



INTRODUCTION TO THE RESEARCH PROJECT, DISCLAIMER AND COPYRIGHT

This is one of a series of “country-reports” produced by the Association of Voluntary Service Organisations (AVSO) and the European Volunteer Centre (CEV). They aim to provide comprehensive and practical information on volunteers and the law in a range of current and future European Union Member States. Each country report explores, in a standardised format, some of the key questions that face volunteers and volunteer-involving organisations in relation to their legal positions.

Important: the information contained in each country report is subject to resources and quality of information available. It is also subject to frequent change.

If you wish to comment on any of the country reports, or be involved in their annual updates in some form, CEV and AVSO would be delighted to hear from you.

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GENERAL DEFINITIONS OF VOLUNTEERISM

VOLUNTEERISM: refers to all forms of voluntary activity, whether formal or informal, full-time or part-time, at home or abroad. It is undertaken of a person's own free-will, choice and motivation, and is without concern for financial gain. It benefits the individual volunteer, communities and society as a whole. It is also a vehicle for individuals and associations to address human, social or environmental needs and concerns. Formal voluntary activities add value, but do not replace, professional, paid employees.

VOLUNTEERING (*Fr.: bénévolat*): can occur informally (for example neighbourly "helping-out"), or within the structures of a non-profit organisation. It is often (but not always) of a part-time nature. It may occur over one day or many years in a range of different fields. It is good practice to ensure that formal volunteers are covered by appropriate accident, health-care and third party liability insurance, that they receive appropriate training and management, as well as the reimbursement of all out-of-pocket expenses.

FULL-TIME VOLUNTARY SERVICE (*Fr.: volontariat*): refers to specific, full-time project-based voluntary activities that are carried out on a continuous basis for a limited period of time. Voluntary-service activities may occur at home and abroad. It is good practice to ensure voluntary service volunteers are afforded appropriate social protection, such as accident, health-care and third party liability insurance. Volunteers should also receive appropriate training and management, reimbursement of out-of-pocket expenses as well as appropriate accommodation and subsistence allowances as agreed between the volunteer and the non-profit organisation (and the State as appropriate).

LEGAL POSITION OF VOLUNTEERS IN SPAIN

1. CONCEPT OF A VOLUNTEER AND VOLUNTEERISM IN SPAIN

Under current legislation, a volunteer is defined as a person who freely commits himself/herself to carry out volunteerism.

Volunteerism in Spain is defined as the group of activities of general interest, developed by individuals, not carried out on the grounds of a labour, public service, mercantile or any other paid relationship. It must fulfil the following requirements:

- The work must be of an altruistic and solidarity character;
- It must be freely chosen and not subject to any personal duty or legal boundary (for example, obligatory civil service performed by conscientious objectors);
- It must be carried out without economic gain, and without prejudice to the right of the volunteer to be reimbursed for any expenses s/he may incur while fulfilling their tasks;
- It must be developed through public or private non-profit organisations in the framework of a concrete programme or project.

Voluntary activity that takes part in an isolated, sporadic, or individual way, outside the framework of public or private non-profit organisations, or motivated by family relations or friendship, are expressly excluded from the concept of voluntary work in Spain.

2. VOLUNTEERS AND THE LAW IN SPAIN

There are different laws applying to volunteering in Spain:

At the State level:

- Law 6/1996 On Volunteerism of 15 January 1996

At the Regional level:

- Law 17/1998 of 25 June on Volunteering in the Basque Country.
- Law 3/1998 of 18 May on Volunteering in the Balearic Islands.
- Law 4/1998 of 15 May on Volunteering in the Autonomous Community of Canary Islands.
- Law 7/1998 of 6 May on Volunteering in the Autonomous Community of La Rioja.
- Law 2/1998 of 27 March on Volunteering in the Community of Navarra.
- Law 1/1998 of 5 February on Social Volunteering in Extremadura.
- Law 4/1995 of 16 March on Volunteering in the Autonomous Community of Castilla-La Mancha.
- Decree 12/1995 of 19 January regulating Volunteering in Castilla y León.
- Law 3/1994 of 19 May on Social Volunteering in the Autonomous Community of Madrid.
- Decree 45/1994 of 19 May on Social Volunteering in the Autonomous Community of Andalucía.
- Law 4/1993 of 14 April on Social Services of the Autonomous Community of Galicia.
- Law 9/1992 of 7 October on Social Volunteering in the Autonomous Community of Aragón.
- Law 25/1991 of 31 December creating the Catalan Institute of Volunteering

In order to understand the applicability of these State and Regional Laws, it is important to note that, according to the constitutional distribution of powers, the Spanish Autonomous Communities have power to rule on this matter. Support for, and the promotion of volunteering, is thus not an activity exclusive to the central authorities.

Indeed, the national law on volunteerism was issued in order to bring together the various laws on volunteering that exist in the different Autonomous Communities. The intention was not to limit the activities of the Autonomous Communities, but to co-ordinate them more effectively.

The national law on volunteerism therefore limits the scope of its application to those volunteers and organisations developing national or supra-autonomous community level programmes, or working in areas that fall under the exclusive jurisdiction of the State (as provided by Article 149 of the 1978 Spanish Constitution).

The Spanish Law 6/1996 On Volunteerism Of 15 January 1996

The Law 6/1996 has three clearly defined parts relating to:

1. General aspects of volunteering;
2. Relationship between the volunteer and the organisation for whom they volunteer;
3. Measures to foster volunteering.

The Law on Volunteerism applies to volunteer programmes of a national or cross-regional nature (for example between Andalucía and Valencia), and volunteers who work in areas that fall under the exclusive jurisdiction of the State only (however note that, according to the constitutional distribution of powers, the Spanish Autonomous Communities may have power to rule on this matter).

General Aspects Of Volunteering

The Spanish law stresses the importance of establishing boundaries between the concepts of "volunteer" and "employee". In this sense, a volunteer is a person who carries out a work without economic gain, despite the right of the volunteer to be reimbursed for any expenses s/he may incur while fulfilling their tasks. Moreover, a volunteering work must be of an altruistic and solidarity character.

Relationship Between The Volunteer And The Organisation For Whom They Volunteer

The law lays down a broad framework of rights and duties of volunteers, including:

- The right to information, training, supervision, personal and technical support;
- Insurance against accidents and illness;
- Proper conditions of security and hygiene;
- Reimbursement of expenses;
- A document proving the nature and length of the voluntary activity undertaken.
- The obligation to respect the objectives and regulations of the organisation for whom they are volunteering their time and skills;
- To reject any payment;
- To respect the rights of the beneficiaries;
- To participate in any necessary training courses provided by the organisation.

The rights and duties of non-profit private and public organisations involving volunteers include:

- To subscribe to an appropriate insurance policy which covers volunteers against risks of accident and illness directly related to the execution of their volunteer activity;
- Reimburse costs volunteers may incur while fulfilling their duties, and provide volunteers with the appropriate instruments needed to carry out their tasks;
- Establish internal systems of information and guidance necessary for the effective execution of the volunteers' tasks;
- Provide volunteers with any necessary training;
- Guarantee volunteers the proper conditions of security and hygiene, according to the nature and characteristics of the volunteer activity;
- Provide volunteers with the required identification cards, and issue certificates detailing the nature and length of the voluntary activities undertaken.
- Keep records of any discharge or dismissals of voluntary staff.

The law also requires an agreement is drawn-up between the volunteer and the organisation for who s/he is volunteering. This agreement should include as a minimum: the rights and duties of both parties, the nature of the tasks to be undertaken by the volunteer, the number of hours committed by the volunteer, any necessary training of the volunteer, duration of the agreement, causes and means to end the agreement.

In practice however, smaller, less well-resourced organisations involving volunteers in Spain have found it difficult to comply with these minimum conditions, since the state does not provide any accompanying support to cover the cost of properly insuring, training, reimbursing volunteers' expenses, etc. Many have therefore taken on volunteers "illegally."

Measures To Foster Volunteering

Measures to foster volunteering foreseen by the law have become a hotly debated issue in Spain, and the 1996 law has both its fierce supporters and opponents.

Measures to foster volunteering foreseen by the law include the provision, by the state, of technical assistance, training programmes, information services and campaigns to raise awareness of volunteering. The law also provides some financial support measures directly to volunteers in the form of price reductions for public transport and cultural museums and events, etc.

Nevertheless, many non-profit organisations and professionals oppose this type of regulation of volunteering. Many feel that the public administrations' motivation is to control civic participation in society, which goes against the very free, spontaneous and personal nature of voluntary action. For example, providing volunteers with some form of "bonus" for participation in voluntary activity endangers the very "philosophy" of volunteerism. They feel that the law aims to entice people to volunteer rather than remove obstacles, which would encourage diverse, "free" participation in volunteering. In particular however, the inclusion of provisions relating to the substitution of compulsory military or civil service by voluntary work met with fierce resistance. It was argued that such a provision should never have been included in the Spanish Law on Volunteerism but rather in the Law on Military Service or Civil Service, as compulsory military or civil service has a punitive

connotation among young men. This should not be transferred to the volunteer field. This conflict is now solved however, as compulsory military service has now ended in Spain. However, the debate on just how far the state should aim to regulate volunteering is still not resolved.

For further information on these issues, see the following sources:

- AAVV (1996), *Monográfico sobre Voluntariado*. Documentación Social, 104, Madrid: Cáritas Española;
- AAVV (2001), *Repensar el Voluntariado*. Documentación Social, 122, Madrid: Cáritas Española;
- Andrés García Inda (Universidad de Zaragoza) y Antonio Madrid (Universidad de Barcelona).

Voluntary Service Abroad

Volunteers participating in voluntary service programmes abroad also fall within the scope of application of the 1996 law, as stated in an additional provision. However, it does not provide for any particularities regarding their specific situation. Special attention is paid only to those volunteers participating in government development cooperation programmes, run by officially recognised public or private non-profit organisations. The law foresees particular privileges and economic advantages for these specific volunteers, as will be discussed later.

Voluntary Work in relation to the Abolition of Conscription to Military Service and Alternative Service in Spain

Until 2001, compulsory Military Service and Alternative Service existed in Spain. Within this framework, and in relation to the Law 6/1996 on Volunteering, alternative service could be performed either within public administrations or in authorised non-governmental organisations according to the law regulating volunteering. In reality, this meant that young men could perform “voluntary activities” as a substitute for Military Service.

In August 2000 however, the Spanish Government adopted a programme of actions related to youth policies for the years 2000/2003. Among them was the creation of a “Voluntary Civil Service Law”. The initiative opened a strong debate. The proposal that was submitted by the Government encountered strong opposition from the civil society sector. It was considered that it offered legal support for the recruitment of cheap labour, to replace the gap left by contentious objectors upon the abolition of compulsory military service. Trade Unions, Youth Councils and NGOs all have put forward different arguments to reject such an institutionalisation of voluntary civil service.

Final Comments

The Law 6/1996 aims to reflect international recommendations on support for volunteerism, such as those outlined in Volonteur Europe’s “European Charter for Volunteers” (1989) and the International Association for Volunteer Effort’s (IAVE) “Universal Declaration on Volunteering” (1990). It also takes into account the

recommendations made by non-governmental organisations in Spain that have a long tradition in this field, for example the Plataforma para el Voluntariado and the Coordinadora de ONGs para el Desarrollo.

Reimbursement Of Expenses And Other Necessary Economic Support Provided To Volunteers: Labour, Tax And Social Security Law Implications

Volunteers' Expenses and Subsistence Support

Under the Spanish Law 6/1996 on Volunteerism volunteers have the right to be reimbursed for their out-of-pocket expenses. The concept of expenses however, refers exclusively to justified real costs, which volunteers may incur while fulfilling their tasks.

Questions may arise however when any other economic compensation (aside from the strict reimbursement of expenses), is granted to full-time volunteers (such as pocket-money, board and accommodation), as is widely practiced throughout Europe. According to general tax law provisions, any such economic compensation is taxable as income. For further information, see: "Moving in Europe with the European Voluntary Service Programme" (2000), Structure for Operational Support (SOS) of the European Voluntary Service (EVS) Programme: <http://www.sosforevs.org>

Those who volunteer within recognised state development cooperation programmes are the clear legal exception to this rule. Under the 1996 law, volunteers within these programmes, have the right to receive, tax-free, subsistence financial support in the host country, as well as a series of other advantages.

State Social Welfare Payments

Volunteers do not enjoy any recognised "legal status" vis-à-vis the state social security system. In practice, this means that volunteers' situations are examined on a case-by-case basis, and volunteers can in theory lose any parallel status they enjoy (such as unemployed, disabled, unfit to work, in receipt of family allowance etc.) and any entitlements associated with this status.

Those volunteering full-time in non-governmental national or transnational voluntary service programmes, such as the European Voluntary Service Programme will lose entitlement to any state welfare payment they may have been claiming if they receive accommodation, board and pocket-money from the organisation or project for whom they are volunteering.

Welfare Protection Of Volunteers

Health-Care

Spanish Volunteers

There are no special provisions regarding volunteers under the Spanish Health and Social Security Systems. However, according to the Spanish Constitution of 1978 and

the General Law of Public Health of 1986, access to public health is a universal right in Spain, which does not depend upon the specific legal, labour or economic status of the beneficiaries.

Volunteers Coming to Spain from other E.U. Countries

Volunteers coming to Spain from another E.U. country for periods of longer than three months however may encounter difficulties accessing state health-care. The so-called E-111 Form, which grants E.U. citizens the right to state health-care within the European Union, is issued for a maximum period of three months. Any necessary extension must be applied for at the local social security offices in Spain. Since there is not a “legal category” of “volunteer” in Spain, it is not possible to issue insurance certificates that may cover the volunteer for the entire period of their stay in Spain when it is longer than 3 months. Contrary to employees or students, who can be insured in Spain for their whole stay just by presenting a certificate or declaration that includes an indication of the time the person is staying in Spain, volunteers may have to ask for their E111 forms to be renewed by their national states when it expires after their first three months.

Volunteers under the European Voluntary Service Programme are entitled to claim under the EVS Group Insurance Plan, which covers you against the risks of accident, sickness, death, permanent disability, repatriation and third party liability.

Third-Country Nationals Coming To Spain To Volunteer

Residents outside one of the Schengen agreement countries need to apply for a three-month visa if they are staying up to this time, or for a non-remuneration residence visa if they are staying longer. Volunteers should check whether their county has specific arrangements with Spain for the purposes of receiving health-care while they are there.

Volunteers From Abroad

In the absence of any particular provision applying specifically to overseas volunteers, they will be subject to general legislation by default.

3. GOVERNMENTAL ACTIONS FOR THE PROMOTION OF VOLUNTARY ACTIVITY IN SPAIN

The aim of the Spanish Law on Volunteerism of 1996 is to support and raise awareness in society of volunteerism.

Following this objective, a three-year *State Plan on Volunteerism* was approved by the Ministry of Work and Social Affairs (1997-2000). The United Nations International Year of Volunteers 2001 (IYV 2001) then served as an appropriate structure within which to launch the Second State Plan for Volunteerism, to be developed between 2001 and 2004.

The First National Plan divided the policy of voluntary work in four areas to be focused thereafter by the government:

- **Sensitisation:** To make society aware of the importance of collaboration.
- **Promotion:** To create a real culture of volunteering.
- **Support:** To offer technical and financial support.
- **Co-ordination:** To create mechanisms to warrantee participation of different agents in society.

The *Second State Plan for Volunteerism* aims to continue the objectives and actions produced by the First State Plan 1997-2000, but not as a second or as a continuation plan, but as the same document adapted to the new period. In general terms, the structure of the priority areas, actions and measures remains the same. However, some slight changes are made.

The promotion area is substituted since its contents were not clearly defined which caused some confusion. Secondly, the introduction of the concept “strategic line” instead of “measure” aims to give the Plan a more sectoral perspective, which will allow for the prioritisation of some areas and actions oriented towards concrete and short-term objectives. Finally, the Second Plan reduces the total number of actions and indicates, where possible, which organism is responsible for each measure in order to turn the plan into operation. The full text of the Second Plan can be found in: <http://www.mtas.es/injuve/descarga/IIplanvoluntariado.pdf>

4. FINAL REMARKS

Currently, there are no plans at the level of the Spanish central authorities to develop any further legislation aimed at supporting or promoting volunteerism. However, the Spanish Law 6/1996 on Volunteerism may be viewed as an example of how to regulate such issues as the boundaries between voluntary work and employment, the relationship between the volunteer and the organisation for whom they volunteer, as well as an example of measures established by the state to foster volunteer activities. The law still fails however, to recognise and facilitate transnational full-time voluntary service programmes outside the framework of state international development programmes.

As illustrative of what the Spanish arena of volunteerism looks like, a survey carried out by the Spanish Youth Institute (Injuve) in July 1998 serves as a useful starting point. According to the survey, only 2.2% of young people aged between 14 and 18 years old spent some time per week, on social participation or volunteer activities. Those who did engage in these activities, notwithstanding, spent a minimum of 5 hours, one day per week. The survey concluded that young people in Spain were not prepared to sacrifice their leisure time on voluntary activity.

The reasons for this lack of civic participation on the part of young people may range from historical to contemporary to personal reasons, but the general trend in Spain is one of young people rebelling against institutions and institutionalised programmes. In addition, volunteering is not generally viewed in Spain as an important space for integration, socialisation and creation of a spirit of citizenship among young people. Another very influential factor stems from the fact that there are daily heated debates between Spanish non-governmental organisations, and the Trade Unions on the boundaries between volunteer work and employment.

Spain is nevertheless witnessing a steady increase in engagement in voluntary action. High rates of unemployment, especially among young people, and the current restructuring of the economy in many areas, may be seen as contributing to the volunteer “boom” phenomenon currently underway in Spain.

5. USEFUL CONTACTS

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Further Information:

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