



- Spain and the European Social Charter -

Ratifications

Spain ratified the European Social Charter on 06/05/1980 and has accepted all 72 paragraphs of the Charter. On 04/12/1990, it denounced Article 8§4b (prohibition of the employment of women in certain dangerous occupations).

It ratified the protocol adding new rights on 24/01/2000 and the protocol reforming the supervisory machinery on 24/01/2000.

Spain has signed but not yet ratified the revised Charter. It has not yet signed or ratified the collective complaints protocol.

Table of Accepted Provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	3.1	3.2	3.3
4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	6.4	7.1	7.2
7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1	8.2	8.3	8.4
9	10.1	10.2	10.3	10.4	11.1	11.2	11.3	12.1	12.2	12.3	12.4
13.1	13.2	13.3	13.4	14.1	14.2	15.1	15.2	16	17	18.1	18.2
18.3	18.4	19.1	19.2	19.3	19.4	19.5	19.6	19.7	19.8	19.9	19.10
AP1	AP2	AP3	AP4								

= Accepted provisions

The Charter in domestic law

Automatic incorporation into domestic law based on Article 96(1) of the Constitution.

Reports

Between 1982 and 2008, Spain submitted 21 reports on the application of the Charter. The [21st report](#) concerns the accepted provisions related to the theme "Health, social security and social protection" (Articles 3, 11, 12, 13, 14 of the Charter and Article 4 of the 1988 Protocol). Spain submitted it on 10/12/2008.

The following report will concern the accepted provisions related to the theme "Labour Rights" (Articles 2, 4, 5, 6 of the Charter and Articles 2 and 3 of the 1988 Protocol). It is due by 31/10/2009.

* [Under the new reporting system in effect since 31 October 2007](#), by decision of the Committee of Ministers, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States are to present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter will be reported on once every four years.

Update : October 2009
Factsheet – SPAIN

Department of the European Social Charter
Directorate General of Human rights and legal
affairs
Monitoring Directorate



The situation of Spain with respect to application of the Charter

Examples of progress achieved following conclusions or decisions of the ECSR¹

General

- ▶ Adoption of the Workers' Statute of 10 March 1980 in view of Spain's ratification of the European Social Charter.

Non-discrimination

- ▶ Adoption of new legislation on non-discrimination in employment and occupation (Act No. 62/2003).

Non-discrimination (Nationality)

- ▶ Reinforcement of trade unions' bargaining power by increasing the number of areas that may be covered by collective bargaining (Act No. 7/1990 on collective bargaining and participation in determining the working conditions of public servants).
- ▶ Extension of medical assistance to foreigners resident or lawfully present in Spain (Act No. 13/1996, which entered into force on 1 January 1997).
- ▶ Equal treatment in employment, including self-employment, and in access to social services and public housing for legally resident foreigners (Acts No. 4/2000 and No. 8/2000).
- ▶ Simplification of administrative procedures and laws affecting foreign nationals (Act No. 14/2003).
- ▶ Improvement of safeguards against the expulsion of foreign nationals (Act No. 4/2000).
- ▶ Foreign nationals in Spain, including ones who are there unlawfully, are entitled to emergency medical treatment in the event of serious illnesses or accidents (Institutional Act on the rights and freedoms of foreign nationals in Spain of 11 January 2000).

Non-discrimination (Disability)

- ▶ Legislation on equal opportunities for persons with disabilities (Law 45/2002).
- ▶ Act explicitly prohibiting direct and indirect discrimination in employment and occupation on the ground, *inter alia*, of disability (Law No. 62/2003).

Children

- ▶ Extension of the Workers' Statute (prohibition of work under 16 years of age) to cover young workers working with their families.
- ▶ Prohibition of minors' access to self-employment.
- ▶ Submission of young workers, including self-employed, to statutory working-time limitations, prohibition of night-working, and to regular medical examinations.
- ▶ Improvements of the Criminal Code as regards sexual exploitation, pornography and trafficking of children.

1 "1. The European Committee of Social Rights (ECSR) makes a legal assessment of the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure" (Article 2 of the Rules of the ECSR).

Education

- ▶ Adoption of Constitutional Law No. 10/2002 on the Quality of Education (Law 45/2002)

Employment

- ▶ Adoption of new Employment Law No. 56/2003 on the Quality of Education (Law 45/2002)
- ▶ Repeal of the Merchant Navy (Criminal and Disciplinary Offences) Act of 22 December 1955, merchant seamen are now liable to disciplinary sanctions (pecuniary and professional-related) only for the offences listed in Chapters III and IV of Part IV of the 1992 Act (National Ports and Merchant Navy Act No. 27/1992); repeal of Sections 29 and 49 of Act No. 209/1964, whereby flight personnel could be subjected to criminal penalties for disciplinary offences even in cases where neither the safety of the aircraft nor the lives or health of those on board was threatened (Act No. 10/1995 amending the penal code)².
- ▶ Reduction of daily working time for men and women whose children are hospitalised after birth (Law 12/2001).
- ▶ Prohibition of dismissal during pregnancy (Law No. 33/99).
- ▶ Improvement in the regulations governing night work for women in industrial jobs (Act No. 11/1994).

Social Protection

- ▶ Improvement of the social security coverage for self-employed (Royal Decree-Law 2/2003 and Royal Decree 1273/2003).
- ▶ Extension of the payment of old-age, invalidity and family benefits to all citizens concerned, in cases where they have insufficient means (Act No. 26/1990).

Cases of non-conformity

Non-discrimination (nationality)

- ▶ *Article 13§1 – adequate assistance for every person in need*

Payment of minimum income benefit is subject to a residence requirement in one community and to a minimum age requirement, set at twenty-five years, in most of the autonomous communities. Furthermore, social assistance for persons living alone is manifestly inadequate in several regions, and the minimum income is not paid for as long as the need persists.

- ▶ *Article 18§3 – right to liberalisation of immigration procedures*

Foreign workers who have lost their job are not entitled to an extension of their work permit to give them sufficient time to seek new employment.

- ▶ *Article 19§6 and 19§10 – family reunion*

There is no evidence that migrant workers' children between the age of 18 and 21 have the right to family reunion. The same applies to self-employed workers.

Non-discrimination (Disability)

- ▶ *Article 15§1 (and Article 1§4) – vocational training arrangements for the disabled*

The Government has failed to demonstrate that persons with disabilities are guaranteed an effective right to mainstream education and training.

- ▶ *Article 15§2 – employment of persons with disabilities*

The Government has failed to demonstrate that persons with disabilities are guaranteed effective equal access to employment.

² RecChS(95)9 adopted by the Committee of Ministers on 22 May 1995.

Children

- ▶ *Article 7§5 – working conditions between the age of 15 and 18 (remuneration)*
Young workers' wages are not adequate.
- ▶ *Article 17 – right of mothers and children to social and economic protection*
Corporal punishment in the home is not prohibited.

Employment/Health

- ▶ *Article 3§1 and 3§2 – right to health and safety at work (regulations)*
 1. Regulations for temporary workers are not sufficiently effective to protect this category of workers in an adequate manner;
 2. Self-employed workers, who are a high proportion of the active population, are not sufficiently covered by the occupational health and safety regulations;
 3. The number of occupational accidents is very high and their frequency is increasing.

Employment

- ▶ *Article 2§1 – right to reasonable working time*
 1. The Workers' Statute permits a one year reference period in certain circumstances for averaging of working hours;
 2. The law permits weekly working time in excess of 60 hours.
- ▶ *Article 2§3 – right to annual holiday with pay*
Workers who fall ill or have an accident during their holidays are, in general, not entitled to take holiday at another time.
- ▶ *Article 4§1 – right to fair remuneration*
The minimum wage falls far below the threshold of 60% of the average wage.
- ▶ *Article 4§2 – right to increased remuneration for overtime*
There is nothing in the law to ensure that workers receive an increased rate of pay or an equivalent rest period, in exchange for overtime.
- ▶ *Article 4§4 – right to protection in case of dismissal*
 1. Workers with fixed-term contracts of less than a year whose contract is broken before the end are not granted any notice;
 2. Workers on fixed-term contracts of more than one year are entitled to only fifteen days' notice
- ▶ *Article 6§4 – right to collective bargaining (strikes and locks-out)*
The cases in which the Government may resort to compulsory arbitration go beyond the requirements of Article 31 of the Charter.
- ▶ *Article 8§2 – protection against dismissal during maternity leave*
Domestic workers are not entitled to the same protection against dismissal during pregnancy and maternity leave as other workers; dismissals of women during pregnancy and maternity leave are permitted in the context of collective redundancy even where the undertaking has not ceased to operate.
- ▶ *Article 8§3 – time off for nursing mothers*
Domestic workers are not entitled to time off for nursing their children.

Social Protection

- ▶ *Article 12§1 – right to social protection*
Unemployment benefits are inadequate.
- ▶ *Article 16 – social, legal and economic protection of the family*
Family benefits are inadequate even when other existing benefits and tax relief are taken into consideration.

The ECSR is unable to assess whether Spain complies with the following provisions:

▶ *Article 9 – right to vocational guidance*

It has not been established that the right to vocational guidance in the education system is guaranteed, or that equal treatment is guaranteed to all nationals of States Parties.

▶ *Article 10§4 – right to vocational training - facilities*

It has not been established that the right to equal treatment for nationals of other States Parties lawfully resident or regularly working is guaranteed with respect to financial assistance for training.

▶ *Article 18§1 – applying immigration regulations in a spirit of liberality*

It has not been established that the rules governing the right to engage in a gainful occupation are applied in a spirit of liberality.