

## — 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 8§4b (prohibition of the employment of women in certain dangerous occupations).

# Monitoring the implementation of the European Social Charter <sup>1</sup>

## I. Reporting system <sup>2</sup>

### Reports submitted by Spain

Between 1982 and 2017, Spain submitted 30 reports on the application of the 1961 Charter.

The [29<sup>th</sup> report](#), submitted on 19/10/2016, covers the accepted provisions relating to Thematic Group 2 "Health, social security and social protection", namely:

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of the elderly to social protection (Article 4 of the 1988 Additional Protocol)

In addition, the report concerns the information required by the Committee in the framework of Conclusions XX-4 2015 relevant to Thematic Group 4 in the event of non-conformity for lack of information.

Conclusions with respect to these situations will be published in January 2018.

The [30<sup>th</sup> report](#), which was submitted on 14/11/2017, concerns the accepted provisions relating to the 1961 Charter and the Additional Protocol relative to Thematic Group 3 "Labour Rights", namely:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right of workers to be informed and consulted (Article 2 of the 1988 Additional Protocol)
- the right of workers to take part in the determination and improvement of the working conditions and working environment (Article 3 of the 1988 Additional Protocol),

In addition, the report should provide the information required by the Committee in the framework of Conclusions XXI-I 2016 relating to Thematic Group 1 "Employment, training and equal opportunities" (Articles 1, 9, 10, 15, 18, 20, 24 and 25), in the event of non-conformity for lack of information.

The conclusions related to these provisions will be published in January 2019.

---

<sup>1</sup> 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](#).

<sup>2</sup> 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-conformity <sup>3</sup>

#### Thematic Group 1 "Employment, training and equal opportunities" - Conclusions XX-1 (2012)

► *Article 152 – 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.

► *Article 153 – Right to free placement services*

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

► *Article 1054 – 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.

#### 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 XX-3 (2014)

► *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.

► *Article 254 – 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.

► *Article 451 – 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.

► *Article 452 – 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.

---

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

► *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.

► *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.

► *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.

Thematic Group 4 "Children, families, migrants" - Conclusions XX-4 (2015)

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

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

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

- It has not been established that adequate childcare facilities exist;
- It has not been established that adequate family counselling services exist;
- It has not been established that associations representing families are consulted when family policies are drawn up;
- It has not been established that adequate mediation services exist;
- Family benefits are not of an adequate level for a significant number of families.

► *Article 19§1 and 19§10 – Right of migrant workers and their families to protection and assistance – Assistance and information on migration -Equal treatment for the self-employed*

*It has not been established that adequate measures have been taken against misleading propaganda relating to emigration and immigration*

► *Article 19§3 – Right of migrant workers and their families to protection and assistance - Co-operation between social services of emigration and immigration states*

*It has not been established that there is adequate co-operation between the social services of Spain and emigration and immigration states. Conclusions 2017.*

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

*It has not been established that social welfare benefits are not excluded from the calculation of the worker's income for the purposes of family reunion. Conclusions 2017.*

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§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"

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

Thematic Group 3 "Labour rights"

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

Thematic Group 4 "Children, families, migrants"

- ▶ Article 7§3 - Conclusions XX-4 (2015)
- ▶ Article 8§2 - Conclusions XX-4 (2015)
- ▶ Article 19§8 - Conclusions XX-4 (2015)

## II. Examples of progress achieved in the implementation of rights under the Charter (*update in progress*)

### Non-discrimination

- ▶ Adoption of 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 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 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)<sup>4</sup>.
- ▶ 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).

---

<sup>4</sup> RecChS(95)9 adopted by the Committee of Ministers on 22 May 1995.

- ▶ 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.
- ▶ 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.

#### 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).

#### Safe and healthy working conditions

- ▶ 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.

#### Social security

- ▶ 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)