



*This is an unofficial translation [for reference only].*

## **Civil Code: Book One: Title I<sup>1</sup>**

### **Book One**

#### **Persons**

##### **Title I**

##### **Spanish and foreigners**

[Incorporates the changes introduced by Statute 36/2002, October 8, about modifications of the Civil Code in nationality matters (BOE number 242, 9/10/2002). References are also made to changes introduced by Statute 52/2007, December 26, that recognises and extends rights and establishes policies in favour of those who were subjected to political persecution or violence during the civil war and the dictatorship. (BOE number 310, 27/12/07)].

##### **Article 17**

1. Spanish by birth are:<sup>2</sup>

a) Those born to a Spanish father or mother.

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<sup>1</sup> Source: [civil.udg.edu](http://civil.udg.edu)

<sup>2</sup> According to the seventh additional provision ('Acquisition of Spanish Nationality') of the Statute 52/2007, 26 December 2007, which recognises and extends rights and establishes policies in favour of those who were subjected to political persecution or violence during the civil war and the dictatorship (BOE number 310, 27/12/07, pp. 53410-53416): (i) persons whose father or mother were Spanish by birth can opt for Spanish nationality by birth if they formalise their declaration within two years of the entry into force of this additional provision. This term can be extended for one year by agreement of the Consejo de Ministros; and (ii) this right is also recognised to the grandchildren of those who lost or had to refuse Spanish nationality as a consequence of exile. For more details, see below, 'Addendum'.

- b) Those born in Spain to foreign parents if at least one of them was also born in Spain. The children of diplomatic or consular officials accredited in Spain are excepted.
  - c) Those born in Spain to foreign parents, if both lack a nationality or if the legislation of the State of either of the parents does not give the child a nationality.
  - d) Those born in Spain without determinate filiation. For this purpose minors whose first known place of sojourn is Spanish territory are presumed to be born on Spanish territory.
2. Filiation or birth in Spain, which are determined after the age of eighteen years, are not in themselves cause for the acquisition of Spanish nationality. An interested party has a right to opt for Spanish nationality by birth within two years of that determination.

### **Article 18**

The continuous possession and use of Spanish nationality during ten years, in good faith, and based on title registered before the Civil Registry, is cause for the consolidation of the nationality even if the title that originated it is void.

### **Article 19**

- 1. A foreigner under the age of eighteen years adopted by a Spaniard acquires, from the date of the adoption, Spanish nationality by birth.
- 2. If the adoptee is over the age of eighteen years, he may opt for Spanish nationality by birth within two years of the adoption.

### **Article 20**

- 1. The following have the right to opt for Spanish nationality:
  - a) Those persons that are or have been under the parental authority (*patria potestas*) of a Spaniard.
  - b) Those whose father or mother were Spanish by birth and were born in Spain.
  - c) Those who are included in the second paragraph of Articles 17 and 19.
- 2. The declaration of option shall be formulated:
  - a) By the legal representative of an applicant under the age of fourteen years or lacking legal capacity. In this case, the option requires authorisation from the chief officer of the Civil Registry of the domicile of the declarant, after consulting the Public Prosecutor (*Ministerio Fiscal*). Such authorisation shall be granted in the interest of the minor or legal incompetent.
  - b) By the interested party assisted by his legal representative, when the former is over the age of fourteen years or when, lacking legal capacity, is enabled by the judgment declaring the legal incompetence.<sup>3</sup>
  - c) By the interested party, on her own, if emancipated or over the age of eighteen years. The option will expire at the age of twenty years, but in case the applicant is not emancipated

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<sup>3</sup> This refers to the judgment in which the legal incompetence, of those over the emancipation age, is declared. Therefore, the legal incompetent that is older than the emancipation age can act on her own, for this purpose, only when authorize to do so in the judgment that declared her legal incompetence.

according to the law of the State of which she is a national at the age of eighteen years, the term to opt will be extended for up to two years from the emancipation.

- d) By the interested party, on her own, within two years following the recovery of full legal capacity. The case in which the right to opt expires according to paragraph c) is excepted.
3. Notwithstanding the preceding paragraph, the exercise of the right to choose referred to in paragraph 1.b) of this article shall not be subject to any age limitation.

[This article is worded according to Statute 36/2002, of October 8, about modifications to the Civil Code in nationality matters (BOE number 242, 9/10/2002, pp. 35538-35540)].

## **Article 21**

1. Spanish nationality is acquired by a naturalisation certificate, discretionally granted by Royal Decree (Real Decreto), when exceptional circumstances obtain relating to the interested party.
2. Spanish nationality is also acquired by residing in Spain, according to the conditions established in the following article and by a concession given by the Minister of Justice (Ministro de Justicia), who can deny it for reasons of public order or national interest.
3. In either case the application may be presented by:
  - a) The interested party who is emancipated or over the age of eighteen years.
  - b) Those over the age of fourteen years assisted by their legal representative.
  - c) The legal representative of those under fourteen years old.
  - d) The legal representative of those lacking legal capacity, or those lacking legal capacity, by their own or duly assisted, depending on the sentence of legal incapacity.

In this case and the previous one, the legal representative will be able to apply only if the authorisation according to letter a) of paragraph 2 of the previous Article has been previously obtained.

4. The concessions by naturalisation certificate or by residency expire 180 days following their notification, if within that period the applicant fails to appear before the competent official to meet the requirements of Article 23.

## **Article 22**

1. To grant the concession of nationality by residency, this residency should have lasted for ten years. Five years will be enough for those who have obtained refugee status, and two years in the case of nationals by birth from Latin American countries, Andorra, the Philippines, Equatorial Guinea or Portugal or of Sephardim.
2. A one year period of residency will be enough for:
  - a) Those who were born in Spanish territory.
  - b) Those who did not exercise on time the power to opt.

- c) Those who were legally under the tutelage, guardianship or in the care of a Spanish citizen or institution for two consecutive years, even if they continue in this situation at the time of the application.
  - d) Those who at the time of the application were married to a Spaniard for a year and are not legally or de facto separated.
  - e) The widower or widow of a Spaniard, if at the time of the death of the spouse there was no legal or de facto separation.
  - f) Those born outside Spain to a father or mother, grandfather or grandmother, who had been Spanish by birth.
3. In all the cases, the residency shall be legal, continuous and immediately before the application. For the purposes of the provisions of clause d) of the previous paragraph, the spouse that lives together with a Spanish diplomatic or consular officer accredited abroad shall be deemed to have legal residence in Spain.
4. In the proceedings covered by the legislation of the Civil Registry, the applicant must display good citizenship conduct and a sufficient degree of integration into Spanish society.
5. The granting or denial of nationality by residency is without prejudice to the possibility of starting a contentious-administrative judicial action.

[This article is worded according to Statute 36/2002, of October 8, regarding modifications to the Civil Code in nationality matters (BOE number 242, 9/10/2002, pp. 35538-35540)].

### **Article 23**

The following are common requirements for the validity of the acquisition of Spanish nationality by option, naturalisation certificate or residence:

- a) That those over the age of fourteen years and capable of declaring for themselves swear or promise fidelity to the King and obedience to the Constitution and the laws.
- b) That the same person declares that he or she renounces his or her previous nationality. Those nationals by birth of those countries covered in paragraph 1 of article 24 are exempted from this requirement.<sup>4</sup>
- c) That the acquisition is inscribed in the Spanish Civil Registry.

[This article is worded according to Statute 36/2002, of October 8, regarding modifications to the Civil Code in nationality matters (BOE number 242, 9/10/2002, pp. 35538-35540)].

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<sup>4</sup> According to Article 18 of the Statute 52/2007, 26 December 2007, which recognises and extends rights and establishes policies in favour of those who were subjected to political persecution or violence during the civil war and the dictatorship (BOE number 310, 27/12/07, pp. 53410-53416), this requirement shall not be applicable to the volunteer members of the International Brigades who took part in the Civil War from 1936 to 1939. This exemption solidifies the right recognised to these volunteers by the Royal Decree 39/1996, 19 January. According to clause b) of the same Article 18, a Royal Decree approved by the Consejo de Ministros shall determine the requirements and the procedure to follow for the acquisition of Spanish Nationality by the persons referred to in the previous paragraph. For more details, see below, 'Addendum'.

## **Article 24**

1. Spanish nationality will be lost by those emancipated who, habitually residing abroad, voluntarily acquire a different nationality or exclusively use the foreign nationality that was attributed to them before their emancipation. The loss will happen after three years from, respectively, the acquisition of the foreign nationality or the emancipation. Notwithstanding, those interested can avoid losing the Spanish nationality if within that term they declare to the officer in charge of the Civil Registry their will to retain it.

Acquiring the nationality by birth of Latin American countries, Andorra, the Philippines, Equatorial Guinea or Portugal is not enough to produce, according to this paragraph, the loss of the Spanish nationality by birth.

2. In any case, the emancipated Spaniards who expressly renounce Spanish nationality will lose it, if they have another nationality and habitually reside abroad.
3. Those born and residing abroad who hold Spanish nationality because they are the child of a Spanish father or mother, also born abroad, when the laws of the country of residence attribute them the nationality of that country, will lose, in every case, their Spanish nationality if they do not declare their will to retain it before the officer in charge of the Civil Registry within three years of their attaining majority or emancipation.
4. Spanish nationality will not be lost, according to this norm, if Spain is at war.

[This article is worded according to Statute 36/2002, of October 8, about modifications to the Civil Code in nationality matters (BOE number 242, 9/10/2002, pp. 35538-35540)].

## **Article 25**

1. Those who are not by birth Spanish will lose Spanish nationality:
  - a) When they exclusively use, within a three year period, the nationality they had renounced when acquiring the Spanish nationality.
  - b) When by their own will they enter to the military forces or exercise a political position in a foreign state against the express prohibition of the government.
2. A definitive judgment stating that the applicant has engaged in falseness, concealment, or fraud in the acquisition of Spanish nationality nullifies that acquisition, although no adverse effects will derive from it to third parties in good faith. The action of annulment shall be exercised by the Public Prosecutor (Ministerio Fiscal) on his own initiative or by petition, within fifteen years.

[This article is worded according to Statute 36/2002, of October 8, regarding modifications to the Civil Code in nationality matters (BOE number 242, 9/10/2002, pp. 35538-35540)].

## **Article 26**

1. Those who have lost Spanish nationality will be able to recover it by fulfilling the following requirements:

- a) Be a legal resident in Spain. This requirement shall not apply to emigrants or children of emigrants. Other cases may be waived by the Minister of Justice under exceptional circumstances.
  - b) Declare before the officer in charge of the Civil Register the desire to recover Spanish nationality.
  - c) Register their recovery in the Civil Register.
2. Those covered by any of the situations described in the previous article will not be able to recover or acquire Spanish nationality without previous rehabilitation discretionally given by the Government.

[This article is worded according to Statute 36/2002, of October 8, regarding modifications to the Civil Code in nationality matters (BOE number 242, 9/10/2002, pp. 35538-35540)].

### **Article 27**

Foreigners have in Spain the same civil rights as the Spanish, with the exceptions established in the provisions of special laws and international treaties.

### **Article 28**

Corporations, foundations, and associations, recognised by law and domiciled in Spain, shall enjoy Spanish nationality, provided they are included in the concept of juridical persons according to the norms of the present Code. Associations domiciled abroad will have in Spain the treatment and rights determined by international treaties or special laws.

## **Addendum**

Relevant excerpts from Statute 52/2007, of 26 December, which recognises and extends rights and establishes policies in favour of those who were subjected to political persecution or violence during the civil war and the dictatorship. (BOE number 310, 27/12/07, pp. 53410-53416).

**Article 18.** Concession of Spanish nationality to the volunteer members of the International Brigades.

1. To materialise the right recognised by the Royal Decree (Real Decreto) 39/1996, 19 January, to the volunteer members of the International Brigades who took part in the Civil War from 1936 to 1939, the requirement of renunciation of their previous nationality according to Article 23, clause b), Civil Code which refers to the acquisition of the Spanish nationality by naturalisation certificate shall not be applicable
2. A Royal Decree (Real Decreto) approved by the Consejo de Ministros, shall determine the requirements and the procedure to follow for the acquisition of Spanish Nationality by the persons referred to in the previous paragraph.

Seventh additional provision. Acquisition of Spanish Nationality.

1. A person whose father or mother were Spanish by birth can opt for Spanish nationality by birth if they formalise their declaration within two years of the entry into force of the present additional provision. This term can be extended for one year by agreement of the Consejo de Ministros.
2. This right shall also be recognised to the grandchildren of those who lost or had to renounce their Spanish nationality as a consequence of exile.

Second final provision. Entry into force.

The present law shall enter into force the day following that of its publication in the Official Gazette (Boletín Oficial del Estado), with the exception of the Seventh Additional Provision which shall enter into force the year of its publication.

As a consequence,

I order all Spanish citizens and authorities to observe and enforce this law.

Madrid, 26 December 2007. JUAN CARLOS R.

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## Note on translation

Translation by:

Francisco Saffie Gatica

PhD candidate

School of Law

University of Edinburgh

f.saffie@sms.ed.ac.uk

This text contains a minor correction to the original translation commissioned in 2012 by the EUDO-Citizenship Observatory, the predecessor of GLOBALCIT.

The text was corrected by Lorenzo Piccoli, GLOBALCIT Research Associate, 12 October 2018.

Global Citizenship Observatory (GLOBALCIT)

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