



SPAIN LGBT GOOD PRACTICES

I. Constitutional and legal provisions

Article 14 of the **Constitution** proclaims the equality of all Spanish citizens in law, “without any discrimination whatsoever prevailing on the grounds of birth, race, sex, opinion or other personal or social condition or circumstance”. Discrimination on the grounds of sexual orientation is covered by the terms “personal condition or circumstance”. The foregoing was upheld by the Spanish Constitutional Court (**Constitutional Court Judgment 41/2006**, of 13 February). Furthermore, the principle of non-discrimination on the grounds of sexual orientation has been incorporated into several provisions of Spanish law including **asylum protection, private and public employment, health, education, State Security Forces and Corps, personal data, sport, communication, penitentiary regulations** (including positive actions to protect transgender prisoners) , etc.

According to **Article 9.2** “the public powers must promote the necessary conditions to ensure that individual and collective freedom and equality are real and effective; to remove any obstacles that prevent or hinder their effectiveness and ensure the participation of all citizens in political, cultural and social life”. This precept has triggered positive actions, directed at offsetting any specific disadvantageous situation suffered by a certain group.

Spain was the third country in the world to legalize **same-sex marriage** in 2005, granting equal rights than married heterosexual couples, including adopting children, inheritance, pensions and tax benefits. In November 2012, Spain’s highest court upheld the **Law 13/2005, of 1 July, amending the Spanish Civil Code in terms of the right to marry**, stating that the constitution must be interpreted in a broad and flexible manner so as to adapt to social evolution. Since 2005 more than 28.000 gay and lesbian couples have got married and a majority of Spaniards support equal marriage rights¹.

¹ Social Research Center - CIS (May 2011): 77% of young people (15-29 year old) in favour of same-sex marriage; Metroscopia (2011): 56% of Spaniards in favour of same-sex marriage, including adoption rights



Law 3/2007, of 15 March, regulating the rectification of register entries relating to a person's sex grants legal recognition for the preferred gender of transgender persons and procedures for changing the name and the mention of the sex of transgender people on birth certificates, identity cards, passports and other official documents. This legal recognition does not include sterilization or any specific civil status such as being unmarried, or divorce.

Regional Basque Law 14/2012, of 28 June, on non discrimination based on gender identity and recognition of rights of transgender people, and **Navarre Foral Law 12/2009**, of 19 November, on non discrimination based on gender identity and recognition of rights of transgender people **guide public policies related to transgender people** in these regions. For instance, the recent Basque Law foresees the creation of an administrative unite aiming at providing information to transgender people, health guidelines to treat transgender people and other positive actions to avoid discrimination, included in the education system. It also makes possible that people undergoing gender reassignment treatment holds provisional identity documentation, while their National Identity Document is not issued. The **Parliaments of Andalucía (Law 2/2014) and of the Canary Islands (Law 8/2014)** have also passed similars Comprehensive Bills on non-discrimination on grounds of gender identity and the rights of transsexual people.

Furthermore, the **Parliament of Galicia** adopted in April 2014 the first specific regional Law against discrimination of LGBTI people (Law 2/2014), followed in October 2014 by a similar Bill passed by the **Parliament of Catalunya** (Law 11/2014) on LGBTI rights and for the eradication of homophobia, biphobia and transphobia.

The bias motive related to sexual or gender identity may be taken into account as aggravating circumstance when committing a crime (Article 22.4 of the **Criminal Code-Organic Law 10/1995**). Besides, special **Hate Crime and Discrimination Prosecution Services** have been set up in all provinces. A coordinator on hate crimes and discrimination has also been appointed at the Supreme Court.



II. Deputy Prosecutors for criminal protection of principles of equality and non-discrimination

In 2013 was created in Spain a network of prosecutors specifically devoted to the protection of the principles of equality and non-discrimination (at least one for each of the 50 provincial prosecution offices), in order to coordinate the activities of all bodies of the prosecution in the investigation of those crimes committed on hate or discriminatory grounds, which include specifically LGBT people. This network is coordinated by one Deputy Prosecutor at the Spanish Public Prosecution Office.

The Prosecution aims that this network responds to the multiple problems which affect the discrimination victims including the victims of discrimination crimes based on sexual orientation and gender identity. Thus, doctrine and jurisprudence are sought for combating all forms of discrimination and facilitating an effective response by the Public Prosecution against this type of crime. Furthermore, the network will increase the legal certainty in this area.

The network's functions are to gather information, documentation and recommendations of international human rights bodies (at United Nations and European Union level); to collect the jurisprudence deriving from the European Court of Human Rights, the Court of Justice of the European Union, the Constitutional Court and the Supreme Court; and to investigate, pursue and prosecute this type of criminal activity. In addition, a relevant objective is to approximate the Prosecution to citizenship, public institutions, victims' associations and human rights NGOs. And this in order to establish and promote contact and ongoing dialogue with civil society.

Furthermore, The Ministry of Interior announced in December 2014 the creation of a protocol for police action. The protocol has been developed in order to intensify the policial pursue and punish hate crimes. In Spain LGBT discrimination is the first ground for hate crimes. In this sense, the protocol provide special attention to this type of discrimination.

III. Government declarations and commitment



The Spanish Government has shown a commitment towards upholding human rights by LGBT, as declared in the Resolution adopted by the Council of Ministers on 17 May 2013, which approved the **Government Declaration on the International Day against Homophobia and Transphobia**. Similar Government declarations have been adopted since 2009 on a yearly basis.

In the 2013 declaration, the Government reiterates its commitment to promote the effective enjoyment of human rights by everyone irrespective of their sexual orientation or gender identity at a national and international level. This will include the promotion coordinated at international level to repeal laws that criminalizes LGBT people in numerous countries. The Government also supports the despathologization of transgenderism from the International Classification of Diseases and Related Health Problems edited by the World Health Organization.

At a national level, the Government will fight homophobia and transphobia with information and awareness-raising campaigns, it will also promote the study of this kind of discrimination and will promote the employment and social inclusion of transgender people.

IV. Public policies

The Ministry of Health, Social Services and Equality, mainly within the **Institut of Women and for Equal Opportunities**, is the department that promotes the mainstreaming on equal treatment and non discrimination at national level, including discrimination based on sexual orientation and gender identity. With this purpose the Ministry is developing the following projects:

- **Map of the Discrimination.** This project aims at studying the social attitudes towards discrimination, the perception of potential victims of discrimination and improving the systematic compilation of official data and statistics on discrimination, in order to design more efficient public policies to promote equal treatment and non discrimination irrespective of inter alia, sexual orientation and identity.



The first research product elaborated in the framework of the Project is the ***Diagnostic study of secondary sources about discrimination in Spain***. An executive summary of this research in English is available here:

<http://www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion/publicaciones.htm>

The second product of the Map will be the **national Survey on Discrimination** that has been designed by the National Research Center (CIS). The survey aims at measuring the perception of discrimination based on different grounds, including sexual orientation and gender identity. The questionnaire includes specific questions related to sexual orientation (social acceptance of same-sex marriage and adoption). The results of an analytic study based on this survey have been presented at a European Seminar held in Madrid on 30th/31st October 2014.

Besides the Ministry is currently working in cooperation with other departments to promote systematic data-collection (number of reported cases of discrimination: judicial procedures, rulings, sanctions, etc.)

- **Empower civil society organizations** including mechanisms to promote dialogue and debate with public administrations, for instance through the **State Council of NGOs for Social Action**, a consultative body to encourage the participation of non-profit organizations in the drafting of social policies, including LGBT organizations. This includes the **annually basis subsidies allocated to social organizations**, including those promoting non discrimination based on sexual orientation and gender identity. The first strand of subsidies benefits social organizations to develop concrete social programs, including programs regarding LGBT people. The total amount of these subsidies to social organizations is decided by income taxpayers on an annual basis. The second strand of subsidies supports management and staff costs of social organizations.
- **Training program on equality and non-discrimination mainstreaming in public policies**, with the support of Progress Action Grants. The project aims at fighting all kind of discrimination based on sexual orientation and identity,



among other grounds. The beneficiaries of the project are public directives and civil servants responsible for the design, implementation and evaluation of public policies, legislation and programs at all administrative levels. This programme includes the elaboration of a training handbook with guidelines for equality and non discrimination mainstreaming and training activities.
https://www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion/documentos/Manual_ingles_invertir_igualdad.pdf.

- **Practical guides against discrimination.** In the first semester of 2015, two practical guides will be published, featuring basic information about what are to be considered forbidden discriminations in different areas (employment, education, healthcare, housing, access to goods and services), and on different grounds (mainly, ethnic origin, sexual orientation and gender identity, disability) where to resort to in case of being discriminated against, and which are the key issues to bear in mind in order to report a discrimination successfully. The first guide will be addressed to citizens at large, while the second will target legal professionals and ngo-officials who may be confronted with discrimination incidents.
- **Cooperation with local governments.** The Institut of Women and for Equal Opportunities, in cooperation with the Spanish Federation of Municipalities and Provinces, has launched a contest on local good practices in the field of equality and non-discrimination policies and programmes, including LGBT policies. The outcome will be publicly announced in the first quarter of 2015.
- **Awareness raising campaign among child and youth people (13-17 year old)** through the Internet to promote equal treatment and non discrimination based on, *inter alia*, sexual orientation and gender identity.

This campaign “**Yosoytu.Mezclate**” includes a webpage, educational materials, information activities in social network and an artistic competition with three modalities (music, photography and essays). The project was developed in December 2013 and includes material in English and regional languages. It will be relaunched in 2015 under the name YoSoyTu.

More information is provided at: www.mezclate.es



- The Ministry and the Foundation for Diversity (FpD), signed in 2013 an agreement to promote, disseminate and implement Spain's Diversity Charter and other initiatives related to diversity management.

The Diversity Charter, promoted by the European Commission, represents a commitment text (charter/code) that signed on a voluntary basis by companies and institutions to encourage adhesion to fundamental principles of equality and respect irrespective of sexual orientation, *inter alia*, and promote diversity.

At international level, the Ministry of Foreign Affairs and Cooperation, especially within the **Human Rights Office** promotes cooperation within international organizations, including the United Nations, the European Union and the Council of Europe to ensure that LGBT people fully enjoy human rights.

The national **Ombudsman** (*Defensor del Pueblo*), is entrusted with the protection and defence of fundamental human citizen rights and public freedoms.

At **regional level** the following regional government units were set up:

- **Catalonia:** Equal Treatment and Non Discrimination Unit for LGBT people; National Council of LGBT People, integrated by 47 entities and organizations. Besides the regional government has adopted an Inter-ministerial Plan for non-discrimination against homosexual and transgender people
- **Basque Country:** "*Berdindu*"
- **Madrid:** Program for assisting homosexual and transgender people.

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