

SPANISH MUNICIPAL LEGISLATION INVOLVING QUESTIONS OF PUBLIC INTERNATIONAL LAW, 1991

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This survey covers aspects of Spanish municipal legislation related to Public International Law. Only relevant articles will be quoted or mentioned and an unofficial translation or a reference to the *BOE* will be given.

I. INTERNATIONAL LAW IN GENERAL

II. SOURCES OF INTERNATIONAL LAW

1. State Practice

— Order issued 2 April 1991, by the *Ministerio de Asuntos Exteriores* (Ministry of Foreign Affairs) which regulates access to the Ministry of Foreign Affairs Archives (*BOE* n. 87, 11.4.91 and n. 102, 29.4.91).

Note: This order replaces the order of 16 January 1984, and establishes the conditions by which citizens may exercise their right of access to the documentary archives of the Ministry of Foreign Affairs. All documents pertaining to the Ministry, whether housed in the Ministry's General Archives or in the Administration's General Archives, can be consulted for research purposes under the following conditions:

“Fourth -

All documents deposited in the archives indicated in number one can be freely consulted with the exception of documents that:

- a) are prohibited from being made public by law.
- b) affect classified materials as stipulated by law.

c) constitute a risk to national security or would hinder efforts to solve a crime if their contents were released.

d) contain personal information such as police, court or medical records or information of any other type that might affect an individual's safety, honour, or good reputation or invade his privacy or the privacy of his family.

Fifth -

1. Documents which are expressly prohibited from being made public by law can be consulted during the periods of time and under the conditions established in said law.

2. The documents in the Department's General Archives included in sections b and c of the previous rule can be consulted when the period stipulated by the proper authorities for the classification of the document has expired or after 25 years. They can also be seen if the authorities who classified them or the General Advisory Office of the Department give their approval.

3.3. Documents that contain information related to section d) of the previous rule cannot be seen without the express consent of the parties affected until 25 years after the time of their death if date of death is known, or, in all other cases, until after 50 years have passed from the date on the document".

III. RELATIONSHIP BETWEEN INTERNATIONAL AND MUNICIPAL LAW

IV. SUBJECTS OF INTERNATIONAL LAW

1. Nationals

Note: See VII. Nationality in the Section on Private International Law.

2. Diplomatic and Consular Protection

— Royal Decree 324/1991, 15 March, based on Law 19/1990, 17 December, which sets the guidelines for advanced compliance with the Convention between the Kingdom of Spain and the Government of the Republic of Cuba as regards compensation for Spanish property and goods

affected by the laws, provisions and measures issued by the Government of the Republic of Cuba on or after January 1, 1959 (BOE n. 65, 16.3.91).

Note: This decree creates an Interministerial "Liquidation" Commission charged with distribution of the 5,416 million *pesetas* which is the amount of the overall compensation agreed to by Cuba in compliance with the 1986 Agreement. The following substantive points should be mentioned:

"Article 2.- Beneficiaries:

1. Citizens of Spain, whether individuals or juristic persons whose goods have been damaged or rights or interests violated in Cuba by the laws, provisions or measures issued by the Government of Cuba between January 1, 1959, and November 16, 1986, both dates included, are considered beneficiaries.

2. Individuals or juristic persons who are beneficiaries to the Agreement must have possessed Spanish nationality without interruption from the date in which a law or provision was issued or from the time a measure was taken that entitles them to be a beneficiary until November 16, 1986, or until the time of an individual's death or the dissolution of juristic persons if either took place before the date indicated above.

3. In cases of the dissolution of corporations or of juristic persons in general, the rights provided for in Law 19/1992, 17 December, can be claimed by the previous partners or members of the corporation or juristic person that has been dissolved, or, in given cases, by their trustees.

4. The rights recognized by Law 19/1990, 17 December, can be transferred to any heirs of the beneficiaries who can correctly accredit their condition as such.

Article 4. - Documentation that must accompany the application:

1. Beneficiaries should provide the following documentation:

1) Proof of Spanish citizenship as stipulated by Spanish law covering the period from the promulgation of the laws or provisions or the adoption of measures issued by the Government of the Republic of Cuba until November 16, 1986, or until the death of a beneficiary or the dissolution of a juristic person that is a beneficiary.

2) Proof of entitlement to the right, when such entitlement derives from the right to a pension or to other goods or from any other right. In order to comply with this requirement, beneficiaries should present an authentic document attesting to the acquisition of the goods or the right which is dated prior to the issuance of the laws, provisions or measures in question. If that is not possible, entitlement should be accredited by any type of legally recognized proof. As regards bearer bonds, proper proof of the acquisition of the bond

prior to January 1, 1959, or its deposit in a Cuban bank prior to that date and in the name of the applicant must be provided. If one of these two can not be duly accredited as stipulated by article 4, paragraph 2 of Law 19/1990, rights represented by bearer bonds are excluded from the effects of this Law.

3) Proof of the estimated value of the goods and rights affected at the time damage took place.

4) Proof that damage was a direct consequence of the law or provision or of the application of a measure adopted by the Government of the Republic of Cuba in or after January, 1959.

5) A declaration stating that no amount has already been received from the Government of the Republic of Cuba as compensation for the items being claimed or a statement of the amounts received, if any. The Commission reserves the right to verify any statements presented.

2. Those persons presenting a claim who are heirs of beneficiaries must present proof of this relationship in addition to all of the other documentation required.

3. Those persons who, by invoking article 2.3 of this Royal Decree declare themselves partners or members of corporations or juristic persons that have been dissolved must also present proof of this status”.

— Order dated 19 April 1991, issued by the *Ministerio de Economía y Hacienda* (Ministry of Economics and Finance) determining the risks derived from foreign and international trade and commerce which are covered by the State (*BOE*, n. 97, 23.4.91).

Note: The risks derived from foreign trade which are covered by the State are the following:

“One. Civil or international war, revolution, uprisings or any similar catastrophic event which takes place in a foreign country, the political events and economic or severe trade balance crises that take place outside of Spain, or the express or tacit measures adopted by a foreign government that give rise to one of the following:

- Breach of contract by either party.
- The omission, alteration or delay of a payment or of the transfer of sums owed from the working funds set up for the enforcement of contracts or from the funds produced by investment dividends.
- The confiscation, expropriation, impounding, impossibility of recovery, destruction or breakdown of the object of said investment or the goods that form part of the contract or that are used to carry it out.

Two. Breach of contract by a foreign public entity which causes a loss prior or subsequent to its issuance.

Three. Regulations or any other type of measure adopted by the Spanish authorities that cause a breach of contract, impede the receipt of payments or dividends due, or change the agreed upon schedule of payments.

Four. The execution of deposited securities and the forfeiture of guarantees.

Five. Breach of contract by a private foreign entity as well as the *de jure* or *de facto* insolvency of said entity, causing a loss in the period prior or subsequent to the issuance of the same, provided that the duration of at least one of the risks is longer than 36 months.

Six. The risks covered by the *Compañía Española de Seguros de Crédito a la Exportación, Sociedad Anónima, Compañía de Seguros y de Reaseguros* (Spanish Insurance Company for Export Credits, Corporations and Insurance and Reinsurance Company) regarding Market Research, Aid to Trade Fairs, Currency Exchange Discrepancies, Bank Guarantees (prefinancing and financing), Projects and Work Sites in Foreign Countries, Investment Abroad, Credit for Purchasers of Foreign Currencies, and others that can be paid in foreign currencies”.

3. Aliens

Note: See VIII. Aliens, Refugees and Citizens of European Communities in the Section on Private International Law.

V. THE INDIVIDUAL IN INTERNATIONAL LAW

VI. ORGANS OF THE STATE

1. Diplomatic Missions

— Royal Decree 1748/1990, 26 October, creating Defense Attaches for the Spanish Embassies in Tunisia, Moscow, Seoul and Warsaw (*BOE* n. 15, 17.1.91).

— Royal Decree 1749/1990, 28 December, creating Defense Attaches for the Spanish Embassies in Prague, Budapest and Managua (*BOE* n. 15, 17.1.91).

— Royal Decree 107/1990, 21 September, creating a Defense Attache for the Spanish Embassy in the United Arab Emirates (*BOE* n. 32, 6.2.91, and n. 34, 8.2.91).

2. Consuls and Consulates

— Order issued 27 May 1991, by the *Ministerio de Asuntos Exteriores*, creating an Honorary Consular Office in Bratislava (Federal Republic of Czechoslovakia), (*BOE* n. 137, 8.6.91).

— Official order issued 27 May 1991 by the *Ministerio de Asuntos Exteriores*, creating an Honorary Consulate Office in Quelimane (Mozambique), (*BOE* n. 137, 8.6.91).

3. Trade Delegations, Information Centers

— Order issued 14 June 1991, by the *Ministerio de Industria, Comercio y Turismo* (Ministry of Industry, Commerce and Tourism) establishing a Spanish Tourism Office in Berlin (Federal Republic of Germany), (*BOE* n. 154, 28.6.91).

4. Privileges and Immunities

— Organic Law 12/1991, issued 10 July, regarding the modification of articles 411, 412, 413, 414, 415, 702 and 703 of the Criminal Justice Law (*BOE* n. 65, 11.7.91).

“Article 411:

The King, Queen, their respective consorts, the Prince, heir to the Throne, and the Regents of the Kingdom are exempt from the provisions established in the previous article (regarding the obligation to appear in court as a witness).

Also exempt from testifying are accredited diplomatic agents in Spain in all cases, and administrative, technical or service staff that form part of the diplomatic mission, when so established in treaties.

Article 412 (regarding exemption from appearing in Court, but not from testifying):

7. As regards members of Consular Offices, the terms of international agreements in effect at the time will be respected.

Article 415:

The individuals mentioned in the second paragraph of article 411 and section 7 of article 412 will be invited to provide a written response to the *Ministerio de Justicia* (Ministry of Justice) with a copy to the *Ministerio de Asuntos Exteriores*, to any and all questions posed to them through diplomatic channels”.

VII. TERRITORY

VIII. SEAS, WATERWAYS, SHIPS

1. Internal waters

— Order issued 27 December 1990, by the *Ministerio de Obras Públicas y Transportes* (Ministry of Public Works and Transport), modifying the 30 October 1989, order which set the limits on internal waters in the ports of Santa Cruz de Tenerife, Los Cristianos, Santa Cruz de La Palma, La Estaca and San Sebastián de la Gomera (*BOE* n. 4, 4.1.91).

2. Territorial Sea

— Order issued 17 April 1991, by the *Ministerio de Obras Públicas y Transportes*, regulating the anchoring of tankers in territorial waters or in the restricted Spanish economic zone (*BOE* n. 93, 18.4.91).

Note: Any tanker that does not have Spain as its final destination or that does not unload all or part of its cargo in a port or terminal located in Spain but that desires to anchor in the previously mentioned zones, should request prior authorization from the closest Harbor Master or directly from the Central Headquarters of the Merchant Marine. This authorization can be granted or denied, but in all cases the tanker must temporarily anchor where instructed to do so and undergo a safety inspection which will be taken into account in the decision as to whether or not to grant authorization for anchoring. All tankers will also comply with any other safety and towing requirements.

3. Fisheries

— Royal Decree 1724/1990, 18 December, regulating maritime fishing with long-line rigging along the Mediterranean coastline (*BOE* n. 4, 4.1.91).

— Resolution issued 17 April 1991, by the *Secretaría de Estado de Pesca Marítima* (Secretary of State for Maritime Fishing) which contains a revision (dated 1 January 1991) of the Census of the Ocean-Going Fleet, the Deep Sea Fleet and Long-line vessels weighing more than 100 GRT that operate within the geographic boundaries of the Northeast Atlantic Fishing Commission (NEAFC), (*BOE* n. 98, 24.4.91, n. 162, 8.7.91 and n. 424, 9.10.91).

— Order issued 4 July 1991, by the *Ministerio de Agricultura, Pesca y Alimentación* (Ministry of Agriculture, Fishing and Foodstuffs), regulating the control of fishing sites for non-community member fishing vessels (*BOE* n. 160, 5.7.91 and n. 214, 6.9.91).

— Resolution issued 3 July 1991, by the *Secretaría General de Pesca Marítima* (General Secretary for Maritime Fishing) in which the annual census of refrigerated trawlers is published in accordance with the Order dated 17 October 1988, regulating the activities of the Spanish fleet that fishes in the regulated zones of the Northwest Atlantic Fishing Organization (NAFO), (*BOE* n. 242, 9.10.91).

IX. INTERNATIONAL SPACES

X. ENVIRONMENT

1. Seas

— Law 14/1991, issued 29 April, designating the Cabrera Archipelago as a Land-Maritime National Park (*BOE* n. 103. 30.4.91).

2. Air

— Order issued 15 April 1991, by the *Ministerio de Obras Públicas y Transportes*, establishing guidelines for the reduction of pollution produced by the residuals of the titanium dioxide industry (BOE n. 102, 29.4.91).

3. Flora and Fauna

— Law 19/1990, issued 10 December, on the Conservation of the Flora and Fauna of the Ocean Floor around the Medes Islands (BOE n. 8, 9.1.91).

4. Transportation

— Resolution issued 23 October 1991, by the *Dirección General de Policía Ambiental* (Office of the Environmental Police) establishing the border crossings through which toxic and dangerous wastes can be transported (BOE n. 264, 4.11.91).

Note: In compliance thereof the following border crossings are established: by land, La Junquera and Irun to France, and Tuy, Fuentes de Onoro and Badajoz, to Portugal. By sea: the ports of Bilbao, Gijón, Santander, Barcelona, Cádiz and Huelva.

XI. LEGAL ASPECTS OF INTERNATIONAL COOPERATION

1. Military and Defense Cooperation

— Order 72/1991, issued 1 October, by the *Ministerio de Defensa* (Ministry of Defense), creating the *Oficina de Aplicación del Convenio entre los Estados Partes del Tratado del Atlántico Norte* (Office for the Application of the Agreement between the Member States of the North Atlantic Treaty), regarding the statutes governing its armed forces (BOE n. 244, 11.10.91 and n. 275, 16.11.91).

2. Cultural Cooperation

— Resolution issued 13 December 1990, by the *Secretaría General Técnica del Ministerio de Asuntos Exteriores* (General Service of the Ministry of Foreign Affairs), stipulating the publication of Special Rules nos. 9-12 of the Universal Exposition in Sevilla, 1992:

Special Rule (Number 9) regarding the protection of industrial and intellectual property rights (patents and copyrights).

Special Rule (Number 10) regarding the benefits and advantages of the co-Commissions.

Special Rule (Number 11) regarding admission tickets.

Special Rule (Number 12) regarding trade licenses for unofficial participants (BOE n. 11, 12.1.91 and n. 40, 15.2.91).

— Law 7/1991, issued 21 March, creating the *Instituto Cervantes* (Cervantes Institute) (BOE n. 70, 22.3.91).

Note: The objectives and goals of the *Instituto Cervantes* are to promote the teaching, study and use of Spanish abroad. The Institute will report to the *Ministerio de Asuntos Exteriores* in conjunction with other related governmental offices and agencies.

— Order issued 14 March 1991, by the *Ministerio de Educación y Ciencia* (Ministry of Education and Science), by which the 19 April 1985, order is broadened through the addition of a specialized program of study including technical-professional activities called the “Workshop of Latin America” as part of the Unified and Polyvalent Baccalaureate, equivalent to secondary studies (BOE n. 70, 22.3.91), and the Resolution issued 22 March 1991, by the *Secretaría de Estado de Educación* (Secretary of State for Education) establishing the objectives, contents and methodology for the teaching and technical-professional activities specialty called “Workshop on Latin America” (BOE n. 71, 23.3.91).

— Resolution issued 8 April 1991, by the *Secretaría de Estado de Educación*, for the enforcement of the official Order of 8 June 1988, testing the incorporation of a second foreign language into the secondary school curriculum (BOE n. 95, 20.4.91).

— Royal Decree 919/1991, issued 14 June, establishing the suspension or reduction of tariffs on the temporary importation of ships to be used as floating hotels during the Olympic Games in Barcelona 1992 (BOE n. 147, 20.6.91).

— Royal Decree 1235/1991, issued 2 August, regarding the National Commission for the Commemoration of the 500th Anniversary of the Discovery of America (BOE n. 185, 3.8.91).

Note: In accordance with article 1, the National Commission will plan, program, organize, coordinate and execute the activities to be held in

conjunction with the celebration of this event, without encroaching on the areas of responsibility which correspond to the High Commission for the Commemoration of the 500th Anniversary of the Discovery of America or those that correspond to other agencies or offices of the Universal Exposition in Sevilla, 1992.

— Order issued 20 September 1991, by the *Ministerio de Economía y Hacienda* regulating the waiver of import duties on goods needed for the Olympic Games in Barcelona 1992 (*BOE* n. 238, 4.10.91).

3. Tariffs and Trade Cooperation

— Law 20/1991, passed 7 June, modifying the Tax Laws of the Canary Islands (*BOE* n. 137, 8.6.91 and n. 254, 23.10.91).

— Royal Decree 1081/1991, issued 5 July, establishing the rules for the levying of municipal taxes on manufacturing and importation in the Canary Islands, created by Law 20/1991, 7 June (*BOE* n. 167, 13.7.91).

— Royal Decree 893/1991, issued 6 June, modifying Appendices I and II of the current Customs Tariffs (*BOE* n. 142, 14.6.91).

— Royal Decree 895/1991, issued 6 June, partially modifying the current Customs Tariffs (*BOE* n. 142, 14.6.91, n. 175, 23.7.91, and n. 179, 27.7.91).

— Resolution issued 3 June 1991, by the *Secretaría de Estado de Comercio* (Secretary of State for Commerce), modifying the Official Order issued 10 October, 1989, which regulates the importation of certain textile products (*BOE* n. 142, 14.6.91).

— Resolution issued 14 June 1991, by the *Dirección General de Aduanas e Impuestos Especiales* (Department of Customs and Special Taxes) updating the TARIC (*BOE* n. 151, 25.6.91 and n. 177, 25.7.91).

— Royal Decree 1293/1991, issued 2 August, expanding Appendices I and II of the current customs tariffs (*BOE* n. 193, 13.8.91).

— Royal Decree 1730/1991, issued 15 November, expanding Appendices I and II of the current Customs Tariffs and modifying Appendix I (*BOE* n. 293, 7.12.91).

— Royal Decree 1735/1991, issued 15 November, partially modifying the structure and rights applicable to section 1502 of the current Customs Tariffs in the area of national subdivisions (BOE n. 296, 11.12.91).

— Resolution issued 12 December 1991, by the *Dirección General de Aduanas e Impuestos Especiales* updating the TARIC (BOE n. 301, 17.12.91).

— Order issued 27 June 1991, by the *Ministerio de Industria, Comercio y Turismo*, by which the importation of some products originating in third party countries and entering Spain through the Principality of Andorra are subject to inspection (BOE n. 155, 29.6.91, and n. 175, 23.7.91).

— Order issued 27 June 1991, by the *Ministerio de Industria, Comercio y Turismo*, modifying the systems of commercial exchange with the Principality of Andorra (BOE n. 155, 29.6.91).

4. Road Traffic and Transportation

— Order issued 22 March 1991, by the *Ministerio de Obras Públicas y Transportes*, amending the order issued 11 February 1988, regulating the distribution of authorizations for international transportation both for bilateral and community contingents as well as the distribution of multilateral authorizations CEMT (BOE n. 92, 17.4.91).

— Resolution issued 5 November 1991, by the *Dirección General del Transporte Terrestre* (Department of Land Transport) ordering that the entire text of the Order issued 30 September 1986, establishing the liberalization of certain international means of transportation of passengers and merchandise be published including the modifications introduced by the resolution issued 18 October 1991 (BOE n. 274, 15.11.91).

5. Air Traffic and Transportation

— Order issued 26 December 1990, by the *Ministerio de Obras Públicas y Transportes*, replacing Annexes 1 and 2 of Decree 1675/1972 issued 28 June on the tariffs for aid to air navigation (EUROCONTROL) (BOE n. 160, 4.1.91).

— Order issued 2 August 1991, by the *Ministerio de Obras Públicas y Transportes*, updating the Technical Instructions for the Risk-Free Transportation of Merchandise by Air (BOE n. 219, 12.9.91).

Note: Application of the amendments to Annex 18 of the OACI.

6. Investments

Note: See XVI. Investments and Foreign Exchange in Section on Private International Law.

7. Taxes

Note: See XXIII. Tax Law in Section on Private International Law.

8. Labour, Social Security and Emigration

Note: See XXI. Labour Law and Social Security in Section on Private International Law.

9. Health and Relief Cooperation

— Order issued 24 October 1991, by the *Ministerio de Agricultura, Pesca y Alimentación*, establishing exceptions to the health standards required for the importation of vegetables or vegetable products originating in or entering Spain from countries which have signed the Schengen Agreement (BOE n. 262, 1.11.91).

10. Recognition of Qualifications

— Order issued 22 March 1991, by the *Ministerio de Educación y Ciencia*, modifying the 8 July 1988, order which regulates the admission exams to universities, technical schools and junior colleges given to students with foreign studies that can be validated (BOE n. 80, 3.4.91).

— Royal Decree 1665/1991 issued 25 October regulating the general system for recognizing secondary school diplomas from European Economic Community state members that require a minimum of three years of study (BOE n. 280, 22.11.91).

XII. INTERNATIONAL ORGANIZATIONS

— Law 15/1991, passed 13 May, regarding the Kingdom of Spain's participation in the Ninth Increase in the Resources of the Association for International Development (*BOE* n. 115, 14.5.91).

— Law 16/1991, passed 17 May, regarding Spain's subscription to additional capital shares of the International Finance Corporation (*BOE* n. 119, 18.5.91).

— Law 24/1991, issued 21 November, authorizing Spain to participate as a founding member of the European Bank for Reconstruction and Development (EBRD), (*BOE* n. 283, 26.11.91).

Note: This authorizes Spain to subscribe to 34.000 shares at a face value of 10.000 ECUs each of which 10.200 will be paid for immediately and the other 23,800 paid upon demand according to the terms established in article 6.5 of the Bank's Articles of Incorporation.

XIII. EUROPEAN COMMUNITIES

— Royal Decree 1789/1991 issued 20 December, cancelling the duties applicable to the EEC Group of 10 and Portugal for certain agricultural products (*BOE* n. 307, 24.12.91).

XIV. RESPONSIBILITY

XV. PACIFIC SETTLEMENT OF DISPUTES

XVI. COERCION AND USE OF FORCE SHORT OF WAR

— Resolution issued 11 March 1991, by the *Secretaría de Estado de Comercio*, modifying the trade rules applicable to exportations to Kuwait (*BOE* n. 64, 15.3.91).

Note: In compliance with the community sanctions against Iraq after the invasion of Kuwait, this resolution replaces prior provisions that required that exports to Kuwait be submitted to administrative authorization.

— Order issued 11 March 1991, by the *Ministerio de Economía y Hacienda*, abolishing the 4 August 1990, order related to certain financial transactions with Kuwait (*BOE* n. 79, 1.4.91).

Note: The 4 August 1990, order required administrative authorization for certain financial transactions with Kuwait as a consequence of the Gulf War.

— Order issued 31 May 1991, by the *Ministerio de Industria, Comercio y Turismo*, modifying the trade rules for exchange with Iraq (*BOE* n. 133, 4.6.91).

Note: Article 1. In accordance with (EEC) Regulations number 2340/90 and 3155/90, the importation of any product originating in or passing through Iraq is prohibited, as are Spanish exports to Iraq.

In accordance with article 2, products included in Annex I of (EEC) Regulation number 1194/91 are exempt from this prohibition.

— Resolution issued 10 December 1991, by the *Secretaría de Estado de Comercio*, suspending trade concessions with the Socialist Federative Republic of Yugoslavia (*BOE* n. 298, 13.12.91).

Note: The suspension is due to “the current situation in the Federative Socialist Republic of Yugoslavia” and “its refusal to respect the cease fire called for by the European Community and its member States in The Hague last October 4”.

XVII. WAR AND NEUTRALITY