



# **The right to strike in the public services**

## **Spain**



## **The right to strike in the public services – Spain**

### **Contents**

- 1. Legal basis**
- 2. Who has the right to call a strike?**
- 3. Definition of strike**
- 4. Who may participate in a strike?**
- 5. Procedural requirements**
- 6. Legal consequences of participating in a strike**
- 7. Case law of international/European bodies**
- 8. Recent developments**
- 9. Bibliography**

### **Notes**

This factsheet reflects the situation in July 2021. It was elaborated by Coralie Guedes (independent expert), updated by Stefan Clauwaert (ETUC) and Diana Balanescu (independent expert), and reviewed by EPSU/ETUI; it was also sent for comments to EPSU's Spanish affiliates.

## 1. Legal basis

### International level

Spain has ratified:

#### UN instruments<sup>1</sup>

**International Covenant on Economic, Social and Cultural Rights**

(ICESCR, Article 8)

**International Covenant on Civil and Political Rights**

(ICCPR, Article 22)

#### ILO instruments<sup>2</sup>

**Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise**

(ratification on 20 April 1977)

**Convention No. 98 concerning the Right to Organise and to Bargain Collectively**

(ratification on 20 April 1977)

**Convention No. 151 concerning Labour Relations (Public Service)**

(ratification on 18 September 1984).

**Convention No. 154 concerning the Promotion of Collective Bargaining**

(ratification on 11 September 1985)

### European level

Spain has ratified:

**Article 11 (the right to freedom of assembly and association) of the European Convention on Human Rights<sup>3</sup>**

(ratification and entry into force on 04 October 1979). A reservation was made in respect of Article 11 insofar as it may be incompatible with Articles 28 and 127 of the Spanish Constitution.<sup>4</sup>

**European Social Charter of 1961**

(ratification on 6 May 1980).<sup>5</sup>

**Revised European Social Charter of 1996<sup>6</sup>**

(ratification on 17 May 2021 and entry into force on 1 July 2021).

Spain has accepted all provisions of the Revised Charter, including **Article 6(4) (the right to collective action)**.

**The Collective Complaints Procedure Protocol<sup>7</sup>**

(ratification on 17 May 2021 and entry into force on 1 July 2021).

## National level

### The Constitution of Spain

The right to strike is guaranteed in the 1978 Constitution (Article 28(2)).

“The right of workers to strike in defence of their interests is recognised. The law governing the exercise of this right shall establish the safeguards necessary to ensure the maintenance of essential public services.”

Under Article 55 (1) of the Constitution, the right to strike (recognised in Article 28, (2)) may be suspended when a **state of emergency** or **siege** (martial law) is declared under the terms provided in the Constitution.

Detailed rules are to be found in the 1977 Decree on Labour Relations.

A **strike** is **defined** as a **collective work stoppage** directly related to workers’ occupational interests.

No distinction is made in Spain between the central and local civil services, since the same legal provisions apply to all civil servants and public-sector workers.

The Spanish Government has the power to establish the basis and principles of these regulations, but their scope may be limited, enlarged or specified by relevant standards issued by the Autonomous Communities.

This means that, while the Law of 2 August 1984 reforming the civil service applies to the civil service both nationally and locally, the same law also states that, within this legislative framework, the Autonomous Communities may introduce provisions that apply to their own civil service.

In 2006, a **Civil Service Statute** was agreed between the Ministry of Public Administration and the trade unions. This Statute introduced a unified approach to employment conditions in the public sector, such as career paths, code of conduct and collective bargaining. The Statute recognises the right to strike as a full right, but demands that essential community services are maintained, without specifying them.

The Royal Decree 5/2015, approving the Revised Text of the Basic Statute of the Public Employee (EBEP), includes the following provisions:

- Article 15 (c) recognises strike action as an individual right that is exercised collectively, based on the obligatory maintenance of essential community services.
- Article 30 determines the deduction of remuneration during the exercise of the right to strike but guarantees that it does not have the character of a sanction. Nor does it affect the respective system of social security benefits.
- Article 95 (l) makes it a very serious offence to prevent the free exercise of the right to strike.
- Article 95 (m) classifies the failure to comply with the obligation to provide essential services in the event of a strike as a very serious offence.

Articles 18 (c); 41.7; and 72 (j and ñ) of law 55/2003 on the Framework Statute for Statutory Staff of the Public Health Services proposes a regulation similar to that of the EBEP.

Although there is no specific regulation of the right to strike for public employees, the jurisprudence of the Constitutional Court and the Supreme Court considers that the regulation for general labour relations (RDL 17/1977) is applicable to them, with the necessary adaptations.

## **2. Who has the right to call a strike?**

A strike affecting a single employer may be called by trade union or workforce representatives or groups of workers. Strikes affecting an entire sector may only be called by trade unions. General strikes are also allowed as long as they are motivated by a concern related to the workers' interests.

### 3. Definition of strike

A strike is taken to mean the complete stoppage of work. As such, the following forms of strike are considered to be **illegal**:

- work-to-rule actions
- sit-ins
- workplace occupation
- staggered strikes
- strikes affecting strategic parts of the enterprise
- selective strikes
- rotating strikes

A strike is **illegal** when it is initiated in support of **political** or any other purposes outside the professional interests of the workers concerned.<sup>8</sup>

According to Article 11 Royal Decree-Law 17/1977 **a strike is illegal** when it is intended to alter, within its period of validity, the agreed terms of a collective agreement or the provisions of an award, as well as when it occurs in contravention of the provisions of the Royal Decree-Law 17/1977, or as expressly agreed in the Collective Bargaining Agreement for the settlement of disputes.<sup>9</sup>

**Solidarity strikes** are illegal under the law, but the Constitutional Court has interpreted solidarity action as legal in cases where there exists a minimum convergence of interests among the groups of employees involved. Such legality has to be established on a case-by-case basis.

**Peaceful picketing** is legally protected under the right to strike in connection with the right to freedom of expression. However, the limits between peaceful picketing and unlawful coercion and intimidation are quite often not at all clear. The criminal code punishes the members of a picket line who attempt to force anyone to participate in the strike.

Furthermore, the **Organic Law No. 4/2015 on Citizens' Security** criminalises offences committed by persons who disrupt or seek to disrupt harmonious relationship among citizens, descripting public order, causing damage to persons or property, blocking roads or public spaces or preventing authorities or bodies from performing their duties freely and depending on the situation at stake this might lead to fines of up to 600.000 euro. In its Opinion adopted in March 2021, the Council of Europe's Venice Commission for Democracy through Law concluded that the amount of penalties provided by Law No. 4/2015 – especially those for serious and very serious offences (up to 600 000 Eur in the latter case) – appears quite high, in the Spanish context. It further stated that in view of the imprecise definition of some offences (most notably Article 36 para. 6 which speaks of “disobedience to the authorities”), these fines may have a chilling effect on the exercise of the **freedom of assembly**. The Venice Commissions recommended that the amounts of the fines should therefore be reconsidered.<sup>10</sup>

**Lock-out.** Pursuant to Article 12 Royal Decree-Law 17/1977, employers can only close the workplace in case of strike or any other form of collective irregularity in the working regime, in any of the following circumstances:

- (a) danger or violence to persons or damage to property;
- (b) illegal occupation of the place of work, or a clear and actual danger that this may happen;
- (c) the size of the absence or irregularities in the work seriously impede the normal production process.<sup>11</sup>

Spanish legislation allows lockouts only when persons or property are in danger, as a policing measure. However, it is a measure rarely put into practice by employers.<sup>12</sup>



#### 4. Who may participate in a strike?

In the absence of specific regulations governing strikes in essential services, the Constitution, the case law of the Constitutional Court and the disciplinary rules for civil servants apply, as do the rules contained in Royal Legislative Decree No. 17/1977.

No list of essential services or objective criteria for their definition exists: both the Constitution and the current legislation require *certain services essential* to the community to be maintained during a strike, but the power to define such services more precisely lies with the Government (or with regional executive bodies, where appropriate) and the Constitutional Court's case law. The Spanish authorities have provided many examples of decisions which declared various services to be essential in the event of industrial action, and the method adopted by the courts seems to preclude *a priori* decisions on the nature of services.

However, it is only once a strike has been called and the decision has been taken by the authorities to order the establishment of minimum services that this decision may be appealed before the civil (administrative and litigation) courts, with the possibility of suspension of the effects of the appealed act as a mechanism for 'immediate legal supervision'.

The Constitutional Court, however, has imposed certain restrictions on the notion of essential services. In particular, the level of service required must not be out of proportion to the breach of fundamental rights threatened by the strike.

Judicial review and negotiations between government and the two sides of industry to determine what staff should be co-opted to provide **minimum services** are fundamental safeguards of the right to strike in essential public and economic services.

When a strike is held in **essential public services**, a minimum level of service must be ensured. On 23 September 2010, for the first time a collective agreement was concluded between the Government and the two main trade unions to organise minimum service provision during general strike action that was due to take place six days later. The agreement mainly covered the transport sector, as negotiations in all other sectors had failed.

Under Article 10 Royal Decree-Law 17/1977 when the strike is declared in companies responsible for the provision of public services of any genre or services of recognized and unavoidable need and particularly serious circumstances exist, the governing authority may decide on the necessary measures to ensure the functioning of the services. The government also may adopt for this purpose **appropriate intervention measures**.<sup>13</sup>

Exceptionally, in the event of possible harm to the national economy, the Government may end a strike by imposing **compulsory arbitration**.<sup>14</sup> This situation has been found by the European Committee of Social Rights to be not in compliance with Article 6(4) of the European Social Charter (see section 7 below). The Constitutional Court of Spain has pointed out that this arbitration could only be constitutional when the arbiter chosen is impartial.<sup>15</sup>

The right to strike in the public services – Spain

The right to strike is not accorded to **judges, magistrates, public prosecutors<sup>16</sup> or members of the police<sup>17</sup> and military forces<sup>18</sup>.**

## 5. Procedural requirements

Although a **peace obligation** may be stipulated by collective agreement, any restriction of the right to strike in an employment contract is unlawful.

There is no legislation requiring **exhaustion** of mediation/conciliation or **arbitration procedures prior to striking**. However, Article 10 of Royal Decree 17/1977 states that the Government may institute arbitration proceedings if there are serious consequences from striking.<sup>19</sup>

The workers must establish a **strike committee** of no more than 12 representatives from among themselves.

In general, **written notice** must be given, both to the other party and to the Ministry of Employment, at least **five calendar days** in advance. From that day forward, both parties are legally bound to negotiate. The strike notice shall contain the objectives of the strike, the steps taken to resolve the differences, the date on which the strike initiate and the composition of the strike committee.<sup>20</sup>

Pursuant to Article 4 Royal Decree-Law 17/1977, when a strike affects companies responsible for any kind of **public service**, a strike prior notice of at least **ten calendar days** must be given to the employer and the labour authority. The workers' representatives should give the notice before initiation of advertising of the strike to service users.<sup>21</sup>

In order to end a strike, an agreement – having the same legal value as a collective agreement – must be concluded.

Generally speaking, **strike breakers** may not be used by the employer, the only exception being where the strike committee fails in its obligation to maintain plant and machinery.

During strike action, there is an obligation to maintain the safety and maintenance services necessary for human safety and protection of the company's property.

The main limit on the right to strike of public employees is interpretation of the concept of "maintaining essential community services" around which there is considerable case law of the Constitutional Court dating from judgement 11/1981 to judgement 148/1993. The determination of essential services and the workers who must provide them can be made by agreement of the parties and, failing that, by the labour authority. The latter weighs the extent of the strike, its duration and other circumstances, and must seek a proportional solution between the exercise of the strike and the needs of service users. The decision must be reasoned and can be challenged but this normally comes after the strike has taken place. There is evidence that the minimum services imposed can be excessive, as in many of the cases in which they are appealed by the trade unions the courts have found the nature of these minimum services to be excessive.

## 6. Legal consequences of participating in a strike

**Exercising the right to strike** does not terminate the employment relationship, nor does it justify any penalties, unless the worker is guilty of professional misconduct during the strike action. Nevertheless, for the duration of the strike action, the work contract is suspended, and the worker is not entitled to any form of pay (for public service workers this is covered by article 30, of the basic law on public employment (EBEP)). The obligation to pay social security contributions is suspended. The worker is also not entitled to any unemployment benefits or compensation benefit for temporary inability to work. According to article 95.3 (m) of the EBEP it is very serious misconduct to fail to meet the requirement to deliver minimum essential services.

**Taking part in illegal strike action** and refusing to work when called on to fulfil their obligation to maintain the safety and maintenance services necessary for human safety and protection of the company's property are legitimate causes for dismissal.

It is an offence under article 409 of the Penal Code for public officials to promote, direct or organise the collective and manifestly illegal abandonment of a public service, as well as to take part in the collective or manifestly illegal abandonment of an essential public service to the serious detriment of the service or the community.

**Criminal sanctions.** Article 315 of the Criminal Code allowed for the imposition of prison sentences for anyone who coerces other persons into starting or continuing a strike. This was criticised by international monitoring bodies such as UN Committee on Economic, Social and Cultural Rights<sup>22</sup> and the ILO Committee on Freedom of Association but was repealed by Organic Law 5/2021.

## 7. Case law of international/European bodies

### International Covenant on Economic, Social and Cultural Rights

In its Concluding observations on the sixth periodic report on Spain<sup>23</sup>, the **Committee on Economic, Social and Cultural Rights** expressed concerns about use of article 315 (3) of the Criminal Code, which has resulted in the criminal prosecution of workers who have participated in strikes (art. 8). This article was repealed by Organic law 5/2021.

### International Labour Organisation

#### Committee on Freedom of Association (CFA)

*Case No 3093 (Spain) - Complaint date: 25 July 2014, General Union of Workers (UGT) and Trade Union Confederation of Workers' Commissions (CCOO)*

The complaint also concerned **article 315.3 of the Criminal Code** that was repealed by Organic Law 5/2021.

#### Committee of Experts on the Application of Conventions and Recommendations (CEACR)

*Direct Request (CEACR) - adopted 2018, published 108th ILC session (2019)<sup>24</sup> on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*

The Committee noted the observations of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT), both received on 9 August 2018 and included in the Government's report, and of the Spanish Confederation of Employers' Organizations (CEOE), communicated by the Government on issues addressed by the present comment, as well as the Government's comments in this respect.

The Committee also noted the observations of the International Trade Union Confederation (ITUC), received on 1 September 2018, which in addition to raising issues addressed by the present comment, referred to matters relating to the application of the Convention in practice, including the exercise of the right to strike and the check off of trade union dues. The Committee requested the Government to provide its comments in this regard.

#### **Article 3 of the Convention - observations of the social partners on the exercise of the right to strike**

The Committee, noting the various viewpoints of the workers' confederations, as well as the International Organisation of Employers (IOE) and the CEOE, in relation to the exercise of the right to strike, and particularly regarding **minimum services**, requested the Government to address through tripartite dialogue the operation of the procedures for the determination of minimum services, as well as the other issues and concerns raised by these organizations.

The Committee noted the Government's indication in general terms that tripartite dialogue depends on the proposals made by the parties to the negotiation. The Government recalled

the principal elements of the system for the determination of minimum services, and emphasized that:

- (i) the most common intervention by the government authorities is the determination of minimum services for essential services;
- (ii) its intervention is impartial;
- (iii) the establishment of these minimum services has to be undertaken on the basis of a restrictive criterion, without achieving the normal level of operation, and there must be adaptation and proportionality between the protection of the interests of the community and the restriction of the right to strike;
- (iv) this has to be done through a legal provision, following a hearing of the strike committee, with sufficient publicity and the reasons being given to allow those affected to defend their positions and any subsequent judicial review;
- (v) in each case, the characteristics and circumstances of the strike have to be taken into account;
- (vi) minimum service orders can be challenged in the courts, and failure to comply with them does not render a strike unlawful.

The Committee also noted the assertion by the CCOO, in relation to essential services (within the definition of such services in Spanish legislation), that the administrative authority continued to fail to comply with the elements of the system for the determination of minimum services referred to by the Government (the CCOO provided examples of court rulings in this respect). In particular, the CCOO indicated that, in an important number of such essential services, Government authorities had refused to enter into dialogue with trade unions for the determination of minimum services and instead established them in a unilateral and abusive manner, which has given rise to various appeals to the courts, some of which have not been resolved, while others have given rise to court judgments finding the determination of minimum services and the replacement of workers abusive.

The Committee further noted that CEOE allegations of the existence of dysfunctions in the exercise of the right to strike and that it reiterated its previous observations in this respect with the assertion that the dysfunctions should be resolved by guaranteeing the free individual exercise of both the right to strike and the right to work, and its views that:

- (i) information on the strike should be prohibited from 24 hours prior to the commencement of the strike with a view to avoiding situations of coercion;
- (ii) the judicial finding on whether or not the strike is legal should be issued before it commences;
- (iii) minimum services should be negotiated prior to the commencement of the dispute, and the rules established should be of a permanent nature;
- (iv) all the liabilities that may arise from participation in unlawful strikes should be determined; and
- (v) recourse to dialogue and out-of-court resolution machinery should be intensified.

Observing the persistent divergences in the information provided and that the social partners continued to challenge aspects of the current system, including the reference by workers' organizations to court rulings setting aside administrative decisions for the determination of minimum services, the Committee once again requested the Government to address through social dialogue with the most representative organizations of employers

and workers the operation of the machinery for the determination of minimum services and the other issues and concerns raised by these organizations in relation to the exercise of the right to strike.

*Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016) on Labour Relations (Public Service) Convention, 1978 (No. 151)*

### **Article 8 out-of-court dispute settlement procedures**

The Committee noted the observations of the UGT and the CCOO alleging the absence of a system of out-of-court dispute settlement for public employees, even though the trade unions have requested the establishment of such a system, and the possibility of its creation is envisaged in section 45 of the Public Employees Basic Statute. The Committee requested the Government to send its comments on this matter.<sup>25</sup>

### **European Social Charter**

#### **Collective complaints under article 6(4) ESC**

On 17 May 2021, Spain ratified the Additional Protocol Providing for a System of Collective Complaints.<sup>26</sup> Complainant organisations are now entitled to lodge collective complaints raising the non-compliance of a State's law or practice with any of the provisions of the Revised European Social Charter.<sup>27</sup>

### **ECSR Conclusions**

In its **Conclusions XX-3 (2014)**<sup>28</sup>, the ECSR found the situation in Spain not in conformity with the Charter on the ground that section 10(1) of Royal Legislative Decree No. 17/1977 allows recourse to arbitration to end a strike in cases that go beyond the requirements set out in Article 31 of the Charter. According to the law in question, the Government has statutory powers to impose arbitration to end a strike in exceptional circumstances, namely when it considers that there is a threat to the rights and freedoms of others because a strike has gone on too long, the parties' positions are irreconcilable and too much damage is being done to the national economy.

The information provided with respect to some cases of interference by the Government does not show that the imposition of binding arbitration to end a strike is necessary within the meaning of Article 31.

The ECSR also took note of the comments from the Spanish trade union confederations that the criminalisation of trade union activity in the form of informative picket lines in the course of a strike is disproportionate and unjustified and therefore constitutes an infringement of Article 6(4) of the 1961 Charter. The Committee has therefore asked the Government to provide information and comments in relation to this matter.

In its **Conclusions XXI-3 (2018)**<sup>29</sup>, the ECSR found and concluded the following in relation to specific restrictions on the right to strike and procedural requirements:

The Committee recalled that pursuant to Section 10.1 of Royal Legislative-Decree No. 17/1977 of 4 March 1977 the Government may impose arbitration to end a strike in exceptional circumstances, namely when it considers that there is a threat to the rights and freedoms of others because a strike had gone on for too long, the parties' positions were irreconcilable and too much damage was being done to the national economy. According to a Supreme Court judgment of 9 May 1988, a situation permitting Government interference has to be exceptional, or there must be a cumulative series of circumstances, all of which have to be considered by the Government, before it can make use of its exceptional discretionary power. The Committee asked for a more detailed description of these exceptional circumstances.

The Committee in its previous conclusions (Conclusions XIX-3 (2010) and XX-3 (2014)), found that Royal Decree-Law 17/1977 allowed the use of obligatory arbitration in circumstances that exceeded the limits established by Article 31 of the 1961 Charter.

The report stated that there has been no change in this respect, therefore the Committee considered that the situation was still not in conformity with the 1961 Charter. The Committee asked to be kept informed of when and in what circumstances this procedure has been used.

The Committee referred to its general question on the right of members of the police to strike.

### **Conclusion**

The Committee concluded that the situation in Spain was not in conformity with Article 6§4 of the 1961 Charter on the ground that 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.



## 8. Recent developments

### State of emergency and Covid-19

Article 116 of the Spanish Constitution (1978), together with the Organic Law 4/1981, provides for the possible declaration of three different states of emergency, namely: a state of alarm, a state of emergency and a state of siege (martial law). Article 4 of the Organic Law 4/1981 allows the government to declare a **state of alarm** under very specific circumstances, essentially, in cases of natural disasters, health crises, such as **epidemics** and serious contamination situations, or when public essential services are paralysed (when the provisions of article 28(2) of the Constitution – right to strike - are not guaranteed), or when there is shortage of goods of primary necessity.<sup>30</sup> Prior to coronavirus, a state of alarm had only been declared once, on 4 December 2010, when civilian air traffic controllers abandoned their duties in a concerted way, provoking the closure of Spanish airspace.<sup>31</sup>

The Spanish government addressed the situation caused by the coronavirus pandemic by declaring a **state of alarm** on 14 March 2020. On 9 October 2020, Spain declared again a state of alarm in certain parts of the territory, and from 25 October it was extended to the entire national territory; the state of alarm was subsequently prolonged until 9 May 2021.<sup>32</sup>

According to Article 116(1) of the Spanish Constitution, it is possible to establish “limitations”, during the state of alarm, which according to Article 11 of the Organic Law 4/1981, can affect the freedom of movement at certain hours or under certain requirements, to goods that can be requisitioned, to the compulsion of personal contributions, to the intervention and transitory occupation of premises (except private homes), to the limit or rationing of the use or consumption of services or essential commodities or to the adoption of health and environmental protection measures.<sup>33</sup> It can be noted that the right to strike is not among the rights listed that could be subject to limitations. However, Article 4 of the Organic Law 4/1981 provides that a state of alarm can be declared in case of: c) Cessation of essential public services for the community, when the provisions of Articles 28(2) **right to strike** and 37(2) right to adopt collective labour measures of the Constitution<sup>34</sup> **are not guaranteed**, if any of the other circumstances or situations contained in this article concur (such as natural disasters or epidemics).<sup>35</sup>

Spain has not derogated from the European Convention of Human Rights according to Article 15 of the Convention<sup>36</sup> or from any other international instrument.<sup>37</sup> Spain has not used either the possibility to derogate from its obligations under the European Social Charter as provided by Article 30 of the 1961 Charter.<sup>38</sup>

### Industrial relations during Covid-19

The severity of the impact of the pandemic on Spain’s economy and labour market required the government and social partners to work closely together to mitigate its effects. Together with the key role played by tripartite social dialogue in the response to the crisis, trade unions and employers have also maintained a strong bi-partite social dialogue. The **Sixth Bi-partite Agreement on Autonomous Resolution of Labour Disputes (ASAC)** was concluded in November 2020. The agreement provides additional momentum to the extension of mediation, arbitration and conciliation mechanisms to have a more effective collective bargaining system. Moreover, the agreement broadens its application in relation to the previous one, including **public employees** in mediation or modifying the management of the

strike, facilitating that the mediation can be carried out during the notice period and that it lasts as long as deemed necessary to end the conflict.<sup>39</sup>

**Labour disputes** in the context of the pandemic in Spain have exhibited a marked decline in their number, workers involved and working hours lost in 2020. Moreover, available data shows a decline in conciliation, mediation and arbitration procedures.<sup>40</sup>

On 17 May 2021, Spain **ratified the Revised European Social Charter**, accepting all provisions, and the **Collective Complaints Procedure**.<sup>41</sup>

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## Notes

1 Status of ratification by Spain of UN instruments: <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en> (accessed on 12 July 2021).

2 Status of ratification by Spain of ILO conventions: [https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102847](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102847) (accessed on 12 July 2021).

3 Status of ECHR ratifications: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?module=signatures-by-treaty&treaty=005> (accessed on 12 July 2021).

4 Spain made reservations in respect of the application of Article 11, insofar as it may be incompatible with Articles 28 and 127 of the Spanish Constitution; Article 28 of the Constitution recognises the right to organise, but provides that legislation may restrict the exercise of this right or make it subject to exception in the case of the armed forces or other corps subject to military discipline and shall regulate the manner of its exercise in the case of civil servants; Article 127 (1) of the Constitution specifies that serving judges, law officers and prosecutors may not belong to either political parties or trade unions and provides that legislation shall lay down the system and modalities as to the professional association of these groups (<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?module=declarations-by-treaty&numSte=005&codeNature=2&codePays=SPA>).

5 See status of ratification by Spain of the European Social Charter of 1961: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035?module=signatures-by-treaty&treaty=035>. In a declaration contained in the instrument of ratification of the European Social Charter of 1961, Spain declared that it will interpret and apply Articles 5 and 6 of the European Social Charter, read with Article 31 and the Appendix to the Charter, in such a way that their provisions will be compatible with those of Articles 28, 37, 103.3 and 127 of the Spanish Constitution (all articles dealing with the rights of certain public servants).

6 Status of ratification by Spain of the Revised European Social Charter: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163?module=signatures-by-treaty&treaty=163>; see also European Social Charter, Country profile: Spain at: <https://www.coe.int/en/web/european-social-charter/spain> (accessed on 12 July 2021).

7 Through a Declaration contained in the instrument of ratification of the Revised Charter deposited on 17 May 2021, Spain declared: “In relation to Article D, paragraph 2, of Part IV of the European Social Charter (revised), Spain declares that it accepts the supervision of its obligations under this Charter following the procedure provided for in the Additional Protocol to the European Social Charter providing for a system of collective complaints, made in Strasbourg on 9 November 1995.” (<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=163>).

8 Article 11 of Royal Decree-Law 17/1977, see IRLEX, Spain, 2019, [https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:ESP,,2019](https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:ESP,,2019).

9 *Ibid*

10 Venice Commission, Opinion on the Citizens’ Security Law, adopted by the Venice Commission at its 126th Plenary Session, 19-20 March 2021 ([https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)004-e)).

11 Article 12 of Royal Decree-Law 17/1977, see IRLEX, Spain, 2019, [https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:ESP,,2019](https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:ESP,,2019).

12 <https://www.eurofound.europa.eu/country/spain#industrial-action-and-disputes>

13 Article 10 of Royal Decree-Law 17/1977, see IRLEX, Spain, 2019, [https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:ESP,,2019](https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:ESP,,2019).

14 Article 10 of Royal Decree-Law 17/1977, see IRLEX, Spain, 2019, [https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:ESP,,2019](https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:ESP,,2019).

15 Decision of Constitutional Court STC 11/1981 of 8 April, par. 2. d).

16 Article 127(1) of the Spanish Constitution provides that: “Judges and Magistrates, as well as Public Prosecutors, whilst actively in office, may not hold other public office nor belong to political parties or trade unions. The law shall lay down the system and methods of professional association for Judges, Magistrates and Prosecutors.”

17 However, Basic Law No. 9/2015 revised the regulations on the freedom of association of the National Police Corps, a body of public officials. As in the previous regulations (Basic Law of 1985), the national police force are entitled to a special system of freedom of association, because members of the police may establish their own unions, but are not permitted to join general unions. Facilities and guarantees for the exercise of trade union activities are also regulated, and responsibilities are established for the activities of these trade unions. The police may also appoint representatives for safety and health at work and may participate in the Police Council, a body of equal representation of management and staff that aims, among other functions, to mediate and conciliate in collective action measures and participate in the establishment of working conditions.

18 According to Article 7 of the Organic Law 9 of 27 July 2011: “Members of the military may not exercise the right to form or join trade unions or engage in trade union activities. Members of the Armed Forces shall not take part into collective bargaining, adopt collective conflict measures and exercise the right to strike.”, see IRLEX, Spain, 2019, [https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:ESP,,2019](https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:ESP,,2019).

- 19 See IRLX, Spain, 7.3.2 Exhaustion of dispute resolution procedures prior to strikes, 2019, [https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:ESP,,2019](https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:ESP,,2019).
- 20 IRLX, Spain, 2019, [https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100\\_ISO\\_CODE3,P1100\\_SUBCODE\\_CODE,P1100\\_YEAR:ESP,,2019](https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:ESP,,2019).
- 21 *Ibid*
- 22 [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fESP%2fCO%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fESP%2fCO%2f6&Lang=en)
- 23 Available at [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fESP%2fCO%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fESP%2fCO%2f6&Lang=en)
- 24 Direct Request (CEACR) available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3962334,102847,Spain,2018](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3962334,102847,Spain,2018)
- 25 Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:3252715,102847,Spain,2015](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3252715,102847,Spain,2015)
- 26 See European Social Charter, Country profile: Spain at: <https://www.coe.int/en/web/european-social-charter/spain> (accessed on 12 July 2021).
- 27 For more information on the collective complaints procedure under the European Social Charter, see: <https://www.coe.int/en/web/european-social-charter/collective-complaints-procedure>.
- 28 ECSR, Conclusions XX-3 (2014), available at: <http://hudoc.esc.coe.int/eng?i=XX-3/def/ESP/6/4/EN>.
- 29 ECSR Conclusions XXI-3 (2018), available at: <http://hudoc.esc.coe.int/eng?i=XXI-3/def/ESP/6/4/EN>.
- 30 See Article 4 of Organic Law 4/1981 at: <https://boe.es/buscar/act.php?id=BOE-A-1981-12774>
- 31 European Parliamentary Research Service, States of emergency in response to the coronavirus crisis: Situation in certain Member States, Spain, pp. 10-11, June 2020 ([https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649408/EPRS\\_BRI\(2020\)649408\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649408/EPRS_BRI(2020)649408_EN.pdf)).
- 32 European Parliamentary Research Service, Maria Diaz Crego and Silvia Kotanidis, 'States of emergency in response to the coronavirus crisis', December 2020 ([https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659385/EPRS\\_STU\(2020\)659385\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659385/EPRS_STU(2020)659385_EN.pdf)).
- 33 Venice Commission, Observatory on emergency situations, Spain (<https://www.venice.coe.int/files/EmergencyPowersObservatory/ESP-E.htm>).
- 34 See Articles 28(2) and 37(2) of the Constitution (in English) at: <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>
- 35 See Article 4 of Organic Law 4/1981 at: <https://boe.es/buscar/act.php?id=BOE-A-1981-12774>
- 36 Article 15 of the ECHR 'Derogation in time of emergency' provides that: "In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law."
- 37 Venice Commission, Observatory on emergency situations, Spain (<https://www.venice.coe.int/files/EmergencyPowersObservatory/ESP-E.htm>).
- 38 European Committee of Social Rights, Statement on COVID-19 and social rights, 24 March 2021 (<https://rm.coe.int/statement-of-the-ecsr-on-covid-19-and-social-rights/1680a230ca>); Note that Spain ratified the Revised European Social Charter on 17 May 2021 (where Article F applies), but until then it was bound by the 1961 Charter (Article 30 refers to 'Derogations in times of war or public emergency').
- 39 Eurofound, Oscar Molina, 'Spain: Working life in the COVID-19 pandemic 2020', 23 March 2021 (<https://www.eurofound.europa.eu/sites/default/files/wpef21032.pdf>).
- 40 <https://www.eurofound.europa.eu/sites/default/files/wpef21032.pdf>
- 41 European Social Charter, Country profile: Spain at: <https://www.coe.int/en/web/european-social-charter/spain> (accessed on 12 July 2021).