



Guide to the rights and obligations of immigrants

Guia de drets i deures
dels immigrants

Amb el suport:



Generalitat de Catalunya
Departament d'Acció Social i Ciutadania
Secretaria per a la Immigració

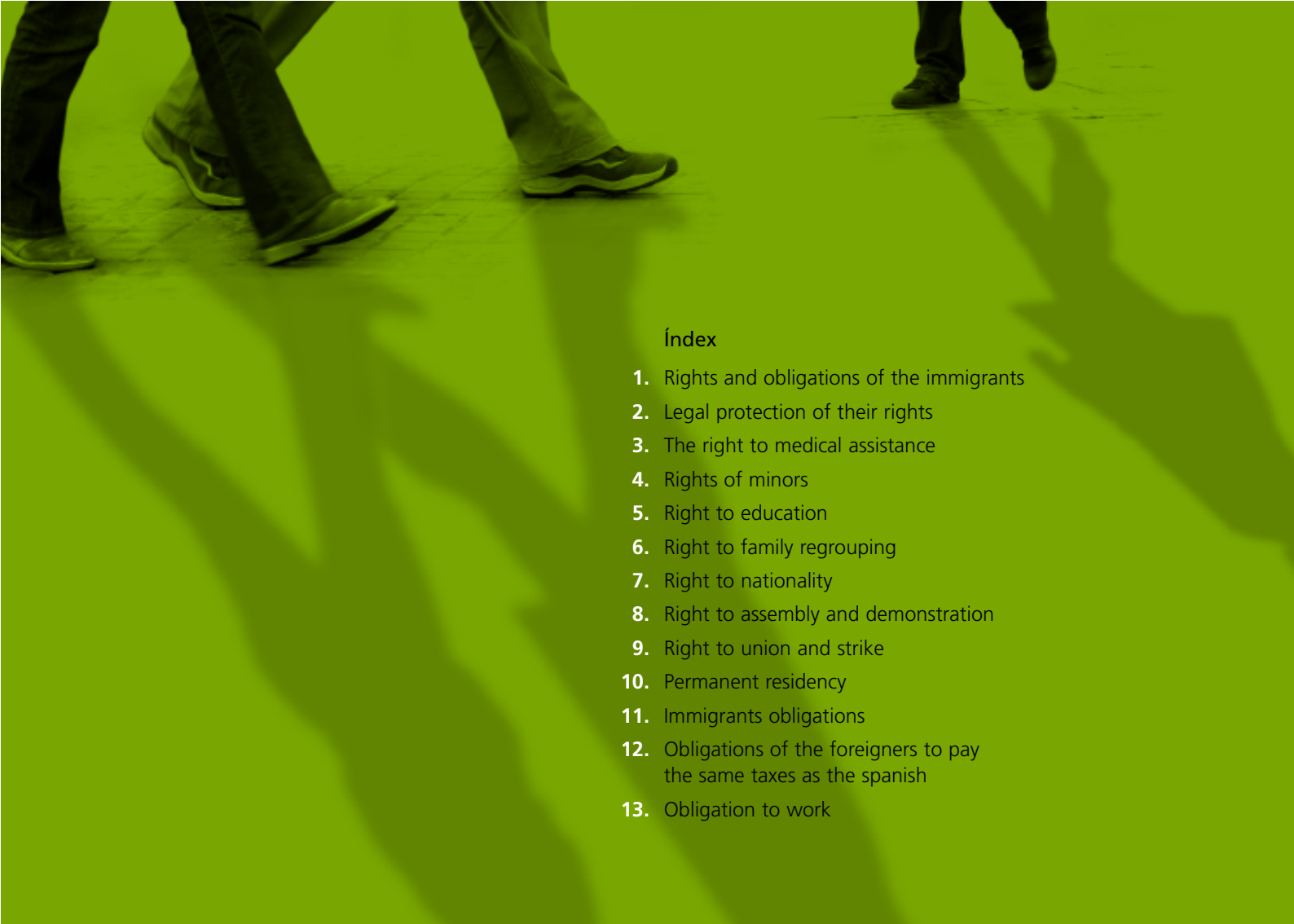
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This little guides' main aim is to provide useful information to newcomers who arrive in Catalonia.

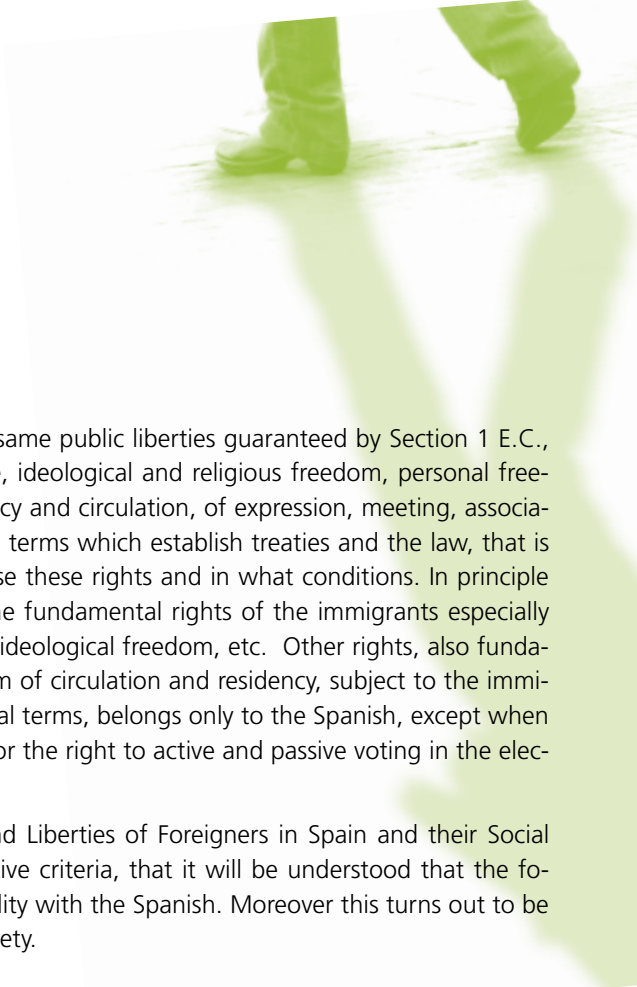
Our Union organisation has confirmed that foreigners are one of the groups, who, unfortunately are unaware of their rights and obligations and this could lead to a series of abuses and discrimination.

The Association for Mutual Help for Immigrants in Catalonia (AMIC) and the Union UGT are committed to working day by day, in our offices and work centres so that the newcomers have the same rights and obligations in matters of work, socially and politically. For this reason our actions are made with a view to continue contributing to the construction of an ever more plural society, where individual and cultural differences are respected, within the framework of democratic values.

You have in your hands material that has been edited in several languages, which we have titled "Guide to the rights and obligations of immigrants". It is a basic instrument to help orientate any newcomer wherever they may be coming from, nationality or their legal situation.

We hope that this support material helps to guide and promote the integration of all newcomers.





1. Rights and obligations of the immigrants

DO IMMIGRANTS HAVE THE SAME RIGHTS AS THE SPANISH?

Introduction

The E.C. establishes in article 13 that foreigners in Spain will enjoy the same public liberties guaranteed by Section 1 E.C., relating to fundamental rights: equality before the law, the right to life, ideological and religious freedom, personal freedom, the right to intimacy, inviolability of the home, freedom of residency and circulation, of expression, meeting, association, right to judicial protection of their rights. All this is consistent with terms which establish treaties and the law, that is the law will be in charge of determining how the foreigners can exercise these rights and in what conditions. In principle there appears to be a consensus at European level of recognition of the fundamental rights of the immigrants especially those laws called “inherent to the persons dignity” such as life, privacy, ideological freedom, etc. Other rights, also fundamental, practice may be limited or conditioned, for example the freedom of circulation and residency, subject to the immigrant having legal residency or the right of participation which, in general terms, belongs only to the Spanish, except when complying with mutual criteria, can it be established as a treaty or law for the right to active and passive voting in the elections.

The Substantive Law 4/2000, of the 11th of January, on the Rights and Liberties of Foreigners in Spain and their Social Integration, in paragraph 1 of article 3, establishes as general interpretive criteria, that it will be understood that the foreigners exercise the same rights as are recognised in conditions of equality with the Spanish. Moreover this turns out to be fundamental to the effective integration of the foreigner in Spanish society.



2. Legal protection of their rights

JUDICIAL PROTECTION OF THE RIGHTS

Can an immigrant have access to effective legal protection although they have no residency authorisation?

Yes, according to the Spanish Constitution "everyone has the right to obtain effective guidance from the Judges and Tribunals in the practice of their legitimate rights and interests, without, in any case, bringing about a lack of defence.

In consequence the foreigners also have the right to effective legal guidance, allows them to appeal resolutions and administrative acts which affect them. All administrative acts relating to foreigners can be appealed, except preferential expulsion.

Does a foreigner have the right to free justice?

The foreigners who do not dispose of the economic resources can make use of the right to free legal assistance under the same conditions as the Spanish and for any kind of litigation. On the other hand, and more specifically, in the judicial and / or administrative which deny their entry into Spain, decides their return to their home country or their expulsion is declared, as well as the refusal of exile requests they can also make use of this right and furthermore they will have an *int Verpreter* at their disposal when they do not speak Spanish.



3. The right to medical assistance

Can an immigrant be attended in emergency services?

Foreigners have the right to medical assistance in emergency services, although they can only enjoy this in its totality, just like the Spanish citizens, those immigrants registered in the census for their town. Minors and pregnant women do have access to complete medical assistance.

4. Rights of minors

What is the situation of undocumented minors in Spain?

If the protection of minors' services suspects that a foreigner may be a minor, he/she will be given immediate attention and the prosecutor's office will make the necessary tests to determine his/her age and establish what their situation is.

If it is then determined that he/she is a minor, he/she will be kept at the disposal of the protection of minors services and, according to the principle of family regrouping, it will be studied whether or not he/she should be returned to their home country or remain in Spain. Minors who are protected by the Public Administration will enjoy a normal situation of residency.



5. Right to education

Can an immigrant minor without residency authorisation study?

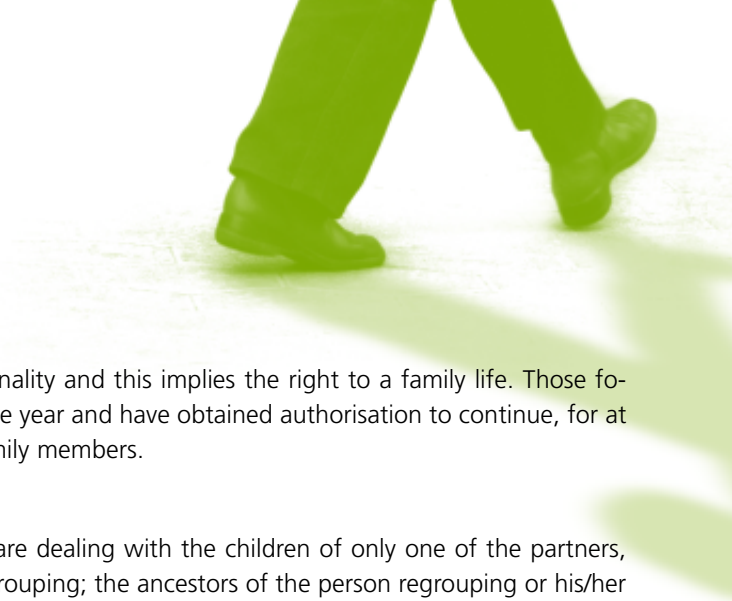
Foreign minors will have the right and duty to basic, free and obligatory education under the same conditions as the Spanish, independent of their administrative situation, this implies that they can obtain qualification credits and access to the public system of grants and aid.

Do immigrant infants without authorisation to reside have access to education?

With regard to infant education, which is voluntary, it is subject to the existence of sufficient places, whether the minor has authorisation or not. It is the state that has to guarantee sufficient places.

Can immigrants without authorisation of residency go on to higher levels of study?

With regard to non-obligatory education (university, technical, etc.), only those foreigners who are resident will benefit equal conditions as the Spanish, in the same way as the obtaining of these titles would be subject to holding an authorisation for residency or visit, however, the Education Administrations, in carrying out their responsibility for educational matters, could facilitate the access of minors who are census registered in a town to levels of post obligatory non university education and to obtain the corresponding titles.



6. The right to family regrouping

What does the right to family regrouping consist of?

Everyone has the right to the free development of his/her personality and this implies the right to a family life. Those foreigners who find themselves in Spain, have resided legally for one year and have obtained authorisation to continue, for at least, one more year, have the right to regroup some of their family members.

Who are those family members who can be regrouped?

The partner, children under 18 who are not married, when we are dealing with the children of only one of the partners, must have the sole legal guardianship in order to request the regrouping; the ancestors of the person regrouping or his/her spouse when they are in his/her care and there are reasons for authorising his/her residency in Spain.

What does the residency card empower you to do by reason of family regrouping?

The authorisation that the relations will receive will be of equal duration to that of the foreigner requesting the regrouping. It does not authorise them to work, only reside, without impairing, whilst fulfilling certain requirements, the regrouped person from requesting an independent authorisation for work.

What happens when a regrouped spouse separates from or divorces the person who requested the regrouping?

Provided that they have lived together legally with the person who regrouped them for at least 2 years in Spain, although the matrimony would be ended, the spouse who came to Spain will retain the residency. For this to happen he/she has to communicate the change of situation within 3 months.



7. Right to nationality

NATURALISATION THROUGH RESIDENCY: THE MOST COMMON WAY OF NATURALISATION

What is involved in the acquisition of Spanish Nationality through residency?

In this case the reason for acquiring nationality is based on the fact of legal, continued residence in Spain, but among other requirements: declaration by the Ministry for Justice of its concession and declaration of the immigrant of his will to acquire it.

Does a time limit exist for acquiring nationality?

Yes. The general time span is 10 years of residence, with some exceptions: in the first place 5 years will be enough for refugees; 2 years is sufficient when dealing with nationals from Latin-American countries, Andorra, Philippines, Spanish Guinea, Portugal or Sephardic countries, and lastly 1 year for those immigrants with strong ties in Spain such as those born in Spain, those married with Spanish, etc.

What should this residency be like?

The residency must be real, therefore it has to fulfil 3 conditions: it must be legal (have administrative authorisation to reside); it must be continuous (this is not interrupted by short and sporadic visits abroad) and must precede the request.



8. The right to assembly and demonstration

In principle foreigners can exercise this right under the same conditions as the Spanish when they have obtained authorisation for their stay or residency in Spain. The promoters should communicate these activities to the competent authority and they can only prohibit or propose modifications for reasons accounted for by law (Ordinary Law – Right to assembly).

9. Right to union and strike

Can an immigrant affiliate freely with a union?

When the foreigners possess an authorisation for their visit or residency they have the right to freely join a union or business organisation.

Can an immigrant take part in a strike?

The right to strike can be practiced only by those immigrants authorised to work.



10. Permanent residency

What is permanent residency?

This is the situation of indefinite authorisation to live and work in Spain under equal conditions as the Spanish. In order to access this the foreigner is required to have lived legally in Spain for five years.

Who is entitled to permanent residency?

Those who have had a temporary residency for five years consecutively. Holiday periods outside Spain or other statutory reasons for which the immigrant leaves the territory on a temporary basis do not affect the continued residency.

11. Immigrants obligations

The first obligation of an immigrant

The Rules of development of the law for Immigration establishes that the foreigners must enter Spain by the authorised routes, hold a passport or identification document which is valid for entry, hold a visa where necessary and not be affected by any prohibitions. At the same time he/she must present the documents that justify the object and conditions of their stay, account for means of survival for the time he/she will remain in Spain. In exceptional cases the government can decide to wave these conditions, but these are rare cases and are normally applied to humanitarian situations or of public interest.



What does a Prohibition of entry imply?

Even though the foreigners have the requisites for entry, their entry will be prohibited when they have been previously expelled from Spain or when they have been sent home and find themselves within the limits of prohibition which these resolutions establish; when they are being hunted by Interpol or other form of international, judicial or police cooperation, only when the reasons for which they are being searched constitute a crime in Spain; when the Home Minister in an express resolution prohibits the entry for acts against Spanish interests, human rights, etc.; when it is established by some international agreement of which Spain forms a part.

Refusal of entry

When the foreigner does not comply with the requisites required for entry to Spain his/her entry will be denied in a justifiable resolution. The most common assumption is refusal for not proving the necessary economic means for permanence in Spain, normally nationals from countries from whom a visa is requested. The resolution should be notified to the foreigner and should detail the appeals necessary, the time limit for presentation, and also informed of his/her right to legal aid and an interpreter, who may be of the state if the foreigner does not have the economic means.

Expulsion

If a foreigner is expelled by a judicial or administrative order or he/she is not allowed to continue in Spain, he/she must leave Spain obligatorily within the time stated in the expulsion resolution, which will never be less than 72 hours. The preferential expulsions are immediate.

Can an expelled foreigner try to re-enter Spain?

An expulsion carries with it the prohibition to enter Spanish territory for a minimum of three years and a maximum of ten. If the expelled foreigner were to try and enter the country illegally he/she may be expelled with no necessity of opening a case.

If the expelled foreigner were to manage to enter Spain he/she will not be able to legalise his/her situation until the expulsion sanction has lapsed.



Return

When a foreigner is denied entry into Spain at the border he/she will be returned to his/her point of origin in the shortest time possible. If the return is delayed by more than 72 hours, the governing authority that resolved it must report the delay to the examining magistrate in order for him/her to decide the place of internment.

What is an internment centre for immigrants?

These internment centres are not prisons and are equipped with social, legal, cultural and sanitary services. They are only deprived of their freedom of movement. The internment with the object of return must be communicated to the embassy or consulate of his/her country or to the Ministry of Foreign Affairs and Co-operation when the consulate cannot be notified or does not exist in Spain.

Who assumes the expenses of the return?

The people economically responsible for the return and any expenses incurred by the internment are the company or carrier who transported the foreigner except when the same requests exile at the border and the request begun processing.



12. Obligations of foreigners to pay the same taxes as the spanish

The Spanish Constitution establishes that “everyone” will contribute to the maintenance of public spending in accordance with his/her economic capacity by way of a just tax system inspired on the principles of equality. The word “everyone” includes the Spanish as well as immigrants.

Should immigrants pay all kinds of taxes?

Without prejudice to that established in the international norms relating to double imposition, the immigrants have the same obligation to contribute as the Spanish, whether they are a physical or legal entity. In fact, since the year 2001, the Value Added Tax (V.A.T.) is the principle source of tax collections of the Spanish State and this is a tax that we all pay when we buy anything, Spanish, legal and illegal immigrants. If an immigrant sets up a business, he will pay business tax, an autonomous immigrant will have to do his tax returns and make the respective payments, etc.

13. Obligation to work

Is work an obligation for the immigrant?

Work in Spain is, in the majority of cases, the very grounds for immigration. In order to obtain a renovation of work and residency authorisation one of the indispensable requirements is the payment of Social Security contributions, which is also required for the family regrouping procedure. If an immigrant doesn't work he doesn't contribute either and is not entitled to exercise a series of rights. Consequently work is a n obligation in order to exercise rights.

On the other hand the Spanish Constitution establishes work as a duty and a right for the Spanish and it is to be understood that this duty to work should apply to immigrants.



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