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National legislation

Ispanija

This page provides information on the Spanish legal system and a general overview of the country's legal order.

Sources of Spanish law

The sources of Spanish law are defined in Article 1 of the Civil Code (*Código Civil*):

The Spanish legal order is drawn from law, custom and the general principles of law.

Provisions that contradict another of a higher ranking are without legal validity.

Custom only applies in the absence of applicable law, provided that the custom in question is not contrary to public order or morality and is demonstrable.

Legal uses that are not merely interpretative of an expression of intent are deemed to be customs.

In the absence of law or custom, the general principles of law apply, notwithstanding their role in informing the legal order.

The legal rules contained in international treaties do not apply directly in Spain until they have become part of the internal legal order by being published in full in the Official State Gazette (*Boletín Oficial del Estado*).

Case-law complements the legal order with the doctrine established over time by the Supreme Court (*Tribunal Supremo*) in its interpretation and application of the law, custom and the general principles of law.

Spain's judges and courts, which are subject solely to the Constitution and the rule of law, are duty bound to decide on every case they hear, drawing on the established system of sources to inform that decision.

Types of legal instruments

Constitution: supreme legal order of the Spanish State, to which all public authorities and citizens are subject. Any provision or act contrary to the Constitution is without legal validity. Its content is separated into two clearly differentiated parts: a) legal doctrine and b) organic law.

International treaties: written agreements entered into between certain subjects of international law and governed by that law. They may consist of one or more related legal instruments, regardless of their denomination. Once signed and officially published in Spain, international treaties become part of the internal legal order.

Statutes of autonomy: basic Spanish institutional rules applicable to individual autonomous communities and recognised by the Spanish Constitution of 1978. They are adopted by organic law. They contain, at least, the denomination of the autonomous community; its territorial boundaries; the denominations, organisational structures and seats of the autonomous institutions; and the powers vested in them. Statutes of autonomy are not an expression of sovereignty, nor are they a *constitution* since they do not stem from an originating constituting power (which was not vested in the territories that became autonomous communities). Rather, they owe their existence to their recognition by the State without, under any circumstances, the principle of autonomy challenging the principle of unity.

Law: Spain has various types of laws.

Organic laws: those relating to the implementation of fundamental rights and civil liberties, those adopting statutes of autonomy and the legal order governing the general electoral system, and others provided for in the Constitution.

Ordinary laws: those governing matters not regulated by organic laws.

Legislative decrees: statutory provisions on certain matters issued by the Government by virtue of the powers delegated to it by Parliament (*Cortes Generales*).

Decree-laws: provisional legislative provisions issued by the Government in cases of extraordinary and urgent need and which do not affect the legal order governing the basic institutions of the State; the rights, duties and freedoms of citizens under Title One of the Constitution; the legal order governing the autonomous communities; or the legal order governing the general electoral system. Decree-laws must be submitted to debate and vote by the entire Congress of Deputies (*Congreso de los Diputados*) within thirty days of enactment.

Regulations: general legal rules issued by the executive authority. They rank immediately below law in the hierarchy of norms and, generally speaking, implement it.

Customs: defined as 'the set of rules derived from the generally constant repetition of uniform actions'. In order for a custom to represent an expression of collective and spontaneous intent, it must be widespread, constant, uniform and long-standing.

General principles of law: general normative statements that, without having been formally incorporated into the legal order, are deemed to form part of that order as they serve as a basis for other particular normative statements or embody in an abstract manner the content of a group of such statements. They are used to address legal shortcomings or interpret legal rules.

Case-law: constituted by two judgments — issued by the Supreme Court or, in the case of certain matters for which jurisdiction is limited to the autonomous community, by the High Court of Justice (*Tribunal Superior de Justicia*) of that autonomous community — that interpret a rule in the same way. If a judge or court diverges from the doctrine established by the Supreme Court, the judgment is not invalidated automatically but rather serves as the basis for an appeal on points of law. Notwithstanding, both the Supreme Court and the High Court of Justice in a particular autonomous community may, on substantiated grounds, diverge from the settled case-law and generate new case-law at any time.

Hierarchy of norms

Article 1.2 of the Spanish Civil Code states that 'provisions that contradict another of higher ranking shall be without legal validity'. This means that a hierarchy of norms must by necessity be established. To this end, the Spanish Constitution regulates the interrelationship between the various norms and their hierarchical and jurisdictional relationships.

Under the Constitution, the primacy of norms in Spanish law is as follows:

The Constitution.

International treaties.

The law, in the following order: organic laws, ordinary laws and rules with the rank of law (including royal decree-laws and royal legislative decrees), there being no hierarchy between them but rather distinct procedures and areas of application.

Rules issued by the executive, with their own hierarchy depending on the body that enacts them (royal decrees, ministerial orders, etc.).

In addition to this, a principle of jurisdiction is established with regard to rules issued by the parliaments of the various autonomous communities (regional government decrees, regional government orders, etc.).

Judges and courts shall not apply regulations or other provisions that contravene the Constitution, the law or the principle of a hierarchy of norms.

Institutional framework

Institutions responsible for the adoption of legal rules

Spain's institutional framework is based on the principle of separation of powers, with legislative power being vested in the Spanish Parliament and the legislative assemblies of the country's autonomous communities.

Government, both at state level and in each autonomous community, holds executive power — including the power to regulate — and on occasions exercises legislative power as delegated to it by Parliament.

Local authorities do not have legislative power, but they do wield regulatory power, which is principally exercised in the form of municipal by-laws.

Legislative initiative lies with the Government, Congress and Senate, the assemblies of the autonomous communities and, in certain cases, popular initiative.

The decision-making process

International treaties: three adoption mechanisms are available, depending on the matters regulated by the treaty.

Firstly, an organic law will authorise the signing of treaties where the exercising of jurisdiction arising out of the Constitution is vested in an international organisation or institution.

Secondly, the Government may give State consent to the signing of legally binding treaties or agreements, with the prior authorisation of Parliament, in the following cases: political treaties, military treaties or agreements, treaties or agreements affecting the territorial integrity of the State or the fundamental rights and duties set out in Title One, treaties or agreements entailing financial obligations for the tax authorities, and treaties or agreements requiring amendment or derogation of a law, or that require legislative measures in order to be implemented.

Finally, for all other matters the sole requirement is to inform Congress and the Senate as soon as the treaty has been signed.

Once signed and officially published in Spain, international treaties become part of the internal legal order. Treaty provisions may only be derogated, amended or suspended in the manner specified in the treaties themselves or in accordance with the general rules of international law. International treaties and agreements may be terminated by the same procedure as for their adoption.

Law:

Bills are approved by the Council of Ministers (*Consejo de Ministros*), which submits them to Congress with an explanation of the reasons for their introduction and the legal background necessary for Congress to make a decision on them.

In the case of autonomous communities, bills are approved by the respective councils of ministers and are submitted, on identical terms, to the legislative assembly of the autonomous community in question.

Once the bill for an ordinary or organic law has been approved by Congress, the President thereof immediately refers it to the President of the Senate, who then submits it to the Senate for deliberation. The Senate has two months from the date of receipt of the bill to exercise its veto or introduce amendments. Vetoes must be approved by an absolute majority.

A bill cannot be submitted to the Monarch for assent until Congress has ratified the initial draft (in the case of a veto, this must be by absolute majority; a simple majority is sufficient once two months have passed since submission of the bill) or has voted on the amendments, accepting or rejecting them by simple majority. The two-month period allowed to the Senate 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 Congress.

Laws adopted by Parliament are submitted to the Monarch, who within fifteen days of adoption endorses them, enacts them and orders their publication.

Organic laws: adoption, amendment or derogation of organic laws requires an absolute majority of Congress in a final vote on the bill in its entirety.

Regulations: the procedure by which these are drawn up is as follows:

Regulations are initiated by the relevant policy-making department by preparing the corresponding bill, which is submitted with a report on the need for and aptness of the regulation, as well as a financial report containing an estimate of the attendant cost.

Throughout the preparation process it is necessary to solicit, in addition to reports, opinions and prior mandatory approvals, all studies and consultations deemed necessary to ensure the aptness and legality of the text. In every case, regulations must be accompanied by a gender-impact report on the measures they contain.

Where the provision affects citizens' legitimate rights and interests, a public hearing may be held 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 above-mentioned period.

In every case, bills for regulations must be reported on by the Technical Secretariat-General (*Secretaría General Técnica*), without prejudice to the opinion of the Council of State (*Consejo de Estado*) in cases where this is legally required.

A prior report by the public authorities will be required where the regulation may affect the distribution of jurisdiction between the State and the autonomous communities.

Before regulations adopted by the Government can come into force, they must be published in full in the Official State Gazette.

Legal databases

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

Is access to the databases free of charge?

Access to this database is free of charge.

Short description of contents

All gazettes published since 1960 can be consulted on the Official State Gazette website.

The website includes a search engine for legislation and announcements, together with databases of constitutional case-law (from 1980 onwards), reports and opinions of the State Legal Service (*Abogacía del Estado*) (from 1997 onwards) and opinions of the Council of State. It also includes the **recast versions** containing the main amendments made to the legislation. Finally, it offers an alert service covering legislative notifications, public announcements and consultation of information and documentation.

Related links

[Database of Spanish legislation](#)

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