

— Spain and the European Social Charter —

Signatures, ratifications and accepted provisions

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 the Revised Charter on 23/10/2000 but has not yet ratified it.

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

The Charter in domestic law

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

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			

* On 04/12/1990, Spain denounced Article 854b (prohibition of the employment of women in certain dangerous occupations).

Monitoring the implementation of the European Social Charter ¹

I. Reporting system ²

Reports submitted by Spain

Between 1982 and 2020, Spain has submitted 32 reports on the application of the 1961 Charter.

The [31st report](#), which was submitted on 30/10/2018, concerns the accepted provisions relating to Thematic group 4 "Children, families, migrants" (Articles 7, 8, 16, 17 and 19).

Conclusions with respect to these provisions have been published in March 2020.

The [32nd report](#), which was submitted on 19/12/2019, covers the accepted provisions of the Social Charter relating to thematic group 1 "Employment, training and equal opportunities", namely:

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 1 of the Additional Protocol).

Conclusions with respect to these provisions will be published in January 2021.

¹ The European Committee of Social Rights ("the Committee") monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure ».

Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

² Following a [decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States present 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.

Following a [decision taken by the Committee of Ministers in April 2014](#), States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups.

Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

Situations of non-conformity³

Thematic Group 1 "Employment, training and equal opportunities" - Conclusions XXI-1 (2016)

► *Article 151 – Right to work – Policy of full employment*

Employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

► *Article 152 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

The restrictions on the employment to the public service of States Parties to the Charter are excessive which constitutes a discrimination on grounds of nationality.

► *Article 153 – Right to free placement services*

The measures taken during the reference period did not make it possible for public employment services to function in an effective manner.

► *Article 1051 – Right to vocational training - Promotion of technical and vocational training ; access to higher technical and university education*

It has not been established that equal access to higher vocational education is guaranteed to nationals of other States Parties lawfully resident in Spain.

► *Article 1851 - Right to engage in a gainful occupation in the territory of other States Parties - Applying existing 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.

Thematic Group 2 "Health, social security and social protection" - Conclusions XXI-1 (2017)

► *Article 352 - Right to safe and healthy working conditions - Enforcement of safety and health regulations*

Measures taken to reduce the number of accidents at work are insufficient.

► *Article 1251 – Right to social security - Existence of a social security system*

The level of unemployment benefits for unemployed without family responsibilities is inadequate.

► *Article 1254 – Right to social security - Social security of persons moving between states*

- Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- The length of residence requirement (ten years) for entitlement to non-contributory old-age pension is excessive.

► *Article 1351 – Right to social and medical assistance - Adequate assistance for every person in need*

- Minimum income eligibility is subject to a length of residence requirement in the majority of Autonomous Communities;
- Minimum income eligibility is subject to age requirements (25 years old);
- Minimum income is not paid for as long as the need persists;
- The level of social assistance paid to a single person is not adequate.

Thematic Group 3 "Labour rights" - Conclusions XXI-3 (2018)

► *Article 251 – 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.

³ Further information on the situations of non-conformity is available on the [HUDOC database](#).

► *Article 2§3 – Right to just conditions of work – Annual holiday with pay*

Not all employees have the right to take at least two weeks of uninterrupted holiday during the year.

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

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

► *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.

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

- Notice period of two weeks is unreasonable for workers with more than 6 months service;
- There is no notice period in the event of the employer's death or incapacity or for workers on probation.

► *Article 6§2 – Right to bargain collectively - Negotiation procedures*

Legislation permits employers unilaterally not to apply conditions agreed in collective agreements.

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

Legislation authorises the Government to impose compulsory arbitration to strikes in cases which go beyond the limits permitted by Article 31 of the 1961 Charter.

Thematic Group 4 "Children, families, migrants" - Conclusions XXI-4 (2019)

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

- Young workers' wages are not fair;
- It has not been established that apprentices' allowances are adequate.

► *Article 8§2 – Right of employed women to protection - Illegality of dismissal during maternity leave*

The reasons for the dismissal of an employee during pregnancy or maternity leave go beyond the admissible exceptions.

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

It has not been established that women working in the public sector are entitled to paid breastfeeding breaks.

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

The level of family benefits is inadequate as it does not constitute a significant income supplement.

► *Article 19§4 – Right of migrant workers and their families to protection and assistance – Equality regarding employment, right to organise and accommodation*

It has not been established that non-discriminatory treatment is ensured in law and in practice with regard to enjoyment by foreign workers of the benefits afforded by collective agreements.

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

- Social welfare benefits are excluded from the calculation of the worker's income for the purposes of family reunion;
- It has not been established that the requirements for suitable accommodation to house family members or restrictions relating to language or healthcare are not so restrictive as to prevent any family reunion.

► *Article 19§10 - Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed*

The grounds of non-conformity under Articles 19§4 and 19§6 apply also to self-employed migrant workers.

The Committee 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"

- ▶ Article 1§4 - Conclusions XXI-1 (2016)
- ▶ Article 2§4 - Conclusions XXI-1 (2016)
- ▶ Article 10§3 - Conclusions XXI-1 (2016)

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

- ▶ Article 3§3 - Conclusions XXI-1 (2017)
- ▶ Article 4 of the 1988 Additional Protocol - Conclusions XXI-1 (2017)

Thematic Group 3 "Labour rights"

- ▶ Article 2§4 - Conclusions XXI-3 (2018)
- ▶ Article 6§3 - Conclusions XXI-3 (2018)

Thematic Group 4 "Children, families, migrants"

- ▶ Article 7§3 - Conclusions XXI-4 (2019)
- ▶ Article 7§9 - Conclusions XXI-4 (2019)
- ▶ Article 7§10 - Conclusions XXI-4 (2019)
- ▶ Article 17 - Conclusions XXI-4 (2019)
- ▶ Article 19§2 - Conclusions XXI-4 (2019)
- ▶ Article 19§3 - Conclusions XXI-4 (2019)
- ▶ Article 19§9 - Conclusions XXI-4 (2019)

II. Examples of progress achieved in the implementation of rights under the Charter (non-exhaustive list)

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ Since 2006 when the Organic Law of Education entered into force a total of 148 vocational education qualifications have been developed of which 108 were developed during 2011-2014.
- ▶ Royal Decree 10/2011 of 26 August 2011 on urgent measures to promote youth employment, support job stability and maintain vocational retraining programmes for those who have exhausted their unemployment benefits is aimed at improving the skills of young people.

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

- ▶ Law No. 3/2012 of 6 July 2012 on urgent measures for the reform of the labour market has been adopted. According to the report, Section 13 of the Law defines "teleworking" as work where the work activity is carried out primarily in the worker's home or in a place chosen freely by the worker, as an alternative to being physically present at the company's work centre. The Law recognises that teleworkers have the right to suitable protection in relation to safety and health.
- ▶ The new Law No. 23/2015 of 21 July 2015 on the regulation of the Labour and Social Security System Inspectorate (ITSS) which repeals and replaces Law No. 42/1997 of 14 November 1997. The new law features several innovations in that it assigns new powers to sub-inspectors in relation to the prevention of occupational risks and creates a labour and social security inspectorate as a body which is independent of the national administration of the state or the regulation of a national body to tackle undeclared work, illegal employment and social security fraud as a specialised department of the ITSS. The law also governs the functions and powers of the ITSS, the remit, its organisation and its co-operation with other institutions. It explicitly recognises protection for its staff, including against acts of violence, compulsion, threats or illegal influence aimed at its inspectors and sub-inspectors.
- ▶ The new Labour, Social Security and Occupational Health Sub-inspectors Service strengthens the functions of the ITSS in terms of overseeing and monitoring the application of regulations concerning the prevention of occupational risks. In particular, this Service is responsible for verifying or checking the application of regulations which directly involve physical working conditions (situations as regards safety, health and hygiene at work), preventative actions according to the analysis of the rate of accidents at work, and information and assistance for businesses and workers.
- ▶ The integration into the general social security scheme of the special scheme for domestic staff and the special agricultural scheme (Act 27/2011 of 1 August 2011, Act 28/2011 of 22 September 2011, Royal Legislative Decree 29/2012 of 28 December 2012), and of clergy belonging to the Spanish federation of evangelical churches (Royal Decree 839/2015 of 21 September 2015, implementing the European Court of Human Rights judgment of 3 April 2012, final on 3 July 2012, in the case of Manzananas Martin, application No. 17966/10).
- ▶ Measures to authorise persons, under certain conditions, to combine receipt of a retirement pension with certain forms of employment (Royal Legislative Decree 5/2013 of 15 March 2013).
- ▶ Measures to assist the self-employed, including reductions in and rebates on their contributions (Royal Legislative Decree 4/2013 of 22 February 2013; Act 14/2013 of 27 September 2013; Act 25/2015 of 28 July 2015).
- ▶ Reduced employer contributions under measures to promote business creation and youth employment (Act 11/2013 of 26 July 2013), and the employability of workers in general (Royal Legislative Decree 16/2013 of 20

December 2013; Royal Decree 3/2014 of 28 February 2014; Royal Legislative Decree 8/2014 of 4 July 2014; Royal Decree 637/2014 of 25 July 2014).

►Measures to protect part-time workers (Royal Legislative Decree 11/2012 of 2 August 2012; Act 1/2014 of 28 February 2014).

►A special agreement to assist persons with disabilities (Royal Decree 1567/2013 of 1 March 2013).

Thematic Group 3 "Labour rights"

►The Royal Decree 299/2016 on the protection of health and safety for workers who face the risks of exposure to electromagnetic fields, further strengthened the specific protection, in addition to the general Law No. 31/1995 on the prevention of occupational risks.

►In the field of public administrations, Spain signed on 21 December 2015 the "Framework Agreement on information and consultation rights for central governments administrations". The Sectorial Social Dialogue Committee for Central Government Administrations signed a social partner agreement on common minimum standards of information and consultation rights for central administration workers in matters of restructuring, work-life balance, working time and occupational health and safety.

►The Royal Decree 1084/2014 of 19 December 2014 amending the Royal Decree 67/2010 of 29 January 2010 on the adaptation of the legislation on the prevention of occupational risks to the general administration of the State has intervened to amend the legislation on the participation of workers in the determination and improvement of working conditions. This amendment is essentially in response to the decision of the General Bargaining Committee of the General State Administration, adopted on October 29, 2012, regarding the allocation of resources to the bargaining and participation structures and the streamlining of these structures. The decision concerns on the one hand the election of the delegates to the prevention and the credits of hours which they benefit and, on the other hand, the committees of safety and health at work, which must adapt, except in the cases provided for in the said royal decree, to the new definition of "workplace" according to which it constitutes the new electoral unit.

The agreement of the General Negotiating Committee of the General State Administration is also at the origin of the provisions contained in Royal Decree-Law 20/2012 of 23 July 2012 adopting measures to guarantee budgetary stability and to encourage competitiveness. Specifically, Article 10 of this text designates the General Negotiating Committees as the responsible bodies for agreements in this area, in particular as regards the exercise of representational and negotiating functions.

Thematic Group 4 "Children, families, migrants"

►Section 38§3 of the Workers' Statute was amended through the Royal Decree-Law No. 3/2012. Under the new provision, if the holiday period coincides with a temporary incapacity resulting from pregnancy, childbirth or breastfeeding that prevents the worker from enjoying it fully or partially during the calendar year to which the holiday relates, the worker may take the holiday once the incapacity is over and provided that not more than eighteen months have passed from the end of the year in which the holiday was accrued.

►Section 6 of Royal Decree No. 1621/2011 has extended to domestic workers the right provided under Section 37 of the Workers' Statute.