

SPANISH LEGAL FRAMEWORK FOR MISSING PERSONS AND UNIDENTIFIED BODIES



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EuroMed Rights, founded in 1997, is a network that brings together 68 organizations from 30 countries. Its work aims to promote and protect human rights and democracy in the southern and eastern Mediterranean regions, while also influencing the policies of key European actors towards these regions. The network pursues its mission through networking and exchange among its members and partners, capacity-building to improve their skills, monitoring and documenting human rights violations and abuses, as well as advocacy work.

EAAF (Equipo Argentino de Antropología Forense) is an Argentine nonprofit, non-governmental organization that applies forensic sciences to cases of human rights violations by providing independent forensic investigations to help victims' families access their rights to justice and truth and potentially recover the remains of their missing relatives. Since its founding in 1984, just months after the fall of the last Argentine dictatorship, EAAF has pioneered the application of forensic sciences to human rights investigations in over 60 countries, primarily focusing on enforced disappearances. The Team has made thousands of identifications of victims of human rights violations and provided answers to their families; supplied evidence to justice proceedings that have imprisoned dictators and senior military officers in nine countries; trained thousands of victims' families, government forensic practitioners, judges, police, human rights defenders, and journalists; and contributed to the improvement of numerous internationally accepted forensic protocols, including those regarding the investigation of femicides and the deaths of missing migrants. EAAF's investigation of disappearances under democracy dates to its first days as a team.

University of Chicago Law School Global Human Rights (GHRC) works alongside partners and communities to advance justice and address the inequalities and structural disparities that lead to human rights violations worldwide. The GHRC uses diverse tactics and interdisciplinary methods to tackle pressing and under-addressed human rights issues. The work of the GHRC varies but includes investigating and advancing accountability for mass atrocities and armed conflict, addressing the impacts of colonialism, advocating for equality and non-discrimination, and advancing socio-economic rights.

The University of Chicago Law School Immigrants' Rights Clinic is a U.S.-based university legal clinic that provides legal representation to immigrant communities in Chicago and around the country, including individual representation of immigrants in removal proceedings, immigration-related complex federal litigation, and policy and community education projects on behalf of community-based organizations.



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I. LEGAL FRAMEWORK FOR MIGRANT PERSONS IN SPAIN

The [Spanish Constitution](#) establishes that foreign nationals will enjoy public freedoms in Spain under the terms established by treaties and the law.

The entry and stay of migrants in Spain is regulated by [Organic Law 4/2000, of January 11, on the rights and freedoms of foreign nationals and their social integration](#), and by its [Development Regulation, approved by Royal Decree 557/2011, of April 20](#).

Both regulations have been amended several times over the years. In fact, in the coming months, a new implementing regulation will come into force, approved by [Royal Decree 1155/2024, of November 19](#).

Article 3 of the Organic Law establishes that:

1. Foreigners shall enjoy in Spain the rights and freedoms recognised in Title I of the Constitution in the terms established in international treaties, in this Law, and any regulations governing their exercise. As a general interpretative criterion, it shall be understood that foreigners exercise the rights conferred upon them by this Law under conditions of equality with Spanish nationals. Rules relating to the fundamental rights of foreigners shall be interpreted in accordance with the Universal Declaration of Human Rights and with the international treaties and agreements on the same matters in force in Spain. Religious beliefs or ideological or cultural convictions of a different nature may not be invoked to justify acts or conduct that contravene those rights.

Although Spain's administrative structure is divided into three levels (state, regional and municipal), immigration falls under the exclusive jurisdiction of the State, as established by the Spanish Constitution. However, regional and municipal authorities are involved in matters concerning the identification of human remains and burials, as we will see in the following pages.

II. MAIN LAWS ON MISSING PERSONS AND HUMAN REMAINS

A missing person is understood to be a person who is absent from their habitual residence for no known or apparent reason, whose absence is a cause for concern, or whose new residence is unknown, thereby prompting a search for reasons of personal safety or concern from family or society.

The disappearance of a person may give rise to a judicial declaration of absence or death if certain requirements are met, as outlined below.

In order for a declaration of absence or death of a person to be issued in Spain, the Spanish Courts have jurisdiction when the missing person had their latest domicile in Spanish territory or held Spanish nationality (Art. 22 quater of [Organic Law 6/1985, of July 1, on the Judiciary](#)).

In Spain, the disappearance of persons has two distinct dimensions. On the one hand, the fact of the disappearance itself, which may be voluntary, involuntary, or forced and which may be linked to a criminal offence. On the other hand, the legal consequences of the disappearance, which may result in a judicial declaration of legal absence.

As regards disappearance as a fact, the rules relating to this situation are set out in the [Criminal Code \(CP\)](#) and in the [Criminal Procedure Act \(LECrim\)](#). In contrast, the legal consequences of disappearances are governed by the [Civil Code \(CC\)](#).

CRIMINAL RULES

The provisions of the CP relating to missing persons apply only to persons who have disappeared as a result of a criminal offence, such as forced disappearance, illegal detention or kidnapping.

The LECrim establishes the possibility of taking DNA samples to help identify bodies. This may be

carried out by the Judicial Police or by a forensic pathologist acting on the order of the investigating judge in the jurisdiction where the body was found (Arts. 326, 363, 778 and Third Additional Provision).

CIVIL RULES

The CC regulates the provisions and legal consequences of a missing or presumed deceased person (Arts. 181 to 198).

Three legal measures are provided for in these cases. Firstly, the judicial authority must be informed of the disappearance of a person from their home or last known residence, in order to “appoint a guardian to protect and represent the missing person in court or in urgent matters that cannot be delayed without serious harm”. This notification may be made by any interested person or the Public Prosecutor.

After one year from the disappearance or three years if the person had appointed a representative to manage their affairs, the person may be declared to be “legally absent”. This declaration must be requested by the spouse, blood relatives up to the fourth degree or the Public Prosecutor. The Judge will determine which family member is responsible for representing the person declared absent, investigating their whereabouts, safeguarding and managing their assets, and fulfilling their obligations.

A declaration of death is more complex. It may be issued in the following circumstances:

1. Ten years have passed since the last news of the missing person, or, failing this, since their disappearance.
2. Five years have passed since the last news or, failing this, since their disappearance, provided that the person had reached the age of seventy-five by the end of that period.
3. One year has passed, counting from date to date, since an imminent life-threatening situation—such as an act of violence—in which the person was involved and from which no subsequent information has been received. In the case of an accident, this period will be three months.
4. Two years have passed since the disappearance of persons who, as members of an armed contingent (including volunteer auxiliaries or intelligence personnel), participated in combat operations. This period runs from the date of the peace treaty or, if none was signed, from the official declaration of the end of the war.
5. Three months have passed since a confirmed shipwreck or disappearance at sea of a person on board, and no further news has been received.
A shipwreck is presumed to have occurred if the ship does not reach its destination or, lacking a fixed point of arrival, has not returned six months after the latest news was received or, in the absence of this, from the date of departure of the ship from the initial port of the voyage.
6. In the case of persons aboard a crashed aircraft, a declaration of death may be issued if three months have passed since the confirmed crash without further news, or if human remains have been recovered but not identified.
An accident is presumed if, during a journey over sea, desert or uninhabited areas, six months have passed since the last known contact of the person or aircraft and, failing that, from the date of commencement of the journey. If the journey was made in stages, the timeframe will be calculated from the last point of take-off for which there was contact.

Once the death has been declared, succession proceedings (testament or intestate) of the person will be initiated.

In the civil sphere, it should be noted that given Spain's territorial configuration into autonomous communities as regional public authorities, some regions (such as Catalonia, Aragon and Navarre) have adopted their own regulations in this regard; even so, their content remains in line with the state regulations.

Based on the above, two conclusions can be drawn in the civil sphere. The first is that **a declaration of legal absence or death cannot be issued when the missing foreign national did not reside in Spain**. The second is that these declarations apply exclusively to matters concerning property and inheritance.

OTHER RULES OF INTEREST

[Law 4/2015, of April 27, on the Statute of the Victim of Crime](#), concerns victims of criminal activities. An indirect victim (Art. 2) includes those whose relative's death or disappearance was directly caused by a criminal offence, except when the person responsible is:

1. The victim's spouse (if not legally or de facto separated), the children of the victim or of the spouse (if likewise not separated) who were cohabiting with the victim at the time of death or disappearance; a person in a similar emotional relationship to the victim, and that person's children if they were living with the victim; the victim's parents and relatives in the direct or collateral line up to the third degree who were in the victim's care; or anyone under the victim's guardianship, curatorship, or foster care.
2. In the absence of the above, other direct relations and siblings, with priority among these given to the one who legally represented the victim.

The provisions of this Law shall apply to victims of crimes committed in Spain or that may be prosecuted in Spain, regardless of their nationality, whether they are adults or minors or whether or not they enjoy legal residence (Art. 1).

Every victim has the right to protection, information, support, assistance, care and reparation, as well as the right to actively participate in the criminal process and to receive respectful, professional, individualised and non-discriminatory treatment, from their first contact with the authorities or officials, through victim assistance and support services and, where appropriate, restorative justice, throughout the criminal process and for an appropriate period of time after its conclusion, regardless of whether or not the identity of the offender and the outcome of the process are known (Art. 3).

These rights are specified in the right to understand and be understood (Art. 4); the right to receive information from the first contact with the competent authorities (Art. 5); the right to obtain a copy of the report, duly certified and translated (Art. 6); the right to receive information on the criminal case (Art. 7); the right to translation and interpretation (Art. 9); the right to access assistance and support services, in the manner determined by regulation (Art. 10); and the right to the return of property (Art. 18).

To exercise these rights, the Government and the Autonomous Communities that have assumed powers in matters of Justice must organise, within their own jurisdiction, Victim Assistance Offices (Arts. 27 to 29).

These provisions are further developed by [Royal Decree 1109/2015, of December 11, which develops Law 4/2015, of April 27, on the Statute of the Victim of Crime](#), and regulates Victim Assistance Offices.

III. PROCEDURES FOR REPORTING MISSING PERSONS

The procedure for reporting a missing person is the same for both Spanish nationals and foreign nationals. A report can be filed with the State Security Forces and Corps (National Police, Civil Guard or regional and local police) or with the Judicial Authority.

The report, in addition to initiating an investigation process, is recorded in the [National Centre for Missing Persons](#) and in the Database of Missing Persons and Unidentified Human Remains and, where applicable, the Schengen Information System (SIRENE), if the disappearance has taken place in Spain.

In the case of migrants, the difficulties that arise are of a different kind. If the person reporting the disappearance is in Spain legally there should be no obstacles to submitting and processing a missing person report. However, if the reporting party is irregularly residing in Spain and they go to a National Police Station or a Civil Guard Post, they risk the initiation of expulsion proceedings due to their irregular status. The report may be filed with the competent authority by a resident of another European Union country, but there may be certain limitations. Finally, if reporting party

resides neither in Spain nor the EU, they are unable to file a missing person report in Spain.

In this regard, the Spanish Ministry of Foreign Affairs, European Union and Cooperation recognises that there is no type of procedure or mechanism to assist foreign nationals whose relatives, also foreign nationals, have disappeared in Spain or on migratory routes into the country. This Ministry also recognises that it is not possible to open a channel in Spanish consular offices that allows foreign nationals who cannot travel to Spain to begin a search procedure, including the taking of genetic samples, as this is not included among the consular functions provided for in the 1963 Vienna Convention on Consular Relations.

The Spanish authorities have two options: firstly, foreign nationals may file a report with the police authorities in their country of residence, which will be processed through international police cooperation channels; or, secondly, they may file a request for information on the whereabouts of the person with their embassy in Spain so that they can take the appropriate steps with the competent Spanish authorities.

In no case does filing a report equate to obtaining a “certificate of absence”; this is only possible in the circumstances and with the requirements set out in Section 2 of this document.

In this regard, it should be noted that Axis 14 of the [Spanish Humanitarian Diplomacy Strategy 2023-2026, from the Ministry of Foreign Affairs, European Union and Cooperation](#) establishes the support for locating missing persons during migration processes and the reestablishment of family contact, with the help of the International Red Cross and Red Crescent Movement.

To date, no measures have been adopted in relation to this Axis of the Spanish Humanitarian Diplomacy Strategy.

IV. RULES AND PROCEDURES FOR UNIDENTIFIED BODIES

[Organic Law 10/2007, of October 8, regulating the police database on DNA identifiers](#) determines the creation of a database that integrates the files of the State Security Forces and Corps. This holds data obtained from DNA analyses carried out as part of a criminal investigation, or during the procedures for identifying bodies or finding missing persons (Arts. 1 and 3).

The police database of DNA identifiers is overseen by the Ministry of the Interior, through the State Secretariat for Security (Art. 2). In practice, both the National Police and the Civil Guard maintain their own files, which are integrated into the database. It should be noted that the Civil Guard is the law enforcement agency responsible for policing Spain’s territorial waters.

Data relating to deceased persons will be deleted once the person in charge of the database has been informed of their death. In procedures involving the identification of human remains or for investigating missing persons, the registered data will be retained for as long as it is necessary to complete the corresponding procedures (Art. 9).

Art. 479 of the Organic Law of the Judiciary establishes the Institutes of Legal Medicine and Forensic Sciences (IMLCF), attached to the Ministry of Justice, as auxiliary bodies that support the Administration of Justice in its scientific and technical scope. These institutes are regulated by [Royal Decree 144/2023, of February 28, approving the Regulations of the Institutes of Legal Medicine and Forensic Sciences](#).

In this context, the Institutes of Legal and Forensic Medicine carry out the forensic medical investigation in all cases of violent death or suspected criminal activity that have occurred within their jurisdiction and ordered by the judicial authority, as well as the identification of bodies and human remains.

There is at least one institute in each autonomous community, as well as in the autonomous cities of Ceuta and Melilla. The territory under the jurisdiction of the Ministry of Justice includes the IMLCF of: Castilla La Mancha (IMLCF of Albacete, Cuenca and Guadalajara; IMLCF of Toledo and Ciudad Real), the Balearic Islands (IMLCF of the Balearic Islands), Castilla León (IMLCF of Burgos, Ávila, Segovia and Soria; IMLCF of León and Zamora; IMLCF of Valladolid, Salamanca and Palencia),

Murcia (IMLCF of Murcia), Extremadura (IMLCF of Badajoz; IMLCF of Cáceres), Ceuta, Melilla and state jurisdictional bodies.

For their part, the autonomous communities that have assumed powers in matters of justice are: Galicia, Asturias, Cantabria, the Basque Country, Navarre, La Rioja, Aragon, Catalonia, Valencia, Madrid, Andalusia and the Canary Islands. In these regions the organisation and oversight of the Institutes of Legal Medicine and Forensic Sciences is the responsibility of the corresponding autonomous community.

The regulations of each Institute can be found at the following link:
<https://www.mjusticia.gob.es/es/institucional/organismos/medicina-legal-ciencias/normativa>.

The National Institute of Toxicology and Forensic Sciences is a technical body attached to the Ministry of Justice, whose function is to assist the Administration of Justice and contribute to the consistency of scientific criteria and the quality of analytical expertise, as well as to the development of forensic sciences, in accordance with Article 480 of Organic Law 6/1985, of July 1, of the Judiciary. This institute maintains relations with the Institutes of Legal Medicine and Forensic Sciences.

There are no specific procedures in place for cases where it is presumed that the body is that of a migrant who died during the migration journey. As can be seen from the regulations cited above, DNA samples are taken from all unidentified bodies. These samples are entered into the database of the Ministry of the Interior.

In the case of burials, Art. 67 of [Law 20/2011, of July 21, on the Civil Registry](#) establishes that “if there are indications of violent death or in any case in which judicial proceedings must be initiated, the registration of the death will not in itself imply the granting of a burial or cremation licence. Said licence will be issued when authorised by the competent judicial body.” This means that until the judicial proceedings initiated upon the discovery of an unidentified body are concluded, the body must remain for an indeterminate and prolonged period of time in the refrigerated facilities at the Institutes of Legal Medicine and Forensic Sciences.

When a burial or cremation licence is granted, it is recommended that the body be buried and not cremated, both to preserve evidence and due to the clear incompatibility of this practice with some widely held religious beliefs in Spain.

Cemetery management is a local council responsibility, as established in Art. 25.2.j) of [Law 7/1985, of April 2, governing local council regulations](#). The local council must provide a burial site. This site can only be occupied for a certain period of time, which varies between 2 and 5 years depending on the locality. When this period ends, the remains must be removed and placed in a common grave.

V. MAIN LAWS AND PROCEDURES FOR REGISTERING THE DEATH OF A NON-CITIZEN AND TRANSFERRING THE REMAINS OF A NON-CITIZEN TO OTHER COUNTRIES

According to Art. 9 of Law 20/2011, of July 21, on the Civil Registry, the Civil Registry shall record the events and actions that affect both Spanish nationals and foreign nationals, which have occurred in Spain, including the declaration of absence, presumed death and death (Art. 4).

The death of a foreign national is recorded in the local Civil Registry of the place where it occurred. If the place is unknown, the death is registered in the local Civil Registry where the body was found. The registration certifies the death of a person and the date, time and place where it occurred. The registration must also include the identity of the deceased (Art. 62).

The transfer of the remains of a foreign national to another country is regulated by [Decree 2263/1974, of July 20, approving the Mortuary Health Regulations](#) (Arts. 38 and 39). The requirements for transferring the body of a foreign person to another country are:

1. The relatives or representatives of the deceased must ask the respective Consulate accredited in Spain to initiate the necessary procedures to obtain the authorisation that allows the entry of the body into the destination country.
2. The relatives or legal representatives of the deceased, through the consular authority of their country, must request authorisation from the Provincial Health Department in whose district the death occurred, for the body to leave Spain. This request, which will be accompanied by a copy of the application referred to in the previous section, must include: the name, surname and address of the deceased; the date, place and cause of death; the transport to be used; the place the body will leave Spain; and the destination country. Medical certificates of death and embalming must be attached to the application.
3. The Ministry of Health must communicate its decision to the Provincial Chief Health Officer of the province corresponding to the port, airport or land border through which the departure from Spain will be made.
4. The body must be embalmed or temporarily preserved and placed in a coffin.

VI. CARRYING OUT IDENTIFICATION PROCESSES (INCLUDING DNA) OF AN UNIDENTIFIED DECEASED PERSON

Section 4 of this document outlines the general rules for identifying a body through a DNA sample.

There are no specific legal procedures for migrants, although there is a [collaboration agreement between the Spanish Ministry of Justice and the Spanish Red Cross on humanitarian matters and identification of bodies](#).

In this agreement, the collaboration involves exchanging data on missing persons between the Institutes of Legal Medicine and Forensic Sciences, the National Institute of Toxicology and Forensic Sciences, and the Family Contact Restoration Service of the Spanish Red Cross. This aid relatives involved in the process of searching for their loved ones as a result of migration processes, natural disasters, armed conflicts and internal disturbances, reflecting their joint interest in searching for missing persons and identifying bodies.

This agreement allows for a comparison of the databases of unidentified bodies with the data provided by the Spanish Red Cross. In the event of a match, with judicial authorisation, contact with the relatives is facilitated and, provided that the judicial authority so determines, the relevant tests will be performed. However, the taking, management and analysis of samples is not within the remit of the Spanish Red Cross.

Therefore, only members of the State Security Forces and Corps or the Institutes of Legal Medicine and Forensic Sciences will be authorised to take and manage the samples. As previously stated, these actions may only be carried out within Spain, and the samples may not be taken in the country of origin.

VII. MAIN LAWS RELATING TO FORCED DISAPPEARANCES OR DETENTION OF MIGRANTS

As indicated in Section 2 of this document, the rules relating to forced disappearances with indications of criminality are regulated by the Penal Code. The rules relating to the detention of migrants for violations of immigration laws are found in Arts. 62 et seq. of Organic Law 4/2000, of 11 January, cited above.

VIII. CHALLENGES IN SPAIN

1. To create a civil, non-police organisation that acts as a single point of contact for relatives of missing or deceased persons in a migratory context, involving the participation of other institutions and civil society.
2. To implement collaboration mechanisms with civil society organisations, institutions and entities in the countries of origin, transit and destination.
3. To establish a channel for reporting and collecting biological samples in Spanish Consular Offices, guaranteeing the confidentiality of the data and its exclusive use for humanitarian purposes.
4. To develop a common Protocol for all Legal and Forensic Medicine Institutes that includes all the criteria, information records and traceability of the places where the body is found.
5. To adapt the existing legal framework on declarations of absence and declarations of death to address the situation of the relatives of missing migrants and the transnational nature of migratory flows.
6. To encourage proactive measures by the Spanish authorities to initiate the search for the relatives of the missing or deceased person and not have the burden fall on the relatives themselves.
7. To ensure that family members who are in an irregular residential situation will not be punished for reporting the disappearance of a migrant.



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