

Member State law - Spain



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This page provides information about the Spanish legal system and a general overview of the legal system in Spain.

Sources of the Spanish legal system

The sources of the Spanish legal system are defined in Article 1 of the Civil Code:

1. The sources of the Spanish legal system are the Law, custom and the general principles of law.
2. Any provisions which contradict another of a higher ranking are invalid.
3. Custom only applies in the absence of any applicable law, provided that it is not contrary to morality or public order and has been proven.
4. Legal uses which are not merely interpretative of a declaration of will are deemed to be customs.
5. The general principles of law apply in the absence of law or custom, without prejudice to the informing nature of the legal system.
6. The legal rules contained in international treaties do not apply directly in Spain until they have become part of the internal rule of law by being published in full in the Official State Gazette.
7. Caselaw complements the legal system with the doctrine which is repeatedly established by the Supreme Court when interpreting and applying the law, custom and general principles of law.
8. The judges and courts have the inexcusable duty of resolving the cases they hear in every case, using the established system of sources.

Types of rules

Constitution: Supreme legal rule of the State, to which all public authorities and citizens are subject. Any provision or act contrary to the Constitution is invalid. It is structured in two clearly separate parts as regards its content: a) the dogmatic part, and b) the organic part.

International Treaties: a written agreement between certain subjects of international law and which is governed by it, which can consist of one or more related legal instruments, irrespective of what it is called.

Statutes of Autonomy: basic Spanish institutional rule of an Autonomous Community, recognised by the Spanish Constitution of 1978 and which is approved by the Organic Law. It contains at least the name of the Community, the territorial limits, the name, organisation and seat of the autonomous institutions and the powers assumed.

- Law: there are various types of laws.
- Organic Law: relating to the development of fundamental rights and civil liberties, those which approve the Statutes of Autonomy and the general electoral system and the others specified in the Constitution.
- Ordinary Law: governing matters to which the organic law relates.
- Legislative Decree: these mean the delegation by the Cortes Generales (Parliament) of the power to issue rules with the ranking of law in respect of certain subject matters.

- Decree-Law: provisional legislative provisions issued by the Government in extraordinary circumstances and emergencies and which cannot affect the arrangement of basic State institutions, rights, duties and liberties of citizens governed in Title One of the Constitution, the system of Autonomous Communities, nor the general electoral right. They must be submitted immediately for discussion and voting by the whole of the Congress of Deputies within thirty days of being issued.
- Regulation: a legal rule of a general nature issued by the executive authority. It ranks immediately below law in the hierarchical system and, generally speaking, develops it.
- Custom: is defined as 'the set of rules derived from the more or less constant repetition of uniform actions'. In order for custom to represent a collective and spontaneous will, it must be general, constant, uniform and lasting.
- General Principles of Law: listed general rules which, without having been incorporated into the legal system by formal procedures, are deemed to form part of it because they serve as a basis for other listed particular rules or embody in an abstract manner the content of a group of such rules. They are used to make up for legal shortcomings or to interpret legal rules.
- Case-law: is based on two sentences which interpret a rule in the same way, emanating from the Supreme Court and, in the case of certain subjects for which jurisdiction is limited to the Autonomous Community, from the Higher Courts of Justice in the Autonomous Community in question. In the event that a judge or court moves away from the doctrine established by the Supreme Court, the decision is not invalidated automatically but rather serves as the basis for an appeal on points of law. Nevertheless, the Supreme Court may move away from its consolidated case-law at any time.

Hierarchy of rules

Article 1.2 of the Spanish Civil Code states that 'provisions which contradict those of higher ranking are invalid'. This means that a hierarchy of rules must of necessity be established, and to this end the Spanish Constitution governs the interrelationship between the various rules and their hierarchical and jurisdictional relationships.

According to the Constitution, the primacy of rules under Spanish law is as follows:

1. The Constitution.
2. International Treaties.
3. Law in the strict sense: Organic Law, ordinary Law and rules with the ranking of Law (including Royal Decree-Law and Royal Legislative Decree).
4. Rules emanating from the executive, with their own hierarchy depending on the body which issues them (Royal Decree, Decree, Ministerial Order, etc.).

In addition to this, a principle of jurisdiction has been established with regard to rules emanating from the Autonomous Communities by means of their own Parliaments.

Institutional framework

Institutions responsible for passing legal rules.

The institutional framework in Spain is based on the principle of separation of power, with legislative power being attributed to the Cortes Generales and to the Legislative Assemblies of the Autonomous Communities.

The Government has the executive power, including the power to regulate and on occasions exercises legislative power by delegation from the Cortes Generales.

Regulatory rather than legislative power has been given to Local Authorities.

The legislative initiative lies with the Government, the Congress and the Senate, the Assemblies of the Autonomous Communities and the popular initiative.

The decision-making process

International Treaties: three approval mechanisms exist, depending on which type of subjects the Treaty is regulating.

- Firstly, organic Law authorises the conclusion of Treaties where the exercising of jurisdiction arising out of the Constitution is attributed to an international organisation or institution.
- Secondly, the Government may give State consent to being bound by Treaties or agreements with the prior authorisation of the Cortes Generales, in the following cases: Treaties of a political nature, Treaties or Agreements of a military nature, Treaties or Agreements which affect the territorial integrity of the State or the fundamental rights and duties set out in Title

one, Treaties or Agreements which involve financial obligations for the Tax Authorities, Treaties or Agreements which require modification or derogation of any Law or require legislative measures in order to be implemented.

- Finally, for all other subjects it is merely necessary to inform the Congress and Senate immediately that the treaty has been entered into.

International Treaties which have been validly entered into, once officially published in Spain, become part of the internal order. Their provisions can only be derogated, modified or suspended in the manner specified in the Treaties themselves or in accordance with the general rules of International Law. International Treaties and agreements are terminated using the same procedure as for their approval.

Law:

Bills are approved by the Council of Ministers, which submits them to Congress, accompanied by an explanation of the reasons and background necessary for a decision to be taken on them.

Once an ordinary or organic bill has been approved by the Congress of Deputies, the President thereof immediately reports to the President of the Senate, who submits it for deliberation by the Senate. Within a period of two months from the day the draft is received, the Senate can exercise its veto or introduce amendments to it. The veto must be approved by an absolute majority.

The bill cannot be submitted to the King for his assent unless Congress ratifies the initial draft by absolute majority, in the case of a veto, or by simple majority once two months have passed since it was submitted, or rules on the amendments, accepting them or not by simple majority. The period of two months which the Senate has in order to veto or amend the bill is reduced to twenty calendar days in the case of bills declared to be urgent by the Government or by the Congress of Deputies.

The King sanctions Laws approved by the Cortes Generales within fifteen days, issues them and orders their immediate publication.

- Organic Law: The approval, modification or derogation of organic Laws requires an absolute majority of the Congress, at a final vote on the bill as a whole.

Regulation: regulations are issued in accordance with the following procedure:

- Regulations are initiated by the relevant policy-making department by preparing the corresponding bill, to which is attached a report on the need for and appropriateness of it, as well as a financial statement containing an estimate of the attendant cost.
- Throughout the preparation process it is necessary to obtain, in addition to the reports, opinions and prior prescriptive approvals, such studies and consultations as are deemed appropriate in order to ensure the impact and legality of the bill. In every case, regulations must be accompanied by a gender-impact report in respect of the measures set out therein.
- Where the provision affects the legitimate rights and interests of the people, they may be given a hearing, within a reasonable time-frame of no less than fifteen working days. Therefore, when the nature of the provision so requires, it is submitted to public consultation during the said period.
- In every case, draft regulations must be reported on by the Secretaría General Técnica (departmental secretariat), without prejudice to the ruling of the Council of State in those cases where this is legally required.
- It is necessary to inform the Ministerio de Política Territorial (ministry of regional policy) first where the regulation may affect the distribution of jurisdiction between the State and the Autonomous Communities.
- Before regulations approved by the Government can come into force, they must be published in full in the Official State Gazette.

Databases of legislation

The Official State Gazette has a database containing all legislation published since 1960: [Iberlex](#).

Is access to the databases free of charge?

Access to this database is free of charge.

Short description of the contents

Gazettes published since 1960 can be consulted on the Official State Gazette's website.

There is a search engine for searching legislation and announcements, together with databases of Constitutional Case Law since 1980, CaseLaw of the Abogacía del Estado (State lawyers) (reports and rulings since 1997) and of the Council of State. Finally, it offers alerting services for legislative notifications, public announcements and information consultations and documentation.

Related Links

 [IBERLEX/ database of Spanish legislation](#)

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