



HOUSING RIGHTS IN SPAIN

Article 47 of the 1978 Spanish Constitution (hereafter “SC”) provides that one of the guiding principles of social and economic policy is the right of Spanish citizens to decent and adequate housing, stating that: Article 47 SC “All Spaniards have the right to enjoy decent and adequate housing. The authorities shall promote the necessary conditions and establish appropriate standards in order to give effect to this right, regulating land use in accordance with the general interest in order to prevent speculation. The community shall have a share in the benefits accruing from the town planning policies of public bodies.”

Another reference linked to housing rights can be found in the rights of older people set out in Article 50 of the Spanish Constitution: Article 50 SC “The public authorities shall guarantee, through adequate and periodically updated pensions, a sufficient income for citizens in old age. Likewise, and without prejudice to the obligations of the families, they shall promote their welfare through a system of social services that provides for their specific problems of health, housing, culture and leisure.”

The Spanish State is organized into municipalities, provinces and Autonomous Communities with various levels of autonomy in dealing with matters of interest to them, the authorities all take part in the realization of this right. According to article 148, each of the established Autonomous Communities and two Autonomous Cities assume exclusive jurisdiction for housing, in their respective Autonomous Statutes Organization Acts, without prejudice to the exclusive jurisdiction of the State for the basis for and coordination of the general planning of economic activity and for the basis for regulations concerning credit (article 149 of the Constitution).

Among the matters for which the Constitution states that the Autonomous Communities may assume jurisdiction are “land management, urban planning and housing”. It also defines the areas that come exclusively within the jurisdiction of the State, such as “the basis for and coordination of the general planning of economic activities” and “public works of general benefit”.

Although “land management, urban planning and housing” come exclusively within the powers of every autonomous community, in some specific cases the articles related to housing rights are further developed:



1.1. Housing on Statute's of Autonomy

1.1.1 Organic Law 6/2006 of the 19th July, on the Reform of the Statute of Autonomy of Catalonia

Article 26. Rights in the field of housing

“Those individuals who lack sufficient resources have the right to a decent housing and public authorities shall, therefore, establish by law a system of measures to guarantee this right, within the terms determined by law.”

Article 40. Protection of the individual and the family

40.4 “The public authorities shall promote public policies to encourage the emancipation of young people, by facilitating access to work and housing so that they may develop their own lives and participate with equal rights and obligations in social and cultural life.”

Article 47. Housing

“The public authorities shall facilitate access to housing by means of the provision of land and the promotion of public and subsidised housing, with special attention to young people and groups with the greatest needs.”

1.1.2. Organic Law 2/2007 of the 19th March, on the Reform of the Statute of Autonomy of Andalusia

Article 25. Housing

“So as to favour the constitutional right to decent and adequate shelter, the public authorities are obliged to the public promotion of housing. The law shall regulate access to this as well as to the aid facilitating it under conditions of equality.”

Article 37. Guiding principles

37.22. “The rational use of land, adopting whatever measures are necessary to prevent speculation and promoting the access of needy groups to protected housing.”

1.1.3. Organic Law 1/2007 of the 28th February, on the Reform of the Statute of Autonomy of the Balearic Islands



Article 22. Right of access to decent housing

“The public administrations of the Balearic Islands shall guarantee the right of Balearic citizens to have access to decent housing. The aid which shall promote this right shall be regulated by law, especially favouring the young, people with no means, women who have suffered abuse, people affected by a disability and those others for whom the aid is justified.”

1.1.4. Organic Law 1/2006 of the 10th April, on the Reform of the Organic Law 5/1982, Statute of Autonomy of the Valencian Community

Article 16.

“The Generalitat [Valencian executive] shall guarantee Valencian citizens’ right to have access to decent housing. The aid which shall promote this right shall be regulated by law, especially favouring the young, people with no means, women who have suffered abuse, people affected by a disability and those others for whom the aid is justified.”

1.1.5. Organic Law 5/2007 of the 20th April, on the Reform of the Statute of Autonomy of Aragon

Article 24. Protection for individuals and families.

“Aragonese public authorities shall design their policies according to the following objectives:[...]

Promoting the emancipation of young people, facilitating their access to the labour market and to housing.”

Article 27. Housing

“The public authorities of the Autonomous Community shall effectively promote the exercise of the right to decent housing, facilitating the access to it, either by rental or purchase, by means of a rational use of land and the development of public and protected housing, paying special attention to the young people and the disadvantaged.”

1.1.6. Organic Law 14/2007 of 30th November, on the Reform of the Statute of Autonomy of Castile-Leon



Article 16. Guiding principles of public policy

16.12. “The full integration of young people in society and public life, enhancing their autonomy, especially by the means of access to training, employment and housing.”

16.14. “The access of all the citizens of Castile-Leon to decent housing under conditions of equality, by the means of the expansion of construction land and the development of public and protected housing, paying special attention to the young people and the disadvantaged.”

1.2 National Laws

Before the laws that affect the realization of this right are listed, it should be noted that, as a result of power sharing by the State administration and the Autonomous Communities, the focus will be mainly on the most representative national laws (and Royal Decrees), as a list of laws adopted at the level of the Autonomous Communities would be excessively long^[1].

- Law 19/2009 of 23 November, promotion and facilitation measures procedure of the lease and the energy efficiency of buildings.
- Royal Decree 2066/2008 of 12 December, the State Housing Plan and Rehabilitation (2009-2012).
- Royal Legislative Decree 2 / 2008 of 20 June, approving the revised text of the Land Law
- Royal Decree 314/2006 of 17 March, approving the Technical Building Code
- Act No. 15/1995 of 30 May 1995 on restrictions on ownership of buildings to eliminate architectural obstacles to disabled persons;
- Act No. 29/1994 of 24 November 1994 on tenancy in urban areas
- The 1989 Spanish Civil Code;
- Decree No. 2114/1968 of 24 July 1968 adopting the regulations on officially subsidized housing
- Act No. 57/1968 of 27 July 1968 on the receipt of early payments for the construction and sale of housing, partially amended by Act No. 38/1999 of 5 November 1999 on building regulations
- The Forced Expropriation Act of 16 December 1954 and the implementing Regulations of 26 April 1957
- The Mortgage Act of 8 February 1946 and the implementing Regulations of 14 February 1947



The Spanish state has signed and ratified several international treaties regarding the fundamental rights which, in application of articles 10.2 and 93 of the SC, are integrated into the Spanish legal system:

Article 10.2 SC

“Provisions relating to the fundamental rights and liberties recognised by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain.”

Article 93 SC

“Authorization may be granted by an organic act for concluding treaties by which powers derived from the Constitution shall be transferred to an international organization or institution. It is incumbent on the Cortes Generales [the Parliament] or the Government, as the case may be, to ensure compliance with these treaties and with resolutions originating in the international and supranational organizations to which such powers have been so transferred.”

These international mechanisms contain provisions regarding housing, such as Article 25 of the Universal Declaration of the United Nations, Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 (Art.13 and 14.2), the Convention on the Rights of the Child of 1989 (Art. 27.3) and the Convention on the Eliminations of All Forms of Racial Discrimination of 1965 (Art. 5.e).

At the European level, Spain has also ratified several instruments, such as the European Convention for the Protection of Human Rights and Fundamental Liberties of 1950 (ratified in 1979) and the European Social Charter of 1961, with implications for the development of housing rights.

No, no, and no. None of the successive Spanish governments has ratified the Revised European Social Charter of 1996 nor signed or ratified the Additional Protocol of 1995. This protocol established a system of collective complaints allowing to bring to court those states that failed to implement the measures required to comply with Article 31 of the Revised Charter, concerning the development of access to decent housing, the prevention and reduction of homelessness aimed at its progressive elimination and the reduction of housing prices in order to provide affordable housing to low-resource individuals.

The Spanish State is organized into municipalities, provinces and Autonomous Communities with various levels of autonomy in dealing with matters of interest to them, the authorities all take part in the realization of this right. According to article 148, each of the established Autonomous Communities and two Autonomous Cities assume exclusive jurisdiction for housing, in their respective Autonomous Statutes Organization Acts, without prejudice to the exclusive jurisdiction of the State for the basis for and coordination of the general planning of economic activity and for the



basis for regulations concerning credit (article 149 of the Constitution). Among the matters for which the Constitution states that the Autonomous Communities may assume jurisdiction are “land management, urban planning and housing”. It also defines the areas that come exclusively within the jurisdiction of the State, such as “the basis for and coordination of the general planning of economic activities” and “public works of general benefit”.

4.1 Sharing of power by the State, the Autonomous Communities and the municipalities

4.1.1 Exclusive powers of the State

- Drawing up the general economic planning basis and coordination of the housing subsector;
- Credit regulations;
- Housing tax policy: State taxes and tax benefits;
- Basic standard-setting instruments;
- Funding: coordination with financial institutions for the granting of preferential mortgages
- Promotion of public housing; Administration and management of State housing

4.1.2 Exclusive powers of the Autonomous Communities

- Regional planning, programming, monitoring and follow-up of housing protection policies at the Autonomous Community level;
- Drafting regulations at the Autonomous Community level; enforcement and inspection of compliance with such regulations and of basic State regulations;
- Management and handling of personal financial assistance files for persons purchasing subsidized housing and for subsidized rehabilitation work;
- Public promotion of housing and of land purchasing and management;
- Monitoring and classification of privately owned, officially subsidized housing;
- Administration, management and maintenance of the public rental housing stock; assignment of housing built for sale in order to promote ownership; management of public lands;
- Management and handling of rural housing assistance files;
- Agreements with local cooperatives and their management bodies as a form of public housing promotion.



4.1.3 Powers shared by the State and the Autonomous Communities

- Planning and follow-up of housing policy; and compilation of statistics;
- Funding for the promotion and purchase of housing. These functions must be carried out in a coordinated manner through agreements between the State and the Autonomous Communities;
- Construction quality control.

4.1.4 Powers of the municipalities

- Urban planning: establishing building and land-use conditions;
- Issuing building permits and carrying out inspections;
- Public promotion of municipal housing;
- Administration, management and maintenance of municipal housing and land stocks.