

– Spain and the European Social Charter –

Ratifications

Spain ratified the European Social Charter on 06/05/1980, accepting all 72 paragraphs of the Charter*.

It has ratified the Additional Protocol of 1988 and the Amending Protocol of 1991 on 24/01/2000.

Spain has signed but not yet ratified the Revised Charter. It has not yet signed or ratified the Additional Protocol of 1995 providing for a system of collective complaints.

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	A P3	AP4	AP = Additional Protocol				Grey = Accepted provisions			

The Charter in domestic law

Automatic incorporation into domestic law in accordance with Article 96(1) of the Constitution.

Reports**

Between 1982 and 2015, Spain submitted 27 reports on the application of the Charter.

The [26th report](#), submitted on 20/09/2013, covers the accepted provisions relating to Thematic Group 3 "Labour Rights" (Articles 2, 4, 5, 6, 21, 22, 26 and 29).

Conclusions with respect to these situations were published in January 2015.

The [27th report](#), which should have been submitted by 31/10/2014, covers the accepted provisions relating to Thematic Group 4 "Children, Family, Migrants", namely:

- The right of children and young persons to protection (Article 7),
- The right of employed women to protection (Article 8),
- The right of the family to social, legal and economic protection (Article 16),
- The right of children and young persons to social, legal and economic protection (Article 17),
- The right of migrant workers and their families to protection and assistance (Article 19),
- The right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- The right to housing (Article 31).

In addition, the report provides the information required by the European Committee of Social Rights in the framework of Conclusions 2013 relating to Thematic Group 4 "Health, Social Security and Social Protection" (Articles 3, 11, 12, 13, 14, 23 and 30), in the event of non-conformity for lack of information.

Conclusions with respect to these situations will be published in January 2016.

* On 04/12/1990, Spain denounced Article 8§4b (prohibition of the employment of women in certain dangerous occupations).

** [Following a decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States Parties submit a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years. As from 2014 States Parties having accepted the complaints procedure have to provide a national report every two years only.

Situation of Spain with respect to the application of the Charter

Examples of progress achieved in the implementation of social rights under the Social Charter¹

General

- ▶ Adoption of the Workers' Statute of 10 March 1980 in view of Spain's ratification of the 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 (Act 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.
- ▶ The First Schedule to Act No. 54/2007 on International Adoption amended the Civil Code to remove the "right" of parents and guardians to use "reasonable and moderate" forms of "correction" from Articles 154 and 268 of the Civil Code.

Education

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

Employment

- ▶ Adoption of new Employment Act No. 56/2003 on the Quality of Education (Act No. 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

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

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 (Act No. 12/2001).
- ▶ Possibility of taking unexpired leave at a later date in non-maternity cases of temporary incapacity (Article 38(3) of the Workers' Statute as amended by Act No. 3/2012)
- ▶ Prohibition of dismissal during pregnancy (Act No. 33/1999).
- ▶ Improvement in the regulations governing night work for women in industrial jobs (Act No. 11/1994).
- ▶ With the entry into force of the Equality Act, domestic workers, like other workers, cannot be dismissed for reasons pertaining to pregnancy or maternity.

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

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ *Article 1§2 – Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

The restrictions on access to employment in the public service for non-nationals are excessive.

([Conclusions XX-1](#))

- ▶ *Article 1§3 – Right to free placement services*

It has not been established that free placement services operate in an efficient manner.

([Conclusions XX-1](#))

- ▶ *Article 10§4 – Right to vocational training - Encouragement for the full utilisation of available facilities*

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

([Conclusions XX-1](#))

Thematic Group 2 "Health, social security and social protection"

- ▶ *Article 12§1 – Right to social security – Existence of a social security system*

The minimum level of sickness benefit is manifestly inadequate.

([Conclusions XX-2](#))

- ▶ *Article 12§4 – Right to social security - Social security of persons moving between states*

1. Equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;

2. Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;

3. The length of residence requirement for entitlement to non-contributory old-age pensions is excessive.

([Conclusions XX-2](#))

- ▶ *Article 13§1 – Right to social and medical assistance - Adequate assistance for every person in need*

1. Minimum income eligibility is subject to a length of residence requirement;

2. Minimum income eligibility is subject to age requirements (25 years old);

3. Minimum income is not paid for as long as the need persists;

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

4. The level of social assistance paid to a single person is manifestly inadequate (except for the Basque country and Navarra).

[\(Conclusions XX-2\)](#)

► *Article 14§1 – Right to benefit from social services - Promotion or provision of social services*

1. It has not been established that effective access to social services is guaranteed;
2. The conditions to be met by providers of social services are not clearly defined;
3. It has not been established that supervisory arrangements for ensuring that providers of social services comply with the conditions ensuring the quality of services exist.

[\(Conclusions XX-2\)](#)

► *Article 14§2 – Right to benefit from social services - Public participation in the establishment and maintenance of social services*

1. That there are means of monitoring the actions of non-governmental organisations and other non-public service providers;
2. That there is equal and effective access to social services provided by non-governmental organisations and other non-public service providers.

[\(Conclusions XX-2\)](#)

► *Article 4 of the Additional Protocol – Right of the elderly to social protection*

It has not been established that there is legislation protecting elderly persons from discrimination on grounds of age.

[\(Conclusions XX-2\)](#)

Thematic Group 3 “Labour rights”

► *Article 2§1 – Right to just conditions of work - right to reasonable working time*

The maximum weekly working time may exceed 60 hours in flexible working time arrangements and for certain categories of workers.

[\(Conclusions XX-3 \(2014\)\)](#)

► *Article 2§4 – Right to just conditions of work – Elimination of risks in dangerous or unhealthy occupations*

It has not been established that all workers exposed to residual risks for health and safety are entitled to appropriate compensatory measures such as reduction in working hours, exposure time or additional paid leave.

[\(Conclusions XX-3 \(2014\)\)](#)

► *Article 4§1 – Right to a fair remuneration – Decent remuneration*

1. The minimum wage for workers in the private sector does not secure a decent standard of living;
2. The minimum wage for contractual staff in the civil service does not secure a decent standard of living.

[\(Conclusions XX-3 \(2014\)\)](#)

► *Article 4§2 – Right to a fair remuneration- Increased remuneration for overtime work*

The Workers’ Statute does not guarantee increased remuneration or an increased compensatory time-off for overtime work.

[\(Conclusions XX-3 \(2014\)\)](#)

► *Article 4§4 – Right to a fair remuneration – Reasonable notice of termination of employment*

1. The notice period that applies to permanent and fixed-term employment contracts under the following circumstances is not reasonable:

- dismissal when an employment contract expires or when its objectives are realised;
- termination of employment contracts based on the death or retirement of an employer who is a natural person or based on the winding up an employer which is a legal person, beyond three years of service;
- termination of employment contracts for objective reasons, beyond six month of service.

2. Employees on probationary periods under entrepreneur support contracts may be dismissed without notice;

3. Notice periods may be left to the discretion of the parties to an employment contract.

([Conclusions XX-3 \(2014\)](#))

▶ *Article 6§2 – Right to bargain collectively -*

1. Legislation was passed which affects the right to bargain collectively, without consultation of trade unions and employers' organisations;

2. Act No. 3/2012 allows employers unilaterally not to apply conditions agreed in collective agreements.

(Conclusions XX-3 (2014))

▶ *Article 6§4 – Right to bargain collectively – Collective action*

Legislation authorises the Government to impose compulsory arbitration to end a strike in cases which go beyond the derogations permitted by Article 31 of the Charter.

([Conclusions XX-3 \(2014\)](#))

Thematic Group 4 "Children, families, migrants"

▶ *Article 7§5 – Right of children and young persons to protection – Fair pay*

1. Young workers' wages are not fair; and

2. It has not been established that the apprentices allowances are adequate.

([Conclusions XIX-4 \(2011\)](#))

▶ *Article 7§10– Right of children and young persons to protection – Special protection against physical and moral dangers*

It has not been established that the legal framework effectively protects children from child pornography.

([Conclusions XIX-4 \(2011\)](#))

▶ *Article 8§3 – Right of employed women to protection - Time off for nursing mothers*

Domestic workers are not entitled to time off for breastfeeding.

([Conclusions XIX-4 \(2011\)](#))

▶ *Article 16 – Right of the family to social, legal and economic protection*

Family benefits are inadequate.

([Conclusions XIX-4 \(2011\)](#))

▶ *Article 19§6 and 19§10 – Right of migrant workers and their families to protection and assistance - Family reunion*

1. Excluding social welfare benefits from the calculation of the worker's income is likely to hinder family reunion rather than facilitate it;

2. No provision is made in law or in practice for the family reunion of children of migrant workers aged between 18 and 21 who do not have a disability and do not require the assistance of a third party because of their state of health.

([Conclusions XIX-4 \(2011\)](#))

The European Committee of Social Rights has been unable to assess compliance with the following provisions and has invited the Spanish Government to provide more information in the next report:

Thematic Group 1 "Employment, training and equal opportunities"

(Report to be submitted before 31 October 2015)

▶ Article 1§1 - Conclusions XX-1 (2012)

▶ Article 10§1 - Conclusions XX-1 (2012)

▶ Article 18§1 - Conclusions XX-1 (2012)

Thematic Group 2 "Health, social security and social protection"

(Report to be submitted before 31 October 2016)

- ▶ Article 11§1 - Conclusions XX-2 (2013)

Thematic Group 3 "Labour rights"

(Report to be submitted before 31 October 2013)

- ▶ Article 4§5 - Conclusions XX-3 (2014)

Thematic Group 4 "Children, families, migrants"

(Report to be submitted before 31 October 2014)

- ▶ Article 7§§1, 3 and 17 - Conclusions XIX-4 (2011)
- ▶ Article 19§§ 3 and 8 - Conclusions XIX-4 (2011)