives at the moment of nomination of said candidates before Judiciary District Electoral Commissions. Such appointment must be accepted forthwith.

### **2<sup>nd</sup> Subdivision.- Nomination and proclamation of candidates**

#### **Section 187.- Presentation of candidatures to municipal elections.**

1.- Judiciary District Electoral Commissions shall have competence in local council elections for all operations contemplated in Part I, Chapter VI, 2<sup>nd</sup> Subdivision of this Act, relating to presentation and proclamation of candidates.

2 (As amended by 2<sup>nd</sup> Addit. Prov. of Institutional Act 3/2007, of May 22).- Candidatures shall be presented in the form of a list of candidates.

Section 44 *bis* of this Act shall not apply to candidatures presented for municipalities with 3,000 (three thousand) inhabitants or below this figure<sup>63</sup>.

3.- Presentation of candidates by groupings of electors shall require a number of firms of persons entered in the municipality's electoral register, duly authenticated by a notary or by the Secretary of the respective local council, such number being determined by the following scale:

a) In localities with less than 5,000 (five thousand) inhabitants no less than 1 per 100 (one per cent) of the persons so registered, subject to the number of signatures being more than twice the number of councillors to elect;

b) In those between 5,001 (five-thousand one) and 10,000 (ten thousand) inhabitants, at least 100 (one hundred) signatures;

c) In those between 10,001 (ten-thousand one) and 50,000 (fifty thousand) inhabitants, at least 500 (one-thousand five hundred) signatures;

d) In those between 50,001 (fifty-thousand one) and 150,000 (one-hundred fifty thousand) inhabitants, 1,500 (one-thousand five hundred) at least;

e) In those between 150,001 (one-hundred thousand one) and 300,000 (three-hundred thousand) inhabitants, 5,000 (five-thousand) signatures at least, and

f) In all other cases 8,000 (eight thousand) signatures at least.

4.- Candidatures so presented as well as those proclaimed, shall be published in the Official Provincial Gazette.

Section 187 bis.- Additional statement to candidature (added by Sect. 4 of Institutional Act 1/1997, of May 30).

1.- Citizens eligible under Section 177.1 of this Act shall at the moment of presentation of candidates hand in, besides the documents required to prove that they satisfy all conditions required by Spanish law, a formal declaration with the following contents:

a) Nationality and dwelling place in Spain;

b) Declarant's statement that he is not deprived of the right to eligibility in the member State of origin;

c) As the case may be, last domicile in the member State of origin.

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<sup>63</sup> In other words, candidatures presented in small localities are exempt from the obligation laid down in said Sect. 44.

2.- Where the corresponding Electoral Commission so directs, a candidate may be required to produce a certificate of the administrative authority of the member State of origin to the effect that he is not deprived of the right of eligibility in said member State.

3.- Once the proclamation of candidates has taken place, the Central Electoral Commission shall communicate to the other States through the appropriate Ministry the relevant data relating to their respective nationals accepted as candidates.

### **3<sup>rd</sup> Subdivision.- Use of mass-communication media**

#### **Section 188.- Municipal electoral propaganda. Mass-communication media.**

The right to free-of- charge broadcasting spaces in public-owned media provided for in Section 645 of this Act belongs in the case of municipal elections to parties, federations or coalitions presenting candidates in localities making up at least 50 per 100 (fifty per cent) of the legal population of the constituencies comprised in the geographical area of circulation or, as the case may be, in the broadcasting coverage of said media.

### **4<sup>th</sup> Subdivision.- Ballot papers and election envelopes.**

#### **Section 189.- Ballot papers and election envelopes in municipal elections.**

1.- For the purposes of Section 70.1 of this Act Judicial District Electoral Commissions shall be the Electoral Commissions with competence in municipal elections.

2.- Ballot papers for the election of local councillors shall contain the data set out in Section 172.2 of this Act.

### **5<sup>th</sup> Subdivision.- Postal voting by residents abroad in municipal elections.**

#### **Section 190.- Postal vote of residents abroad in municipal elections.**

1.- Absent Spanish residents living abroad and wishing to exercise their right to vote at elections in the municipality where they are registered according to the Electoral register, shall notify the corresponding Provincial Division of the Electoral Register's Office not later than the 20<sup>th</sup> (twentieth) day after the call of the election. The communication shall be made in writing and must include a photocopy of the applicant's National Identity Card (*Documento Nacional de Identidad*) or passport.

2.- On receipt of said notification the Provincial Division shall send to the applicant an identical certificate to the one contemplated in Section 72 of this Act, a blank ballot paper, the form of which shall be determined by statutory instrument, a copy of the page or pages of the Official Provincial Gazette where the candidatures proclaimed in said municipality have been

published, the election envelope, as well as an envelope with the address of the corresponding Electoral Commission and an explanatory note appended to it.

3.- Said certificate must be sent by registered mail and not later than the 32 (thirty-second) day from the call of the election.

4.- Electors shall write on the ballot paper the name of the party, federation, coalition or electors' grouping for whose candidates he intends to vote and send the ballot papers pursuant to Section 73, subsection 3, of this Act. The Post Office shall act in this case according to subs. 4 of said Section.

### **6<sup>th</sup> Subdivision.- Aggregate counting.**

#### **Section 191.- Aggregate counting by Judicial District Electoral Commissions.**

1.- Judicial District Electoral Commissions shall have competence for all aggregate counting operations in elections of local councillors.

2.- Aggregate counting is to be carried out by alphabetical order of the district municipalities.

### **Chapter VII** **Election expenses and subsidies**

#### **Section 192.- Appointment of managers-general at municipal elections.**

1.- The appointment of managers-general of political parties, federations and coalitions before the Central Electoral Commission shall be effected as provided in Section 174.

2.- Managers of the lists of candidates of political parties, federations and coalitions shall be appointed by written notification of the respective manager-general to each Provincial Electoral Commission, between the fifteenth and twentieth day after the call of the election, and said appointments shall be notified by every Provincial Electoral Commission to the Central Electoral Commission.

3.- Promoters of electors' groupings shall notify in writing the appointment of the managers of their lists of candidates to the respective Provincial Electoral Commission within two days following the presentation of said lists.

#### **Section 193.- Subsidies for expenses at municipal elections.**

1.- The State shall subsidize expenses incurred in election activities according to the following rules:

- a) 150 (one-hundred fifty) Euros<sup>64</sup> for every local councillor elected;
- b) 0.30 (zero point thirty) Euros<sup>65</sup> for each vote obtained by lists of candidates one of whose members at least has been proclaimed councillor.

2 (As amended by Sect. 3 of Institutional Act 13/1994, of March 30).- The limit of expenses at municipal elections shall be obtained by multiplying by 0.09 (zero point zero nine) Euros<sup>66</sup> the number of inhabitants of the constituencies where each party, federation, coalition or grouping of electors has presented candidates. Those taking part in elections of at least 50 per 100 (fifty per cent) of local councils, may spend an extra 96.162 (ninety-six thousand one-hundred sixty-two) Euros<sup>67</sup>.

3.- In addition to subsidies referred to in the preceding subsections, the State shall subsidize parties, federations, coalitions and electors' groupings for election expenses arising from direct and personalized mailing of election envelopes and ballot papers or of election propaganda and advertisements, according to the following rules:

a) In each of the constituencies where they have obtained representation in local councils, there shall be paid 0.12 (zero point twelve) Euros<sup>68</sup> per elector to political formations having presented candidates in 50 per 100 (fifty per cent) of municipalities with more than 10,000 (ten thousand) inhabitants of the relevant province and having won representation in at least 50 per 100 (fifty per cent) of said municipalities;

b) The sum referred to above shall not be included within the limit set out in subsection 2 of this Section, where sufficient evidence has been produced of performance of the activity referred to in this present subsection.

4.- The amounts referred to in the preceding subsections are to be construed as being expressed in constant value<sup>69</sup>. Actual amounts payable shall be fixed by an Order of the Ministry and Economy and Finance within five days from the call of the election.

5 (Added by Sect. 5 of Institutional Act 1/2003, of March 10).- No subsidy shall be paid in the cases contemplated in subsections 2, 3 and 4 of Section 127 of this Act.

## **Chapter VIII**

### **Mandate and constitution of Local Councils**

Section 194. –Term of mandate of local councillors.

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<sup>64</sup> 25,000 (twenty-five thousand) *pesetas* in the Spanish original text.

<sup>65</sup> 50 (fifty) *ptas.* in the Spanish text.

<sup>66</sup> 15 (fifteen) *pta.* “ “ “ “ .

<sup>67</sup> 16,000,000 (sixteen million) *ptas.* Before said Institutional Act 13/1994 the limit was 20,000,000 (twenty million) *ptas.*

<sup>68</sup> 20 (twenty) *ptas.* in the Spanish text.

<sup>69</sup> The Spanish text says “constant value in pesetas”, but now this is of course to be construed in terms of Euros.

1 (As amended by Institutional Act 8/1991, of March 13).- Local councillors' term of mandate shall be 4 (four) years as from the date of election, according to Section 42, subsection 3, of this Institutional Act.

2.- On expiry of their mandate local councillors shall remain in office strictly for dispatching day-to-day business until their successors enter their functions. Under no circumstances shall members of the extinguished council adopt decisions for which a qualified majority is legally required.

#### Section 195.- Constitution of Local Councils.

1.- Local Councils are constituted at a public sitting on the twentieth day following the polling date, unless an electoral petition has been filed against proclamation of elected councillors, in which case they shall be constituted on the fortieth day following said date.

2.- To this end a provisional Bureau shall be set up, consisting of the oldest and the youngest councillors present at the sitting, with the Council's Secretary acting as clerk to the bureau.

3.- The Bureau shall check the credentials or identity accreditations of persons elected against the certificates received by the council from the Judiciary District Electoral Commission.

4.- At the end of the operation referred to above, the Bureau shall declare the council duly constituted, provided the absolute majority of councillors is present at the sitting. Failing this a new sitting shall be convened for two days later, at which the council shall be deemed to be constituted whatever the number of councillors present.

### **Chapter IX** **Election of Mayors**

#### Section 196. -Election of the Mayor.

The Mayor shall be elected at the same sitting in which the council has been constituted, according to the following procedure:

- a) All councillors having held the first place in their list may be candidates;
- b) Where one of them obtains the absolute majority of the councillors' vote, he shall be declared elected;
- c) If no candidate secures the absolute majority, the councillors in first position of their list and having polled the largest number of votes in the council's area shall be elected. In the event of a tie the issue shall be decided by lot.

In councils with a number of inhabitants ranging from 100 (one hundred) to 250 (two-hundred fifty) all councillors may be candidates. If one of them obtains the absolute majority of

councillors' votes, he shall be declared elected; where none of them obtains an absolute majority, the councillor having polled the most votes from the electors shall be declared elected.

Section 197.- Motion of censure against Mayors (as amended by Institutional Act 8/1999, of April 21).

1.- Mayor may be deposed by means of a censure motion, which shall be tabled, discussed and voted upon according to the following rules:

a) Such motion shall be tabled by at least the absolute majority of the council's members and must name an alternative candidate to the office of Mayor, who can be one of the councillors<sup>70</sup>. The motion shall in any case contain a statement of explicit acceptance by the candidate so proposed;

b) The motion shall contain the firms of its proponents, duly authenticated by a public notary or by the Secretary-General of the council and must be tabled before him by any of its signatories. The Secretary-General must check that the motion satisfies the conditions laid down in this present Section and shall thereupon issue the appropriate certificate;

c) On the tabling of the motion so certified with the Council's General Register by one of the signatories, a full meeting of the Council is thereby automatically convened to be held at noon on the tenth day after the date of entry in the Register. The Secretary of the Council shall forward a certification thereof to all councillors within one day at the latest from the lodging of the motion, with an indication of the day and the time of the sitting, so that members of the council may duly attend;

d) The plenary meeting shall be chaired by a provisional Bureau consisting of the oldest and the youngest councillors, excluding the mayor and the alternative candidate, with the Council's Secretary acting as Clerk, on accreditation of his official position;

e) The Chair shall confine itself to reading out the censure motion and giving briefly the floor, if they are attending the sitting, to the alternative candidate, the Mayor and the spokesmen of the council's political groups, and finally to putting the motion to the vote;

f) The alternative candidate shall be proclaimed as Mayor elect where the censure motion is adopted by an absolute majority of the legal number of councillors.

2.- No councillor may sign during his mandate more than one censure motion. Provided that motions not proceeded with for failure to satisfy the requirements set out in paragraph b) of subsection of this present section shall not be taken into account..

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<sup>70</sup> A provision clearly inspired by Section 13 of the Constitution, according to which the Congress of Deputies (only the Congress, not the Senate) may challenge Government policy by a motion of censure tabled by the majority of its members, provided (subs. 23) such motion includes a candidate to the office of Prime Minister. This provision is in turn an imitation, namely of the Federal German Republic's Fundamental Act (*Grundgesetz*) of 1949, which has laid down for the first time in constitutional law this requirement of an alternative candidate for a motion of censure to be tabled and discussed (a formula that has been termed in Germany "constructive non-confidence vote", *konstruktives Misstrauensvotum*).

3.- The Mayor's resignation after the tabling of the censure motion shall not suspend the proceedings and vote upon said motion.

4.- In municipalities governing themselves by the open council (*concejo abierto*) system, censure motions shall be transacted according to the provisions of the two last subsections, albeit with the following provisos:

a) References to councillors for the purpose of signature, presentation and vote of the motion, as well as the constitution of the provisional Bureau, shall be construed to be references to electors entered in the local electoral register, as in force on the day of tabling of the motion;

b) Any elector legally eligible and residing in the municipality may be a candidate;

c) References to the full meeting shall be construed as referring to the general residents' meeting. (*Asamblea vecinal*);

d) Notification by the Secretary to councillors of the day and time of full meeting shall be replaced by an announcement of the open general meeting to local residents, such announcement being made in the same manner as normally used for convening said general meetings;

e) The provisional Bureau shall give the floor only to the alternative candidate and to the Mayor.

5.- The Mayor, in the discharge of his functions, must prevent any act disturbing, hindering or impeding councillors' right to attend the plenary sitting for the vote on the censure motion and to vote at such meeting. In particular causes for abstention from being a candidate and rejection of candidates contemplated in the administrative procedure legislation shall not apply to the censure motion.

6.- Changes in the office of Mayor resulting from a censure motion in municipalities ruled by open council system, shall not entail any change in membership of the respective Provincial Deputation.

Section 197 bis.- Request by Mayor of a vote of confidence (*added by said Institutional Act 8/1999, of April 21*)

1.- Mayors may put to the full Council meeting a question of confidence relating to one of the following subjects:

a) The annual Budget;

b) The Council's organizational rules (*reglamento orgánico*);

c) Tax regulations;

d) Final decisions after the dispatching of general planning measures affecting the local authority.

2.- The raising of confidence question as conditional on the decision to be taken on one of the subjects referred to in the foreign subsection shall be expressly included in the appropriate item of the full meeting's agenda, and each of such decisions shall require the voting *quorum* specifically prescribed by Act 7/1985, of April 2, of Basic Local Government<sup>71</sup>. The vote shall be taken in any case by public roll-call.

3.- The request for a confidence question may also be made after the relevant decision has been debated in the full sitting but has not obtained an absolute majority for its adoption.

4.- Where the question of confidence does not obtain the necessary number of votes for the decision to be adopted, the Mayor shall automatically cease to hold office, but shall continue to discharge his functions until his successor takes up the position. The new Mayor's election is to take place at a full sitting automatically convened for the tenth day at noon after the vote on the decision on which the question of confidence was made conditional and is to be conducted under the rules set out in Section 196, albeit with the following particularities:

a) In localities with more than 250 (two-hundred fifty) inhabitants the outgoing Mayor shall be excluded from the first place of the list for the election and his place shall be taken by the second name on said list, both for submission of candidates and for automatic appointment as Mayor, where said second name belongs to the list having polled the most votes and no candidate has obtained an absolute majority of the legal number of councillors.

b) In localities between 100 (one hundred) and 250 (two-hundred and fifty) inhabitants the outgoing Mayor may not stand as candidate nor be proclaimed Mayor in case no candidate has obtained an absolute majority of the legal number of councillors. Where no candidate wins said majority, the candidate having polled most electors' voters at the council election, excluding the outgoing Mayor, shall be proclaimed.

5.- The preceding subsection shall not apply where the question of confidence is made conditional on the adoption or the modification of the annual Budget. In this case confidence shall be deemed to be granted and the appropriations bill adopted if no motion of censure with an alternative candidate to office of mayor is tabled within one month from the denial of confidence or if said motion is defeated.

The limit laid down in subsection 2 of the preceding section does not apply for this purpose.

6.- No Mayor may request more than one vote of confidence in one year from commencement of his mandate nor more than two during his whole mandate and no question of confidence shall be raised in the last year of the council's mandate.

7.- No request for a vote of confidence may be made from the tabling of a censure motion until the vote on it

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<sup>71</sup> According to subs. 1 of Sect. 47 of said Basic Local Regulation Act, a single majority of councillors present at the sitting is required for adoption of any decision, except for a number of questions extensively listed in subs. 2 of same Section, for which a two-third majority of the legal number of councillors is necessary, and others for which, under subs. 3, absolute majority of such number is required

8.- Councillors having voted favourably on a matter on which a question of confidence has been made conditional may not sign in the six following months a censure motion against the Mayor who has submitted it .

During this period said councillors may not vote against the point on which the question of confidence was made conditional where such point is put to the vote on the same terms as on the preceding occasion. If they nevertheless vote against, their vote shall be null and void.

Section 198.- Vacancy of the position of Mayor (as amended by Institutional Act 8/1999, of April 21).-

In cases other than those contemplated in Sections 197 and 197 *bis* of this Act the vacancy of the Mayor's office shall be dealt with as provided in Section 196, provided that for this purpose the list to which the former Mayor belonged shall be headed by the second name on it, unless this latter person resigns his candidacy.

Section 199.- Election system in local entities below municipal level.

1.- The election system for bodies of local districts with a jurisdiction area below that of a local council shall be laid down by the law of the Self-governing Community responsible for their creation or recognition. Said law must comply in any case with the Basic Local Government Regulation Act, failing which the following provisions of this Section shall apply.

2.- District Mayors (*Alcaldes pedáneos*) shall be directly elected by district residents, through a majority system, among candidates nominated by the different parties, federations, coalitions or electors' groupings.

3.- The Residents' Boards (*Juntas Vecinales*) of minor local districts shall consist of the local mayor, who shall act as chairman, and 2 (two) further members in communities below 250 (two-hundred and fifty) residents and 4 (four) members in those with more residents, unless the number of said members exceeds one third of the respective local council membership, in which case they shall only be 2 (two).

4.- The appointment of said members shall be made in accordance with the results of the local council election in the ward or wards corresponding to the minor district.

5.- The number of members for each party, federation, coalition or electors' groupings shall be allotted by the District Electoral Commission according to the procedure laid down in Section 163 of this Act.

6.- On completion of the foregoing operation the representative of each list of candidates shall appoint among district electors those who are to be members of the aforesaid Residents' Board.

7.- If no Residents' Board is to be set up under local government law because the open council system has been adopted for said minor district, there shall be elected in any case a District Mayor in the manner provided for in subsection 2 above.

Section 200.- Mayors of open-council municipalities.

Provincial Electoral Commissions shall adopt all necessary resolutions for compliance with subsection 2 of Section 179 of this Act, to ensure election of a Mayor in communities with an open-council system.

**PART IV**

**SPECIAL PROVISIONS FOR ELECTION OF INSULAR COUNCILS IN THE CANARY ISLANDS**

Section 201.- Election of Insular Councils (*Cabildos Insulares*) in the Canary Islands.

1.-Each island<sup>72</sup> elects by universal, direct and secret suffrage in a ballot box other than the one reserved to local council elections, as many insular councillors (*Consejeros Insulares*) as set out below:

Insular Councillors

Up <sup>73</sup> to 10,000 (ten thousand) residents .....	11 (eleven)
From 10,001 to 20,000 (twenty thousand) residents .....	13 (thirteen)
From 20,001 to 50,000 (fifty thousand) .....	17 (seventeen)
From 50,001 to 100,000 (one-hundred thousand).....	21 (twenty-one)

From 100,001 onwards 1 (one) further councillor for each 100,000 (one-hundred thousand) residents or fraction thereof, plus one where the result would be an even number.

2.- Insular Councillors’ mandate shall be four years from the polling day, as provided by Section 42, subsection 3, of this Institutional Act.

3.- The election of Insular Councillors shall take place by the procedure prescribed for the election of local councillors, each island being a constituency.

Section 44 *bis* of this Act shall not apply to lists of candidates in islands with a number of residents equal to or below 5,000 (five-thousand) inhabitants<sup>73</sup>

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<sup>72</sup> There are seven of them (disregarding six small islands, all of them practically uninhabited and devoid of any administrative entity), i.e.(from east to west): LANZAROTE, FUERTEVENTURA, GRAN CANARIA, TENERIFE, GOMERA, LA PALMA and HIERRO, the three named first constituting the province of LAS PALMAS de GRAN CANARIA and the remaining four the province of SANTA CRUZ de TENERIFE.

<sup>73</sup> That is to say, candidatures in communities below 5,000 inhabitants are expected from the obligation to keep the balanced proportion between genders provided for in said Section 44 *bis*.

4.- Insular Councils shall be constituted at a public sitting within thirty days after polling day, with a provisional Bureau consisting of the oldest and the youngest elected councillors, as provided by Section 195 for local councils.

5.- Each Insular Council shall be presided by the first candidate of the list that has polled the most votes in the insular constituency.

6 (*as amended by said Institutional Act/1991, of March 13*).- Presentation of candidates, voting system and allotment of seats shall be in accordance with the procedure prescribed for local council elections.

7 (*as amended by Institutional Act 8/1999, of April 21*).- The Insular Council's President may be deposed by a censure motion according to the procedure of Section 197. Any of the insular councillors who have been heads of the electoral list of a party, federation, coalition or electors' grouping in the constituency may be a candidate to the office of President.

The President of the Insular Council may further cease to hold office if he fails to win a question of confidence raised before the full Council by the procedure of Section 197 *bis*, where said motion is made conditional on any of the following matters:

- a) The annual Budget;
- b) The Insular Council's Organizational Statute;
- c) The insular plan for cooperation with municipal works and services;
- d) Adoption of the final proceedings on the insular town and country planning schemes contemplated in town and country planning legislation.

Defeat of the request for a vote of confidence shall entail election of a new President by the system provided for in Section 197 *bis* for Mayors of localities with more than 250 (two-hundred fifty) inhabitants.

8 (*Former 7*) Insular Councils elections shall also be subject to Sections 202 and 203 of this Act on eligibility and disqualifications.

9 (*Added by Institutional Act 8/1991, of March 13*).- The State shall subsidize the election expenses incurred in Insular Councils elections according to the following rules:

- a) 901,5 (nine-hundred one point five) Euros<sup>74</sup> for each insular councillor elected;
- b) 0.36 (zero point thirty-six) Euros<sup>75</sup> for each vote polled by every list of candidates of which one at least has been elected insular councillor

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<sup>74</sup> 150,000 (one-hundred fifty-thousand) *ptas.* in the original Spanish text.

<sup>75</sup> 60 (sixty) *ptas.* in the Spanish official text.

10 (*Added by said Institutional Act 8/1991, of March 13*).- The limit on expenses incurred in Insular Councils elections shall be the result of multiplying by 0.09 (zero point zero nine) Euros<sup>75</sup> the number of inhabitants of each island where the party, federation, coalition or electors' grouping has presented lists of candidates.

11 (*Added by Sec. 5 of Institutional Act 1/2003, of March 10*).- Election subsidies under present Section shall be subject to the limits laid down in subs. 2,3 and 4 of Section 127 of this Act.

## **PART V**

### **SPECIAL PROVISIONS FOR ELECTION TO PROVINCIAL DEPUTATIONS**

#### **Chapter I** **Eligibility**

Section 202.- Right to be a candidate at elections to Provincial Deputations.

In addition to persons falling within one of the cases set out in Section 6 of this Act ineligibility also applies to direct or surrogate debtors of the relevant local authority against whom an execution order has been issued by a judicial decision.

#### **Chapter II** **Disqualifications**

Section 203.- Disqualifications for elections to Provincial Deputations.

1.- Causes for ineligibility referred to in the foregoing Section shall also be disqualifications for membership of Provincial Deputations.

The following persons shall also be disqualified:

a) Lawyers and litigators' judicial agents in guidance or representation of parties in court or in administrative proceedings against the relevant authority, except in actions referred to in Section 63.1 of the Basic Local Government Act<sup>76</sup>;

b) Divisional directors, civil servants or other staff in active service of the relevant Provincial Deputation or of dependent entities and firms;

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<sup>75</sup> 15 (fifteen) *ptas* “ “ “ “ ..

<sup>76</sup> Said subs. 1 of Section 63 of Basic Local Government explicitly entitles the following persons (or rather categories of persons) to petition the courts against alleged illegal decisions of local authorities: a) the State and Self-governing Communities; b) members of said authorities who have voted against the decision.

c) Directors-General or similar officers of Provincial or Local Savings Banks (*Cajas de Ahorros Provinciales y Locales*) operating in the same province;

d) Contractors or subcontractors in respect of public contracts wholly or partly financed by the Deputation or by dependent entities.

2.- Should a disqualifying situation arise, persons affected must choose between resigning from their seat in the Provincial Deputation or relinquishing the position giving rise to disqualification under the provisions of the preceding subsection.

3.- Where disqualification arises from the cause described in paragraph b) of subsection 1, the civil servant or public employee opting for his seat in the Provincial Deputation shall be placed in the situation of special commission or, failing this, in the situation contemplated in the relevant collective bargaining agreement. The civil servant or employee shall in any case be entitled to preservation of his employment position.

### **Chapter III** **Electoral procedure**

#### **Section 204.- Scale for allotment of seats to Provincial Deputations.**

1.- The number of members of each Provincial Deputation shall be determined, depending on the number of the province residents, by the following scale:

Members:

Up to 500,000 (five-hundred thousand) residents.....	25 (twenty-five)
Between 500,001 and 1,000,000 (one million) .....	27 (twenty-seven)
Between 1,000,001 and 3,500,000 (three-and a-half million) .....	31 (thirty-one)
From 3,500,000 residents. ....	51 (fifty-one)

2.- Provincial Electoral Commissions shall allot in proportion to the number of residents the seats corresponding to each judiciary district (*partido judicial*) on the 10<sup>th</sup> (tenth) day after the call of the election, according to the following rules:

a) Every judicial district shall be assigned at least one member;

b) No district is to have more than 3/5 (three-fifths) of the total number of provincial representatives;

c) Fractions equal to or more than 0.50 (zero point zero) resulting from such proportional allotment shall be rounded up to the next higher unity and those below said 0,50 down to the next lower unity;

d) Where the result of the operations described above is a higher number than the legal aggregate of provincial representatives, there shall be deducted as many seats as necessary from the districts with the least number of residents for each representative. Where on the contrary the

resulting number is lower than said legal aggregate, there shall be added as many seats as necessary to the districts with the highest number of residents per representative.

3.- For the purposes of this Chapter judiciary districts shall be those determined for the 1979 local elections.

#### Section 205.- Assignment of seats in Provincial Deputations.

1.- After constitution of all local councils in the whole province the relevant Judiciary District Electoral Commission shall immediately draw up a list of all political parties, coalitions, federations and each grouping of electors having obtained at least one local councillor in each judiciary district, said list being arranged in descending order of the aggregate votes polled by each of them.

2.- For the purposes of the preceding subsection in localities with less than 250 (two-hundred and fifty) referred to in Section 148 of this Act the number of seats to be taken into account for each candidature shall be obtained by multiplying the aggregate votes polled by each of its members by the number of candidates making up the list up to a maximum of 4 (four). Resulting fractions shall be rounded down to the next lower unity.

3.- On completion of the aforesaid operation the Judiciary District Electoral Commission shall assign the corresponding seats to parties, federations, coalitions and every electors' grouping in each district by the procedure provided in Section 163, according to the aggregate votes polled by each political formation or grouping of electors.

4.- Where by virtue of the preceding subsection two or more parties, coalitions, federations or electors' groupings should have the same quotient, the vacancy shall be allotted to the formation having polled most voter and in the event of a tie, to the one with a greater number of local councillors in the district and failing this, by drawing lots.

#### Section 206.- Proclamation of elected members and alternate members .

1.- Upon assignment of seats pursuant to the foregoing sections, the relevant electoral Commission shall convene separately within five days the local councillors of political parties, coalitions, federations and electors' groupings having obtained seats, so that that they may elect from lists supported at least by one-third of the respective councillors those who are to be proclaimed members, plus 3 (three) alternates to cover by order of such designation any future vacancies.

2.- Once said election has been carried out, the Judiciary District Electoral Commission shall proclaim the corresponding members and alternates and issue to the Provincial Electoral Commission and to the Provincial Deputation a certification of members so elected in the district.

#### Section 207.- President of the Provincial Deputation.

1.- Provincial Deputations shall meet in a constituent sitting chaired by a provisional Bureau consisting of the oldest and the youngest member present, with the Secretary of the Deputation acting as clerk.

2.- A candidate must obtain absolute majority of votes in the first round and single majority in the following rounds to be elected President.

3.- The President may be deposed by a censure motion that shall be transacted as provided for in Section 197. Every member of the Provincial Deputation may stand as candidate.

4 (*Added by Institutional Act 8/1999, of April 21*).- The President of the Provincial Deputation shall further cease to hold office in the event of defeat of a motion of confidence raised by him in a plenary sitting, according to the procedure of Section 197 of this Act, where such motion has been made conditional on any of the following matters:

- a) The annual Budget
- b) The Provincial Deputation's organizational Regulations;
- c) The provincial plan for contribution to works and services within municipal jurisdiction.

Defeat of the motion of confidence shall entail the election of a new President by the procedure laid down in Section 197 *bis* of this Act for Mayors of municipalities with more than 250 inhabitants.

#### Section 208.- Replacement of members of Provincial Deputations.

1.- In the event of decease, incapacity, resignation –or loss of the local councillor mandate- of a provincial councillor, the vacancy shall be filled by one of the alternate members elected in the respective judiciary district, according to the order agreed between them for replacement.

2.- Where a vacancy cannot be filled because the three alternates elected in the relevant judiciary district have already filled previous vacancies, a new election of members for that district shall be held, according to the procedure laid down in Section 206 of this Act.

#### Section 209.- Respect for self-government and traditional chart regimes.

Nothing in this present Chapter shall prejudice special self-government and traditional chart regimes.

## **PART VI**

### **SPECIAL PROVISIONS FOR ELECTIONS TO EUROPEAN PARLIAMENT**

*(Added except for Sects. 210 bis and 220 bis, by Institutional Act 1/1987, of April 2).*

#### **Chapter I** **Franchise**

*(title modified by Sect. 8 of Institutional Act 13/1994, of March 30).*

Section 210 *(as amended by said Sect 8 of Institutional Act 13/1994, of March 30)*.- Franchise for election to European Parliament.

1.- Without prejudice to the provisions of Chapter I of Part I of this Act all persons residing in Spain but not having acquired the Spanish nationality, shall be entitled to vote at elections to the European Parliament, provided:

a) They are citizens of the European Union according to the 2<sup>nd</sup> paragraph of subs. 1 of Section 8 of the European Union Treaty<sup>77</sup> ;

b) They satisfy the conditions for registration as a voter laid down by this present Act for Spanish citizens and they also have the right to vote in the respective member State of origin.

2.- Nobody may vote more than once at the same election.

3.- Citizens of the European Union who are not Spanish citizens and wish to exercise their right to vote in Spain must have previously made the necessary option.

#### **Chapter II** **Eligibility**

Section 210 bis *(added by Sect. 9 of Institutional Act 13/1994, of March 30)* .- Right to be elected at elections to European Parliament.

1.- Without prejudice to the provisions of Chapter I of Part I of this Act, the following persons residing in Spain and not having acquired the Spanish nationality, shall be eligible at elections to European Parliament:

a) Persons who are European Union citizens according to the 2<sup>nd</sup> paragraph of subsection 1 of Section 8 *ter* of the Treaty on the European Community ;

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<sup>77</sup> The Treaty of the European Union (officially published on July 29, 1992) directs that all persons holding the nationality of one of the member States shall be a citizen of the European Union, entitled as such to vote at local elections (more precisely at municipal elections) and at elections to the European Parliament.

b) Satisfy all the conditions for eligibility laid down in this Act for Spanish citizens and have also the right of eligibility in their member State of origin.

2.- Persons falling within Sect. 154.1 and 154.2 of this Act shall not be eligible to the European Parliament. Provided that subs. 1 of Sect. 154 shall only apply to citizens of the European Union qualified as eligible where the discharge of the functions or positions referred to in said Section constitutes a cause for disqualification in the member State of origin.

### **Chapter III** **Disqualifications**

#### **Section 211.- Disqualifications from membership of European Parliament.**

1.- Causes of ineligibility as member of the European Parliament shall also be disqualifications therefrom.

2. -The following are also disqualified:

a) Persons who are disqualified under the electoral regulations of the European Communities;

b) Persons falling within subs. 2 of Section 155 of this present Act;

c) Members of Spanish Parliament;

d) Members of the Legislative Assembly of a Self-governing Community.

3.- In the events contemplated in paragraphs c) and d) of the preceding subsection, disqualification shall be resolved in favour of the membership last acquired

#### **Section 212 (as amended by Institutional Act 8/1991, of March 13).- Mandate of members of the European Parliament.**

1.- Members of the European Parliament shall discharge their mandate on a full-time basis in the same conditions as those laid down in this Act for members of the Congress of Deputies and for senators.

2.- By virtue of the foregoing subsection, Sections 157 and 158 of this Act shall also apply to members of the European Parliament. These may not therefore receive out of the State, regional or local budgetary appropriations any remuneration other than that to which they are entitled in their capacity as members of said Parliament.

3.-Members of the European Parliament may not sit in collective executive bodies or board of directors of any organization, public entity or firm with a direct or indirect majority of public capital.

Section 213 (as amended by said Institutional Act 8/1991, of March 13).-

Members of the European Parliament may only perform private activities referred in paragraphs a) and b) of Section 159 of this present Act, in addition to those not included in subsection 2 of said Act.

## **Chapter V**

(Former Chapter III, renumbered by Sect. 9 of Institutional Act 13/1994, of March 30)

### **Electoral system**

Section 214.- Constituencies for elections to the European Parliament.

Members of the European Parliament shall be elected in a constituency consisting of the whole Spanish territory.

Section 215 (as amended by Institutional Act 16/2003, of November 28).-Allotment of seats of European Parliament.

The number of members of European Parliament to be elected in Spain shall be determined according to the provisions of European statutes.

Section 216.- Assignment of seats as members of European Parliament

The assignment of seats depending on the results of the poll shall be effected according to Section 163 of this Act, except as provided in subs. 1 a) and in subs. 2 of said Section.

Section 217.- Replacement of members of European Parliament.

In the event of death, incapacity or resignation of a member of the European Parliament the vacant seat shall be assigned to the candidate or, as he case may be, to the alternate candidate of the same list entitled to it by his position on said list.

## **Chapter V**

(Former IV. Renumbered by Institutional Act 13/1994, of March 30)

### **Call of the election**

Section 218.-Call of election to European Parliament.

1.- The call of elections to the European Parliament shall be effected in accordance with European statutes and by a Royal Decree.

2.- Said Decree shall be issued with the countersign of the Prime Minister, on his own proposal and following a deliberation in the Council of Ministers.

3.- Section 42 of this Act shall not apply in elections to the European Parliament.

## **Chapter VI**

*(Also renumbered by Sect. 9 of Institutional Act 13/1994, of March 30)*

### **Electoral procedure**

#### **1st Subdivision.- Candidates' representatives before electoral authorities**

*(Also renumbered by Sect. 9 of Institutional Act 13/1994, of March 30. Formerly Subdivision 1 of Chapter V)*

##### **Section 219.- Representatives of candidatures to European Parliament.**

1.- For the purposes of Section 43 of this present Act each party, federation and coalition wishing to take part at the election shall appoint a representative-general as provided for in Section 168 of this Act.

2.- The promoters of each grouping of electors shall appoint in the same manner their representative-general on presentation of their candidates.

3.- Each of the representatives-general may within two days after his appointment appoint in writing addressed to the Central Electoral Commission his candidates' representatives before the Provincial Electoral Commissions.

4.- These appointments shall be communicated by the Central Electoral Commission to Provincial Commissions within the two following days and representatives so appointed shall appear before the corresponding Commission to state their acceptance.

#### **2nd Subdivision.- Presentation and proclamation of candidates**

*(renumbered by Sect. 9 of Institutional Act 13/1994, of March 30. Formerly 2nd Subvis. of Chapter V).*

##### **Section 220.- Presentation of candidates to European Parliament.**

1.- The Central Electoral Commission shall have competence for all operations contemplated in Part, I, Chapter VI, 2nd Subdivision, of this present Act relating to presentation and proclamation of candidates for elections to European Parliament.

2 *(as amended by Institutional Act 16/2003, of November 28).*- Candidatures shall be presented by means of full lists of candidates, unless parties, federations, coalitions or electors' groupings avail themselves of the possibility contemplated in Section 221, in which case each list may contain as many candidates and alternates as members to be elected.

3.- For presentation of candidates every party, coalition, federation or grouping of electors must produce the supporting signature of 15,000 (fifteen thousand) electors. No elector may give his written support to more than one list of candidates.

4.- Parties, federations and coalitions may however replace the requirement laid down in the preceding subsection by the signature of 50 (fifty) elected representatives, whether members of the Congress of Deputies, senators, Spanish members of European Parliament, members of Legislative Assemblies of Self-governing Communities or members of local assemblies<sup>78</sup>. Provided that no such representative may give his written support to more than one list of candidates.

5.- Candidatures presented and candidates proclaimed shall be made public in the State's Official Gazette.

Section 220 bis (added by Sect. 11 of Institutional Act 13/1994, of March 30).- Formal statement for presentation of candidates.

1.- Citizens of the European Union eligible according to Section 210 bis at the time of presentation of candidatures must produce, in addition to documents required to prove that they satisfy all conditions laid down by Spanish law, a formal declaration stating:

- a) Their nationality and their domicile in Spain;
- b) That they are not standing at the same time as candidates for election to European Parliament in another member State;
- c) As the case may be, the municipality or constituency of their member State of origin where they were last registered;

2.- They shall also produce a certificate of the relevant administrative authorities of their member State of origin to the effect that they have not been disenfranchised in said State.

The Central Electoral Commission may also demand production of an identity card that is still valid and an indication of the date since which they are subjects of a member State.

3.- Once candidatures have been proclaimed, the Central Electoral Commission shall communicate to the other member States the data relating to their respective subjects included in said candidatures.

### **3<sup>rd</sup> Subdivision.- Ballot papers and voting envelopes**

*(Renumbered by Sect. 9 of Institutional Act 13/1994, of March 30. Formerly 3<sup>rd</sup> subdiv. of Chapter V)*

Section 221.- Ballot forms and envelopes for elections to European Parliament.

1.- For the purposes of Section 70.1 of this Act. the Central Electoral Commission shall be the competent authority for elections to European Parliament.

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<sup>78</sup> That is to say, not only city or town councils, but also Provincial Deputations.

2.- Ballot papers for election of members of the European Parliament must contain the name, initials and symbol of the party, federation, coalition or electors' grouping presenting the candidature.

3.- Ballot forms shall also contain the full list of name and surname of candidates and alternates composing the candidature, by order of their position on the list. The characteristic referred to in Section 46.7 may also be mentioned if such is the case<sup>79</sup>

4.- Parties, federations, coalitions or electors' groupings may state, when presenting their list of candidates to the Central Electoral Commission, the geographic area in which they wish their ballot forms to be distributed, where said area does not cover the whole national territory and provided it is at least the same as that of the election wards existing in a Self-governing Community.

#### Section 222.- Territorial limits for candidates' campaign.

Parties, federations, coalitions or electors' groupings may on presentation of their candidature to the Central Electoral Commission, state their wish that in some electoral wards covering the whole territory of the corresponding Self-governing Community only the names of candidates and alternates of parties or of territorial organizations thereof with an area of operation strictly confined by their respective statutes to said territory, and, as the case may be, their own name, initials and symbol, shall be mentioned.

### **4<sup>th</sup> Subdivision.- Aggregate counting**

#### Section 223.- Aggregate counting at elections to the European Parliament.

1.-For the purposes of Sections 103, 104, 105, 106 and 107 of this present Act Provincial Electoral Commissions shall be the competent Electoral Commissions.

2.- After the count representatives and election proxies of candidates may lodge within two days such claims and petitions as they think fit, which shall be determined by Provincial Electoral Commissions within two further days.

3. -On completion of the preceding operations Provincial Electoral Commissions shall forward to the Central Electoral Commission not later than the 15<sup>th</sup> (fifteenth) days following the election a certificate signed by their chairman and secretary of the election results in the respective province, with an explicit mention of the number of voters, valid votes, void ballot papers, blank votes and votes polled by each candidature.

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<sup>79</sup> That is to say, that the candidate in question is an "independent" one or that he stands as candidate fro a party which is in turn standing as part of coalition or federation.

Section 224.- Assignment of seats in European Parliament.

1.-The Central Electoral Commission shall proceed not later than the 20<sup>th</sup> (twentieth) day after the election, to the counting of votes on a national level, to the assignment of seats to each list of candidates and to the proclamation of elected candidates.

2.- Within five days from such proclamation the elected candidates shall swear or affirm allegiance to the Constitution before the Central Electoral Commission. On expiry of said term the Central Electoral Commission shall declare the vacancy of seats assigned to members of the European Parliament having failed to declare their allegiance to the Constitution and the suspension of any prerogatives to which they may be entitled on account of their mandate, as long as they do not make the aforesaid oath or affirmation.

3.- The Central Electoral Commission shall likewise be the competent authority for the conduct of all other general counting operations not contemplated in the preceding section.

**5<sup>th</sup> Subdivision.- Election petitions**

*(Renumbered by Sect. 9 of Institutional Act 13/1994, of March 30. Former 5<sup>th</sup> Subdiv. of Chapter V).*

Section 225.- Electoral petitions jurisdiction.

1.- The Supreme Court (*Tribunal Supremo*) shall be the competent court for election petitions.

2.- The decision of the court on an election petition shall be notified not later than the 45<sup>th</sup> (forty-fifth) day following the election.

**Chapter VII**

**Election expenses and subsidies**

Section 226.- Appointment of managers-general at elections to European Parliament

1.- Managers-general of political parties, federations and coalitions shall be appointed according to the provisions of Section 174.1 of this Act.

2.- Managers of candidatures in each province shall be appointed, according to Section 174.2 of this Act, before the 21<sup>st</sup> (twenty-first) day following the call of the election.

Section 227.- Subsidizing of expenses for elections to European Parliament.

1 (*As amended by Institutional Act 8/1991, of March 13*).- The State shall subsidize electoral activities according to the following rules:



## ADDITIONAL PROVISIONS

### One

1 (as amended by Sect. 5 of Institutional Act 1/2003, of March 10).-- Provisions of this Act shall be without prejudice to the exercise of the responsibilities vested in Self-governing Communities by their Statutes, with due observance of the Constitution and of this present Institutional Act, regarding elections to their respective Legislative Assembly.

2 (as amended by Addit. Prov. n° 2.4 of Institutional Act 3/2007, of March 22).- By virtue of the responsibilities vested by the Constitution in the State the following sections of Part I of this present Institutional Act shall also apply to elections to the Legislative Assemblies of Self-governing Communities:

1 to 42; 44, 44 bis; 45; 46.1, 6 and 8; 47.4; 49; 51.2 and 3; 54; 58; 59; 60; 61; 62, 63; 65;66;68;69; 70.1 and 3; 72;73; 74;75;85; 86.1; 90;92; 93;94; 95.3; 96: 103.2; 108.2 and 8; 109 to 119; 125 to 130; 131.2; 132; 135 to 152.

3.- The remaining sections of the Part I of this Act shall be surrogate law to legislation adopted by Self-governing Communities and shall as such apply to elections of Assembly Communities of said Communities where the latter have not enacted any statute to this end.

4.- The contents of Parts II, II, IV and V of this Institutional Act cannot be altered or replaced by Self-governing Communities' legislation.

5. -Where Self-governing Communities do not legislate on the matters governed by the sections mentioned below, said sections shall be construed for the purposes of elections to Legislative Assemblies in the following manner:

a) References to State organizations in Sections 70.2. 71.4 and 98.2 shall be references to the equivalent autonomous organizations;

b) Mention of the national territory in Section 64.1 shall refer to the territory of the relevant Self-governing Community;

c) The allusion in Section 143 to the Committee set up by the First Transitional Provision of the Auditing Court Institutional Act Institutional Act<sup>87</sup> shall be a reference to a Committee of the relevant Legislative Assembly and the State's duty to subsidize election expenses mentioned in said section and in the preceding one shall be a duty of the relevant Self-governing Community.

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<sup>87</sup> Said Act (to be more precise Institutional Act 2/1982, of May 12, published in the State Official Gazette of May 1, 1982, makes provision for the setting-up of a Joint Committee of both Houses of Parliament with the name of Joint Committee for Relations with the Auditing Court.(*Comisión Mixta para las Relaciones con el Tribunal de Cuentas*).

Two

The Government is hereby empowered to make such statutory orders as may be necessary for compliance with and execution of this Act.

Three

The Government shall make within five years from the commencement of the present Act all necessary rules for effective inclusion in the census data of the National Identity Card number referred to in Section 32 of this Institutional Act.

Four

For the purposes and to the effect of suspension of employment contracts of elected representatives referred to in Sections 45.1 and 48 of the Workers' Statute (*Estatuto de los Trabajadores*) the legal cause of suspension for not re-elected candidates shall be deemed to cease on constitution of the new assemblies.

Five (*added by Institutional Act 3/1998, of June 15*)

Where in the same year and with an interval of no more than four months there are to be local elections, elections to Legislative Assemblies of Self-governing Communities having held their elections on the fourth Sunday of May 1995, and an election to the European Parliament, the decrees for the call of each election shall be enacted on the 55<sup>th</sup> (fifty-fifth) day prior to the date appointed for the election to European Parliament, in order to ensure that all elections are held simultaneously.

Said Decrees shall be published on the day following their enactment in the Official Gazette of the respective Self-governing Community and shall have effect from the very day of publication. The term of Local Assemblies' members<sup>88</sup> shall expire in any case on the day preceding the date of the following election.

Six (*added by Sect. 5 of Institutional Act 1/2003, of March 10*).

Parties and federations must send to the Political Parties Register the list of members of their direction and coordination bodies and keep said list up to date at every time.

**TRANSITIONAL PROVISIONS**

(All of these, except the seventh and last one, have lapsed, since they were all to expire with events or dates that have already happened. We will therefore not reproduce them).

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<sup>88</sup> Local Assemblies (*Corporaciones Locales*) are not only city or town councils, but also Provincial Deputations and Insular Councils in the Canary Islands.

Seven (added by Section 2 of Institutional Act 3/2007, of March 22).

In the Decrees calling for municipal elections to be held before 2011, the provisions of Section 44 *bis*<sup>89</sup> shall only be mandatory in municipalities with a number of residents above 5,000 (five thousand) inhabitants. From the 1<sup>st</sup> of January of said year the number of inhabitants to be taken as a reference shall be the figure set out in the second paragraph of subsection 2 of S<sup>90</sup>ection 187

### **REPEALS**

(*Disposición derogatoria*)

The following are hereby repealed:

- Royal Decree-Law (*Real Decreto-Ley*) 20/1977, of may 18, on electoral provisions;
- Act 39/1978, of July 17, on Local Elections;
- Institutional Act 6/1983, of March 2. amending several articles of the preceding Act;
- Act 14/1980. of April 18, governing election opinion polls, and
- All statutes running counter to provisions of this present Act.

### **FINAL PROVISION**

This present Act shall come into force on the day following the date of publication in the State's Official Gazette.

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<sup>89</sup> That is to say the legal obligation of a balanced gender proportion (40 per 100 at least for either sex) in the lists of candidates.

<sup>90</sup> That is to say, at least 100 (one hundred) signatures for municipalities between 5,001 (five thousand one) and 10,000 (ten thousand) inhabitants.

**REPRESENTATION OF THE (SPANISH) PEOPLE INSTITUTIONAL ACT**

**ARRANGEMENT OF SECTIONS**

**Preamble**

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Section 4 ..... Exercise of suffrage

Section 5 ..... No compulsion for exercise of suffrage

**Chapter II - Eligibility**

Section 6 ..... Passive franchise

Section 7 ..... Declaration of ineligibility

**Chapter III - Election authorities**

**1<sup>st</sup> Subdivision.- Electoral Commissions.**

Section 8 ..... Electoral Commissions

Section 9 ..... Central Electoral Commission

Section 10 ..... Provincial Electoral Commissions

Section 11.....	Judiciary District Electoral Commissions
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(Only a one-paragraph provision)

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